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LUMBEE RECOGNITION

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 420

TO PROVIDE FOR THE ACKNOWLEDGMENT OF THE LUMBEE TRIBE OF NORTH CAROLINA

SEPTEMBER 17, 2003
WASHINGTON, DC

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LUMBEE RECOGNITION

WEDNESDAY, SEPTEMBER 17, 2003

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

The committee met, pursuant to notice, at 10 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Inouye, and Cantwell.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning. The committee will come to order. This will be our first post-recess hearing. This morning we will hear testimony on S. 420, the Lumbee Acknowledgement Act of 2003, introduced by our colleague, Senator Dole, who is with us, as is Congressman McIntyre. I understand that Congressman Faleomavaega may be here also.

Let me proceed just for 1 minute here. We will hear testimony from Senator Dole first, and then we will go to Congressman McIntyre and then your colleague. At the conclusion of that, we then go to the Administration witness because we know people have tight schedules, but you are welcome to stay here with us throughout the hearing if you would like, sit at the dais or sit in the audience, whatever your preference is will be fine with us.

S. 420 will amend the Federal statute relating to the Lumbee Indians of North Carolina, enacted in the termination period of the 1950's. If enacted, it will provide recognition and benefits of recognition to the 50,000-plus member Lumbee Tribe of North Carolina.

[Text of S. 420 follows:]

II

108TH CONGRESS
1ST SESSION

S. 420

To provide for the acknowledgment of the Lumbee Tribe of North Carolina, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2003

Mrs. DOLE introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To provide for the acknowledgment of the Lumbee Tribe of North Carolina, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Lumbee Acknowledgment Act of 2003''.

SEC. 2. LUMBEE ACKNOWLEDGMENT.

The Act of June 7, 1956 (70 Stat. 254, chapter 375), is amended to read as follows:

"SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Lumbee Acknowledgment Act'.

"SEC. 2. FINDINGS.

''Congress finds that—

''(1) many Indians living in Robeson County, North Carolina, and adjoining counties in the State are descendants of a once large and prosperous tribe that occupied the land along the Lumbee River at the time when the earliest European settlements were established in the area;

''(2) when the members of that tribe first made contact with the settlers, the members were a well-established and distinctive people living in European-style houses, tilling the soil, owning slaves and livestock, and practicing many of the arts and crafts of European civilization;

''(3) tribal legend, a distinctive appearance and manner of speech, and the frequent recurrence among tribal members of family names (such as Bullard, Chavis, Drinkwater, Locklear, Lowery, Oxendine, and Sampson) that were found on the roster of the earliest English settlements, provide evidence that the Indians now living in the area may trace their ancestry back to both—

''(A) European settlers; and

"(B) certain coastal tribes of Indians in the State, principally the Cheraw Tribe;

"(4) the Lumbee Tribe has remained a distinct Indian community since European settlers first made contact with the community;

"(5) the members of the Tribe—

"(A) are naturally and understandably proud of their heritage; and

"(B) seek to establish their social status and preserve their ancestry;

"(6) the State has acknowledged the Lumbee Indians as an Indian tribe since 1885;

"(7) in 1956, Congress acknowledged the Lumbee Indians as an Indian tribe but withheld from the Tribe the benefits, privileges, and immunities to which the Tribe and members of the Tribe would have been entitled by virtue of status as an acknowledged Indian tribe; and

"(8)(A) the Tribe is entitled to full Federal acknowledgment; and

"(B) the programs, services, and benefits that accompany that status should be extended to the Tribe and members of the Tribe.

"SEC. 3. DEFINITIONS.

"In this Act:

"(1) ACKNOWLEDGMENT.—The term 'acknowledgment' means acknowledgment by the United States that—

"(A) an Indian group is an Indian tribe; and

"(B) the members of the Indian group are eligible for the programs, services, and benefits (including privileges and immunities) provided by the United States to members of Indian tribes because of the status of those members as Indians.

"(2) INDIAN.—The term 'Indian' means a member of an Indian tribe or Indian group.

"(3) INDIAN GROUP.—The term 'Indian group' means any Indian band, pueblo, village, or community that is not acknowledged.

"(4) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(5) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

"(6) SERVICE POPULATION.—The term 'service population' means the population of the Tribe eligible to receive the programs, services, and benefits

described in section 5(a), as determined by the Secretary under section 5(c).

"(7) STATE.—The term 'State' means the State of North Carolina.

"(8) TRIBAL ROLL.—The term 'tribal roll' means a list of individuals who have been determined by the Tribe to meet the membership requirements of the Tribe established in the constitution of the Tribe adopted November 11, 2000.

"(9) TRIBE.—The term 'Tribe' means the Lumbee Tribe of North Carolina, located in Robeson County, North Carolina, and adjoining counties in the State.

"SEC. 4. ACKNOWLEDGMENT OF LUMBEE TRIBE.

"(a) ACKNOWLEDGMENT.—

"(1) IN GENERAL.—The Tribe is acknowledged.

"(2) APPLICABLE LAW.—All laws (including regulations) of the United States of general applicability to Indians and Indian tribes shall apply to the Tribe and members of the Tribe.

"(b) PETITION.—Any Indian group located in Robeson County, North Carolina (or any adjoining county), the members of which are not members of the Tribe as determined by the Secretary under section 5(c), may submit to the Secretary a petition in accordance with part 83 of

title 25, Code of Federal Regulations (or a successor regulation), for acknowledgement.

"SEC. 5. SERVICES.

"(a) IN GENERAL.—Beginning on the date of enactment of this section, the Tribe and members of the Tribe are eligible for all programs, services, and benefits (including privileges and immunities) provided by the Federal Government to Indian tribes and members of Indian tribes.

"(b) RESERVATION.—

"(1) PROGRAMS, SERVICES, AND BENEFITS.—For the purpose of providing any program, service, or benefit described in subsection (a) to the Tribe or a member of the Tribe, the Tribe, and any member of the Tribe residing in the county of Robeson, Cumberland, Hoke, or Scotland in the State, shall be considered to be residing on or near an Indian reservation.

"(2) FEDERAL LAW.—Beginning on the date of enactment of this section, Robeson County, North Carolina, shall be considered to be the reservation of the Tribe for the purpose of any Federal law applicable to the Tribe.

"(3) NO EFFECT ON FEE OWNERSHIP.—Nothing in this subsection affects the ownership status of

any fee land within the State, or the status of any right or easement in the State, in existence as of the date of enactment of this section.

''(c) DETERMINATION OF SERVICE POPULATION.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall—

''(A) using the tribal roll in existence as of the date of enactment of this section, verify the population of the Tribe; and

''(B) determine the population of the Tribe eligible to receive the programs, services, and benefits described in subsection (a).

''(2) VERIFICATION.—The Secretary shall base a verification under paragraph (1)(A) only on a confirmation of compliance of members of the Tribe with membership criteria established in the constitution of the Tribe adopted November 11, 2000.

''(d) NEEDS OF TRIBE.—

''(1) IN GENERAL.—On determination of the service population, the Secretary and the Secretary of Health and Human Services shall develop, in consultation with the Tribe—

''(A) a determination of the needs of the Tribe; and

"(B) a recommended budget required to serve the Tribe.

"(2) SUBMISSION OF BUDGET REQUEST.—For each fiscal year after determination of the service population, the Secretary or the Secretary of Health and Human Services, as appropriate, shall submit to the President a recommended budget for programs, services, and benefits provided by the United States to members of the Tribe because of the status of those members as Indians (including funding recommendations for the Tribe that are based on the determination and budget described in paragraph (1)) for inclusion in the annual budget submitted by the President to Congress in accordance with section 1108 of title 31, United States Code.

"SEC. 6. JURISDICTION.

"(a) IN GENERAL.—Except as provided in subsection (b), the State shall exercise jurisdiction over all criminal offenses that are committed on, and all civil actions that arise on, land located in the State that is owned by, or held in trust by the United States for the benefit of, the Tribe or any member of the Tribe.

"(b) TRANSFER OF JURISDICTION.—

"(1) IN GENERAL.—After consultation with the Attorney General, the Secretary may accept, on be-

half of the United States, any transfer by the State to the United States of all or any portion of the jurisdiction of the State described in subsection (a).

"(2) AGREEMENT.—A transfer of jurisdiction under paragraph (1)—

"(A) shall be subject to an agreement entered into by the Tribe and the State relating to the transfer; and

"(B) shall not take effect until at least 2 years after the date on which the agreement is entered into.

"(c) NO EFFECT ON INDIAN CHILD WELFARE ACT AGREEMENTS.—Nothing in this section affects the application of section 109 of the Indian Child Welfare Act of 1978 (25 U.S.C. 1919).

"SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as are necessary to carry out this Act.".

○

The CHAIRMAN. The act of 1956, as I understand it, was both a recognition act and also a termination act at the same time. Congress recognized the long history of the Lumbee Tribe and individual Lumbees, but instead of welcoming the tribe into the family of federally recognized tribes, Congress instead basically terminated it. Also, in looking at some of the notes that have been provided through staff, I noticed that there have been a number of times that the Lumbees have been before Congress, going clear back to the 1870's, so this is not the first time they have been here on this issue.

It is an undisputed fact, I believe, that the Lumbees descended from an historic Indian tribe, and their current situation in terms of housing, health care, and education is very, very poor. I have a number of areas that I would like to explore with the witnesses, and certainly appreciate Senator Dole's leadership on this issue here in the Senate.

With that, I would like to refer to my colleague and the vice chairman, Senator Inouye, for any opening statement he may have.

Senator INOUYE. Thank you very much, Mr. Chairman.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. Unfortunately, I have another hearing scheduled for this moment, but I wanted to be here to welcome Senator Dole and the members of the Lumbee Tribe who have waited so very long for this day.

For more than a century, the Congress has been deliberating, sometimes actively, sometimes not, on whether to extend Federal recognition to the Lumbee Tribe. The first time Congress had occasion to address the status of the Lumbee Tribe was shortly after the State of North Carolina extended formal recognition to the tribe in 1885. A few years later, in 1888, the tribe submitted its first petition to the Congress for recognition and assistance. The Congress referred the tribe's petition to the Department of the Interior and the Commissioner of Indian Affairs ultimately denied the tribe's request for funding to support the education of tribal children; 11 years later, following the Commissioner's determination, the first bill to appropriate funds for the education of tribal children was introduced in the Congress. Again, the Interior Department recommended against Federal assistance for the tribe, and thereafter in 1914 the Senate directed the Interior Secretary to investigate the condition and the rights of Lumbee Indians and to provide a report to the Congress.

Mr. Chairman, I will not go into the rest of the history of the tribe's valiant and persevering efforts to achieve Federal recognition. I am certain that will be done by Senator Dole and the very capable witnesses who are here this morning. I just wanted to assure the leadership and the members of the tribe that I fully support your bid for Federal recognition, and I will do everything that I can to assist Senator Dole and Congressman McIntyre in securing the passage of S. 420.

I thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Inouye.

I might tell you, since this is the first time you have appeared before our committee Senator Dole, Senator Inouye and I have almost always spoken with one voice in our support for Indian people in this country. His guidance to me before I became chairman in the years he was the chairman have been just invaluable to me. So I certainly appreciate his endorsement of this bill and his support.

With that, why don't you go ahead?

STATEMENT OF HON. ELIZABETH DOLE, U.S. SENATOR FROM NORTH CAROLINA

Senator DOLE. Thank you very much, Mr. Chairman, for holding this important hearing today. You have provided such strong leadership on issues concerning Native Americans, and you have truly been a visionary in this area, and all have benefitted from your commitment, your perseverance, and your dedications. So thank you for all that you do.

Let me thank Ranking Member, Senator Inouye. You have been a champion as well, working for the betterment of your own State's native people and improving the lives of all Native Americans. I am deeply grateful to you both, and it is a privilege to serve with both of you in the U.S. Senate.

I certainly want to thank the members of the Lumbee Tribe who have traveled here in the face of Hurricane Isabel. We meet today to focus on an issue that I made a top priority once I arrived in the Senate, the terrible injustice that has been done to the Lumbee Indians. Full Federal recognition for this tribe has been unfairly denied for decades. We have a chance, Mr. Chairman, to right this wrong in the United States Senate. I am passionate about this matter, the subject of the first legislation I submitted as a U.S. Senator, the bill before us today.

In visiting with the Lumbees and the residents of Robeson County, where most Lumbees live, one occasion in particular stands out in my mind, a rally earlier this year with Congressman Mike McIntyre, for whom I have great admiration. It brought together the whole community with the common goal of getting the Lumbees the recognition they rightfully deserve. I am so impressed with the determination of the Lumbees. They are a people of great pride and I am in awe of their steadfastness on this issue, even after years of disappointments. Spending time with them has invigorated me in my effort to end this injustice.

Mr. Chairman, for more than a century the Lumbees have been recognized as American Indians. North Carolina formally recognized the tribe in 1885. It was just 3 years later, in 1888, that the tribe began what would become a long quest for recognition and assistance from the Federal Government. There have been numerous studies by the Department of the Interior, beginning as early as 1913, then again in 1914, and yet again in 1933. Each time, it has been determined that the Lumbees are indeed an Indian tribe.

There are more than one-half dozen instances when legislation was introduced, legislation which remained inactive or was passed by only one body. Finally in 1956, Congress passed the Lumbee bill which recognized the tribe, but there was a caveat which brings us to this hearing today. That legislation denied the tribe the benefits

and privileges that every other federally recognized tribe enjoys. This discrimination must end. The Lumbees deserve full recognition for their tribe, not a partial nod that ignores the history and the efforts of so many ancestors.

I introduced S. 420 as my first bill in the U.S. Senate because it is the right thing to do. It is the fair thing to do. This legislation will reverse that 1956 decision by Congress denying full recognition. Passage will allow the tribe to receive much-needed assistance in areas like education, health care, and economic development.

I know there are those who have argued and will do so again today that the Lumbees should go through the Bureau of Indian Affairs [BIA] for Federal recognition. That process is reserved for tribes whose legitimacy must be established. That is not the case with the Lumbees. In fact, the legitimacy of this tribe has been established time and time again, dating back to the late 1800's. The Federal Government has already spent the money and concluded that the Lumbees are an Indian tribe descended from the historic Cheraw Indians. There is no need to waste the tribe's or the Government's time and money again. Congress has never passed a special statute to send a tribe to the administrative process.

It has also been documented by the General Accounting Office that getting through the BIA can take years. If I may quote from that 2001 GAO report:

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

That report says it may take up to 15 years to resolve completed petitions, 15 years. The Lumbees have already waited far too long. It is wrong to impose yet another lengthy delay on this tribe. It has been over 100 years, Mr. Chairman. Let's not make them wait another 15 years

Let us do what is fair, what is right, to resolve this injustice. This tribe with 53,000 members is the largest tribe east of the Mississippi and the largest non-federally recognized tribe in the entire United States of America. The Lumbees have contributed so much not just to North Carolina's heritage, but to our entire Nation. They deserve full recognition now.

For weeks, I have heard about the excitement building among the Lumbees because of the opportunity to come here and to make their case once again. I spoke earlier of the Lumbees' dedication to this issue and how their passion continues to inspire me. Among us today is Emma Lee Locklear whose grandfather, Hezekiah Locklear, signed the petition for Lumbee recognition in 1888. Emma is here to continue the family's tradition of fighting for the rights of Lumbees, and I am determined to fight with her for what is right. I want to ask Emma to stand 1 moment so that we can recognize here.

[Applause.]

Senator Dole. I urge this committee, Mr. Chairman, to act now. Pass S. 420 so that Emma's work and that of her grandfather so many years ago will not have been in vain.

Congressman Mike McIntyre is a dear friend and colleague from North Carolina who is sponsor of the Lumbee bill in the House. Mike has been such a champion of the Lumbee cause and has done

an outstanding job in bringing all the parties together on this. I am so very pleased to work with him.

Following Congressman McIntyre and Congressman Faleomavaega, you will hear from three additional individuals who are truly dedicated to the cause of the Lumbees. Milton Hunt has become a dear friend through our work on recognition for the Lumbees. He is chairman of the tribe and mayor of Pembroke, and has led the way in rallying the entire community around full recognition for the Lumbees. Arlinda Locklear is an attorney with Patton, Boggs and is a nationally recognized expert in the area of Indian tribes. She became the first Native American woman to appear before the U.S. Supreme Court in 1984, and she is a member of the Lumbee Tribe. And Dr. Jack Campisi is an expert on Lumbee issues after having spent long hours researching the Lumbees while living among them, right there in Robeson County. He is a professor at Wellesley College and has done extensive research on tribal communities. They will answer any technical questions that you may have.

Again, Mr. Chairman, thank you very much for the privilege of being here today. Thank you.

The Chairman. Thank you for that very fine statement. I certainly commend all the people that have come all the way from North Carolina. I was watching the Weather Channel just a little while ago and it does not look good for the Outer Banks and further inland, too.

We will now go to Congressman Mike McIntyre. Thank you for appearing, Mike, and we will then continue with Eni Faleomavaega.

STATEMENT OF HON. MIKE MCINTYRE, U.S. REPRESENTATIVE FROM NORTH CAROLINA

Mr. MCINTYRE. Thank you, Senator.

Mr. Chairman, Ranking Member Inouye, and members of the committee, thank you for the opportunity to testify before you today regarding Federal recognition for the Lumbee Indians. And a special thanks to my friends and North Carolina colleagues, Senator Dole and Senator Edwards, and their staffs for their work and leadership on this critical issue. I especially thank Mrs. Dole for requesting this hearing so that we could move ahead on this process. I am also grateful to my colleague Eni Faleomavaega, who for many years has worked on Indian recognition efforts over in the House.

In the late 1500's when English ships landed on the shores of the Roanoke Island, right in the area where the hurricane is now headed, on the North Carolina coast, the Englishmen discovered Native Americans. Included among those Native Americans were both Cheraw and Pee Dee Indians who are direct ancestors of the Lumbee Indians. Later, in 1888, the Lumbees made their first effort at gaining Federal recognition. For at least 500 years, Lumbee Indians have been inhabitants of this land, and over half the time that our country has been in existence, 115 of the last 227 years, the Lumbee Indians have been seeking recognition. Over one-half the history of our Nation, they have been seeking this recognition and respect that they so well deserve.

As the largest tribe east of the Mississippi and the largest non-recognized tribe in America, it is unfathomable to think that this tribe of almost 55,000 people has never been fully recognized by our own government. Mr. Chairman, indeed the time for Lumbee recognition has come. I was born and reared in Robeson County, North Carolina, the primary home of the Lumbee people. I go home almost every weekend and have the high honor of representing approximately 40,000 Lumbees who live in my home county. In fact, there are more Lumbees in Robeson County than any other racial or ethnic group. The Lumbee Indians, many of whom are here in the audience today, are my friends, many of whom I have known all my life.

Senator, as you pointed out, so many have traveled today with an impending storm coming, and will be leaving soon hereafter. With the Senators' indulgence, I would just like to honor them by asking them to stand if they have come here today. Would all the Lumbees please stand?

[Applause.]

The CHAIRMAN. Nice crowd.

Mr. MCINTYRE. Thank you very much.

The CHAIRMAN. I hope their journey home will be safe from this impending storm.

Mr. MCINTYRE. Thank you, sir.

The Lumbees are important to the success of everyday life in Southeastern North Carolina, and their contributions to our society are numerous and endless, from medicine and law to business and banking, from the farms and factories to the schools and the churches, from government military and community service to entertainment and athletic accomplishments. The Lumbees have made tremendous contributions on the county, State and indeed the national level. In fact in my home county alone, my sheriff, my clerk of court, registrar of deeds, chairman of the county commissioners, and indeed my representative in the State legislature, as well as two of my district court judges and one of my superior court judges are all Lumbee Indians.

Mr. Chairman, those contributions are being recognized by my colleagues over in the House through their support of H.R. 898, legislation that I have introduced to grant the Lumbees Federal recognition. I am pleased to report today to the Senate Committee on Indian Affairs that 225 members of the U.S. House, on a bipartisan basis from every region, both sexes, every race, have cosponsored Lumbee recognition. The last time a vote occurred on the floor of the U.S. House to recognize the Lumbees, it had 20 sponsors. Today, we have more than 10 times that number, in fact more than 11 times that number of cosponsors.

The Lumbee contributions are being recognized at home also by both the public and the private sector. Mr. Chairman, from city councils to county commissions to chambers of commerce to our local medical center, to other organizations throughout North Carolina, we have letters of endorsement and resolutions that have been passed by these public and private bodies to seek recognition for the Lumbees.

Mr. Chairman, in conclusion let me urge this committee, and in fact all of the U.S. Congress, to proceed with recognition for the

Lumbee Indians. Justice delayed is justice denied. For too many years there have been too many delays. As you will hear from the next panel that will follow Mr. Faleomavaega, the evidence is clear, cogent, and convincing. It indeed is time to say yes to dignity and decency, yes to fundamental fairness, yes to respect, yes to honor, indeed yes to Federal recognition.

It is time for discrimination to end and recognition to begin.

Thank you for this opportunity to testify. Mr. Chairman, I look forward to working with you, my colleagues Mrs. Dole and others here in the Senate, and also with this committee, with Mr. Edwards of North Carolina, with my colleagues from North Carolina and the other sponsors from across the Nation, for this long overdue recognition.

May God grant that justice will finally be done, and with your help I am confident it will.

Thank you, Mr. Chairman.

[Applause.]

The CHAIRMAN. Thank you.

Congressman McIntyre, where is the House bill now? What is the disposition of the bill?

Mr. MCINTYRE. It is pending in the House Resources Committee.

The CHAIRMAN. It has not been heard yet?

Mr. MCINTYRE. Not yet, sir. You are first. [Laughter.]

The CHAIRMAN. We have a number of letters of support, and you mentioned some of the support from people who are in office. I know Senator Edwards has been rather busy lately, but I asked staff before we came in if we have anything from him. We do not have anything on record. You might ask him if he would submit a letter of support for the committee for our records.

Now, we go to a really terrific friend of mine, Congressman Faleomavaega. A lot of people think that I am the only Native American around here, but he is an honest-to-gosh Native American, too, being a chief of the Samoan Tribe. He has always been very active in the Native American Caucus, and someone we could always rely on to help Indian people.

Eni, nice to see you here.

STATEMENT OF HON. ENI FALEOMAVAEGA, U.S. DELEGATE FROM AMERICAN SAMOA

Mr. FALEOMAVAEGA. Mr. Chairman, I thank you for that kind recognition. There is probably a sense of curiosity from some of the people here in the audience as to what in the world a member of the Samoan Tribe is doing here, living 10,000 miles away from Washington, DC.

First of all, Mr. Chairman, I want to express my most sincere appreciation to the leadership that Senator Dole and her colleagues have shown, especially to my good friend and colleague, Mr. McIntyre.

Excuse my being very emotional about this issue. For the past 12 years I have had the privilege of working very closely with the members of the Lumbee Nation. I have felt such disappointment over the years, feeling that I had failed in my efforts in trying to erase the tremendous injustice that has been done to the Lumbee Nation.

Mr. Chairman, I believe it is important to note that the policy of the United States has been terribly inconsistent with regard to the first Americans, the original inhabitants of this Nation. Our first policy was to do battle with them. General Sheridan epitomized the prevailing opinion at the time in 1869 when he said, "The only good Indians I ever saw were dead."

Our next policy was that of assimilation. During this period, the United States attempted to make Indians part of mainstream America, forcing the Indians to relinquish ties to their cultures and their way of life. Since the 1950's, this country adopted the policy of termination, followed by reinstatement of the current policy of administrative recognition.

Throughout this entire period, the Lumbee have fought for Federal recognition, having submitted about 14 petitions. This is the 15th time now, Mr. Chairman. I hope that we will finally put this matter to rest for this Nation that has tried in every possible way to comply with our regulations and rules. For over 100 years they have been denied the recognition that they so deserve.

I should also mention that many of the Lumbee men and women serve honorably in the military. They have spilled their blood and have died in defense of this Nation, and still the Congress and the Federal Government has refused to give them the full recognition as they deserve. There may be some members of the Administration, Mr. Chairman, that will say that the Lumbee people have not complied with the rules and regulations that have been established in the 1970's. Let me tell you something. We held oversight hearings about 7 or 8 years ago about the current policy of recognition as is done by administrative procedure. It is not done by congressional statute. I will never forget the day that even the man who wrote the regulations on administrative recognition of Native Americans testified and confessed that even he would not have been able to provide any sense of reasonableness and fairness as to how an Indian tribe could be recognized through the current administrative procedures.

I must say, Mr. Chairman, recognition is long overdue. Again, I cannot thank Senator Dole and my good friend Mr. McIntyre enough for their tremendous hard work in bringing this legislation forward on a bipartisan basis. We must also remember that the Congress still has the ultimate authority and its own discretion as to whether or not to grant Federal recognition to any tribe that petitions the Congress.

I think this is a very historical day for the Lumbee people. I sincerely hope, Mr. Chairman, that your committee will give favorable consideration to this legislation, as we on the House side will do everything we can to make this year truly a year rectifying a history of pain and suffering. It is bad enough to say that you are not an Indian, a first American, but when you are subjected to full examinations to say what kind of teeth you have in order to determine whether or not you are Indian, it is the most insulting thing that I have ever heard. Some of the Lumbee people have had to testify in our committee that these are the kinds of procedures that they had to go through. Where do you get the money to pay the attorneys and the anthropologists? It is unbelievable what we have done in the recognition process. I sincerely hope, Mr. Chairman

and I look forward in working with you on this so we can improve the current procedures. Maybe we have to do it statutorily and not by the administrative process.

With that, Mr. Chairman, again I want to thank Senator Dole for the tremendous leadership that she has shown in working on this on a bipartisan basis. This is not a partisan issue. This is not a Republican or a Democrat issue. This is an issue of doing something about what has been wrong for these people. They deserve recognition, Mr. Chairman, and I sincerely hope that your committee will give favorable consideration to this proposed bill.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Eni.

[Applause.]

The CHAIRMAN. This is not a partisan committee, either. We pride ourselves in making sure that it is non-partisan. You know as well as I do, being here a long time, this is a tough place, but I have to take exception to one statement you made in your discourse there. Nobody has ever believed you have ever failed Indian people. Your efforts are well known to them and well known to this Congress, too. So I want to correct that for the record. You have been an absolute stalwart leader of the issues here.

As I mentioned before, you are certainly welcome to sit at the dais or stay, depending on your schedule. We will now go to Aurene Martin, the principal deputy assistant secretary of Indian Affairs from the Department of the Interior.

Ms. Martin, welcome before the committee, a former staffer here on the committee. We still miss your hard work when you were with us here. I understand we now have a nominee that we will be hearing shortly for the assistant secretary position, but I know that you have done a terrific job as the acting assistant secretary and will continue to do so until there is a new appointee.

With that, why don't you go ahead and proceed.

STATEMENT OF AURENE M. MARTIN, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Ms. MARTIN. Thank you. Good morning, Mr. Chairman. My name is Aurene Martin and I am the principal deputy assistant secretary of Indian affairs at the Department of the Interior.

I am here today to present the views of the Administration on S. 420, the Lumbee Acknowledgement Act of 2003. The recognition of a sovereign is one of the most solemn and important responsibilities delegated to the Secretary of Interior. Federal acknowledgement of an Indian tribe establishes the government-to-government relationship between the United States and the tribe and carries with it certain immunities and privileges. It also establishes responsibilities for the Department of the Interior with respect to the tribe.

The Department has promulgated rules which outline the process that must be followed and has established criteria that a petitioner must meet to become acknowledged. In order to become acknowledged, a petitioner must meet seven criteria. The petitioner must demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900. The petitioner

must also show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.

Third, the petitioner must demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times to the present. The petitioner must also provide a copy of the group's present governing document, including its membership criteria. The petitioner must also demonstrate that its membership consists of individuals who descend from an historical Indian tribe or from a group of historical Indian tribes that combined and functioned as a single autonomous political entity, and provide a current membership list.

The petitioner must also show that the membership of the petitioning group is comprised principally of persons who are not members of any acknowledged North American Indian tribe. Finally, the petitioner must also demonstrate that neither the petitioner or its members are the subject of congressional legislation that expressly prohibits, terminates or forbids the Federal relationship.

If a petitioner presents evidence which meets all seven of these criteria, it will be acknowledged.

While Congress clearly possesses the power to recognize tribes, the Department has traditionally opposed congressional attempts to recognize tribal groups, largely because the criteria and process the Department has established provide for thorough analysis and deliberation and consistency in decisionmaking.

Unfortunately, the Lumbee are unable to avail themselves of the Department's acknowledgement process because they have been barred by participation in Federal programs designed to serve Indians by the Act of June 7, 1956. That act, while clearly identifying the Lumbee as Indian persons, specifically prohibited them from accessing services and statutes available to Indians because of their status as Indians.

Because the Department has interpreted this law as forbidding them from participating in the Federal acknowledgment process, it recognizes that some legislation is needed, given the unique status of the Lumbee. Such legislation could authorize the Lumbee to participate in the Department's acknowledgement process and the Department stands ready to assist in drafting such legislation.

If, however, Congress determines to recognize the Lumbee legislatively, there are a number of issues the Department believes should be addressed. The Department is currently devoting a great deal of time and effort to effecting trust reform and participating in litigation whose very subject is the trust relationship. Both the Department and the courts are attempting to define the trust relationship and the specific duties and responsibilities of the United States with regard to tribes. Much of the confusion over the role of the United States as trustee stems from the lack of clear guidance as to what the exact roles and responsibilities of both the trustee and the beneficiary are.

The Department, therefore, recommends setting out the details of this relationship from the time it is created, either through legislation, or through some other trust instrument.

Also, this bill designates Robeson County as the tribes reservation and several surrounding counties as a service area. Congress

has typically identified service areas for a tribe while the initial reservation is identified later by parcels of land acquired in trust on behalf of the tribe. While S. 420 specifically confers jurisdiction on the State within Robeson County, the reservation designation still raises some issues with respect to the ability of the tribe to zone in the county, make other land-use decisions, and exercise an ability to tax within the county.

Finally, the Department has concerns with the provision requiring the secretary to verify tribal membership. In our experience, this is a time-consuming and work-intensive process. It has taken several years to complete with even smaller groups. Typically, it requires a review of every individual's genealogical history, tracing it from the present back to a person who was a member of the historical tribe from which the person is descended.

In the 1980's, the Department received a document identifying the membership of the Lumbee at over 27,000 persons. Current estimates place the membership in excess of 40,000. The Office of Federal Acknowledgement estimates, based on our current staff levels and the number of persons involved in the membership, that verification of the membership will take several years and that it cannot be effected in less than 1 year.

The Department is willing to work with the committee to work out these issues. At a minimum, however, we support the amendment of the 1956 Act to authorize the Lumbee to participate in the Department's acknowledgment process.

This concludes my testimony this morning. I have provided a written statement which I would request be made part of the record.

The CHAIRMAN. Without objection, your complete testimony will be in the record.

[Prepared statement of Ms. Martin appears in appendix.]

The CHAIRMAN. Let me ask you a few questions, if I may, before you have to leave.

Have you visited this area, Robeson County, yourself by any chance, what the Lumbees would call their homeland?

Ms. MARTIN. No; I have not.

The CHAIRMAN. I probably ought to ask them. So you do not know how much of that land is in private ownership now, would you?

Ms. MARTIN. I think that all of it is in private ownership, and none of it is in trust.

The CHAIRMAN. Well, I will ask them, because I was interested in knowing if it is non-Indian-owned land or Indian-owned land or what, but I will ask them about it.

Now, as I understand your testimony, as Congressman McIntyre said, what we are basically dealing with are the regulations, not statutes. As I understand you, they cannot go through the BAR process because they were barred from that by the 1956 Act. Is that correct?

Ms. MARTIN. Yes.

The CHAIRMAN. So it seems to me we have to do one or two things, either change the BAR or exempt the tribe, one of the two, otherwise they are never going to get from A to B. We have to make some changes.

I introduced a bill, S. 297, that you might want to look at. Hopefully, we are going to do at least one hearing on it before we adjourn this year. Basically, that is what it does is try and ferret through some of the problems with BAR and see if we can't streamline it to make it a little easier for those people who have just run into this brick wall of recognition.

From a historical perspective, can you give the committee perhaps some background on what legal implications there would be if we passed this act?

Ms. MARTIN. The tribe has petitioned in the past to become a tribe through the BAR process. I think by recognizing them legislatively, I have identified a number of concerns. Primarily, we have some concerns with regard to what the jurisdictional implications might be, although the bill clearly confers criminal and civil jurisdiction on the State. There are a number of powers that as a sovereign and recognizing the tribe as a sovereign, they might still exercise within the county. It is unclear whether the intent is there to allow the tribe to go ahead and exercise those powers or not.

The other concern we have, and this is with regard to our ongoing efforts at trust reform, one of the most confusing things about the trust relationship is that it is not identified in a single document. The parameters of it are not laid out as one, two, three, or A, B, C. In creating that new relationship with any tribe, one of the things that we think is important moving forward is to try to identify the parameters of that relationship when we create it.

Finally, we think that there is a significant amount of work that needs to be done with verifying the membership and doing research with regard to the original historical tribe from which the members are descended. That will be a considerable amount of work as well.

The CHAIRMAN. Okay, thank you.

I understand that in 1988 and again in the 1950's, one of the rationales, and I know this was long before your tenure, one of the rationales to deny recognition was what was called insufficient funds, which in this day and age, it seems to me that insufficient funds should not fly in the face of justice. We have funds to rebuild a nation in Iraq. It seems to me we ought to be able to find some funds.

[Applause.]

The CHAIRMAN. I might mention to the audience you are all certain welcome here, but I would ask you to keep the cheering, boos or anything else down to a minimum. We try to get through this as well as we can. I just mentioned that because I know we spend a lot of money on nation rebuilding.

Does the BAR criteria include a requirement that the United States have sufficient funds?

Ms. MARTIN. No; the BAR criteria simply sets out a regulatory process by which we recognize tribes.

The CHAIRMAN. I see.

Has the United States ever refused to recognize a newly independent state overseas or any foreign government because of insufficient funds? I will answer it for you. No. We have not. Has any other tribe that you know of been denied the process because of insufficient funds?

Ms. MARTIN. No; not that I am aware of. I think the unique circumstance here is that the Lumbee are a very large tribe. We estimate their membership to be around 40,000 to 50,000.

The CHAIRMAN. I even heard the number 55,000 a while ago. Along that line, do you have any kind of an estimate about what this would cost in terms of BIA, Indian Health Service, whatever, the Federal Government should provide if this bill was passed? Is there a ballpark figure of cost to the Federal Government?

Ms. MARTIN. We were not able to pull those numbers together in time for today's hearing, but the sheer numbers that we are talking about would make the Lumbee the third largest tribe in the United States. In the past, we have loosely estimated the cost of trying to create a similar structure of services for the Lumbee at approximately 15 to 20 percent of then-existing budgets.

The CHAIRMAN. Was that 15 to 20 percent of the existing budget?

Ms. MARTIN. I do not have any documentation to support that at this time.

The CHAIRMAN. Could you try to find some of that and provide it for the committee, some of those numbers?

Ms. MARTIN. Yes, sir.

The CHAIRMAN. The BIA position in 1956, the last time the solicitor weighed in, I understand that the solicitor did recommend some changes. Is that true, or do you know?

Ms. MARTIN. To the 1956 act?

The CHAIRMAN. Yes.

Ms. MARTIN. Yes; actually, the language that has been at issue in almost every bill addressing the Lumbee was recommended by the Department of the Interior, and that is the final clause in the bill which prohibits the Lumbee from accessing services for Indians based on their status as Indians.

The CHAIRMAN. Whenever we deal with a new tribe seeking recognition, we get into things you have touched on, jurisdiction, land in trust, membership. It is always difficult for a newly recognized tribe or even some that were terminated that we are trying to reestablish. Do you have any concerns dealing with rights granted under S. 420 to the Lumbee Tribe to take land into trust?

You mentioned jurisdiction. I understand there could be a problem there.

Ms. MARTIN. The bill confers that jurisdiction on the State and allows for the tribe to transfer, and the State to agree to transfer jurisdiction back to the tribe. But again, I think our concern would be with some of the other exercises of sovereignty that the tribe may want to undertake once it is recognized.

The CHAIRMAN. And maybe last, I have heard numbers of 40,000 up to 55,000 members. Does the Department have any comments on how they establish their base membership rule?

Ms. MARTIN. At the present time, we do not have a current copy of the constitution or any of the documents that establish membership for the tribe. That would be something that we would have to get and look at through the verification process, which as I stated earlier, could take a significant amount of time.

The CHAIRMAN. Okay. I thank you. I have no further questions, but Senator Inouye may, and if he does I am sure he will submit

them in writing. If you could answer those, we would certainly appreciate it.

Thank you for appearing today, Aurene.

Ms. MARTIN. Thank you very much.

The CHAIRMAN. We will now move to our only panel, that will be panel two, Milton Hunt, chairman of the Lumbee Tribe; Jack Campisi, the tribal historian of the Lumbee Tribe, North Carolina, who resides in New York; Arlinda Locklear, tribal attorney for the Lumbee; and Tim Martin, executive director of the United South and Eastern Tribes, Inc.

We will proceed in that order. If you would like to submit your complete written testimony, that will be included in the record. If you would like to abbreviate your written testimony, that would be just fine.

We will start with Chairman Hunt first.

STATEMENT OF MILTON HUNT, CHAIRMAN, LUMBEE TRIBE, NORTH CAROLINA

Mr.HUNT. Thank you, Mr. Chairman.

I want to at this time ask you to enter this into the record.

The CHAIRMAN. It will be included in the record.

Mr. HUNT. I want to thank you for doing that. I want to thank the committee for hosting this today and giving us some opportunity to come here and talk to you about our efforts on Federal recognition for the Lumbee Tribe.

I also want to thank Senator Dole, who introduced our legislation on the Senate side, and Congressman McIntyre on the House side, and Senator Edwards and all the other cosponsors we have on the House side.

We certainly appreciate all the efforts that they have made on our behalf, and we look forward to working with them in the future. We certainly cherish their support.

I want to start out by saying that we have heard the year 1888 talked about here today a couple of times. I want to start back with that and talk about it. In 1888, Everette Sampson, along with other leaders in the Lumbee community, signed a petition and delivered it to Washington to ask for Federal recognition for our people. At that time, we were known as the Croatan Indians of Robeson County.

We also asked for educational help, because in 1887 the Indian Normal School had been established. You must keep in mind from 1835 until 1885 in Robeson County, an Indian could not go to public school. We were barred from going to public schools. So we came out of a 50-year blackout period in 1885 when the State recognized us. But they appropriated only enough money to fund teachers for 2 years. So that was the reason that this group of people came to Washington in 1888 to ask for help, not only for recognition, but for help in our schools.

Those schools had been established to teach our kids and even young adults, who would then go out in the community and teach others to learn the basic skills. This was started with an appropriation from the State of $500, and teachers for 2 years. The tribe donated the land. They also raised the additional part of the money to put the first building there. That is the beginning of UNCP,

which is now a university campus with 4,800 enrolled students that are housed in Pembroke. That was the beginning of that university. It began as Indian Normal School to educate our Indian students that did not have an opportunity for 50 years to be educated.

We have continuously been able to introduce, I have heard it talked about 14 bills being introduced over the years to have us recognized, but there have been nine studies. No study has ever been done that came back that said that we were not Indians. Every study is that. In the most demeaning study, which was the last one done, when they came into the communities in the 1930's and they measured their cheek bones and the separation in their eyes and so forth like that, that was a demeaning study that was done on our people, and a lot of our people did not participate in that.

So we have studies with that done. We have been studied to death. It is time for action. We ask you to help us help ourselves. We need recognition for the Lumbee Tribe. It is very simple. In 1956 when the Act was passed, they gave it to us in one hand and they took it away in the other hand. I was a young fellow at that time. I can remember. Pembroke is the center of the Indian activity in Robeson County. It is a small town of about 3,000 people now, but in 1956 we had a parade and a festival to celebrate the gaining of Federal recognition, not knowing that it was being taken away from us at the same time. We were very, very upbeat at that time. Can you imagine what happened in the Indian community after that? It was a complete let-down. There may be people in this group here today that would attest to that.

Everette Sampson was my great-grandfather. He was one of the 48 signers of the petition in 1888, along with his father William ahead of him. So a lot of our families have been involved. Many of these folks that are here today to show their support for Federal recognition, I am sure many of their families were involved in the signing and helping to get Federal recognition started. We certainly appreciate their efforts to come up here and support us at this today. We are doing everything that we know how to do.

Like I said, we have been studied to death. We did everything that we know to do. The year 1956 was a turning point. You must remember that when Congress recognized us, then they took it away from us, they did another tribe the same way at the same time. Since then, the government has gone back and righted that wrong, and they have since given that other tribe their recognition. Don't you think it would be fair for us to be recognized the same way? That is all we are asking, for fairness. We want people to be fair.

Our tribal government operates under a constitution now. We have three parts of government. The government is working for us and we are moving toward doing the things that we need to do to help our people. We want to continue down that road of helping to make sure that the Lumbees of Robeson and adjoining counties are taken care of and that their needs and their efforts are looked at and accepted. But we want to make sure that my grandchildren will not be up here 100 years from now and saying their grand-

father came up here and talked about this. It is time that Federal recognition for Lumbees came to pass.

So I would hope and pray that you would have it in your heart to help us make sure that this happens for the Lumbee Tribe.

Thank you very much.

[Prepared statement of Mr. Hunt appears in appendix.]

The CHAIRMAN. Thank you.

Some of us have it in our heart. We have to get it into everybody else's heart around this place.

Normally, we hear from the whole panel before we ask questions, but Senator Cantwell is here, so I think I will just go ahead and start asking a few one-by-one so that she can also participate in case she has to leave.

Chairman Hunt, let me start with a couple of questions for you. You mentioned you have been studied to death. It is a sad commentary, unfortunately, with the American government that sometimes they killed Indians to do the studies afterwards. You probably know that the history of the U.S. Government toward Indian people has not been, you might say, of a sterling character.

You did mention another tribe where their status was taken away and then recognition was given back. I asked who that was? Tiwas in Texas. Yes, I am familiar with them. You mentioned that your youngsters for 50 years did not have the opportunity to attend any school, and that the State recognized the tribe in 1885. During that 50-year time, how did you educate your youngsters?

Mr. HUNT. I think it was done basically on homesites. You had teachers, people that may have set up a little classroom. Basically, our people did not get educated. It is just that simple. We went through a 50-year blackout period when there was not must education.

The CHAIRMAN. Do you have any idea what the tribal numbers were in those days?

Mr. HUNT. I really don't, it being 100 years ago.

The CHAIRMAN. I am always interested, very frankly, in Indian people, the difficulty they find themselves in now between modern-day types of teaching and traditional ways of teaching their cultural values. Do you know if during that 50-year time or even later if the things that we consider traditional cultural values such as language and dance and song and music and all the stories and all that was kept alive?

Mr. HUNT. As a matter of fact, I can trace back, the last speaker that we spoke our language. His name is Randall Locklear. He is from out of my family.

The CHAIRMAN. That is a familiar name.

Mr. HUNT. We can attest to him in the early 1900's. We have testimony to that fact, from some of his relatives.

The CHAIRMAN. Are there any documents now that have records of what might be considered an original language?

Mr. HUNT. I can't answer that. Arlinda will have that.

Ms. LOCKLEAR. If I may, Mr. Chairman.

The CHAIRMAN. Yes; please.

Ms. LOCKLEAR. We were studied by a well-known linguist in the early 1940's, Vine Deloria's aunt, in fact, visited our community

and is said to have recorded certain words of the original language of the Lumbee people.

The CHAIRMAN. There were several linguistic groups in American Indians. What was it related to? Was it Siouan?

Ms. LOCKLEAR. We are Siouan speaking.

The CHAIRMAN. Siouan speaking.

Ms. LOCKLEAR. Yes, sir.

The CHAIRMAN. I understand from your testimony, your tribe currently has a membership roll, and I have heard this number from 40,000 to 55,000. How many members are there on the roll?

Mr. HUNT. Enrolled 54,000.

The CHAIRMAN. 54,000. And what is your criteria? Some tribes have lineal descendancy; some have blood quantum. There are a number of other ways.

Mr. HUNT. We have a source document requirement and a contact requirement.

The CHAIRMAN. Would you explain that to the committee? A source document, what does that mean?

Ms. LOCKLEAR. If I may, Mr. Chairman?

The CHAIRMAN. Yes; go ahead.

Ms. LOCKLEAR. There are two basic membership requirements. The source documents that the Chairman refers to consist of a set of documents around the period of 1900 which identifies partial lists of our members at that time. These include Federal Indian census records and school records which are known by our community as the Blood Committee records. These committees were vested under State law with the authority to determine the eligibility of children to enroll in all Lumbee schools. They maintained records for that purpose. Those, plus church records, because most of our churches are 100 percent Indian.

Those documents are the base documents from which an individual must prove descent to apply for membership.

The CHAIRMAN. So it is a little like the Cherokees, if they prove descent it is not based on blood quantum, then. They just have to prove descent?

Ms. LOCKLEAR. There is an additional requirement. We do not have a blood quantum requirement because blood quantum records have never been maintained on our people. However, there is a tribal contact requirement. As that, as translated in our community, basically means an individual who applies must be known to the community. His or her family must be in the community and be known to the tribe or else that person is not allowed to enroll.

The CHAIRMAN. Wilma Mankiller of the Cherokees told me a few years ago when she was chairman they were getting 1,400 requests per month for enrollment with the Cherokees from people in Canada and Alaska and South America and everywhere else. Do you have that problem?

Ms. LOCKLEAR. We have had similar problems. Yes, Mr. Chairman, there is a group in California that purports to sell Lumbee Nation membership cards and they are not authentic.

The CHAIRMAN. Yes; back to the chairman, and since you already chimed in Arlinda, you might wish to again, would you be agreeable to having the BIA consult with you in clarifying your member-

ship criteria and researching those who might be eligible for membership?

Mr. HUNT. I always turn to Arlinda and ask her.

The CHAIRMAN. Okay, let's turn to Arlinda.

Ms. LOCKLEAR. There is one fundamental rule that would be very important to us, Mr. Chairman, and that is as with all tribes we would expect to have our right to determine our own membership criteria respected by the Department. Given that rule, however, we would be happy to work with the Department of the Interior to establish a process for the Department to verify that those individuals who are enrolled actually meet the tribe's membership criteria.

The CHAIRMAN. I am told that the Lumbees are descended from the Cheraw Indians, but at one time it appeared that they were related somehow to the Cherokees or the Croatans, and I am not even familiar with that tribe. When did that change, or what is the connection now between these other groups?

Ms. LOCKLEAR. Those were designations under State law, Mr. Chairman. Those were not names that the tribe itself adopted. The tribe was first recognized by the State in 1885 by the name of the Croatan Tribe. That was changed in 1913 to the Cherokees of Robeson County. The tribe itself was dissatisfied with that name and sought a name change. A referendum was held in 1952 among the Lumbees, and for the first time the tribe itself indicated to the State that it wanted the name "Lumbee" to be adopted. As a result in 1953, legislation to do that was enacted by the State.

The CHAIRMAN. Most tribes, they don't call themselves what everybody else calls them, as you know.

Ms. LOCKLEAR. That is correct.

The CHAIRMAN. In the other world, they call them the Sioux, but the Sioux people all themselves Lakota, as you know. Our people call themselves Sisitas, not the Cheyenne. Is "Lumbee" a name that is from a tribal reference?

Ms. LOCKLEAR. The simplest way to refer to that is to point to the picture here. This is a picture of the Lumber River where our people have always resided.

The CHAIRMAN. The Lumber River.

Ms. LOCKLEAR. The Lumber River. The name "Lumbee" is derived from that. In early colonial records, the Lumber River was known as Drowning Creek. It was changed by State law in 1807 to the Lumber River. The earliest documentation of the Cheraw Tribe shows them residing on Drowning Creek where the Lumbee people still reside today under the name "Lumbee."

The CHAIRMAN. Do the Lumbee have a word in their own language for themselves, like with some tribes? If you interpret what they call themselves to English, like the Dinae for Navajo, it means "the people." Is there a word for that in Lumbee?

Ms. LOCKLEAR. We have no surviving language. Unfortunately, we have lost those words.

The CHAIRMAN. I understand. Unfortunately, a lot of other tribes have, too, as you probably know.

The Lumbees adopted a constitution in November 2001, just 2 years ago, and yet apparently they have been operating as some kind of a political unit. Why so late in adopting a constitution?

Go ahead, Mr. Chairman.

Mr. HUNT. I will have to give you a long answer to that, Mr. Chairman.

The CHAIRMAN. Can you do that in short sentences? [Laughter.]

Mr. HUNT. That came about through several methods. We had an organization that represented Lumbees for about 30 years. The new tribal government was formed by a commission and a referendum of the people in 2000. We had an election of all our people, and elected a new tribal government. I am the first elected chairperson of that committee.

It was just a long time coming.

The CHAIRMAN. In that tribal constitution, you have an independent court, as most tribes do.

Mr. HUNT. We do. We have three branches of government, legislative and executive and judicial branch. We do.

The CHAIRMAN. I see. Let me move on a little bit. We know the BAR process is really complicated, and in some cases takes years to get through it. Earlier you heard me say we have got to change the BAR process or go around it somehow. We have to do something about it. We know that. If the BAR process was made available to the Lumbees, would you be supportive of seeking recognition through that route, or have you kind of given up on them?

Mr. HUNT. Arlinda.

Ms. LOCKLEAR. It is more the latter, Mr. Chairman. We have had this experience with the Department of Interior for more than 100 years now, and I dare say that this tribe would be recognized today had it not been for the Department's longstanding opposition to recognition of the tribe.

Recently, the Department has even changed its position with regard to the ancestry of the Lumbee people. In 1934, the Department testified to Congress that the Lumbee people were indeed Cheraw Indians. Now, the Department will say there needs to be more documentation on that point. It seems to us it is a never-ending game of paper-chase with the Department and one that the tribe is not prepared to engage in any longer.

The CHAIRMAN. I see. If you were provided recognition of, let's take the higher number I have heard today, of 55,000 people, what types of services provided by the Bureau or the IHS would you pursue? What is the most important to the tribal community?

Mr. HUNT. We are receiving some services now, particularly housing.

The CHAIRMAN. From the Federal Government?

Mr. HUNT. Yes; we are. My policy on that, and I think I can speak for the Council is, we would not want to be eligible for any less than any other tribe would be.

The CHAIRMAN. Do you want a casino?

Mr. HUNT. That is not a problem with us right now. That is not an issue. We started this journey 100 years before legislation.

The CHAIRMAN. It is not a problem with me either, because I happen to support Indian gaming.

Mr. HUNT. Yes; That came about in 1988. That was exactly 100 years after we started our journey for Federal recognition. So that is not an issue at this time for us.

The CHAIRMAN. Okay. I think I will yield to Senator Cantwell if she has some questions before we go on to our next witness.

Senator CANTWELL. Thank you, Mr. Chairman. You may have asked this prior, but it seems like a large attendance here today.

The CHAIRMAN. Yes; we introduced them and most of them have come from North Carolina, braving the impending storm, to be her for this hearing. A lot of them are members of the Lumbee Tribe.

Senator CANTWELL. Well, I hope you find safe harbor here in Washington.

I have a couple of questions. Dr. Campisi.

The CHAIRMAN. The only one who has testified so far is Chairman Hunt.

Senator CANTWELL. Okay. Is it okay to ask questions of the rest of the panel?

The CHAIRMAN. Would you prefer to hear them first? What is your time?

Senator CANTWELL. For time, it would be good if I could.

The CHAIRMAN. Okay.

Senator CANTWELL. I have already had an opportunity to read their written testimony.

The CHAIRMAN. Okay. Why don't you go ahead and then I will take testimony from them after and ask some of my questions after you do.

Senator CANTWELL. Okay.

I was struck by your statement that you said that out of 28 tribal petitions for Federal acknowledgement that you have worked on, none have exceeded the Lumbee petition in documentation and evidence, from the perspective of a cohesive political community, as well as the amount of information that can be documented. So I wondered if you could elaborate on your statement, juxtaposed to some of the other tribes that are seeking recognition.

Mr. CAMPISI. I have worked with the Lumbee for 20 years now. There is an incredible amount of paper documentation on issues that relate to a community, issues that relate to political continuity. There is an enormous amount of documentation relating to the kinship system, to the membership. And in that 20 years of work, I visited many of their churches. I went to many of their social events. I attended many civic events, tribal events. I am struck by the cohesiveness of the community.

I did not find, as I have found in other communities, sharp factional divisions as one might expect or sometimes do find. I found differences of opinion, certainly, and that is a healthy thing, but I never found a group anywhere near as large who had such a sense of self, such a sense of direction, and such an understanding of who they are and who others are. That is to what I was referring.

Senator CANTWELL. The BIA testimony there is a process in sequential logic that is if Congress wants to take action to deal with the 1956 act that we could do that. To make sure that that had good legal standing, one of the principles that we would have to address is the historical continuity of a unified community under that one leadership and government. So as a historian looking at 28 tribes that are seeking a similar process, you have no concern about our ability to do that?

Mr. CAMPISI. None at all. I think the tie to the Eastern Siouan tribes is clear. I think the connection to the Cheraw is compelling. I think the work done by John Swanton in the 1930's and the research continued by Bill Sturtevant, Jim Merrill, and Ray Fogelson, three eminent researchers, scholars, all confirm what Swanton came up with in the 1930's. We have more data now available to us than Swanton did. So I do not see any legitimate argument against the argument of dissent from Eastern Siouan Tribes, particularly the Cheraw.

Senator CANTWELL. And how would you compare that to other tribes that already have recognition?

Mr. CAMPISI. It is different in the sense that, there is a lot of serendipity operating. Some tribes were passed over; other tribes formed treaties with the United States because of something they had. I look at some of the Northeastern tribes that I have worked with, and I think the argument of the Lumbees is as compelling as those arguments are, that both Congress and the Department of the Interior have recognized.

Senator CANTWELL. So you would say that they have as much historical data and context as some already recognized tribes, and maybe even more than some that have been recognized?

Mr. CAMPISI. I would say so.

Senator CANTWELL. So again, my point being that if Congress chose to act dealing with the 1956 act we should not be concerned about our historical findings as a precedent to move forward.

Mr. CAMPISI. You should not be concerned. I agree.

Senator CANTWELL. Chairman Hunt, I was curious also, the criteria that is listed for recognition. Have you seen that list of criteria of the BIA?

Mr. HUNT. Yes; I have.

Senator CANTWELL. There are a variety of criteria here, such as, demonstrating the political influence of authority, providing a copy of the governing documents. You believe that you are in conjunction with those criteria? There are seven.

Mr. HUNT. Yes; I do.

Senator CANTWELL. So again, it seems to me that we are back to this 1956 act and that what Senator Dole is trying to do is address the fact that we are caught in this cohesiveness of having met the criteria, having the historical context, but having a previous law on the books that is prohibiting us from moving forward.

Mr. HUNT. I think that is true.

Senator CANTWELL. So then it is a question of whether we have the will to address that inconsistency that is in the 1956 act.

Mr. HUNT. I hope we have the will and the way.

Senator CANTWELL. I want to turn to Mr. Martin, if I could, because Mr. Martin I understand that you represent the United South and Eastern Tribes, and have in the past had some written testimony submitted to this committee in favor of special recognition, but now you, or some of the members, are in opposition. I am trying to understand what the official position is of the United South and Eastern Tribes.

Mr. MARTIN. As clarified in my testimony if you have read that, is the latest resolution that you said did pass, and you said being the intertribal organization representing 24 federally recognized

tribes, we traditionally have supported any Indian group that is going through the Federal acknowledgement process. We have a longstanding opposition to any tribe that wishes to circumvent that system and be recognized legislatively.

Senator CANTWELL. Do you think that the Lumbee meet the criteria that are outlined in the current Federal law for recognition?

Mr. MARTIN. I am not an expert in that area to determine whether they meet that criteria or not. That is the reason we believe that every Indian group should go through the Federal acknowledgement process. The Bureau of Indian Affairs in the infinite wisdom of Congress realized that Federal recognition is a complex and tedious process that should not be entered into lightly. So therefore in the wisdom of Congress, they deferred that to the BIA within the Department of the Interior, who employ the experts that need to review and analyze that comprehensive information.

I am certainly encouraged by the representatives of the Lumbees of North Carolina that they believe that they can meet that criteria. If that is the case, then we, as our testimony says, we should amend the bar that prohibits them from going through the administrative process. Let the information that they say exists to be reviewed by the experts so that they could be, if reviewed by those experts and giving a positive determination, to be welcomed open-arms by the other federally recognized Indian tribes of this country.

Senator CANTWELL. So you do not think that the 1956 act that basically said that nothing in this act should make them eligible for services shouldn't be the lone determinant in deciding whether they should get recognition?

Mr. MARTIN. No, ma'am; I think that as far as that, they should go through the process and meet the criteria just as my tribe has, and I can speak from that personally. I am a member of the Poarch Band of Creek Indians. My tribe went through the process. It took in excess of 20 years for us to go through that process. I cannot in good conscience sit here and say that I should say a tribe just should take their word for it and artificially bestow such a prestigious honor on that tribe as Federal recognition in there. We went through the process. We believe every tribe should go through that process.

I am encouraged by their statements today that they believe that they can meet that criteria.

Senator CANTWELL. But did you have a previous law on the books that had been a roadblock to allowing those criteria to be judged in your favor?

Mr. MARTIN. No, ma'am.

Senator CANTWELL. So that seems to be one of the distinguishing differences here is that perhaps this 1956 law, or at least if I read the BIA testimony correctly, they are saying here is the information, but you have this little stumbling block, Congress. You have something that is prohibiting this that you put on the books in 1956. I am not 100 percent clear why that was put on the books, but it seems like BIA has to deal with that inconsistency. I am glad to hear you say that they should be judged on that criteria because my guess is they probably do meet the rest of the criteria. It is only this inconsistency in the previous law that we have to resolve.

Mr. MARTIN. Yes, ma'am; as my testimony indicates, a House bill has been introduced. I think it is House bill H.R. 1408 that would correct that administrative procedure that bars them from going through the administrative procedures for Federal recognition. Our tribes are in support of that correction so that they can then avail themselves to the BAR process and go through that process and be judged and determined. Our tribes do not believe we should say if they are Indian or not. That is something that is ultimately left up to the Federal Government.

Senator CANTWELL. Thank you.

The CHAIRMAN. Would you yield for 1 moment?

Senator CANTWELL. Yes; thank you.

The CHAIRMAN. I am going to skip around and come back to your testimony. I am sorry we kind of got a little bit astray.

Mr. Martin, you said, let me speak about a couple of tribes that did get land claims, and I understand recognition came with some of the land claims. That included the Alabama Coushatta, the Catawba, the Houlton Band of Maliseets and Mashantucket Pequot, the Narragansetts, the Passamaquoddy, and the Penobscot. So I understand all those did not go through the BAR process, but were a land claim that was passed by Congress, but also got recognition in the process.

My question is, did USET support any of those or oppose any of those, or are you familiar with that?

Mr. MARTIN. I am not familiar with whether we took official stances on those. It has always been our longstanding position that a petitioning tribe should go through the Federal recognition process.

The CHAIRMAN. I see. Okay. Thanks.

Did you have any further questions?

Senator CANTWELL. No, Mr. Chairman; I just wanted to wish everyone here both good luck with the Isabel storm coming, and this process.

The CHAIRMAN. We will try to move along here so you can get out before it hits.

Senator CANTWELL. Hopefully we can resolve these last of the issues and let the facts lay on the table so that this process can take place.

Thank you.

The CHAIRMAN. Why don't we go back now to any comments that the panel would like to make. If you would like to abbreviate, we will go ahead with Dr. Campisi. If you have already made some of them in answers to other questions, you can skip those.

Mr. CAMPISI. Yes; I have. I will skip those parts.

The CHAIRMAN. Good.

STATEMENT OF JACK CAMPISI, TRIBAL HISTORIAN, LUMBEE TRIBE OF NORTH CAROLINA

Mr. CAMPISI. Mr. Chairman and members of the committee, I would like to thank the committee for giving me this opportunity to address the committee on this important legislation. My name is Dr. Jack Campisi. I have been a member of the Anthropology Department at the State University of New York, and most recently on the faculty of Wellesley College in Massachusetts.

Since the publication of the Federal acknowledgement regulations in 1978, I have worked with 28 tribes on their petitions. I conducted historical and field research with the Lumbees for nearly 20 years.

In my testimony today, I will describe the basis of my professional opinion that the Lumbee Tribe in North Carolina meets all but one of the seven criteria specified for Federal acknowledgment in 25 CFR 83, and in S. 297. A previous speaker has outlined the criteria. There is no need for me to go through that. Let me say that there is ample evidence in Federal, State, church, local, school records, newspapers, anthropological and historical publications to demonstrate that the Lumbees meet criterion A.

For criterion D there is a written constitution, and before that we have detailed descriptions of the decisionmaking process. There is no evidence that any of the present members of the Lumbee Tribe are members of any federally recognized tribe. That is criterion F. That leaves four criteria: D, community; C, political; E, tribal origins; and G, congressional termination.

On community, the regulations provide that this criterion can be met by demonstrating that more than 50 percent of the tribe's members reside in an area nearly exclusively. The regulations also provide that this criterion can be met if more than 50 percent of the tribe's married members are married to other tribal members.

In 2002, I conducted a systematic sampling of the tribal membership following a methodology used by the Branch of Acknowledgment and Research in another case. I drew a random sample of 1 percent from the tribal roll, a total of 514 names. This correlated closely with the number of tribal members. I found that 65 percent lived in the core areas in Robeson County, Pembroke, Maxton, Rowland, Lumberton, Fairmont, St. Pauls, and Red Springs.

The CHAIRMAN. Did you do those studies on-site?

Mr. CAMPISI. Yes.

As to marriages, 70 percent of those who are married are married to another Lumbee tribal member.

Two points are important to mention in this regard. If the 70 percent of the tribal members are married to each other, it stands to reason that at least this percentage was maintained in the past. This is borne out by analysis of past Federal censuses going back at least to 1850. Prior to 1850, you do not have the name of the spouse, so it makes it more difficult.

Second, under the regulations, if the petitioner meets the high standard for any time period under criterion B, the petitioner also meets the requirement for criterion C, political, for the same time period.

As to the political, criterion C, even though the Lumbee Tribe can demonstrate high evidence under criterion B throughout its history and thereby satisfy this criterion, it can also demonstrate continuous political authority. For example, in 1885 the tribe was successful in getting the State of North Carolina to recognize them and permit them to establish their own school system, this, after their refusal to send their children to segregated schools.

This picture here, number 2, is Aaron Locklear, identified as a Croatan Indian in this photo from the Smithsonian archives. Aaron Locklear was an influential leader in the early 1900's

Picture number 3 is a picture that shows Anderson Locklear School in 1910. Anderson Locklear was a highly respected educator and religious leader. Locklear Hall on the campus of the University of North Carolina-Pembroke is named for him.

The CHAIRMAN. Is that a grandfather or great-grandfather of you, Arlinda? Which one? Great-grandfather?

Ms. LOCKLEAR. Not direct lineal, but collateral.

The CHAIRMAN. Yes.

Mr. CAMPISI. Photo number 4. In order to teach their children, the tribe needed a teacher's training school. This photo shows a class at that school, the Normal school which later became part of the University of North Carolina-Pembroke. This photo shows a class. In it, it contains a petitioner from the 1887-88 State petitions.

The CHAIRMAN. It looks like a typical Bureau school. They cut all their hair first thing, didn't they.

Mr. CAMPISI. Yes; that is right.

Education is a primary tribal cultural value; 19th-century demands for schooling outstripped the resources available. This caused the tribal leaders to appeal for support to Congress. As stated, no less than nine studies or attempts were made in requests by Congress for information. These continued from the late 1890's to the 1930's. All reported the existence of a Lumbee Tribe.

In 1936 at the direction of Felix Cohen and Dr. Carl Seltzer of Harvard conducted a study under the provisions of the Indian Reorganization Act. Dr. Seltzer collected physical and ethnographic data on 209 tribal members and found 22 met the half-blood standard. I do not condone Dr. Seltzer's physical anthropological technique. It is outmoded and stupid. But the important part of that is, this photo is of Duncan Locklear who informed Dr. Seltzer that according to his grandmother, the last tribal member who spoke the native language died in the 1890's. Duncan Locklear's grandfather was Allen Lowrie, a signer of the 1888 petition.

The State of North Carolina has continuously recognized the Lumbee Tribe, although under different names. In 1953, the Lumbees held a referendum on their present name, which they approved by an overwhelming majority.

Number 6. Finally, this is a scene of the Lumber River, which until 1807 was called Drowning Creek. This is an area where the majority of the Lumbee members live today. It is the same area that the Cheraw Indians were located on in the 18th century. In 1934, the Department of the Interior asked Dr. John Swanton, ethnologist at the Bureau of American Ethnology and leading authority on Southern Indian tribes, determined the tribal origins of the Indians of Robeson County. Dr. Swanton expressed his professional opinion that the Lumbee Indians were of Eastern Siouan tribal origins, and particularly Cheraw.

This opinion was accepted by the Department of the Interior and reported to Congress in 1934, along with a copy of Dr. Swanton's report. After reviewing the data available, Swanton's findings have been supported by such eminent scholars as Dr. William C. Sturtevant, Curator of Ethnology at the Smithsonian Institution and General Editor of the Handbook on North American Indians,

by Dr. James Merrill of Vassar College, historian and specialist on Indians in the Carolinas.

The CHAIRMAN. Dr. Campisi, this is a lot of material in the records here. Was all this used when North Carolina decided to grant State recognition of this tribe?

Mr. CAMPISI. No.

The CHAIRMAN. It was not?

Mr. CAMPISI. It was not available.

The CHAIRMAN. Is it available now?

Mr. CAMPISI. It is available now.

The CHAIRMAN. Can our committee staff get a copy of that or review it or see that?

Mr. CAMPISI. Absolutely.

The CHAIRMAN. Thank you.

Mr. CAMPISI. By Dr. Raymond Fogelson, anthropologist at the University of Chicago and specialist on Cherokee ethnology, and by myself.

In conclusion, the evidence I have reviewed and presented in my written statement and summarize today convinced me that the Lumbee Tribe satisfies the first six of the seven criteria. However, it does not satisfy criterion G, congressional termination. In view of the long history of the Lumbee Tribe's efforts to achieve Federal recognition and the actions of Congress with regard to the 1956 legislation, S. 420 is the appropriate remedy, in my mind.

Thank you.

The CHAIRMAN. Thank you, Dr. Campisi. Your dedication to Indian Country and the long history that you have provided on many occasions is well known to Indian people. You have been involved in 28 BAR applications, is that correct, as I understand it?

Mr. CAMPISI. That is correct.

The CHAIRMAN. How many of those were successful in their bids?

Mr. CAMPISI. Let's see. There was Gay Head, Wampanoags.

The CHAIRMAN. Are you at least batting 500?

Mr. CAMPISI. I would be batting 500 if they ever got around to completing them. I would be better than 500 if they really followed the regulations as I think they ought to.

The CHAIRMAN. You heard me ask earlier of the chairman that as I understand it their governing document, their constitution, was not adopted until just a couple of years ago. Maybe I should have asked the chairman. Did they have any document that they operated under before that?

Mr. CAMPISI. Not as such, but that is an excellent question. They operated in a community sense through a network of kinship and a network of religious organizations, and formed consensus through these two.

The CHAIRMAN. But it was a system of governance of some sort?

Mr. CAMPISI. Absolutely. It was a clear system of governance. In fact, the constitution convention originated through the churches.

The CHAIRMAN. Do you know if there are any records of that form of governance, the meetings they had or things of that nature? Were there notes taken?

Mr. CAMPISI. Yes; there are records of meetings. There are records of groups getting together for specific purposes, specifically,

for example, in the 1930's. There are records of meetings in the 19-teens.

The CHAIRMAN. Did you have an opportunity to review those records or see them?

Mr. CAMPISI. Yes; I have.

The CHAIRMAN. Okay. And if you could also provide those for the committee, we would appreciate that, too.

Mr. CAMPISI. We certainly will.

The CHAIRMAN. Thank you for your appearance.

[Prepared statement of Mr. Campisi appears in appendix.]

And now we will move to Ms. Locklear. Anything you have already said once or twice, you do not need to repeat again for me.

Ms. LOCKLEAR. I appreciate that. I will keep my remarks brief. I think the committee has covered a lot of material today.

STATEMENT OF ARLINDA LOCKLEAR, ESQUIRE, TRIBAL ATTORNEY, LUMBEE TRIBE, NORTH CAROLINA

Ms. LOCKLEAR. Let me begin by saying once again how pleased the Lumbee Tribe is to have the opportunity to make our case to the committee, and how gratified we are by the overwhelming support and hard work of our sponsors that have gotten us here today. That is Senator Dole, she has earned our everlasting gratitude; Senator Edwards and Congressman McIntyre.

Also, a particular thanks to Delegate Faleomavaega. He has been a long-time friend of the Lumbee people. As the chairman yourself indicated earlier, he has not failed. He has helped us succeed. Had it not been for his efforts and others like his, we would no be here today. So we say "thank you" to them.

The CHAIRMAN. He is a good one.

Ms. LOCKLEAR. He is a good man.

I will keep my remarks brief. We have written testimony that the chairman has already accepted into the record.

The CHAIRMAN. Yes; we will read that copiously.

Ms. LOCKLEAR. Probably the most effective thing I could do at this point is to address some concerns that the chairman has raised with other witnesses, to try to clarify the position of the tribe with respect to other tribes and historically.

First of all, with respect to the uniqueness of the Lumbee Tribe, that cannot be overstated. The committee has already heard today that it is the largest non-federally recognized tribe in the country. It has probably the largest documented legislative and administrative record of any tribe in this country. If you compile, as we have, the legislative history of all of the hearings that have been held on this tribe's history since 1899, as well as the nine studies that the Chairman referred to, you have literally hundreds of pages of testimony and documentation with regard to the history, ancestry and community of the Lumbee Tribe. I dare say that these pages compare admirably to the extent of work that was done on Poarch Creek and other tribes that have gone through the administrative process.

In particular with regard to Poarch Creek, I think it is important to observe for the committee that we were pleased to have the support of the chairman of the Poarch Creek Tribe in 1988 who in a letter to this committee specifically noted that the Lumbee has a

unique set of circumstances that does justify special legislation for the Lumbee Tribe, even though USET has repeatedly indicated its support for the administrative process for other tribes.

There is one final circumstance, of course, which hovers above all the rest of these, and that is the 1956 Lumbee Act. It is important to place that act in its context. The Lumbee people, as other witnesses have testified, had been at this task since 1888. There was a pattern to these bills, the nine or so bills that were introduced in Congress between 1899 and 1956. This is the pattern.

Every occasion that the State of North Carolina amended its law to recognize the tribe under a particular name or for a particular purpose, the tribal leadership came to its congressional delegation and sought an act of Congress to recognize the tribe on the same terms that the State had recently done so. You see this with the 1899 statute, which followed on the heels of the 1885 State statute. You see it with the 1911, 1913 statutes which followed immediately on the heels of State recognition under different names. You also see it in 1956 with the Lumbee Act.

The State of North Carolina had just 2 years before recognize the tribe under the name of Lumbee, which was the first time the tribe itself had asserted that this is the name we choose to be known by, the place where we have always resided. After that act, then the tribal leadership came to Congress with the exact same language, the exact bill that had been passed by the State of North Carolina, and asked its delegation to obtain Federal recognition upon the exact same terms. That bill was introduced, but again at the request of the Department of the Interior, who once again objected to recognition of the tribe, it was amended in the Senate to include the termination language.

So what began as one more effort for recognition by the tribe, ended in termination by the tribe at the hands of the Department of the Interior.

As the chairman has testified, the tribe nonetheless thought it had been recognized in 1956. The streets of Pembroke were closed for celebration. There was a parade through town that many of our elders today remember clearly. It was a joyous day for us. And it was only with the passage of time over a few years that we began to realize that once again we had been tricked. That happened conclusively in the early 1970's.

As you have heard, the tribe had operated its own school system under the law of North Carolina since 1885. By court order in the early 1970s, the State of North Carolina was obliged to desegregate its schools. The Lumbee Tribe thought our schools were exempt. We were a recognized Indian tribe, after all. It was only when Lumbee parents were arrested and charged with truancy for refusing to allow their children to be bussed and to be up their own separate school system that a Federal judge told the tribe, you are not federally recognized, and because of that you are not allowed by law to maintain your own school system. It must be dismantled. We lost it. And that is when our modern effort to achieve Federal recognition began again.

Those are the unique circumstances, we believe, that justify Congress taking the act of acting completely, completing what it start-

ed in 1956 with the partial recognition, finishing that act, and recognizing the tribe fully.

As other witnesses have testified, there has only been one other tribe in the history of Federal Indian policy that has been in this precise circumstance. That was what was formerly known as the Tiwas of Texas. In 1968, this tribe, which had been long-recognized by the State of Texas, came to the Congress with its own recognition bill. That bill was amended to include the same termination language that appeared in the 1956 Lumbee Act. In fact, the legislative history of the 1968 Tiwa Act says specifically that that Act was modeled upon the 1956 Lumbee Act.

The Tiwas were not happy with that situation either. It was done at the height of termination policy and eventually Congress righted that wrong. In 1987, the Congress passed the Ysleta del Sur Restoration Act, which extended full Federal recognition to the Ysleta del Sur Pueblo, formerly known as the Tiwas of Texas.

I would like to observe also that there was no opposition to that recognition Act by USET or many other tribes, even though they now profess to have great regard for the administrative process. The administrative process existed at that time. Congress in its wisdom understood that a wrong had been done to the Tiwas of Texas and righted it. For the same reason, Congress needs to realize that the Lumbees have suffered as second-class Indians since 1956. Congress put the Lumbees in that position and Congress should take it out, as it did with the Ysleta del Sur and extend full Federal recognition.

If I may, in summary, refer the committee to some of the major terms of the proposed bill that Senator Dole has introduced, and address a few of the concerns that have been raised by some of the witnesses so far.

First of all, the Act does, as it should appropriately, present itself as an amendment to the 1956 Lumbee Act. It would, as did the 1987 Ysleta del Sur statute, extend full Federal recognition to the Lumbee Tribe; no more half-measures, but full Federal recognition. Second, it also bestows civil and criminal jurisdiction on the State of North Carolina, subject to a change in that situation should the tribe, the State and the United States agree to do so on a negotiated basis.

This is important because it recognizes the longstanding relationship that the tribe has had with the State of North Carolina. It is also important because we fear, given the size and concentration of the Lumbee community, that were it not for that provision, there may be a lapse of jurisdiction for some period of time. So that provision is important to us.

Those are the key provisions. Some question has been raised, however, with regard to land acquisition provisions. Let me say a few words in response to those concerns.

It is not the intent of these bills to establish a reservation per se. There is language in the bill that refers to reservation boundaries, but for the purposes of the delivery of Federal Indian services. As the chairman knows, many of those services are tied to the location of reservation boundaries. As part of the effort to ensure that Lumbees are not again the subject of one-half measure, we put

language in the bill to make sure that the Lumbees are eligible for those services, even though a formal reservation may not exist.

It is also important to point out that because of those differences, the absence of a formal reservation, the extension of State civil and criminal jurisdiction to the tribe, it is not fair for cost purposes to compare this tribe to other tribes in a similar situation.

I think Ms. Martin for the Bureau testified that there may be a 15- to 20-percent participation by the Lumbee Tribe in the existing BIA budget were they recognized. We think that is not an accurate figure at all for a number of reasons. First of all, as I indicated, the Lumbee Tribe because of the State civil and criminal jurisdiction and because of the absence of a formal reservation, would simply not participate in a number of the Federal Bureau of Indian Affairs programs that are geared for those purpose. Law enforcement programs, trust responsibility programs would simply not apply, and therefore those costs would not obtain or attach to this bill.

Second, Ms. Martin's testimony does not take into account the fact that the Lumbee Tribe presently participate in a number of the programs that she is concerned about. By virtue of the tribe's State recognition, the tribe already participates in the HUD Indian Housing Program. The tribe already participates in a number of Department of Labor program, and the tribe already participates in the LEHAP, or Low Energy Housing Assistance Program.

Those are costs that are presently being borne by the United States Congress in the appropriations for Indian people, so that would not be an added item that would come about as a result of this bill. We think for those reasons the 15 to 20 percent estimate is a gross exaggeration of the additional costs that the Congress would bear because of this bill.

In sum, Mr. Chairman, I think you have heard today some eloquent testimony from our leadership. You have seen our people here. You have sensed the excitement that they feel. We really think that the time has come. We have been here long enough. We have been studied enough times. The Congress knows us. The Department of the Interior knows us. We urge the committee to act favorably as soon as possible on Senator Dole's bill.

Thank you.

[Prepared statement of Ms. Locklear appears in appendix.]

The CHAIRMAN. Thank you, Arlinda. You are a fine speaker for the tribe. Let me ask you just a couple of quick questions.

You are going to have to deal with land into trust at some point. Is there a location now that the tribe wants as a land base?

Ms. LOCKLEAR. There has not been a tribal decision made on that issue. There are areas that obviously suggest themselves. As I indicated, the tribe currently receives Indian Housing Program. There are Indian housing units.

The CHAIRMAN. But there are no areas designated that you would like to get as a land base?

Ms. LOCKLEAR. Not at this point.

The CHAIRMAN. Okay. And maybe the last question, you said that the linguistic group of the Lumbees was Siouan.

Ms. LOCKLEAR. Yes.

The CHAIRMAN. Was that also the same linguistic group as the Cheraw?

Ms. LOCKLEAR. Yes; the Cheraw were Siouan speakers.

The CHAIRMAN. I think that is all I need to ask you. Oh, maybe one last question. This number of 40,000 to 55,000 I have heard, what is it? Where is the number of enrolled people?

Ms. LOCKLEAR. The chairman is correct when he testified that we have 53,000 enrolled members.

The CHAIRMAN. 53,000. A large group.

Ms. LOCKLEAR. Let me say that have an ongoing process to cull from that record deceased members.

The CHAIRMAN. How many of those are adults of voting age?

Ms. LOCKLEAR. We have a very young tribe.

The CHAIRMAN. I would be interested in knowing that. I am sure Senator Dole would be interested in knowing that. [Laughter.]

Okay, thank you. I have no further questions, but we may submit some to have you answer in writing.

Ms. LOCKLEAR. Just to clarify. When we said almost 55,000, we were saying "almost," which is the 53,000 figure. The 40,000 is the 40,000 in Robeson County alone, but there are members that live elsewhere as well in surrounding counties and also some other places. But there is not really a discrepancy; that is just a clarification for the numbers.

The CHAIRMAN. Okay. Sure. Thank you.

Mike, I am sure you would be interested in knowing the number of them that can vote too, wouldn't you?

Mr. McIntyre. You bet. [Laughter.]

The CHAIRMAN. Okay. We will go to our last witness, James T. Martin from USET, who has appeared many times before the committee. Nice to see you, James. Go ahead.

And as with the other witnesses, you are welcome to abbreviate, and may have answered a few questions already in earlier dialog.

Mr. MARTIN. Yes, sir; Mr. Chairman, I would submit my written testimony as the formal testimony.

The CHAIRMAN. It will be in the record.

STATEMENT OF JAMES T. MARTIN, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES, NASHVILLE, TN

Mr. MARTIN. I will touch on some highlights. As I mentioned just a moment ago, I am certainly encouraged by the information provided by the Lumbees of North Carolina. But it goes more toward the stance that USET is taking in its formal testimony, that they should go through the process.

My name, for the record, is James T. Martin. I am an enrolled member of the Poarch Band of Creek Indians of Alabama, executive director of USET, the intertribal organization representing 24 federally recognized Indian tribes.

USET acknowledges that Federal recognition of Indian tribes is a formal act creating a perpetual government-to-government relationship, so I can truly understand the sincere desire of this group to become federally recognized. Federal recognition ensures tribes the dignity and the deserving of equal opportunity that fellow other tribes enjoy. Federal recognition is a complex process important to the sovereign and cultural stability of the tribes, in that Federal recognition creates that official trustee relationship and fiduciary responsibilities on the part of the United States.

USET affirms that the Federal recognition mandates the obligation by the Federal Government to protect and preserve the inherent sovereign rights of a tribe. Federal recognition enables the tribe to gain valuable resources to break the yoke of unemployment, low educational levels, substandard housing and poverty that has plagued our people. As they have testified, the same things that occurred there. So I am fully aware and appreciative and respect their desire to gain this recognition, to be able to be welcomed into the society of other federally recognized Indian tribes.

Federal recognition would shield the tribe from undue Federal and State encroachments. Without Federal recognition, tribes have experienced great difficulty in sustaining themselves as independent sovereign and cultural entities. Federal recognition creates the trust relationship that identifies the Government's fiduciary responsibility to manage and protect the Indian lands, natural resources and trust assets. The member tribes of USET realize the affirmative advantage of a proper Federal recognition.

Furthermore, federally recognized tribes enjoy the inherent sovereign powers to be recognized by the United States to exercise criminal jurisdiction over tribal members and civil jurisdiction over all people, Indian and non-Indian, within their territory. Federally recognized tribes have the authority to engage in economic development activities, with certain judicial and tax advantages.

We recognize that Congress has the power to extend certain recognition to groups, but in its infinite wisdom, Congress has deferred this Federal recognition process. Congress has considered this Federal recognition process a complex and tedious one, and it is not to be entered into lightly. Congress therefore deferred to the Department of Interior, which has established a set of regulations, standardizing the Federal recognition process, and creating administrative procedures to determine whether a particular Indian group is a federally recognized tribe or not. That was alluded to by Ms. Martin earlier, and alluded to by Ms. Locklear and other people so I will not restate those areas. But I would state, though, that this BAR procedure was the result of a 2-year study from the congressionally established American Indian Review Commission, and requests by tribes calling for standardized criteria in determining the future relationships of tribes to the United States.

It is the BAR, not Congress, which is staffed with the experts such as historians, anthropologists, genealogists. It is there responsibility to determine the merits of the group's claims. I would propose to Congress that this information provided is a complex information. How will Congress look through that, when they, in your infinite wisdom, have in the past deferred that to the experts to be able to do that? These procedures were established in 1978. They were streamlined in 1994.

The seven criteria that were identified are there for a high reason. Our tribe,the Poarch Band of Creek Indians, had to go through that process. We had to go through it for over 20 years. We believe in that process. USET believes in that process.

I am here today to reiterate USET's longstanding tradition of supporting Indian groups seeking to go through the Federal acknowledgement process. This position is reiterated in our resolution 9315, restating the position on the Lumbee recognition, duly

passed by our Board in 1993. This resolution expressly rejects the concept of legislative recognition of Indian groups in favor of the participation in the FAP process by the Lumbees of North Carolina on an equal basis as other petitioning groups.

It is not the intent of USET to encourage the denial of recognition to any tribe, but it is our intent to demand that the FAP process and the BAR procedures for Federal recognition be administered equally for all groups seeking Federal recognition, and that that group not be allowed to bypass this process.

We recognize that the Interior Solicitor's opinion states that the Lumbees cannot access the BAR because of Federal legislation. USET believes the appropriate remedy is for Congress to clear this barrier through legislation that would allow the Lumbees to access the administrative procedures. A bipartisan bill, as I understand it, H.R. 1408, has been introduced in the House that would allow that to occur.

Additionally, Federal legislation acknowledging of a group would unfairly give preferential treatment to that group over all other groups that are patiently waiting in the BAR process. Moreover, providing Federal acknowledgment of a group through legislation invariably leads to inconsistent and subjective results. Without the use of uniform procedures and criteria, the process of according a group Federal recognition as a tribe will invariably be based upon emotion and politics.

The relationship that all federally acknowledged tribes have with the United States and the public perception of those tribes is diminished if a group is afforded Federal acknowledgement without serious technical review. Thus Congress should take the politics out of Federal acknowledgment and allow the experts to do their job.

I have personal friends in this audience from the Lumbee people. I have broken bread in their house, probably slept in some of their beds going to their unity conference and other meeting. It is not here that I state this as a personal opinion. It is the opinion of all tribes across the Nation, that there are administrative procedures that all tribes should go through so that they can be welcomed into, if they are fortunate enough to pass the process, by all tribes across Indian country, and not to be welcomed in with an asterisk by their name. I am certainly encouraged by the information provided that they believe that they could go through the administrative process and succeed. Six of the seven criteria, as the gentleman says, that they can meet.

We would ask this Congress to amend those procedures to allow the Lumbees of North Carolina to avail themselves to the administrative process and review the information just as all other tribes have done.

Thank you.

[Prepared statement of Mr. Martin appears in appendix.]

The CHAIRMAN. Thank you, Tim.

I want to also by the way thank you on an unrelated issue, the very strong support that USET gave to our Indian provision of the energy bill that is in conference now, and hopefully that is going to come out intact. I think it is going to open up some huge opportunities for Indian tribes who want to avail themselves to it. As

you know, it is voluntary, tribe by tribe, but I want to thank your Board for the help they gave us. I appreciate that.

Mr. MARTIN. Thank you, sir.

The CHAIRMAN. Let me ask you just a couple of things. I understand that some of the members of USET were legislative recognized at one time or another. Is that true?

Mr. MARTIN. Those legislative recognitions were in association with land claims cases. There was not an outright recognition of any tribe as a stand alone recognition bill.

The CHAIRMAN. I see.

Mr. MARTIN. All of those recognitions were associated with land claims.

The CHAIRMAN. So the formal position against legislative recognition was that of the 1993 or so resolution?

Mr. MARTIN. Yes, sir; Now, the other tribes that we have in opposition to outright recognition was the Mowa Band of Choctaw Indians in the State of Alabama, which went through the BAR process and was denied.

The CHAIRMAN. Well, then you did support a couple of the USET members that were based on land claims, you said, at least one.

Mr. MARTIN. Yes, sir.

The CHAIRMAN. If the Lumbees filed a land claim and got recognition with it, what would USET's position be on that?

Mr. MARTIN. We would have to study the legislation as we had studied each of those legislations before and make a determination on that, based upon the merits of that legislation.

The CHAIRMAN. You have 23 members. Is that a unanimous decision when you make that, or is it a majority position of the Board or what?

Mr. MARTIN. Decision by the Board are by majority vote. On particular legislation, we are not bound by if they vote for a position that is taken by the group as a whole. Individual tribes may on their own take it upon themselves to support individual legislations. Our motto is that there is strength in unity, but those are sovereign nations that should be able to make their public stance known.

The CHAIRMAN. Is there any interaction now between USET and the Lumbees? You talked about personal friendships, but is there any interactive tribal things that go on between any of the tribes in USET and the Lumbees?

Mr. MARTIN. There is no formal interaction between the USET organization and the Lumbees. We have to draw a line in the sand. USET is an intertribal organization of 24 federally recognized tribes.

The CHAIRMAN. The members that did get recognition through the legislative process for land claims, have you ever heard them regretting doing it through the legislative route over the administrative route?

Mr. MARTIN. I am not aware of them expressing an opinion in favor or not, sir.

The CHAIRMAN. Okay.

I have no further questions, but I certainly appreciate your being here and I am sorry we had you wait so long. I know as that storm gets closer, some people are going to want to get home, and hope-

fully you will all in the audience be able to get out to the airport if you are flying, and if you are driving be safe.

We are going to keep the record open 2 weeks. If there is any additional testimony from anybody in the audience or from the people that testified that you would like the committee to study. If you would get that to us within the next two weeks, we will make sure that all the members get that.

I thank you, Senator Dole, for bringing this bill to the attention of the committee.

With that, this committee is adjourned.

[Whereupon, at 11:52 p.m. the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF AURENE MARTIN, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and members of the committee. My name is Aurene Martin and I am the principal deputy assistant secretary—Indian Affairs at the Department of the Interior. I am here today to provide the Administration's testimony on S. 420, the "Lumbee-Acknowledgment Act of 2003." The recognition of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. Federal acknowledgment enables tribes to participate in Federal programs and establishes a government-to-government relationship between the United, States and the tribe. Acknowledgment carries with it certain immunities and privileges, including exemptions from State and local jurisdiction and the ability to undertake casino gaming. The Department believes that the Federal acknowledgment process set forth in 25 C.F.R. Part 83, "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," allows for the uniform and rigorous review necessary to make an informed decision establishing this important government-to-government relationship.

Before the development of these regulations, the Federal Government and the Department of the Interior made determinations as to which Indian groups were tribes when negotiating treaties and determining which groups could reorganize under the Indian Reorganization Act (25 U.S.C. 461). Ultimately there was a backlog in the number of petitions from groups throughout the United States requesting that the Secretary officially acknowledge them as Indian tribes. Treaty rights litigation in the West coast, such as *United States* v. *Washington* (384 F. Supp. 312, 279 (W.D. Wash. 1974), *aft'd,* 520 F.2d 676 (9th Cir. 1975), *cert. denied,* 423 U.S. 1086 (1976)), and land claims litigation on the East coast, such as *Joint Tribal Council of Passamaquoddy* v. *Morton* (528 F.2d 370 (1st Cir. 1975)), highlighted the importance of these tribal status decisions. Thus, the Department in 1978 recognized the need to end ad hoe decisionmaking and to adopt uniform regulations for Federal acknowledgment.

Under the Department's regulations, petitioning groups must demonstrate that they meet each of seven mandatory criteria. The petitioner must:

(1) demonstrate that it has been identified as an American Indian entity on a substantially continuous basis since 1900; (2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present; (3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present; (4) provide a copy of the group's present governing document including its membership criteria; (5) demonstrate that its membership consists of individuals who descend from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list; (6) show that the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe, and (7) demonstrate that neither the peti-

tioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

A criterion shall be considered met if the available evidence establishes a reasonable likelihood of the validity of the facts relating to that criterion.

Under the Indian Commerce Clause, Congress has the authority to recognize a "distinctly Indian community" as a tribe. Because, of its support for the deliberative regulatory acknowledgment process, however, the Department of the Interior has traditionally opposed legislative recognition. Notwithstanding that preference, the Department recognizes that some legislation is needed given the unique status of the Lumbee.

In 1956, Congress designated Indians then "residing in Robeson and adjoining counties of North Carolina" as the "Lumbee, Indians of North Carolina." in the Act of June 7, 1956 (70 Stat. 254). Congress went on to note the following:

Nothing in this act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because or their status as Indians shall be applicable to the Lumbee Indians.

In 1989, the Department's Office of the Solicitor advised that the 1956 Act forbade the Federal relationship within the meaning of 25 C.F.R. Part 83, and that the Lumbee Indians were therefore precluded from consideration for Federal acknowledgment under the administrative process. Because of the 1956 Act, we acknowledge that legislation is necessary if the Lumbee Indians are to be afforded the opportunity to petition the Bureau of Indian Affairs' Office of Federal Acknowledgement under 25 C.F.R. Part 83. The Department would welcome the opportunity to assist the Congress in drafting such legislation.

If Congress elects to bypass the regulatory acknowledgement process in favor of congressional recognition, it may only recognize the Lumbee as a tribe pursuant to its Indian Commerce Clause authority if a court could decide that Congress had not acted arbitrarily in implicitly or explicitly finding that the Lumbee constitute a distinctly Indian community. Among other factors, Congress would have to identify or be relying upon the historical continuity of a unified community under one leadership or government. If Congress made the proper express findings (or implicitly relied on sufficient evidence) and then granted the Lumbee Indians federally recognized status, the Department believes that Congress should be cognizant of several important issues that Federal recognition raises. As currently drafted, S. 420 leaves many questions to these issues unanswered.

Under the provisions of this bill, the Lumbee Tribe would be afforded all benefits, privileges and immunities of a federally recognized tribe. Thus, the Lumbee Tribe would be authorized to conduct gaming activities pursuant to the Indian Gaming Regulatory Act (IGRA). Prior to conducting class III gaming, the tribe would need to negotiate a gaming compact with the State of North Carolina. In addition, the tribe must have lands taken into trust. Generally, if a tribe wants to game on land taken into trust after the passage of IGRA, it must go through the two-part determination described in 25 U.S.C. §2719(b)(1)(A). This process requires the Secretary to determine, after consultation with the tribe and the local community, that gaming is in the best interest of the tribe and its members and not detrimental to the local community. If the Secretary makes that determination in favor of allowing gaming, then the gaming still cannot occur without the Governor's concurrence. The bill as drafted does not prohibit gaming.

The Department has devoted a great deal of time to trust reform discussions. The nature of the trust relationship is now often the subject of litigation. Both the executive branch and the judicial branch are faced with the question of what exactly did Congress intend when it established a trust relationship with individual tribes, and put land into trust status. What specific duties are required of the Secretary, administering the trust on behalf of the United States, with respect to trust lands? Tribes and individual Indians frequently argue that the duty is the same as that required of a private trustee. Yet, under a private trust, the trustee and the beneficiary have a legal relationship that is defined by private trust default principles and a trust instrument that defines the scope of the trust responsibility. Congress, when it establishes a trust relationship, should provide the guideposts for defining what that relationship means.

Much of the current controversy over trust stems from—the failure to have clear guidance as to the parameters, roles and responsibilities of the trustee and the beneficiary. In this case, given that we would be taking land into trust in an area in which there has not previously been Federal trust land, such issues as land use, zoning, and the scope of the Secretary's trust responsibility to manage the land should be addressed with clarity and precision. Congress should decide these issues, not the courts. Therefore, we recommend the committee set forth in the bill the spe-

cific trust duties it wishes the United States to assume with respect to the Lumbee. Alternatively, the committee should require a trust instrument before any land is taken into trust. This trust instrument would ideally be contained in regulations drafted after consultation with the tribe and the local community, consistent with parameters set forth by Congress in this legislation. The benefits of either approach are that it would clearly establish the beneficiary's expectations, clearly define the roles and responsibilities of each party, and establish how certain services are provided to tribal members.

Another issue we have identified is the designation of a reservation and a service area for the tribe. S. 420 would designate Robeson County as the tribe's reservation and names several other counties as its service area. Typically Congress has designated land held in trust by the Secretary as a tribe's reservation. Counties are then appropriately designated as service areas. Under the Act, all of Robeson County would be considered "Indian Country" under 18 U.S.C. 1151. By declaring the entire county as a reservation, the legislation raises law enforcement and other important jurisdictional, taxation, and land use issues for Robeson County. Criminal and civil jurisdictions are two areas that are required to be addressed under the Department's land-to-trust regulations under 25 C.F.R. Part 151 precisely because of the potential impact on the local community and its potential impact upon the relationship between the tribe and local residents. Moreover, designating an area as reservation has implications for other groups in the area that might seek recognition.

We are also concerned with the provision requiring the Secretary, within 1 year, to verify tribal membership. In our experience this is an extremely involved process that has taken several years with much smaller tribes. We don't currently have access to these rolls and have no idea what would be involved to verify them. Moreover, S. 420 is silent as to the meaning of verification. Section 5 also requires the Department to determine eligibility for services. However, each program has different criteria for eligibility and the Secretary of the Interior cannot determine eligibility for such things as health care. Finally, section 5 may raise a Recommendations Clause problem by purporting to require the President to submit annually to the Congress as part of his annual budget submission a budget that is recommended by the head of an executive department for programs, services and benefits to the Lumbee Tribe. Under the Recommendations Clause of the Constitution, the President submits for the consideration of Congress such measures as the President judges necessary and expedient.

Should Congress choose not to enact S. 420, the Department feels that at a minimum, Congress should amend the 1956 Act to afford the Lumbee Indians the opportunity to petition the Bureau of Indian Affairs' Office of Federal Acknowledgment under 25 C.F.R. Part 83.

This concludes my prepared statement. I would be happy to answer any questions the committee may have.

TESTIMONY OF DR. JACK CAMPISI BEFORE

THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS ON S.420

September 17, 2003

I hold a doctorate in anthropology, have dedicated my career to research in tribal communities, and teach these subjects as an adjunct professor at Wellesley College. Between 1982 and 1988, I conducted a number of studies for the Lumbee Tribe of North Carolina. Each of these included fieldwork in the community for periods of time varying from a week to three weeks. In all, I spent more than twenty weeks in Robeson County carrying out a variety of research projects. Besides being responsible for synthesizing the thousands of pages of documentation collected during the ten years it took to carry out the archival research, and for designing and carrying out the community research, I had the honor of writing the petition that was submitted on December 17, 1987, to the Branch of Acknowledgment and Research. Specifically, I drafted the Historical Narrative section, and researched and wrote the sections dealing with community and political continuity. Subsequent to the completion of the petition, I continued research with the Lumbee Tribe, most recently in 2002. The material that follows is based on my twenty years' research on the Tribe's history and community.

Over the course of the past twenty-five years, I have worked on 28 tribal petitions for federal acknowledgment. None has exceeded the Lumbee petition in documentation and no group has exhibited more evidence of community cohesion and political continuity than the Lumbee Tribe. It is my professional opinion that the Lumbee Tribe meets the criteria for recognition. I will outline below the main arguments and evidence in support of this conclusion.

An Overview of Lumbee Tribal History

That there was a separate and continuous Indian community in Robeson County during the ante-bellum period is clear from state court and federal census records. Although generally classified as free non-whites during the post-Revolutionary War years, the Lumbees appear to have been treated more generously than free blacks, being allowed to vote without challenge and to own property. However, in the 1830s two seemingly unrelated actions — one by the national government and the other by the State of North Carolina -- converged, with disastrous impact on the Indians of the state. In 1830, Congress passed legislation providing for the removal of all Indian tribes east of the Mississippi River to land set aside in the "Indian Territory" in Oklahoma. Tribes such as the Cherokee and Creek were forced to leave. In the climate of removal, it did not benefit a tribe to overtly manifest its identity. Lumbees, like other Indians in the state, held their land in severally, but often without patents. Thus, they were in a precarious position.

Added to the problem of tribal survival was the steadily worsening relationship between whites and "people of color" in North Carolina following Nat Turner's uprising in 1831. In 1835, the state passed a constitutional amendment denying tribal members rights they had previously enjoyed. Many refused to abide by the changes and some were charged with violations. One case, in particular, went far toward recognizing the Lumbees as Indians. In 1857, a William Chavers was arrested and charged as "a free person of color" with carrying a shotgun, a violation of state law. He was convicted, but promptly appealed, claiming that the law only restricted free Negroes, not persons of color. The appeals court reversed the lower court, finding that "Free

persons of color may be, then, for all we can see, persons colored by Indian blood, or persons descended from Negro ancestors beyond the fourth degree." The following year, in 1859, in another case involving a Lumbee, the appeals court held that forcing an individual to display himself before a jury was tantamount to compelling him to furnish evidence against himself. These cases generally resulted in the Lumbees establishing a special status under the law as Indians, one outside the limitations placed on others who were classified as "free persons of color."

The federal census records are by far the best source of evidence concerning the Lumbee community. It is clear from the names of the heads of households that the area of Robeson County around Drowning Creek, renamed the Lumber River in 1809 by the state legislature, was occupied almost exclusively by tribal members. Based on the 1850 census (the first census to provide the names of the individual's resident in each household), it is possible to describe the residency patterns of the Lumbee community. Thus, there can be no doubt that there was an Indian community present along Drowning Creek from the mid-1700s, separate from other communities in the area. It is also certain that this community had a well-established leadership structure and that it managed its affairs with relative autonomy.

The oldest Lumbee community that can be continuously documented was called Long Swamp, now called Prospect and located within the core area in Pembroke and Smith townships. It is also located right in the heart of the so-called old field of the Cheraw, documented in land records between 1737 and 1739. The earliest census records show the presence in this community of an extended Locklear family continuously since 1790. Members of this extended family appeared among the tribal leaders, both by descent and marriage, who petitioned Congress

for federal recognition in 1888. Members of this extended family were also among those who were tested by physical anthropologist Carl Seltzer in 1936 for blood quantum. This includes Duncan Locklear and Henry Locklear, whose pictures are attached. The Tribe's attorney, Arlinda Locklear, is also descended from this extended family.

From 1860 on, there is abundant evidence of tribal activity. During the Civil War the Lumbee Indians were prohibited from serving in the Confederate Army and were, instead, conscripted into labor gangs and assigned to build the fortifications at the mouth of the Cape Fear River to protect the city of Wilmington. The conditions were harsh and the treatment brutal. Many Lumbee men escaped and returned home where they hid out in the swamps of Robeson County. Besides Lumbees, the swamps provided a refuge for Union soldiers who had escaped from nearby Confederate camps. Because of their treatment by the Confederacy, and more particularly the Home Guard, the Lumbees gave assistance and protection to the Union soldiers. As the number of Lumbees and Union soldiers "laying out" increased, so did the burden of feeding them. With so many men in hiding or conscripted, there were few to do the farm work. Gradually, the attitude of the Lumbees changed from a passive one to one marked by belligerence In short order, a band emerged, led by the sons of Allen Lowrie.

Matters came to a head in 1864 when members of the Allen Lowrie family and the local authorities came into armed conflict and a number of individuals on both sides were killed. In March of 1865, the Home Guard captured Allen Lowrie and his son, William, and after holding them for a short time, executed them in a field near the father's house. This was followed by a virtual reign of terror during which the Home Guard tortured members of the Lowrie family and their kinsmen in order to learn the whereabouts of the band. With the death of his father and

brother, Henry Berry Lowrie, who was barely twenty years old, took over the leadership of the band. For the next decade, led by Henry Berry Lowrie, and with community support and protection, the band fought against local authorities who sought by a variety of means to oppress the Indian population in Robeson County. The Lowrie Band led a struggle that ended only after the disappearance of its leader in 1872, and the capture and death of the last of the band members in 1874. Henry Berry Lowrie remains a folk hero to the Lumbee Indians and his story is told every year in an outdoor drama called Strike at the Wind.

By the 1870s, the Lumbees were openly acknowledged to be Indians. While the Lowrie Band was carrying out its defense, others in the tribe were taking equally effective actions to assert their independence. Lumbees were denied access to the white schools in the county and they refused to attend the schools for blacks. This impasse was broken in 1885, when the Lumbees were formally recognized by the State of North Carolina as an Indian tribe and permitted to establish a school system for the children of tribal members only. Tribal members exercised complete control over who could attend the schools. Each Lumbee settlement had a school committee that determined eligibility. In order to be eligible, an individual had to prove Lumbee ancestry back through the fourth generation; that is, back to the 1770's. Because of the rigorous manner in which these rules were enforced in the nineteenth century, school enrollment provides an accurate basis for determining present-day membership.

In 1887, tribal members petitioned the state legislature, requesting the establishment of a normal school to train Indian teachers for the Tribe's schools. Permission was granted, tribal members raised the funds, and along with some state assistance, the normal school began training teachers for the expanding Lumbee school system. That normal school has been in operation

continually since, evolving into Pembroke State University and, recently, the University of North Carolina at Pembroke.

In 1888, the Tribe petitioned Congress for educational assistance. The request was sent by the House Committee on Indian Affairs to the Commissioner of Indian Affairs, but no action was taken for nearly two years. Finally, in 1890, Commissioner Morgan responded to the Tribe, telling them that, "So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes." There is no doubt that the government's rejection of assistance was based solely on economic considerations; the commissioner implying that if sufficient funds had been available, services would have been provided to tribes he referred to as "civilized."

The Lumbees made frequent attempts over the course of the next fifty years to receive assistance from the United States. In 1899, Congressman John D. Bellamy introduced legislation to provide educational assistance for the Croatan Indians (as the Lumbees were then called). Again, in 1910 and 1911, legislation was introduced in Congress to change the Tribe's name and to establish ". . . a school for the Indians of Robeson County, North Carolina." To secure information on the Tribe, the Indian Office sent Charles F. Pierce, Supervisor of Indian Schools, to investigate. He reported favorably on the Tribe, finding ". . . a large majority as being at least three-fourths Indian."' He described them as being law abiding and industrious and "crazy on the subject of education." Pierce had no doubt that the Lumbees were Indians, or that they were a tribe. Nor did he doubt that federal educational assistance would be beneficial. He opposed the legislation because, in his words, "[a]t the present time it is the avowed policy of the government to require states having an Indian population to assume the burden and responsibility for their

education, so far as is possible." After lengthy deliberations, the bill passed the Senate, but not the House, because the chairman of the House committee felt that the Lumbees were eligible to attend the various Indian boarding schools.

The Tribe continued its efforts to secure federal educational assistance, and in 1914, sent a delegation to Congress. Another investigation was carried out by the Indian Office at the direction of the Senate. Among other things, Special Indian Agent, O.M. McPherson found that the Tribe had developed an extensive system of schools and a complex political organization to represent its interests. He noted that the Lumbees were eligible to attend federal Indian schools, but doubted that these schools would meet their needs. His recommendation was that if Congress saw fit to establish a school, it should be one emphasizing agricultural and mechanical skills. Again, Congress took no action. Parenthetically, it should be noted that during this period tribal activity was generally at a low level across the United States. Not so for the Lumbees, who actively involved their congressmen in their efforts to achieve federal recognition.

During the 1930s, the Tribe renewed its efforts to achieve federal recognition. In 1934, the Bureau of Indian Affairs asked the eminent anthropologist at the Bureau of American Ethnology John Reed Swanton for his professional opinion on the Lumbees. Swanton was emphatic concerning their Indian ancestry, specifying a Cheraw and other eastern Siouan tribes as their ancestry. A later report by Indian Agent Fred Baker (1935), who had visited the Lumbee community, gave further support that they constituted a tribe. Baker discussed a resettlement project with the Tribe in which the government would acquire land for the Lumbees' support, an alternative to the share-cropping and credit system then the predominant means of Lumbee livelihood. Baker reported to Congress:

> It may be said without exaggeration that the plan of the government meets with practically the unanimous support of all of the Indians. I do not recall having heard a dissenting voice. They seemed to regard the advent of the United States government into their affairs as the dawn of a new day; a new hope and a new vision...
> I find that the sense of racial solidarity is growing stronger and that the members of this tribe are cooperating more and more with each other with the object in view of promoting the mutual benefit of all the members. It is clear to my mind that sooner or later government action will have to be taken in the name of justice and humanity to aid them.

However, the Bureau of Indian affairs did not support recognition of the Tribe, despite four studies that all found the Lumbee to be Indian. The apparent reasons were the size of the tribe and the costs to the government.

Following the First World War, the Lumbees renewed their efforts, both in the state and with Congress, to improve their educational system. At the state level, they were able to get an appropriation of $75,000 for capital improvements at the Indian Normal School. The issue of the Tribe's name had become a concern, and tribal leaders sought legislation in Congress to recognize the name adopted by the state legislature – The Cherokee Indians of Robeson and Adjoining Counties in North Carolina. Such a bill was introduced in the Senate in 1924, and at first received favorable support from the Secretary of the Interior, although Commissioner of Indian Affairs Charles H. Burke opposed the legislation. The Secretary later dropped his support and the bill died.

The efforts to obtain congressional recognition were resumed in 1932. Senator Josiah W. Bailey submitted a bill designating the Indians of Robeson and adjoining counties as "Cherokee Indians," but this effort also failed. The following year another bill was proposed, this time designating the Tribe as the "Cheraw Indians," at the suggestion of Dr. Swanton. This name caused a split in the Tribe, with those tribal members led by Joe Brooks favoring it, while

others, led by D.F. Lowry opposing it, fearing it would jeopardize the Tribe's control over its schools. Because of the split in the Tribe, the effort failed.

With the passage of the Indian Reorganization Act, Brooks and his supporters attempted to organize the Tribe under a federal charter. Because the Tribe did not possess a land base, it was advised by Assistant Solicitor Felix Cohen to organize under the half-blood provision of the act. Cohen urged that the Tribe apply for land and a charter under the name of the "Siouan Indian Community of Lumber River." Brooks immediately submitted a proposal that mirrored Cohen's recommendations. Over the course of the next two years, the two projects of establishing recognition under the IRA and receiving land through the Bureau of Indian Affairs proceeded, when suddenly, in 1936, the land acquisition proposal was shifted from the BIA to the Rural Resettlement Administration, and the land that was to be purchased solely for Lumbee use, was opened to non-Indians. After a lengthy struggle, Brooks was able to have a part of the land set aside for tribal members, and incorporated under the name of the Red Banks Mutual Association.

The Tribe was no more successful in achieving recognition under the IRA. The BIA formed a commission of three to investigate the blood quantum of the Lumbees. In 1936, Dr. Carl C. Seltzer, an anthropologist and member of the commission, visited Robeson County on two occasions and took physical data on 209 Indians applying for recognition as one-half or more Indian blood. He found that twenty-two met the criteria. They were certified by the Secretary of the Interior. What made Seltzer's work so ludicrous was that in several cases he identified full siblings in different ways, one meeting the blood quantum requirement and the other not.

It was not until after the second World War that the Lumbees again tried to achieve federal recognition of their status as an Indian tribe. The issue of their name continued to cause

them problems so, in 1952, the Lumbee leadership conducted a referendum on the name. Of 2,144 tribal members who voted, all but 35 favored the use of the name "Lumbee," derived from the Lumber River upon which they had always dwelled. Armed with this overwhelming support, the leader of the movement, D.F. Lowry, asked the state legislature to adopt the change. The legislature approved the name change in 1953. The Lumbee Tribe then took its case to Congress, which in 1956 passed the Lumbee Bill.

There can be no doubt that for more than 200 years the Lumbees have been continuously and repeatedly recognized as American Indians. This was made explicit by the state in the 1880's and by the federal government from at least the beginning of the twentieth century on. Federal and state officials have, on numerous occasions, reviewed the evidence and at no time have they questioned the fact that the Tribe consisted of people of Indian descent. Federal reluctance to acknowledge the Tribe centered on questions involving the extension of services. It was unfortunate that each effort by the Lumbees to clarify their federal status and to receive services coincided with federal Indian policy shifts away from the trust relationship: the General Allotment Act in 1887; the Citizenship Act of 1924, and the termination policy of the 1950s. The exception, the Indian Reorganization Act, which could have provided a means to recognition, was subverted by bad anthropology and bureaucratic indolence.

Recent Lumbee History

Since the passage of the Lumbee Act, the Tribe has faced a steady string of problems, beginning with an attempt by the Ku Klux Klan to intimidate tribal members in 1958. The Tribe's reaction to this threat was a spontaneous gathering that drove the klansmen from the field and broke up their rally, a confrontation that focused national attention for a time on the Lumbee

community. The tribal members have exerted their influence in other ways. In the 1960's they organized voter registration drives that made their influence felt on local politics, electing members of the Tribe to state, county, and local public offices. When the local school authorities attempted to integrate only the black and Indian schools in the county, tribal members staged sit-ins and filed lawsuits to prevent the loss of tribal control over the schools. It must be understood that the school system was and is a key and integral part of tribal identity, and any threat to the tribe's control would be resisted. And resisted it was!

While the Tribe was struggling to maintain its schools, it was actively opposing the so-called "double voting" system, which allowed whites in the towns (which had separate school districts to vote with whites in the county, who were in the minority, to maintain white control over the county school system. The students in the county school system were predominantly Indian and black. Tribal leaders took the case to federal court, and after losing at the district court, won a reversal at the court of appeals, thus ending double voting.

At about the same time, tribal leaders became involved in an issue with high symbolic value to the Tribe. In 1972, the Board of Trustees of Pembroke State University decided to demolish the main building on the campus and replace it with another structure. Very quickly, a group formed to "Save Old Main." The group waged a statewide and national campaign to save the building, and just at the point when it seemed that they would be victorious, the building was burned to the ground. The Tribe overcame this blow and campaigned hard for the reconstruction of Old Main, which they eventually accomplished. The building was completed in 1975 and is now the site of the University of North Carolina at Pembroke's Native American Resource Center.

Since the end of World War II, the Tribe has grown in stature and influence. It was a primary mover in the establishment of North Carolina Commission of Indian Affairs, an organization that has become a model for state Indian commissions. The Lumbees have played an instrumental role in county affairs, where they have represented a moderating influence.

The Lumbee Community Today

The Lumbees are held together by the same mechanisms and values that have kept them together for the past one hundred years or more, mechanisms and values that are typically Indian. First and foremost is the family, which serves as the center of Lumbee social activities. There is continual and widespread visiting among adults, particularly in the homes of parents and grandparents. Often, children live near their parents on land that was part of the family homestead. Members of families speak to and visit each other on an almost daily basis.

The knowledge that the average Lumbee has of his or her kin is truly astounding. It is very common for individuals to be able to trace their parents' genealogies back five or more generations. Not only are individuals able to name their grandparents, great grandparents, great great grandparents etc., but often they can name the siblings of their ancestors, the spouses of their ancestors' siblings, relate where they lived in Robeson County, the church they attended, and the names of their offspring. It is common for an individual to name two or three hundred individuals as members of the immediate family. Every year there are family reunions that attract members from all over the country. They vary in size from small gatherings of a few hundred close kin to reunions involving a thousand or more persons.

This kinship pattern is well illustrated by the mapping of all Lumbee heads of household

based upon the 1850 federal census that I prepared for the Tribe's petition for federal acknowlegment. I identified 168 households headed by Lumbees in 1850. These heads of household are the ancestors of present day Lumbees and include descendants of the Locklear extended family documented on the old Cheraw field in 1790. The households were clustered in what is the core area today of the Lumbee Tribe; in some areas, such as the Prospect community, the area was almost exclusively Lumbee. The households showed an extremely high rate of in-marriage, resulting in complex and multiple kinship and marriage ties among the members – a pattern that continues today as discussed below.

The same kinship pattern is reflected in the list of tribal leaders who appeared on the 1887 petition to the state and the 1888 petition to the Congress. When these individuals' relationships, both marital and kin, are mapped, it again reveals a remarkably tight community. There are multiple ties, as shown by the chart submitted by the Tribe with its petition for federal acknowledgment. Thus, the high rates of marriage and geographic concentration of tribal members shown today, as discussed below, were evident in 1790 and 1850.

Religion also serves to maintain the social boundaries of the Lumbee Tribe. By social boundaries, I mean that there are membership rules, special beliefs and values, a unique history, and a system of political authority and decision-making that marks the Lumbees as a separate community. There are more than 130 Lumbee Indian churches in Robeson County, and with one or two exceptions, each has a Lumbee minister. Church membership crosses family lines and settlement areas, thus drawing together different sectors of the Tribe.

For the Lumbees, church is more than a religious experience; it is one of their most important social activities. It involves many of them on a daily basis. The churches have Sunday

schools, youth organizations, senior citizens' programs, Bible study programs, and chorus practices, to mention but a few of the activities available. It is common for members of the same household to attend different churches, and this behavior further acts to bring the tribal membership together.

An additional and important activity of the churches is to hold an annual "homecoming" during the fall. The event is well advertised and individuals come from great distances to attend. Homecomings are held on Sundays after church service and are open to all Lumbees. Families and friends gather in a church's fellowship hall and share a leisurely meal together. Commonly, there are several hundred tribal members in attendance. Homecomings are informal gatherings which offer opportunities for members of a family from different congregations to join with other families.

The family and the churches also provide the main avenues for political participation. In studying the Lumbee community, it is clear that leadership over the years has tended to surface in the same families from generation to generation, something like a system of inherited leadership. These leaders have gained prominence through their participation in the educational system and as church leaders. In the past, many of the Tribe's most dynamic leaders were ministers and teachers. Today, there are other avenues for the demonstration of leadership qualities, but family, education and religious values still command attention.

The importance of the role played by the Lumbee churches in the political life of the Tribe cannot be overstated. During the 1990s, it was the leadership from the churches that initiated and sustained the process for preparing a tribal constitution. The delegates to the constitutional convention were selected by the churches and represented every segment of the

tribe. After nearly ten years of meetings, negotiations, court actions, and re-drafts, the constitution was presented to the tribal members for their approval. On November 6, 2001, the tribal members voted on the constitution. Eighty-five [85] percent of those voting voted in favor of adoption. The approved constitution is recognized by the State of North Carolina, and it is the Tribe's governing document.

Lumbee Tribe of North Carolina and The Federal Acknowledgment Regulations

The United States Department of the Interior regulations (25 CFR Part 83) for "Establishing That an American Indian Group Exists as an Indian Tribe" has seven mandatory criteria. They are:

(a) identification as an American Indian entity on a substantially continuous basis since 1900;

(b) a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;

(c) the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present;

(d) a copy of the group's present governing document including its membership criteria;

(e) the petitioner's membership consists of individuals who descend from a historical Indian tribe which combined and functioned as a single autonomous political entity;

(f) the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe;

(g) Neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

The 1956 Lumbee Act forbids the federal relationship, making the Tribe ineligible for the administrative process. Were the Tribe eligible for the process, the historical record summarized above demonstrates that the Tribe satisfies all other criteria for acknowledgment.

Criterion (a) Identification as an Indian entity

This criterion can be met by showing evidence of federal, state, or county relationships, or identification by historians or social scientists, in books or newspapers, or by relationships with other tribes or national, regional or state Indian organizations. There are repeated and numerous identifications of the Lumbee Tribe as an Indian entity since 1900, as shown in the summary of the Tribe's efforts to obtain federal recognition above. There can be no serious question that the Lumbee Tribe can and has demonstrated this criterion.

Criterion (b) Community

This criterion provides a number of ways to demonstrate community, foremost among these are rates of marriage and residency patterns. The regulations provide that an Indian group has conclusively demonstrated this criterion by proof that 50 percent or more of its members reside in a geographical area composed exclusively or almost exclusively of tribal members, or that at least 50 percent of its members are married to other tribal members. These are the so-called high evidence standards. The Lumbee members meet both of these standards, thereby proving community conclusively.

To determine the residency and marriage rates for the contemporary period, a 1 percent systematic sample was drawn from the membership files in December 2002. Of the 543 files drawn, 29 were found to contain the name of deceased individuals, or were missing from the files, leaving a balance of 514 files. This corresponds closely with the number of active members (52,850) as reported to the Lumbee Tribal Council in December 2002.

The residency pattern of the Lumbee Tribal members is divided into three categories: core area where the tribal members live in either exclusively or nearly exclusively geographical areas;

those living somewhere in North Carolina; and those living elsewhere. Included in the first category are the following communities in Robeson County: Pembroke, Maxton, Rowland, Lumberton, Fairmont, St. Paul's, and Red Springs. Within these communities are areas that are exclusively (or nearly so) occupied by Lumbees. These areas are reflected on the attached map.

The data show that of the 511 for whom there was residency data, 330 (64.6%) live in the core area. One hundred and two (30%) live in the States of North Carolina, and the 79 (15.4) live elsewhere, almost all of them in the United States. This means that, even without other data on community, the Lumbee Tribe of North Carolina meets the high evidence standard of criterion (b)for the contemporary period. It also satisfies criterion (c) - political - for the same period. Based on census and other data, it is certain that the Tribe would meet the same high standard for the preceding periods, going back well into the nineteenth century, or as far as there are data available.

A second type of high evidence has to do with intratribal marriage. Using the same sample, there were 276 records that provided information on the age and marital status of individuals. Of these, 49 were younger than 16, the age selected as marriageable. Another 23 were identified as single, leaving 204 with known marriage partners. Of this number 143 (70%) were married to another Lumbee tribal member. Sixty-one were married to a nontribal member (59) or to a member of another tribe (2). Once again, the Lumbee Tribe of North Carolina meets the standard of high evidence for the contemporary period under criterion (b) and also criterion (c) for the same period. As with residency, based on census and other data, it is certain that the Tribe would meet the same high standard for the preceding periods, going back well into the nineteenth century, or as far as there are data available.

In addition, the Lumbee Tribe of North Carolina organized, ran, and largely financed its own school system and teacher's training college for nearly one hundred years. It has had and continues to have a complex network of churches that exclusively or nearly exclusively serve the tribal members. Many of these churches are tied together by three organizations - the Burnt Swamp Baptist Association (60 churches), the North Carolina Conference of the Methodist Church (12 churches), and the Lumber River Holiness Methodist Conference (9 churches.) The others are non-affiliated. Presently, there are in excess of 130 churches in Robeson County exclusively serving the Lumbee people and their spouses.

These facts demonstrate the Lumbees have existed from historical times to the present as a community.

Criterion (c) Political

The regulations provide that, if community is proven by high evidence as exhibited by the Lumbee community, this is considered conclusive proof of political authority as well. The strength of the Lumbee Tribe's political leadership is also demonstrated by Lumbee history.

The Lumbee history is one of continual resistance to outside domination, beginning in the eighteenth century. In 1754, the ancestors of the Lumbees were described as a community of 50 families living on Drowning Creek, "mixt Crew [or breed] a lawless people." In 1773, they were identified as "A List of the Mob Railously Assembled together in Bladen County." In the 1830s, Lumbees opposed the laws limiting their freedoms, and in the Civil War and Reconstruction years, under the leadership of Henry Berry Lowerie, they actively opposed, first the Confederate government, and later the United States.

Following Reconstruction, in the 1880s, the Lumbee leadership sought and gained state

recognition (1885) and the establishment of a separate school system, a school system that they ran through locally elected school boards. In 1887, 67 ancestors of the Tribe petitioned the North Carolina legislature to establish a separate teacher training school for the Lumbees.

During the twentieth century, tribal leaders repeatedly petitioned the Congress for federal recognition. Finally, in 1956, after an active campaign by tribal leaders, a tribal referendum adopting the name Lumbee, and the passage of state legislation in 1953 adopting the Lumbee name for the Tribe recognized in earlier state legislation, the United States Congress passed legislation in 1956 recognizing "the Indians in Robeson and adjoining counties of North Carolina . . . as Lumbee Indians of North Carolina." These efforts to achieve state and federal recognition, along with the control of the schools and teacher's college, demonstrate the presence of a strong leadership in the Lumbee community.

From the 1960s on, the Lumbee leadership sought to maintain control over their schools and college, and when that was no longer possible, to share political power in Robeson County. They instituted lawsuits to abolish double voting, fought to save the college's main administration building, and when that burned down, to have it rebuilt, and elect Lumbee leaders to county positions. The Tribe submitted a petition for federal recognition under 25 CRF 83. Finally, beginning in 1993, the Tribe began the process that eventually led in 2002 to the present constitution and tribal government. The process started with funds from a Methodist Church grant, the delegates were chosen from the participating churches, and the process was deeply influenced by church leaders. The results were overwhelming endorsed by the tribal population in two referenda - 1994 and 2001.

The evidence presented here in summary form demonstrates that the Lumbee Tribe of

North Carolina has had a continuous political leadership from sustained contact and would meet criterion (c).

Criterion (d) Governance

This criterion requires that a petitioner submit either a statement describing its system of governance or its governing document. By the adoption of a tribal constitution, one that has been recognized by the State of North Carolina, the Tribe clearly demonstrates this criterion.

Criterion (e) Descent from a historical tribe of tribes

The eighteenth-century records that exist show a Cheraw community precisely where the Lumbees reside today, and they show that this Cheraw community had the same surnames as those common to the modern-day Lumbee community. A 1725 map made by John Herbert showed the tribe between the Pee Dee River and Drowning Creek, now called the Lumber River. In 1737, John Thompson purchased land in the same general area from the Cheraw, and in 1754, Governor Arthur Dobbs of North Carolina identified on "Drowning Creek on the head of Little Pedee 50 families a mixt Crew [or Breed] a lawless people filled the lands without patent or paying quit rents shot a Surveyer for coming to view vacant lands being enclosed by great swamps." A document written in 1771 refers to "the Charraw Settlement" on Drowning Creek , and another document dated 1773 contains a list of names that connect this community to the Cheraw in 1737. Some of the same surnames as today's Lumbee population: Ivey, Sweat, Groom, Locklear, Chavis, Dees, and Grant (see Dr. James H. Merrill letter to Congressman Charlie Rose, October 18, 1989 for further discussion). Thus, the community mentioned in the two references cited in above and the community of Indians described in nineteenth century documents were the same, and were the antecedents of today's Lumbee Tribe.

As to criterion (e), Dr. John R. Swanton, a member of the staff of the Bureau of American Ethnology, a federal government agency, and one of the nation's foremost anthropologists and experts on American Indian tribes, particularly in the southeast, concluded in the early 1930s that the Lumbees are descended predominantly Cheraw Indians. The Department of the Interior adopted this position in its 1934 statement to Congress on one of the proposed recognition bills, relying on Dr. Swanton's report. This has also been confirmed and supported by scholars such as Dr. William C. Sturtevant, Chief Ethnologist of the Smithsonian Institution and general editor of the Handbook of American Indians, Dr. James Merrell, Professor of History, Vassar College, and a leading authority on the colonial Carolinas, Dr. Raymond Fogelson, Professor of Anthropology, University of Chicago, a leading authority on the Cherokee and Indians of the southeast, and myself.

Criterion (f) Petitioner's members are not members of any federally recognized tribe

The members of the Lumbee Tribe of North Carolina are not members of any federally recognized tribe. This can be demonstrated by a review of the Tribe's genealogical data.

Criterion (g) The petitioner has not been the subject of a federal termination act

The Solicitor for the Department of the Interior has determined that the 1956 Lumbee Act is an act forbidding the federal relationship.

Summary

Typically, Indian tribes petitioning for acknowledgment under the administrative process have most difficulty with criteria (b) and (c), community and political authority respectively.

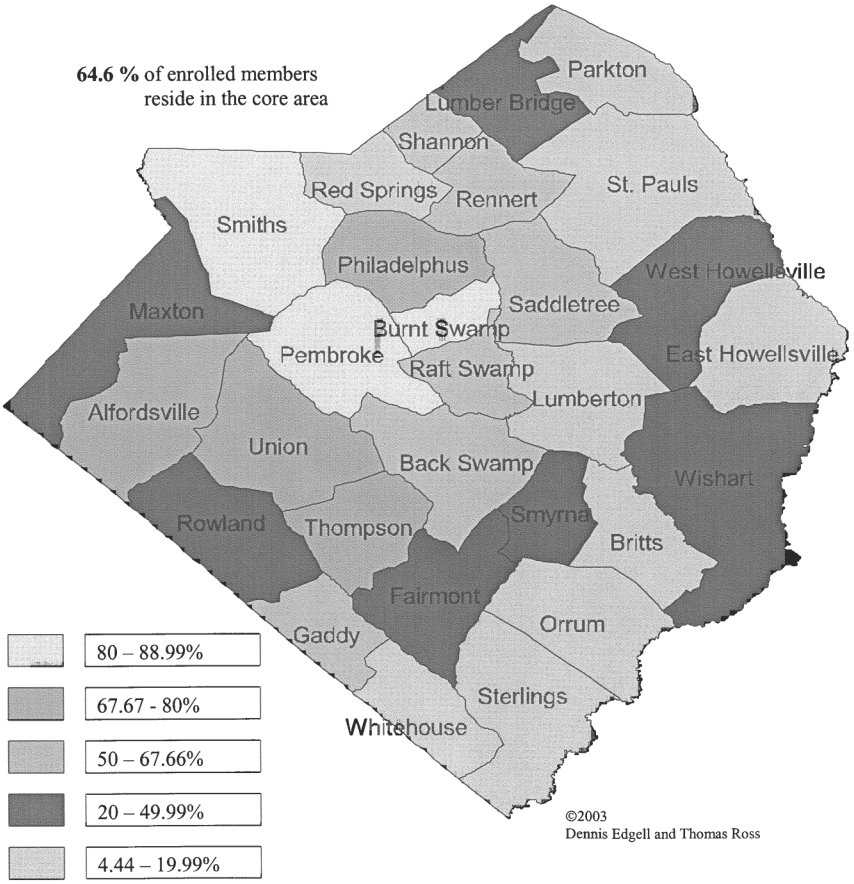
Every tribe that has been denied acknowledgment through the process to date has failed because of the inability to prove these criteria, and perhaps others. As demonstrated above, the Lumbee Tribe's case on these criteria is so strong as to be conclusive. In light of the heavily documented history of the Tribe since 1900, neither can there be any doubt about the Tribe's ability to demonstrate the other criteria.

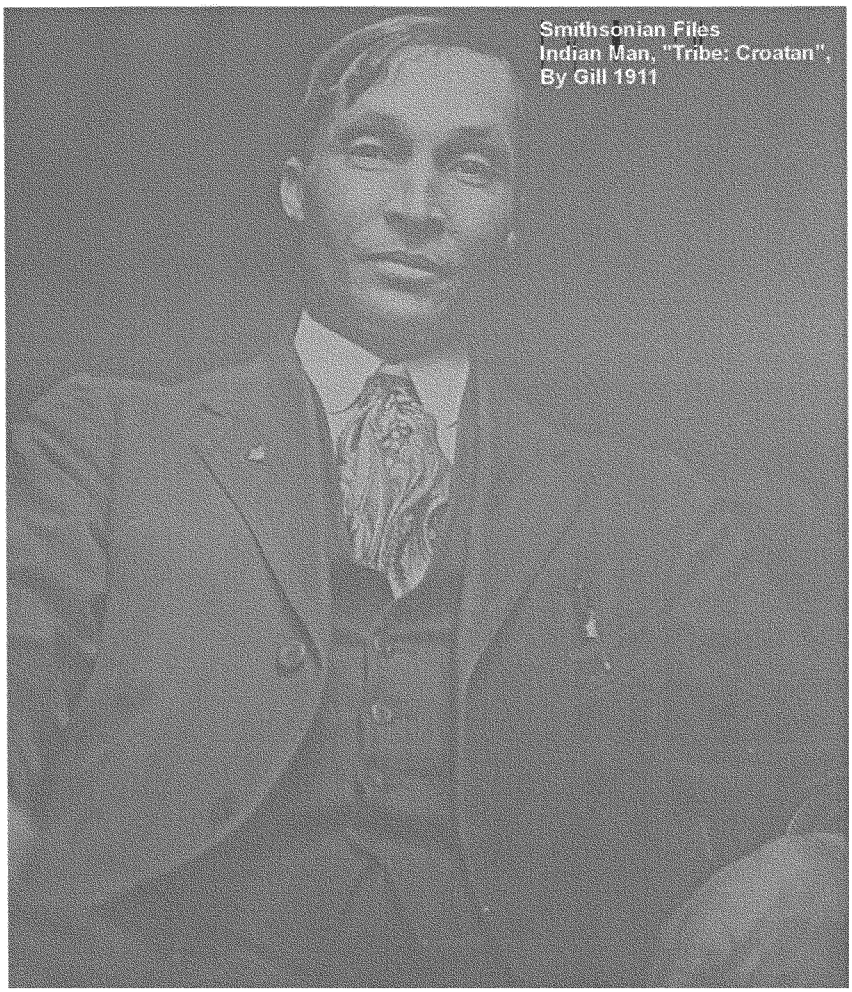
In the past few years, the Bureau of Indian Affairs has opposed bills to recognize the Lumbee. The Bureau has complained that there is too little data, specifically that a genealogical link between the Cheraw Tribe on Drowning Creek and the present-day Lumbee Tribe on the renamed Lumber River cannot be made, despite the occurrence of shared and uncommon surnames. Of course, the failure of the document society to record the births and deaths of Lumbees over the centuries is no fault of the Tribe; nor does this absence suggest that the Lumbee Tribe is not descended from the Cheraw Tribe. In fact, the Department testified in 1934 that the Tribe was descended from the Cheraw Tribe, based upon the work of the eminent Dr. Swanton. The Department's earlier opinion is also corroborated by the professional opinions of Drs. Sturtevant, Merrill, Fogelson, and Campisi. Thus, the Department's current view should be taken as more intellectual curiosity than serious doubt about the origins of the Tribe. And this new found curiosity should be judged in the context of the Department's long-standing determination to oppose recognition of the Tribe even in the face of its past judgment that the Lumbees truly are an Indian tribe.

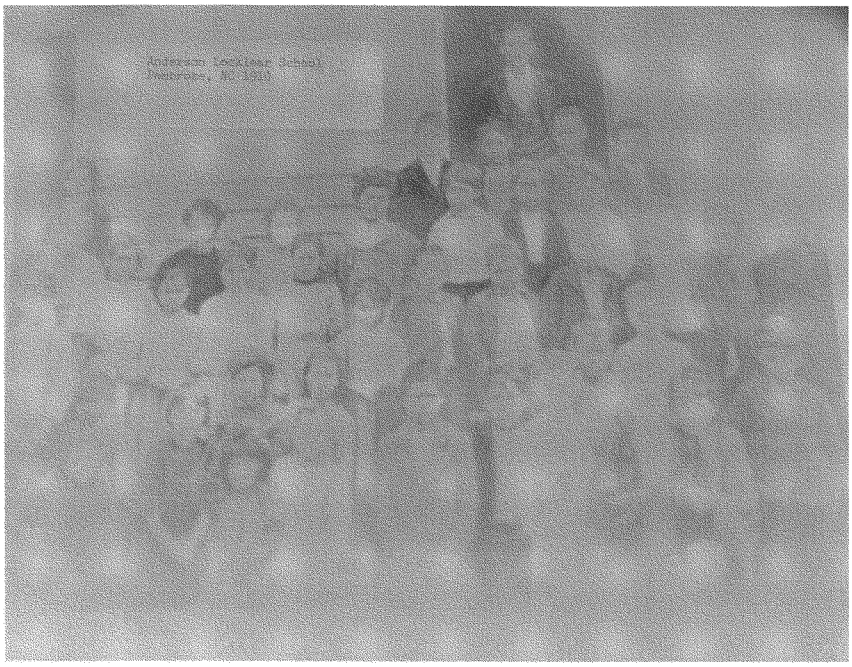
The extensive record of the Tribe's history in the eighteenth, nineteenth, and twentieth centuries establish that the Lumbee Indians constitute an Indian tribe as that term is defined in the Department of the Interior's acknowledgment regulations. The Tribe fails only on the last criterion, that is, Congress has prohibited the Department from acting on the Tribe's petition in the 1956 Lumbee Act. Thus, the Congress can act on Senator Dole's bill with full confidence that the Lumbees are, in fact, an Indian tribe.

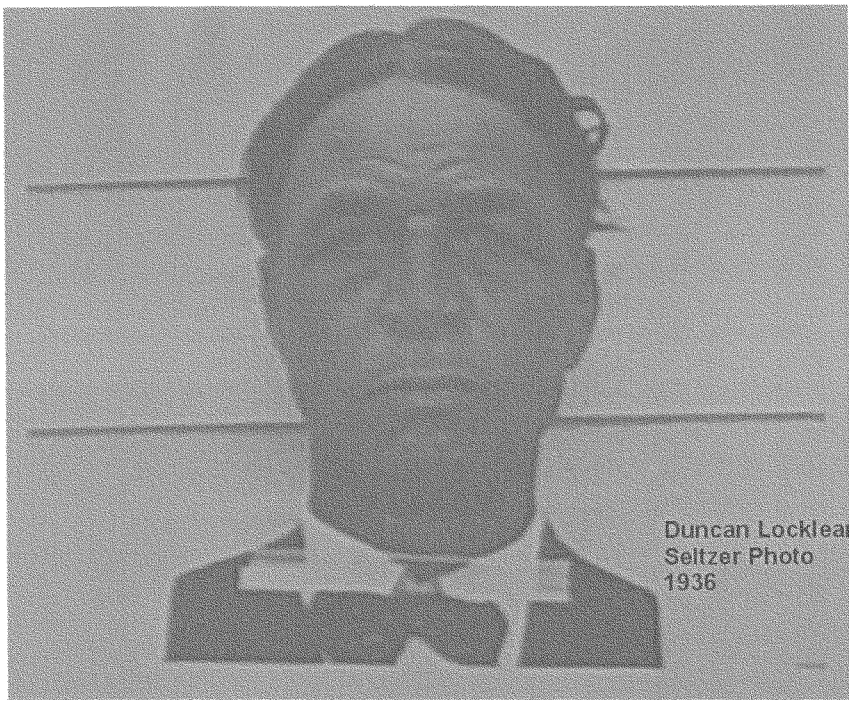
Percent Indian Population by Township 2000

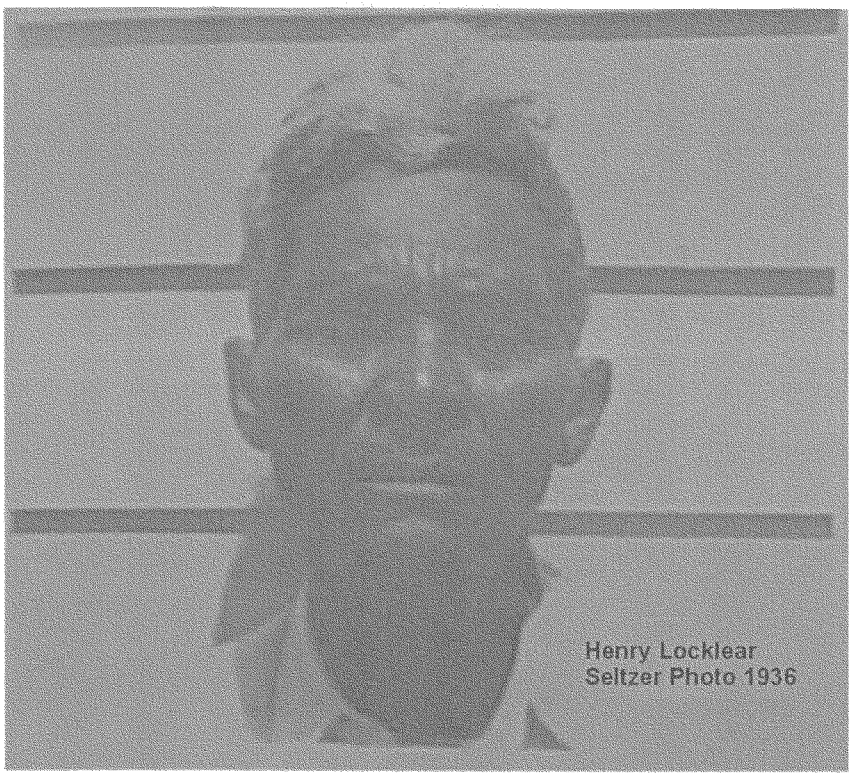
(Lumbee Core Area: Fairmont, Lumberton, Maxton, Pembroke, Red Springs, Rowland, and St. Pauls)

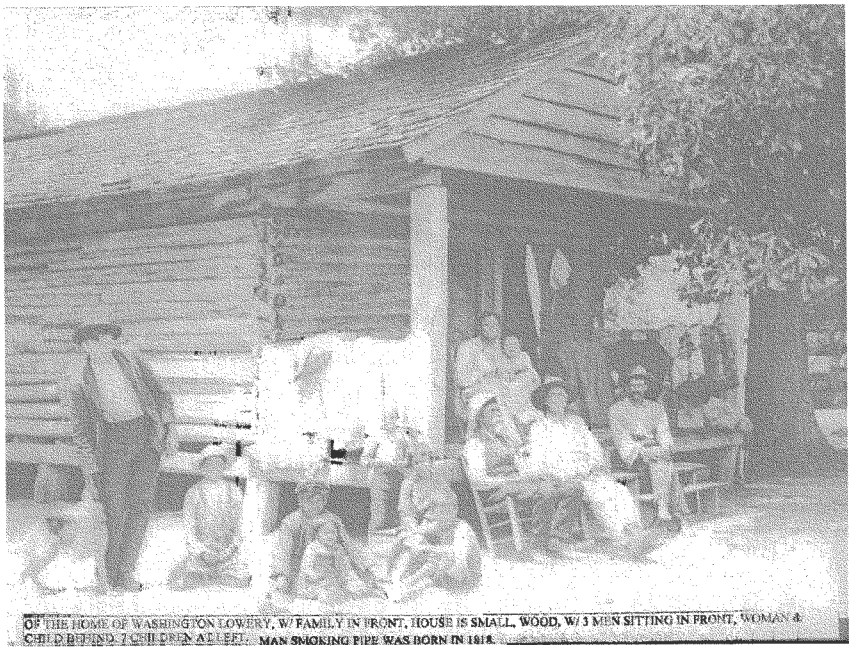



Smithsonian Files
Indian Man, "Tribe: Croatan",
By Gill 1911


Anderson Lockless School
Cameron, Mo 1911


Duncan Lockleai
Seltzer Photo
1936


Henry Locklear
Seltzer Photo 1936



OF THE HOME OF WASHINGTON LOWERY, W/ FAMILY IN FRONT, HOUSE IS SMALL, WOOD, W/ 3 MEN SITTING IN FRONT, WOMAN & CHILD BEHIND, 7 CHILDREN AT LEFT. MAN SMOKING PIPE WAS BORN IN 1818.

Indian Normal Students
Circa 1916-1922

1935: Baker Report

–Federal Indian Agent Fred Baker visited Lumbee and reported

–*...[T]he members of this tribe are cooperating more and more with each other with the object in view of promoting the mutual benefit of all the members. It is clear to my mind that sooner or later government action will have to be taken in the name of justice and humanity to aid them.*

BEN NIGHTHORSE CAMPBELL, COLORADO, CHAIRMAN
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MINORITY STAFF DIRECTOR/CHIEF COUNSEL

United States Senate
COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450
http://indian.senate.gov

September 30, 2003

Dr. Jack Campisi
4 Webster Coon Road
Red Hook, NY 12571

Dear Dr. Campisi:

Thank you for your participation in the September 17, 2003 hearing on S. 420, the Lumbee Acknowledgement Act of 2003. The Committee would appreciate your review of the following questions and the submittal of a written response to the Committee on Indian Affairs no later than September 19, 2003.

1. Your testimony is that you have been involved with 28 BAR applications and that in your view the Lumbees have the strongest arguments in favor of recognition.

Q. How many of those 28 were successful in their BAR bids?

2. If Congress sees fit to legislatively recognize an Indian group, it is imperative that we have a solid factual record on which to act. You have testified that you have extensively studied the history of this tribal group.

Q. Can you provide us with a little more background on the Cheraw or Croatan Indians, from whom the Lumbee Tribe is said to descend?

Q. What type of materials and records were considered by the North Carolina State legislature when it decided to grant "state recognition" to these tribes? Are these materials available in summary form, such that our Committee staff can review it?

3. The Lumbees adopted a constitution in November, 2001 - less than 2 years ago.

Q. If the Lumbees have been operating as a political unit, shouldn't a governing document have been adopted a lot earlier than 2001?

4. From the testimony submitted, it seems the Lumbee tribe has already submitted an application to the BIA's Branch of Acknowledgment Research (BAR), but the tribe was denied the process due to the language of the 1956 Act.

Q. If Congress were to provide the Lumbees access to the BAR process, can you estimate their chances of successfully making it through?

Because of hazardous mail contamination which forced the closure of the Hart Senate Office Building, new procedures have been put into effect for all written material addressed to Senate offices. Accordingly, please send an electronic version of your testimony by e-mail in WordPerfect format to: *testimony@indian.senate.gov*. Your written response may also be submitted to the Committee by telefax directed to (202) 224-5429, however an electronic version of your response will still be required.

Mr. Campisi, I appreciate your attention to this matter and look forward to your response. Thank you.

Sincerely,

BEN NIGHTHORSE CAMPBELL
Chairman

Jack Campisi, Ph. D.
4 Webster Coon Rd.
Milan, NY 12571

October 20, 2003

Honorable Ben Nighthorse Campbell
Chairman, Senate Committee on Indian Affairs
836 Hart Senate Office Building
Washington, DC 20510-6450

Dear Senator Campbell,

This letter responds to yours of September 30, 2003, regarding my testimony at the September 17 hearing on the Lumbee recognition bill.

1. As I indicated at the hearing, the majority of the petitions with which I am associated are still before the Branch of Acknowledgment and Research. I cannot predict the outcome of those cases. However, I worked on the following petitions for federal acknowledgment that have been processed by and received favorable decisions from the Department: Gay Head Tribe of Wampanoag, Massachusetts, Narragansett Tribe of Rhode Island, and Little Shell Tribe of Montana (proposed favorable finding).

2. In a supplemental statement to committee dated September 29, I submitted additional material on the Tribe's history. That material included a copy of the Lumbee Tribe's petition for federal acknowledgment, which contains a detailed discussion on the Tribe's history.

As for legislative materials from the State, there are no committee minutes. The North Carolina General Assembly only established a legislative library in the late 1960s. Minutes of committee reports were not kept until the early 1970s. However, State House and State Senate Journals exist dating back to the 1800s. These Journals consist of the daily record of the activity of the State House and Senate. Included in this information is the state legislator who introduced the legislation, what particular committee it was referred to, and how the vote went.

3. It is typical of Indian communities, even federally recognized tribes, that they operated historically without formal government documents. In fact, most federally recognized tribes did not adopt formal governing documents until after the enactment of the Indian Reorganization Act in 1934. The informal leadership reflected in the Lumbee community is described in Chairman Hunt's letter of October 9, 2003 and in the Tribe's petition for federal acknowledgment.

4. In my view, the Tribe has conclusively demonstrated that it meets the mandatory criteria for federal acknowledgment. As I demonstrated at the hearing, the geographic concentration of the Tribe and the high in-marriage rate, both historically and now, prove the most difficult criteria of community and political authority. As I also demonstrated at the hearing, the

Department concluded and advised the Congress in 1934 that the Tribe is descended from the historic Cheraw Tribe. For these reasons, there is no doubt that the Tribe should be acknowledged were its petition processed by the Department.

However there is considerable doubt about what the Department would do on the Lumbee petition. The Department has historically opposed recognition of the Tribe and there is a serious concern on the Tribe's part that this bias would affect the Department's deliberations on the Tribe's status. In addition, career staff at the Branch of Acknowledgment and Research have recently indicated a desire for additional documentation on the Tribe's descent from the Cheraw Tribe, even though in the past the Department had conceded this to be so. Now, the Department would like to see a genealogical connection between the Lumbee Tribe and the Cheraw Indians, despite the fact that the Department knows that such records on the Cheraw do not exist. In other words, the Department appears to be setting the Tribe up for failure under the acknowledgment regulations, even though the Tribe clearly meets the mandatory criteria.

I would be happy to answer any other questions.

Sincerely,

Jack Campisi, Ph.D.

STATEMENT OF CHAIRMAN MILTON HUNT,
ON BEHALF OF THE LUMBEE TRIBE OF NORTH CAROLINA ON S.420
BEFORE THE UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS
September 17, 2003

In 1888, Everette Sampson, along with other leaders of the Lumbee Tribe, signed a petition to Congress seeking federal recognition of our status as an Indian tribe and financial support for the education of our children. The year before the State of North Carolina had established by legislation a normal school for the Indian community, with attendance limited to members of the Croatan Tribe as we were called at the time. The state legislation authorized named tribal leaders to control admission into the school and hire teachers for the school. But the state statute provided only two years of funding for teachers' salaries and none at all for the purchase of land or construction of a school building. The Tribe itself donated the land and built the school, but had trouble keeping the school open with so little support for the state. These problems led Everette Sampson and other tribal leaders to petition Congress for support.

My name is Milton Hunt and I am the Chairman of the Lumbee Tribe. Everette Sampson was my great-grandfather. Today, I appear before you for the same purpose as my great-grandfather more than one hundred years ago -- to seek federal recognition of our people. I want to describe for you the efforts made by our people since that time so that you can understand the depth of our desire for federal recognition and our frustration over the federal government's neglect.

The 1888 petition failed. The House Committee on Indian Affairs asked the Department of the Interior for its opinion. The Department researched our history and eventually responded to Congress that the Croatan Band, as we were then called, had been recognized by the state and a school system established by the state for the Croatan Indians. But the Department recommended against federal assistance because of insufficient federal funds.

It has been the same story every since. Time and again, our people asked Congress to recognize us, mostly so that we could get assistance for our Indian schools. Time and again, the

Department of the Interior studied our history and our people and admitted that we were Indian people. Yet, time and again, the Department of the Interior has opposed bills by Congress to recognize our Tribe and our bills failed.

Our people have also tried to get federal recognition from the Department of the Interior. After Congress passed the Indian Reorganization Act in 1934, Felix Cohen told our people that we could qualify for recognition by allowing ourselves to be tested for blood quantum. This was a difficult thing to do, the most demeaning thing that's even been asked of our people. Even so, about 200 Lumbees submitted to physical examinations, including blood tests, head measurements, etc. Out of the 200, 22 Lumbees were certified and one-half or more Indian blood. Even so, the Department eventually refused to take land into trust for these individuals so that the Tribe could organize under a constitution and become recognized under the Indian Reorganization Act.

In 1956, Congress finally passed a bill for the Lumbees. As with the other bills, this one was intended to recognize the Tribe, just as the State had recently done, under the name of Lumbee. Once again, the Department opposed the bill and insisted that, if enacted, the bill should be amended to make sure that the Tribe was not eligible for Indian services. Congress amended the bill as the Department requested and enacted a law that gave with one hand and took away with the other -- the 1956 Lumbee gave us the name we had sought for so long, the giving of a name being thought by our people to be official recognition, and the 1956 Lumbee Act prohibited the application of federal Indian statutes to the Tribe. Ever since, we have been considered second-class Indians -- by the Department of the Interior and even by some in Indian country.

Let me say that all this time the Lumbees sought federal recognition, we paid a high price for being an Indian people. We suffered the same discrimination visited upon other Indian peoples. A good example is the history of the Town of Pembroke. Pembroke was incorporated as a town in 1895. It became clear that Lumbees would soon have political control over town

government and the local non-Indians took steps to prevent this. The state legislature began requiring the appointment of some town officials, rather than allowing election of those officers. In 1917, following a petition by leading white residents, the state legislature eliminated the election of all Pembroke town officials and provided for the appointment of all town officials by the Governor. Pembroke was the only town in the State of North Carolina governed this way. This continued until after World War II, when the Lumbee war veterans convinced the state to repeal this legislation in 1945. The Town of Pembroke has been governed by elected Lumbees ever since. Even though we've suffered for who we are, like all Indian people, the United States has never recognized us for who we are, like it has done for other Indian tribes.

Now, some say repeal the 1956 Lumbee Act and force the Tribe to go through the administrative process that was set up in 1978. Our people have been down this road with the Department of the Interior for more than one hundred years now. Every time a bill was introduced to recognize us, the Department was asked to investigate our history and community. A list of these investigations and studies is attached to my statement. Each time the Department acknowledged the existence of an Indian community, but opposed the bill because money was too short. How much do our people have to take? How many times does the Department of the Interior have to investigate our history? We believe enough is enough and the time has come for Congress to finish what it started in 1956.

Lumbee identity and culture

The Lumbee people are a proud and tightly knit Indian community with a strong sense of tribalism. For our people, the world is divided between Lumbees and others. Every Lumbee child is raised by an extended Lumbee family and the majority of Lumbees' contacts are with other Lumbees. As a child, I attended all Indian schools and churches. I still do attend an all Indian church, like most of our people. Nearly all my social contacts are with other Lumbees, like most of our people I am also Mayor of the Town of Pembroke, which is located in the heart

of Lumbee territory and is more than 90% Lumbee Indian. The long congressional and administrative record on Lumbee history speaks to our Tribe's ability to survive by adaptation and yet maintain our culture. The Department of the Interior's investigation in the 1930's shows that our native language survived until the late nineteenth century. One of the last language speakers, Randall Locklear, was one of my relatives. He died in 1901 at the age of eighty-one. According to family history, Randall Locklear often communicated with Clarissa Lowry Chavis in the Indian language. One of Randall Locklear's grandsons, George Locklear, recalled in 1936 having heard his grandfather sing in the traditional Indian way. Other Lumbees interviewed by the Department of the Interior spoke of the use of the Indian language by the Lumbees. According to Duncan Locklear, "The language which the old Indians spoke was unlike any language used by the White people. The White people made fun of their speech and said it sounded like the sound of hoot owls and screech owls and they shamed them into giving up their native speech and adopting that of White people." The native language spoken by the Lumbees was confirmed by linguist Ella Deloria, aunt of the highly respected historian Dr. Vine Deloria, when she visited our community in the 1940's.

There are other cultural practices among our people that you'll see only among other Indians. These were documented in the early nineteenth century by Dr. Frank Speck, a well known ethnographer of eastern Indians. Dr. Speck wrote about the extensive use made by southeastern Indians, including the Lumbees, of gourds in every day life. Others have written about the medicinal practices among the Lumbees, which like other Indians, depend heavily upon plant remedies. These practices among the Lumbees are documented and continue today.

Our connection to the land we call home and to each other are also typical of Indian peoples. We draw our strength from home, known to others as Robeson County. Regardless of where a Lumbee may reside, home is always Robeson County. And when two Lumbees meet for the first time, the first question asked is who are your people, that is, your family lines. All Lumbees know their family history at least three generations back and with a little discussion any

two Lumbees can connect themselves either by direct kinship or marriage. These bonds - the ties to our land and each other - are the ties that have enabled us to survive as a tribe even without federal recognition.

Governance of the Lumbee Tribe

For most of our history, the Lumbee Tribe has functioned with informal leaders, people typically drawn from the leading families within our communities. These leaders took whatever steps were required to protect our people, including self-defense such as during the Civil War, and handled all our government to government relations with the State of North Carolina.

Recently, our people decided to establish a formal tribal government. In November 2001, by special referendum conducted among enrolled Lumbees, a tribal constitution was adopted by the Lumbee people. It created three branches of tribal government: a tribal chairman with executive powers, a tribal council with 18 members representing districts within the Lumbee territory, and a tribal court to hear disputes arising under tribal law among members. This tribal government has been recognized by the State of North Carolina as the governing body of the Lumbee Tribe and I am the Tribal Chairman elected in accordance with its terms. A copy of the Tribe's constitution is attached.

Membership requirements of the Lumbee Tribe

Because the Tribe has not historically received services or other benefits for its members, the Tribe did not historically maintain a formal membership list. Informal and partial lists of tribal members have been prepared for various purposes, though. For example, attendance at the Lumbee schools was limited to Lumbee children and committees of Lumbee leaders (sometimes called blood committees) had authority to determine a child's eligibility to enroll. These committees produced partial membership lists. Lumbees have historically attended all Indian churches, which have also produced lists of church members at various times. Finally, the

United States Census has occasionally prepared special Indian censuses to count Indians. This collection of documents was used to compile a base roll for the Lumbee Tribe for 1900.

As part of the Tribe's preparation of the acknowledgment petition done in 1987, the Tribe for the first time reduced its membership criteria to writing and prepared a list of its members. The written membership criteria are those that have been used by the Lumbee people informally for generations for things such as school attendance. There are two criteria: first, the person must prove descent from an ancestor on the base roll; second, the person must maintain contact with the Lumbee community. To us, maintaining contact means that you must be known to us, that is, known to be related to one of the families at home. Unless the Tribe knows you, then you are not allowed to enroll even if you can prove descent from a Lumbee ancestor.

The Tribe has since the early 1980's (when work on the acknowledgment petition began) used a formal enrollment process. The data contained in every application is confirmed before an individual is enrolled. Using this process, we have enrolled to date nearly 53,000 members, which makes the Lumbee Tribe the largest non-federally recognized tribe in the country and the largest tribe east of the Mississippi River.

Conclusion

As the historical record shows, the Lumbee people have been patient and persistent in their quest for federal recognition, but I can tell you our people yearn for federal recognition. It is important to us that the federal government formally acknowledge what we have paid such a high price to maintain -- tribal existence. And federal recognition would give us the legal status necessary to preserve our unique institutions, such as Indian schools, that are key to our survival as a people. The time has come for the United States to acknowledge the fact that the Lumbee people are and have always been an Indian tribe. This is the truth of the Lumbee people. It is a truth that North Carolina has long acknowledged. It is truth that other Indian people and experts on Indian history accept. And it is a truth that the Department of the Interior has known for one hundred years.

On behalf of the Lumbee people, I thank the committee for the opportunity to share our story with your and urge the Committee to act favorably on S.420.

LUMBEE TRIBE OF NORTH CAROLINA CONSTITUTION

PREAMBLE. In accordance with the inherent power of self-governance of the Lumbee Tribe of North Carolina ("Tribe"), the Tribe adopts this Constitution for the purposes of establishing a tribal government structure, preserving for all time the Lumbee way of life and community, promoting the educational, cultural, social and economic well-being of Lumbee people, and securing justice and freedom for the Lumbee people.

Article I. Territory and Jurisdiction.

1. The territory of the Lumbee Tribe of North Carolina shall include the State of North Carolina;

Amendment: Article I, Section 2 amended March 8, 2003 to read: "The territory of the Lumbee Tribe of North Carolina shall include Robeson, Hoke, Scotland and Cumberland Counties, North Carolina."

2. The Tribe's jurisdiction shall extend to the fullest extent possible under Federal law to:

a). all enrolled members of the Tribe, without regard to location or residence; and

b). all persons, property, and activities located or taking place upon the Tribe's territory.

Article II. Membership

1. The general membership of the Tribe shall consist of those persons who apply for enrollment and demonstrate direct descent from a person listed on Source Documents, which are listed on Exhibit A to this Constitution and incorporated herein by reference, and who maintain contact with the Tribe.

2. Notwithstanding eligibility otherwise, no person's application for enrollment shall be accepted if the applicant has not historically or does not presently maintain contact with the Tribe. Enrolled members may be disenrolled for failure to maintain contact with the Tribe, in accordance with a tribal ordinance adopted under this Constitution.

3. Notwithstanding eligibility otherwise, no person's application for enrollment shall be accepted if the applicant is an enrolled member of any other Indian tribe, unless the applicant has relinquished in writing his or her membership in such tribe.

4. The voting general membership shall consist of those members of the Tribe who are eighteen (18) and older and who are registered voters in accordance with duly adopted tribal ordinance(s).

5. The Tribal Council shall have authority to enact such tribal ordinances governing tribal membership as are consistent with this and other articles of this Constitution, provided that no individual shall be eligible for adoption into the Tribe unless such individual can demonstrate Lumbee or other Indian ancestry.

Article III. Distribution of powers.

1. The powers expressed herein and those powers necessary and proper to the exercise of those powers expressed herein are delegated to the specified branch of government by the general membership of the Lumbee Tribe of North Carolina. Those powers not delegated herein are reserved by the general membership of the Tribe.

2. The members of the Tribe shall be secure in their persons and property and such security shall be preserved by the government created by this Constitution.

3. The powers delegated to the legislative, executive, and judicial branches, except as expressly provided in this Constitution, shall be separate and distinct and no branch shall exercise the powers delegated herein to another branch, except for the office of vice-chairman.

Article IV. Recall.

1. The power to recall any elected official of the Lumbee Tribe of North Carolina who is in the second calendar year or later in his or her term is specifically reserved for the general membership of the Tribe.

2. A recall election shall be held when a petition bearing the signatures, names, addresses, and enrollment numbers of at least ten (10) percent of eligible voters who voted in the election from the district electing a tribal official or ten (10) percent of eligible voters who voted in the election for the tribal chairperson, alleging in one hundred (100) words or less that the tribal official is guilty of malfeasance in office, gross disregard for tribal law or custom, or open abuse of authority, and designating three signatories as a Petitioner's Committee, is filed with the Tribal Elections Board.

3. Upon certification of the signatures on and grounds stated in the petition and within no more than five (5) days of its receipt, the Election Board shall:

   i). serve a copy of the petition upon the named tribal official, who shall have fifteen (15) days from the date of said notice to respond to the reasons stated in the petition in one hundred (100) words or less;

   ii). immediately upon receipt of any response, serve all members of the Petitioner's Committee with a copy of the same;

   iii). allow the Petitioner's Committee forty-five (45) days from the date of receipt of the response to collect additional signatures upon their petition;

   iv). conduct a recall election within ten (10) days of the resubmission of the

petition, provided that the petition is signed by twenty (20) percent of the voters who voted in the election for the recalled tribal official;

4. If at least thirty (30) percent of the voters who voted in the election for the recalled official vote and a majority of those voting vote in favor of recall, the Election Board shall declare the office vacant and the vacancy shall be filled in accordance with the appropriate provisions of this Constitution, except that the recalled tribal official shall not be qualified to run for office in that special election.

5. If a recall election on a tribal official fails to obtain a majority of those voting, the Election Board shall not certify any recall petition against that tribal official for a minimum of one year thereafter.

Article V. Initiative.

1. The power to initiate a vote on a tribal ordinance is specifically reserved for the general membership of the Lumbee Tribe of North Carolina.

2. A minimum of ten (10) percent of the eligible voters may initiate consideration of a proposed tribal ordinance by submitting to the Tribal Elections Board a petition bearing the following:

   i). their signatures, names, addresses, and enrollment numbers;

   ii). the terms of the proposed tribal ordinance; and

   iii). the designation of three signatories as a Petitioner's Committee.

3. Upon certification of the signatures on the petition and within no more than five (5) days of its receipt, the Tribal Elections Board shall serve a copy of the petition bearing the proposed tribal ordinance upon the Tribal Council, which shall take the proposed tribal ordinance under consideration and take a vote thereon at its next regularly scheduled meeting, but no more than thirty (30) days after its receipt from the Tribal Election Board.

4. The Tribal Elections Board shall notify all members of the Petitioner's Committee of the Tribal Council's action on the proposed tribal ordinance within five (5) days of such action.

5. If the proposed ordinance is not enacted or is enacted with substantive changes, the Petitioner's Committee shall have thirty (30) days from their receipt of notice of Tribal Council action to collect additional signatures upon their petition proposing a tribal ordinance.

6. The Tribal Elections Board shall conduct an election upon the proposed tribal ordinance within ten (10) days of the resubmission of the petition proposing the tribal ordinance, provided that the petition is signed by twenty (20) percent of eligible voters.

7. If at least thirty (30) percent of the eligible voters participate in the initiative election and a majority of those voting vote in favor of the proposed ordinance, the Tribal Election Board shall declare the ordinance duly enacted law of the Lumbee Tribe of North Carolina.

Article VI. Referendum.

1. The power to conduct a referendum on any tribal ordinance adopted by the Tribal Council is specifically reserved for the general membership of the Lumbee Tribe of North Carolina.

2. A minimum of ten (10) percent of the eligible voters may initiate a referendum by submitting to the Tribal Elections Board a petition bearing the following:

   i). their signatures, names, addresses, and enrollment numbers;

   ii). the terms of the challenged tribal ordinance adopted by the Tribal Council; and

   iii). the designation of three signatories as a Petitioner's Committee.

3. Upon certification of the signatures of the petition and within no more than five (5) days of its receipt, the Tribal Elections Board shall serve a copy of the petition bearing the challenged tribal ordinance upon the Tribal Council, which shall reconsider its adoption of the challenged ordinance and take a vote thereon at its next regularly scheduled meeting, but no more than thirty (30) days after its receipt from the Tribal Elections Board.

4. The Tribal Elections Board shall notify all members of the Petitioner's Committee of the Tribal Council's action on the challenged tribal ordinance within five (5) days of such action.

5. If the challenged tribal ordinance is not rescinded or substantively altered by the Tribal Council, the Petitioner's Committee shall have thirty (30) days from their receipt of notice of Tribal Council action to collect additional signatures upon their petition for a referendum on the challenged tribal ordinance.

6. The Tribal Elections Board shall conduct a referendum upon the challenged tribal ordinance within ten (10) days of the resubmission of the petition seeking a referendum on the challenged ordinance, provided that the petition is signed by twenty (20) percent of eligible voters.

7. If at least thirty (30) percent of the eligible voters participate in the referendum election and a majority of those voting vote in favor of rescinding the challenged ordinance, the Tribal Elections Board shall declare the ordinance rescinded.

Article VII. Tribal Council.

1. The legislative power to enact ordinances of the Lumbee Tribe of North Carolina shall reside in the Tribal Council. Such legislative power shall include:

    a). the enactment of annual tribal budgets, provided that budgets shall be enacted into tribal law following the conduct of tribal hearing(s) on budgets proposed by the Tribal Chairperson;

    b). the adoption of rules and regulations governing the Tribal Council's procedure and decorum, consistent with the provisions of this Constitution; and

    c). the confirmation of either employment or dismissal of a Tribal Administrator.

2. Except as otherwise provided, members of the Tribal Council shall serve three (3) year terms and no council member can serve more than two (2) consecutive terms. The privilege to run for election to the Tribal Council shall be limited to those members of the Lumbee Tribe of North Carolina who at the commencement of the term of office for which the member stands for election:

    a). are over the age of twenty-one (21);

    b). have maintained their principal place of residence in the particular council district for which the member stands for election no less than the preceding one (1) year;

    c). the Tribal Council shall have authority to enact an ordinance governing disqualification from Tribal Council office due to felony conviction.

3. The Tribal Council shall consist of twenty-one (21) members who shall be elected from districts within Lumbee territory. These districts shall have boundaries as drawn in accordance with the provisions of Article XII, section 3, below, which boundaries shall be redrawn within one (1) year following the publication of each decennial federal census to maintain equal representation for each tribal member.

4. The council members shall elect from their members the following officers:

    a). a speaker, who shall preside over council meetings;

    b). a vice-chairman, who shall preside over council meetings in the absence of the speaker and who is willing and qualified to serve as chairman in the event that becomes necessary;

    c). a secretary, who shall oversee the maintenance of all records of proceedings of the council and tribal ordinances; and

d). a treasurer, who shall oversee council proceedings to prepare annual tribal budgets.

4. All proceedings of the Tribal Council shall be conducted in public session, except for proceedings certified in advance by the speaker as implicating privacy rights of a tribal employee or member. No proceedings of the Tribal Council shall take place in the absence of a quorum which shall constitute two-thirds (2/3) of the sitting council members and all decisions of the Tribal Council shall require an affirmative vote of the majority of present council members, except that a veto override shall require two-thirds (2/3) vote.

5. No ordinance enacted by the Tribal Council shall be binding and effective until such ordinance has been posted in a place reserved for this purpose at the offices of the Tribal Council for a period of thirty (30) calendar days following its enactment, provided that such ordinance was not certified for referendum by the Tribal Chairperson in accordance with Article VIII, section 1 (b) within that period. The Tribal Council shall periodically publish in a newspaper of general distribution in Lumbee territory a calendar of proceedings showing all council actions taken and the address and phone number where copies of ordinances are available.

6. Any council member who is absent from three (3) consecutive regularly scheduled meetings of the council shall be removed from office, provided that such absences are unexcused in accordance with a governing tribal ordinance. A vacancy in a Tribal Council seat will also occur automatically upon the death of a Tribal Council member or the occurrence during that member's term of any circumstance listed above in section 2 that would have disqualified the member from serving upon the Tribal Council. Vacancies in Tribal Council seats shall be filled as follows:

a). If a Tribal Council seat becomes vacant for any reason and one calendar year or less remains in the term of the vacant seat, then

i). the Tribal Council shall schedule, advertise and conduct a public hearing in the district with the vacant seat for the purpose of receiving nominations from district residents to fill the vacancy, then elect as council member for the vacant seat from among those individuals nominated at the public hearing by a 2/3 vote of the Tribal Council;

ii). if no candidate described in (i) above is nominated or qualified to serve, the Tribal Council shall appoint a person who would be qualified to stand for election to that seat to serve the remainder of the term.

b). If a Tribal Council seat becomes vacant for any reason and more than one calendar year remains in the term of the vacant seat, then:

i). a special election shall be conducted to fill the vacancy, and

ii). the newly elected council member shall serve out the remainder of the vacated term.

Article VIII. Tribal Chairperson.

1. All executive powers, including implementation of and compliance with annual budgets, of the Lumbee Tribe of North Carolina shall reside in a Tribal chairperson, who shall cause all laws of the Tribe to be faithfully executed. Specifically, the Tribal Chairperson shall:

    a). deliver to the general membership an annual State of the Tribe Address during the first week of July, which Address shall include a proposed budget for the upcoming fiscal year;

    b). within ten (10) days of its passage by the Tribal Council, certify for referendum by the general voting membership any tribal ordinance that affects fundamental rights or interests of the Lumbee Tribe of North Carolina. Any ordinance imposing a tax or authorizing gaming in Lumbee territory shall be deemed to affect fundamental rights or interests of the Tribe. No ordinance certified as requiring a referendum shall be effective unless and until such ordinance is approved by a majority of those voting in the referendum, such referendum to be conducted in accordance with Article V of the Constitution;

    c). have authority to veto any ordinance enacted by the Tribal Council;

    d). shall nominate a Tribal Administrator, subject to confirmation by the Tribal Council or its designee(s), the Tribal Administrator can be removed by the same process;

    e). represent the Lumbee Tribe of North Carolina before all other governments and tribunals, including the United States, the State of North Carolina, and all federal and state agencies.

2. The Tribal Chairperson shall be elected by the voting general membership for a term of three (3) years and shall not serve more than two consecutive terms. The privilege to run for the office of Tribal Chairperson shall be limited to those tribal members who at the commencement of the term:

    a). are thirty-five (35) years of age or more;

    b). have maintained his or her principal place of residence in the territory of the Tribe for the preceding one (1) year;

    c). the Tribal Council shall have authority to enact a tribal ordinance governing disqualification from office of Tribal Chairperson due to felony conviction.

3. A vacancy shall occur in the office of Tribal Chairperson upon the death of the chairperson or the occurrence during that chairperson's term of any circumstance listed above in section 2 that would have disqualified the chairperson from running for office. Vacancies in the office of Tribal Chairperson shall be filled as follows:

    a). If a vacancy occurs in the office of Tribal Chairperson with one calendar year or less remaining in the term of office, then the Tribal Vice-Chairperson shall serve out the term, provided that the Vice-Chairperson would be otherwise qualified to run for the office of Tribal Chairman.

    b). If the vacancy occurs in the office of Tribal Chairperson with more than one calendar year remaining the term of office, then a special election shall be conducted and the newly elected Tribal Chairperson shall serve out the remainder of the vacated term.

Article IX. Judiciary.

1. The judicial power of the Lumbee Tribe of North Carolina shall reside in the Supreme Court of the Lumbee Constitution and such inferior courts as the Tribal Council may establish. The Supreme Court of the Lumbee Constitution shall have original jurisdiction over all cases and controversies arising under the Lumbee Constitution and all ordinances of the Lumbee Tribe of North Carolina. In the event the Tribal Council establishes inferior courts, the Supreme Court of the Lumbee Constitution shall have appellate jurisdiction only over those cases and controversies arising under tribal ordinances.

2. The rule of law to be applied in the Supreme Court of the Lumbee Constitution in all cases and controversies within its original jurisdiction shall be the will of the Lumbee people as expressed in the Lumbee Constitution, duly adopted tribal ordinances, and Lumbee custom. In the absence of a governing rule of law from these sources, the governing rule shall be federal common law.

3. The Supreme Court of the Lumbee Constitution shall consist of five sitting judges, who shall serve five-year terms; no judge may serve two consecutive terms. These judges shall have the qualifications and be selected as set out below:

    a). the qualifications for Tribal Chairperson specified in Article V, section 2, shall apply to judges of the Supreme Court of the Lumbee Constitution, except that the minimum age of judges shall be thirty-five (35);

    b). at all times, two of the sitting judges shall be graduates of accredited law schools and three shall be lay people;

    c). for the initial appointments to the Court, the Tribal Chairman shall nominate ten qualified candidates, from whom the Tribal Council shall appoint five. By some method of chance, one of the initial appointees shall serve a one-year term, one a two-year term, one a three-year term,

one a four-year term, and one a five- year term. Thereafter, each appointed judge shall serve a five-year term. In making nominations and appointments, the Tribal Chairperson and Tribal Council shall to the greatest extent possible select candidates who reside in different areas or communities of the Lumbee territory.

4. There shall be a Chief Judge of the Supreme Court of the Lumbee Constitution who shall bear administrative responsibilities for the conduct of the Court's business and who shall be elected on an annual basis by the sitting judges.

Article X. Elections Board.

1. There shall be an independent Tribal Elections Board of the Lumbee Tribe of North Carolina, which shall have the following authority:

   a). to promulgate necessary and appropriate regulations under authority of this Constitution and tribal ordinances governing voter registration and the conduct of all regular and special tribal elections;

   b). to conduct all recall, initiative, and referendum proceedings; and

   c). any other matters specified herein or authorized by tribal ordinance.

2. The Tribal Elections Board shall consist of five (5) enrolled members over the age of eighteen (18) appointed by the Tribal Council. For purposes of this appointment, the council members shall be divided as equally as possible into five (5) appointing committees by some method of chance. Each of the five appointing committees shall appoint one Elections Board member. The Board members shall serve six-year terms and may not serve consecutive terms.

3. Any matter decided or certified by the Tribal Elections Board shall be deemed final tribal action and shall be reviewable by the Supreme Court of the Lumbee Constitution.

Article XI. Duty of Loyalty.

1. Every elected and appointed tribal official empowered herein shall affirm upon taking office that he or she will abide by this Constitution and laws of the Lumbee Tribe of North Carolina and will, to the best of his or her ability, perform his or her duties with undivided loyalty to the Lumbee Tribe of North Carolina.

2. The first Tribal Council elected under this Constitution shall adopt an ordinance proscribing conflicts of interests in the performance of duties by elected and appointed tribal officials, which ordinance shall require a tribal official to recuse him or herself from any decision or vote affecting his or her pecuniary interest or a family member.

Article XII. Adoption.

1. A referendum on the adoption of this Constitution shall be conducted among the enrolled members of the Lumbee Tribe of North Carolina aged eighteen (18) and above on November 6, 2001.

2. This Constitution shall be deemed adopted if, at the general referendum conducted therefore, a majority of those enrolled members voting vote in favor of adoption of the same. Specific provisions of the Constitution set out for special vote at the same referendum, if any, shall be deemed adopted upon favorable vote of a majority of those voting on each specific provision as if those provisions were set out in the document itself.

3. Upon adoption, this Constitution shall be considered immediately effective as the governing document for the Lumbee Tribe of North Carolina. The tribal chairperson and Tribal Council members elected on November 7, 2000, shall serve out their full terms, set to expire in November 2003, and shall in the meantime be bound by the terms of this Constitution, subject to the following exceptions and special responsibilities as the first tribal officials to serve under the Constitution:

    a). the present Tribal Council members shall be deemed council members-at-large in the interim between the adoption of this Constitution and the first set of elections held under the Constitution in November 2003, without regard to district boundaries from which they were elected;

    b). before the election in November 2003, the present tribal officials shall draw boundaries for the twenty-one (21) Tribal Council districts, provided that:

        i). each tribal member has equal representation on the Tribal Council; and

        ii). the boundaries for Tribal Council districts shall be drawn and published throughout the tribal territory no less than sixty (60) days in advance of the election to be held in November 2003;

    c). for purposes of the conduct of the election to be held in November 2003, the present tribal officials shall serve as election commissioners, authorized to promulgate regulations governing this election only;

    d). for purposes of the conduct of the election to be held in November 2003, the present tribal officials shall be qualified to stand for office under this Constitution provided that they meet all qualifications therefore, their present term to be counted as their first under this Constitution;

    e). upon election in November 2003, the twenty-one Tribal Council members shall be divided into three groups of seven by some means of chance, with the first group serving a one year initial term, the second group serving a

two year initial term, and the third group serving a three year initial term, after which all Tribal Council members shall serve three year terms.

Article XIII. Amendment.

1. An amendment to the Constitution can be proposed by either two-thirds (2/3) vote of the Tribal Council or by a petition bearing the signatures of five (5) percent of tribal members eighteen years of age or older. Upon certification by the Tribal Elections Board of a proposed amendment to the Constitution, the Tribal Elections Board shall within ten (10) working days post the proposed amendment at appropriate public places and publish the proposed amendment in newspapers of general distribution.

2. Within sixty (60) days after the posting and publication of a proposed amendment, the Tribal Elections Board shall conduct a special election on the proposed amendment. The amendment shall be adopted upon the majority vote of qualified voters voting in the special election. If adopted, the Tribal Elections Board shall within five (5) days of the special election post the amendment at appropriate public places and publish the amendment in newspapers of general distribution with notice of its adoption by special election. The amendment shall become effective ten (10) working days after its posting and publication.

THIS CONSTITUTION ADOPTED AND RATIFIED BY THE LUMBEE PEOPLE THIS THE 16TH DAY OF NOVEMBER, 2001.

Constitutional Amendment enacted by the Lumbee People:

Amendment # 1: The Territory of the Lumbee Tribe of North Carolina shall include Robeson, Hoke, Scotland and Cumberland Counties.

Federal Government Commissioned Reports on the Lumbee Indians

- Charles F. Pierce – March 2, 1912
- O.M. McPherson – 1915
- James Henderson – December 11, 1923
- John R. Swanton – 1933
- Fred A. Baker – July 9, 1935
- John Pearmain – October 1935
- D'Arcy McNickle – April 7, 1936
- D'Arcy McNickle – May 1, 1936
- Carl Seltzer - July 30, 1936

BEN NIGHTHORSE CAMPBELL, COLORADO, CHAIRMAN
DANIEL K. INOUYE, HAWAII, VICE CHAIRMAN

JOHN McCAIN, ARIZONA
PETE V. DOMENICI, NEW MEXICO
CRAIG THOMAS, WYOMING
ORRIN G. HATCH, UTAH
JAMES M. INHOFE, OKLAHOMA
GORDON SMITH, OREGON
LISA MURKOWSKI, ALASKA

KENT CONRAD, NORTH DAKOTA
HARRY REID, NEVADA
DANIEL K. AKAKA, HAWAII
BYRON L. DORGAN, NORTH DAKOTA
TIM JOHNSON, SOUTH DAKOTA
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PAUL MOOREHEAD,
MAJORITY STAFF DIRECTOR/CHIEF COUNSEL
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MINORITY STAFF DIRECTOR/CHIEF COUNSEL

United States Senate
COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450
http://indian.senate.gov

September 30, 2003

The Honorable Milton Hunt
Chairman
Lumbee Tribe of North Carolina
P.O. Box 2709
Pembroke, NC 28372

Dear Chairman Hunt :

Thank you for your participation in the September 17, 2003 hearing on S. 420, the Lumbee Acknowledgement Act of 2003. The Committee would appreciate your review of the following questions and the submittal of a written response to the Committee on Indian Affairs no later than September 19, 2003.

1. As I understand from some of the material you submitted, the Lumbees may be descended from Cheraw Indians. At one point it also appears you were called Cherokees or Croatans.

Q. Can you provide the Committee a little more background on your history, and the history of the Cheraw Indians?

2. As I understand your testimony, your tribe currently has a membership roll – how many members are on the rolls? What are your membership criteria?

Q. Would you be amenable to having the BIA consult with you in clarifying your membership criteria and in researching those who may be eligible for membership?

3. The Lumbee tribe evidently adopted a written document — a constitution — in November, 2001, less than 2 years ago.

Q. Let me play "devil's advocate" and ask you this: if the Lumbees have been operating as a political unit for so long as you suggest, shouldn't a governing document have been adopted a lot earlier than 2001?

4. Recognition will, of course, make your tribe eligible for the many BIA and IHS programs.

Q. If your tribe achieves recognition, what types of services provided by the BIA or IHS would you pursue first – that is, which are the highest priorities for your tribal community?

5. If the BAR process were made available to the Lumbee tribe, would you be supportive of seeking recognition through that route?

Q. If not, please explain the basis for your view.

Because of hazardous mail contamination which forced the closure of the Hart Senate Office Building, new procedures have been put into effect for all written material addressed to Senate offices. Accordingly, please send an electronic version of your testimony by e-mail in WordPerfect format to: *testimony@indian.senate.gov*. Your written response may also be submitted to the Committee by telefax directed to (202) 224-5429, however an electronic version of your response will still be required.

Chairman Hunt, I appreciate your attention to this matter and look forward to your response. Thank you.

Sincerely,

BEN NIGHTHORSE CAMPBELL
Chairman

October 9, 2003

Honorable Ben Nighthorse Campbell
Chairman, Senate Committee on Indian Affairs
836 Hart Senate Office Building
Washington, D.C. 20510-6450

Dear Senator Campbell:

I am writing to respond to your letter of September 30, 2003, in which you pose questions regarding the Lumbee Tribe.

1. The use of different names to refer to the Tribe is simple to explain. These names were used by the State of North Carolina at various times in its legislation. These names and the periods during which the Tribe was recognized by the State under these names are:

- 1885 through 1911- Tribe recognized as Croatan Indians
- 1911 through 1913- Tribe recognized as Indians of Robeson County
- 1913 through 1953- Tribe recognized as Cherokee Indians of Robeson County
- 1953 through present- Tribe recognized as Lumbee Indians of Robeson and adjoining counties.

The Department of the Interior finally resolved the question of the Tribe's aboriginal origins in 1934. It asked Dr. John Swanton to examine the Tribe's history in response to one of the bills that had been introduced in Congress to recognize the Tribe. Dr. Swanton concluded that the Tribe was actually descended from the Cheraw Tribe and other closely related Siouan speaking tribes. Because of Dr. Swanton's research, the Tribe itself wanted its state recognized name changed. Eventually, the Tribe prevailed upon the State of North Carolina to sponsor a referendum among our people to settle upon an appropriate name. The Tribe chose Lumbee, a derivative of the Lumbee River, the heart of the Tribe's historic community. As Dr. Campisi testified at the hearing, the Lumber River was once known as Drowning Creek, which is the documented home of the historic Cheraw Indians (the State of North Carolina changed the name of Drowning Creek to the Lumber River in 1809). The Tribe has ever since been recognized by the State of North Carolina as the Lumbee Tribe and has sought federal recognition under the same name. There is no

question, though, that the modern day Lumbee Indians descend from Croatan Indians, recognized by the State under that name in 1885.

On September 30, Dr. Campisi submitted a collection of historical material to supplement the record on S. 420. A copy of the Tribe's petition for federal acknowledgement was included in that material. The petition contains a lengthy discussion of this history at pages 29 through 91.

5. The current enrollment of the Tribe is 52,000. We may have some

deceased members included in this count, but we believe it is otherwise accurate. The Tribe's membership criteria are set out in the Tribe's constitution, which was attached to my hearing statement. Basically, there are two requirements: first, that the person demonstrate descent from a person on the base roll; and second, that the person maintain contact with the Tribe.

The base roll refers to a collection of historical documents that date

from around 1900 and list members of the Tribe at that time. These include the following: 1900 and/or 1910 federal census records from Robeson, Bladen, Richmond, Cumberland, and Scotland Counties, North Carolina; Croatan School attendance list of O.R. Sampson from 1891 to 1896; Croatan petitioners list of 1888 to Congress; Croatan School Committee list of 1900; and Deep Branch Church records. Because of the high rate of in- marriage among the Lumbees, our members typically have multiple ancestors on these lists.

The contact requirement means that the person must be known to us, by either living among us, have immediate kin who live among us, or regularly visit the community and participate in community activities. As with every Indian tribe, members sometimes move away and lose all contact with the Tribe. Such a person is not eligible for enrollment.

The Tribe has an enrollment office, which processes all applications for enrollment. The enrollment staff ensures that all applications have the necessary supporting documentation to prove descent. These records include birth certificates, death certificates, marriage records, wills, and affidavits.

As for the Department of the Interior's review of the Tribe's roll, the Tribe's biggest concern is that it carefully preserve its right to determine its own membership. Every Indian tribe holds its power and the Lumbee Tribe would object to any limitation of its power in that regard. As a result, the Tribe would not agree to anything indicating that the

Department could change the membership criteria or make membership decisions for the Tribe. However, the Tribe understands the need to work with the Department in establishing a base roll for purposes of federal Indian services. The Tribe would be happy to open our records for the Department so that the Department can assure itself that all our enrolled members actually meet the Tribe's membership criteria and were properly enrolled.

6. Before the adoption of our constitution in 2001, informal leaders who were drawn from the leading families in our community, and who were often ministers, functioned very effectively as tribal leaders. In the material submitted Dr. Campisi on September 30, he included a large collection of historical documents from 1880 through 2001 that show the identity of these tribal leaders, many of the actions they took on behalf of the Tribe, and the leaders' ability to mobilize the community. In fact, many of the items included showing meetings called by tribal leaders on various issues at which literally thousands of Lumbees appeared and cooperated.

This informal style of leadership is the traditional Indian way. In 1988, Dr. Vine Deloria testified in support of one of our recognition bills. Dr. Deloria said the following on this issue:

> If we wish to speak of the traditional Indian method of government, what distinguished Indians from others who constituted political entities, then we are basically speaking of loose alliances of extended family groups, capable of acting in concert with each other as the occasion demanded.
>
> I stress this aspect of traditional life because, while I believe the Lumbees to have satisfactorily proven that they have maintained a continuous political existence, the committee should note, now and in the future, that formal tribal government is a creation of the Bureau of Indian Affairs and not an Indian characteristic. A traditional Indian community more closely resembles what we find in Robison (sic) County among the Lumbees, large extended families who exert social and political control family members, and who see their family as part of an extended people.

A copy of Dr. Deloria's statement was included in the supplemental material submitted by our attorney Arlinda Locklear on September 29.

The key question is whether political authority was being exercised among our people, not whether we had a formal government structure. In this regard, the Lumbee Tribe is like federally recognized tribes that first adopted a formal constitution after the passage of the 1934 Indian Reorganization Act. No one questions that those tribes were political communities before they adopted a constitution. The adoption of a constitution was only a change in form of that government, nothing more. Similarly, the adoption of our constitution in 2001 was merely a change in form of Lumbee self-government.

7. The Tribe has discussed its priorities in terms of what it hopes to accomplish with federal recognition. I'll describe what I believe to be our top three priorities.

First, the Tribe has always been and remains concerned about the quality of education of our children. When our schools were desegregated by court order (along with the other public schools of North Carolina), we lost control over our schools. Because of the concentration of our people and the end of busing, there are still schools in our community that are almost exclusively Indian. But we no longer have control over teacher assignments, curriculum, etc. We would like to focus on the opportunity that federal recognition would provide to specially target our children with programs and services that might reduce our high dropout rate, improve testing skills, reading skills, etc.

Second, Robeson County has one of the highest unemployment rates in the State of North Carolina and the tribal government is interested in working with surrounding local governments to develop an industrial park to entice employers into our area. Federal recognition would enhance our ability to do this – by taking land into trust, offering tax advantages to employers, access to BIA development programs, etc.

Third, the Tribe needs to look to the health of its members. Upon federal recognition, the Tribe intends to work closely with the Indian Health Services to make their services available to the Tribe as soon as possible. As we understand it, nearly all IHS services in the eastern United States are done through contract care, that is, through the use of existing health care providers. The IHS works with newly recognized tribes to assess their members' health needs and propose a budget. IHS services are not available to that tribe until Congress appropriates the additional funds for that purpose. We've been told that every tribe must carry its own purse at IHS. This being so, the Tribe is committed to

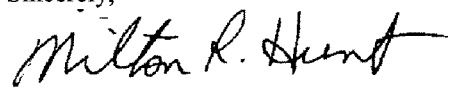
working with IHS and Congress as rapidly as possible to get those services to our people.

8. The Tribe is not interested in the BAR process. We've been down

the road with the Department of the Interior for a hundred years now and, at every turn in the road, the Department blocked the Tribe from getting recognition. The Department opposed all our recognition bills. The Department also blocked us from organized under the Indian Reorganization Act to get recognition. It's clear to us that the Department is just not interested in doing right by the Lumbee people.

The Tribe's goal can be summarized simply- we want to be treated like every other tribe in the country. Congress imposed a half-measure on us once in 1956. We don't want any more half measures. Every other tribe that was precluded by Congress from the administrative process was recognized by Congress. We want Congress to do the same for the Lumbees.

Sincerely,



Milton R. Hunt, Tribal Chairman

Testimony of Arlinda Locklear, Patton Boggs LLP, Of Counsel
for the Lumbee Tribe of North Carolina in Support of S.420
United States Senate Committee on Indian Affairs
September 17, 2003

Mr. Chairman and members of the committee, it is my privilege to appear before you today as counsel for the Lumbee Tribe of North Carolina to testify in support of S.420, a bill introduced by Senator Dole to extend full federal recognition to the Tribe. The excitement and hope generated among the Lumbee people by the support of Senator Dole, Senator Edwards, and Congressman McIntyre, as well as this committee's interest, cannot be overstated. There is a growing sense that the time has come for recognition of the Lumbee Tribe of North Carolina. The Tribe expresses its appreciation to Senator Dole, Senator Edwards, and Congressman McIntyre for their hard work in getting to this day and to the committee for the opportunity to tell its story.

The hundred year legislative record on Lumbee recognition

In one form or another, Congress has deliberated on the status of the Lumbee Tribe of North Carolina for more than one hundred years. On numerous occasions during that time, Congress has itself or directed the Department of the Interior to investigate the Tribe's history and conditions. On all such occasions, the Tribe's Indian identity and strong community have been underscored.

Congress' first experience with the Tribe followed shortly upon the heels of formal recognition of the Tribe by the State of North Carolina in 1885. The 1885 state statute formally recognized the Tribe under the name Croatan Indians of Robeson County, authorized the Tribe to establish separate schools for its children, provided a pro rata share of county school funds for

the Tribe's schools, and authorized the Tribe to control hiring for the schools and eligibility to attend the schools. See North Carolina General Assembly 1885, chap. 51. Two years later, tribal leaders sought and obtained state legislation establishing an Indian normal school, one dedicated to training Indian teachers for the Indian schools. See North Carolina General Assembly 1887, chap. 254. The Indian Normal School was badly underfunded, though, leading to the Tribe's first petition to Congress for recognition and assistance in 1888.

The 1888 petition to Congress was signed by fifty-four (54) tribal leaders, including all members of the Indian Normal School Board of Trustees. All the traditional Lumbee surnames are represented in the list of signatories -- Sampson, Chavis, Dial, Locklear, Oxendine, and others -- and descendants of these signatories are active today in the tribal government. The petition sought federal assistance for the then named Croatan Indians in general and funding for the Tribe's schools in particular. Congress referred the petition to the Department of the Interior, which investigated the Tribe's history and relations with the state. The Commissioner of Indian Affairs ultimately denied the request for funding, citing insufficient resources:

> While I regret exceedingly that the provisions made by the State of North Carolina seem to be entirely inadequate, I find it quite impractical to render any assistance at this time. The Government is responsible for the education of something like 36,000 Indian children and has provision for less than half this number. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes.

Thus began the Department's long-standing opposition to federal recognition of the Lumbee Tribe, typically because of the cost of providing services.

After the failure of the 1888 petition to Congress, the Tribe sought recognition more directly through proposed federal bills. In 1899, the first bill was introduced in Congress to

appropriate funds to educate the Croatan Indian children. See H.R. 4009, 56th Cong., 1st Sess. Similar bills were introduced in 1910 (See H.R. 19036, 61st Cong., 2d Sess.) and 1911 (See S. 3258, 62nd Cong., 1st Sess.) In 1913, the House of Representatives Committee on Indian Affairs held a hearing on S. 3258 where the Senate sponsor of the bill reviewed the history of the Lumbees and concluded that the Lumbees, then called Croatans, had "maintained their race integrity and their tribal characteristics;" See Hearings before the Committee on Indian Affairs, House of Representatives on S. 3258, Feb. 14, 1913. In response to the same bill, the Department of the Interior dispatched C.F. Pierce, Supervisor of Indian Schools, to conduct an investigation of the Croatan Indians. Pierce reviewed the Tribe's history, acknowledged their Indian ancestry and the strength of their community, but recommended against federal assistance for the Tribe:

> It is the avowed policy of the Government to require the states having an Indian population to assume the burden & responsibility for their education as soon as possible. North Carolina, like the State of New York, has a well organized plan for the education of Indians within her borders, and I can see no justification for any interference or aid, on the part of the Government in either case. Should an appropriation be made for the Croatans, it would establish a precedent for the Catawbas of S.C., the Alabamas of Texas, the Tuscaroras of N.Y., as well as for other scattering tribes that are now cared for by the various states.

Those other tribes mentioned by Pierce have since been recognized by the United States.

In 1914, the Senate directed the Secretary of the Interior to investigate the condition and tribal rights of the Lumbee Indians and report to Congress thereon. See S.Res. 410, 63rd Cong., 2d Sess. The Secretary assigned Special Indian Agent O.M. McPherson to conduct the investigation. According to the Secretary's letter to the President of the Senate transmitting the McPherson report, McPherson conducted "a careful investigation on the ground as well as

extensive historical research." The report covered all aspects of the Tribe's history and condition, running 252 pages in length. See Indians of North Carolina, 63rd Cong., 3d Session, Doc. No. 677. McPherson's report again confirmed the tribal characteristics of the Lumbee Indians, but Congress took no action on the McPherson report.

In 1924, yet another bill was introduced in Congress to recognize the Lumbee Indians as Cherokee Indians of Robeson County. See H.R. 8083, 68th Cong., 1st Sess. This bill failed and in 1932 a very nearly identical bill was introduced in the Senate. See S. 4595, 72d Cong., 1st Sess. This bill failed as well.

The next federal bill was introduced in 1933 and was nearly identical to the prior two bills, except that it directed that the Croatan Indians "shall hereafter be designated Cheraw Indians and shall be recognized and enrolled as such..." H.R. 5365, 73d Cong., 1st Sess. In his statement at the hearing on the bill, the Secretary of the Interior attached an opinion of John Swanton, a well-respected specialist on southeastern Indians with the Smithsonian Institution, which concluded that the previously named Croatan Indians actually descended from Cheraw and other related tribes.[1] The Secretary recommended that the United States recognize the Tribe as the Siouan Indians of Lumber River, but also that the Congress include termination language

[1] The Secretary adopted the view at the time that the Lumbee Tribe is descended from the Cheraw and other Siouan speaking related tribes based upon Dr. Swanton's study. In recent times, Department staff that administers the administrative acknowledgment process have expressed some concern about the absence of a genealogical connection between the modern day Lumbee Tribe and the historic Cheraw Tribe; unfortunately, births and deaths of tribal members simply were not recorded by the dominant society in the early 1700's so that a genealogical connection cannot be made. Nonetheless, the historical connection is clear -- the Cheraw Tribe was located precisely where the Lumbee Tribe is today and the Cheraw Tribe had the same surnames typical of the Lumbee Tribe today, such as Locklear, Chavis, Groom and others. Thus, there can be no doubt that the Department had it right in 1934 when it concluded that the Lumbee Tribe is descended from the historic Cheraw Tribe.

because of the expense of providing federal Indian services to the Indians. Rep.No. 1752, House of Representatives, 73d Cong., 2d Sess. The committee adopted the change proposed by the Secretary and reported the bill out favorably, but the bill was not enacted. The following year, the Senate Committee on Indian Affairs took the same action on the identical bill in the Senate, S. 1632, but the Senate floor also did not act on the bill. See Rep.No. 204, Senate, 73d Cong., 2d Sess.

These numerous federal bills to recognize the Tribe under various names have a common and clear legislative history -- that is, state statutes that modified the name by which the State of North Carolina recognized the Tribe. The 1899 federal bill would have recognized the Tribe as Croatan, just as the State had done in 1885. The 1911 federal bill would have recognized the Tribe as the Indians of Robeson County, just as the State had done in a 1911 amendment to state law. See North Carolina General Assembly 1911, chap. 215. The 1913 federal bill would have recognized the Tribe as Cherokee, just as the State had done in a 1913 amendment to state law. See North Carolina General Assembly 1913, chap. 123. Indeed, a committee report on the 1913 federal bill explicitly acknowledged that the federal bill was intended to extend federal recognition on the same terms as the amended state law. Rep.No. 826, House of Representatives, 68th Cong., 1st Sess.; see also S.4595, 72d Cong., 1st Sess. [1932 bill which referred to the 1913 state statute as its antecedent.] Thus, Congress consistently followed the lead of North Carolina in its deliberations on the Tribe's status and did so in finally enacting a federal bill in 1956.[2]

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[2] In between the 1933 bill and the 1956 Lumbee Act, the Tribe attempted to obtain federal recognition through an earlier administrative process. Congress enacted the Indian Reorganization Act in 1934, which authorized half-blood Indians not then recognized to organize and adopt a tribal constitution, thereby becoming federally recognized. The Lumbee leadership wrote to the Commissioner of Indian Affairs, inquiring whether the act applied to the Lumbees.

In light of the mounting historical evidence compiled in Congress' deliberations on its recognition bills, including the McPherson Report and the Swanton opinion, the Indians of Robeson County grew dissatisfied with their designation under state law as Cherokee. Under pressure from the Tribe and after a referendum among tribal members, the State of North Carolina once again modified its recognition of the Tribe in 1953, renaming it Lumbee. North Carolina General Assembly 1953, chap. 874. Two years later, a bill identical to that one enacted by the state was introduced in Congress. See H.R. 4656, 84th Cong., 2d Sess.

The federal bill passed without amendment in the House of Representatives and was sent to the Senate. The Department of the Interior objected to the bill in the Senate, just as it had done in the House, but with more success. The Secretary noted that the United States had no treaty or other obligation to provide services to these Indians and said:

> We are therefore unable to recommend that the Congress take any action which might ultimately result in the imposition of additional obligations on the Federal Government or in placing additional persons of Indian blood under the jurisdiction of this Department. The persons who constitute this group of Indians have been recognized and designated as Indians by the State legislature. If they are not completely satisfied with such recognition, they, as citizens of the State, may petition the legislature to amend or otherwise to change that recognition....If your committee should recommend the enactment of the bill, it should be amended to indicate clearly that is does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians.

The inquiry was referred to Associate Solicitor Felix Cohen, the famous author of the foremost treatise on Indian law, the Handbook of Federal Indian Law. Cohen concluded that the Lumbees could organize under the act, if some members certified as one-half Indian blood or more and the Department approved a tribal constitution. The Tribe immediately asked the Department to make that inquiry and the Department dispatched Dr. Carl Seltzer, a physical anthropologist, for that purpose. Approximately 200 Lumbees agreed to submit to Dr. Seltzer's examination; interviews of these individuals were conducted as well as physical examinations. Dr. Seltzer certified 22 out of the 200 tribal members as one-half or more Indian blood, eligible to organize under the act. However, the Department refused to approve a tribal constitution submitted by those individuals, once again thwarting the Tribe's effort to become federally recognized.

The Senate committee adopted the Secretary's recommendation and, when the bill was enacted into law, it contained classic termination language: "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indian shall be applicable to the Lumbee Indians." Pub.L. 570, Act of June 7, 1956, 70 Stat. 254.

Clearly, the 1956 Lumbee Act was intended to achieve federal recognition for the Tribe. The House sponsor for the bill wrote to Senator Scott, seeking his support for the bill, and noted that the bill was copied from the recent state law by which the State of North Carolina recognized the Lumbee Tribe. Senator Scott, who agreed to sponsor the bill in the Senate, issued a press release describing the bill as one to give federal recognition to the Lumbee Indians of North Carolina on the same terms that the State of North Carolina had recognized the Tribe in 1953. Of course, the termination language added before enactment precluded the extension of the federal trust responsibility and federal services to the Tribe. Thus, Congress simultaneously recognized and terminated the Tribe.

Since 1956, federal agencies and courts have reached varying conclusions regarding the effect of the 1956 Lumbee Act. In 1970, the Joint Economic Committee of Congress described the Lumbee as having been officially recognized by the act, although not granted federal services. See "American Indians: Facts and Future," Toward Economic Development for Native American Communities, p. 34 (GPO 1970). Also in 1970, the Legislative Reference Service of the Library of Congress described the 1956 Lumbee Act as legislative recognition of an Indian people. See Memorandum, April 10, 1970, on Extending Federal Jurisdiction and Services to

Hill 57 Indians, LRS, Library of Congress. And in 1979, the Comptroller General ruled that the 1956 act left the Lumbees' status unchanged, i.e., it neither recognized the Tribe nor terminated the Tribe's eligibility for services it might otherwise receive. The one court to construe the statute concluded it was intended "to designate this group of Indians as 'Lumbee Indians' and recognize them as a specific group..," but not to take away any rights conferred on individuals by previous legislation. Maynor v. Morton, 510 F.2d 1254, 1257-1258 (D.C. Cir. 1975) [holding that the so-called half-bloods certified under the Indian Reorganization act were eligible to receive Bureau of Indian Affairs' services].

The Congressional Research Service (CRS) thoroughly reviewed the history and various interpretations of the 1956 Lumbee Act in 1988. It did so in response to a request from the Senate Select Committee on Indian Affairs, which had under consideration at the time H.R. 1426, a bill to provide federal recognition to the Lumbee Tribe. The CRS concluded as follows:

> The 1956 Lumbee legislation clearly did not establish entitlement of the Lumbee Indians for federal services. It also clearly named the group and denominated them as Indians. Without a court decision squarely confronting the issue of whether the 1956 statute confers federal recognition on the Lumbee, there is insufficient documentation to determine if the statute effects federal recognition of the Lumbees. It is, however, a step toward recognition and would be a factor that either the Department of the Interior or a court would have to weigh along with others to determine whether the Lumbees are entitled to federal recognition.

Memorandum dated September 28, 1988, reprinted in S.Rep.No.100-579, 100th Cong., 2d Sess.

Whatever its ambiguity otherwise, the 1956 Lumbee Act indisputably makes the Lumbee Tribe ineligible for the administrative acknowledgment process. See 25 C.F.R. Part 83. Under the acknowledgment regulations, the Secretary of the Interior cannot acknowledge tribes that are subject to legislation terminating or forbidding the federal relationship. Id., §83.3(e). In a formal

opinion issued on October 23, 1989, the Solicitor for the Department of the Interior concluded that the 1956 Lumbee Act is such federal legislation and, as a result, the Department is precluded from considering any application of the Lumbee Tribe for federal acknowledgment. A copy of the Solicitor's opinion is attached.

Thus, the Tribe continued its efforts to obtain full federal recognition from Congress. Companion bills were introduced in the 100th Congress for this purpose, H.R.5042 and S.2672. Hearings were held on the bills, once again establishing the Lumbee's tribal existence, and the Senate bill was reported favorably out of committee. Neither bill was enacted, however. Companion bills were introduced in the 101th Congress to recognize the Tribe [H.R.2335 and S.901], but neither was enacted. Once again in the 102d Congress, companion bills were introduced [H.R.1426 and S.1036]. This time, the House of Representatives passed the bill [with 240 yeas, 167 nays, and 25 not voting], but the Senate failed to invoke cloture on debate [with 58 voting for and 39 voting against] and the bill failed. In the 103d Congress, H.R. 334, a bill virtually identical to that passed in 1991, was introduced; the bill passed the House again but was never acted on in the Senate.

Legislative precedent for the bill

Only one other tribe in the history of federal Indian affairs has been placed by Congress in precisely the same position as the Lumbee Tribe, that is, half in and half out of the federal relationship, by special legislation.[3] In 1968, Congress enacted a special act regarding the Tiwas

[3] There is a third tribe that was subject to similar legislation -- the Pascua Yaquis of Arizona. In 1964, Congress passed a statute conveying federal land to the Pascua Yaqui Association, Inc., an Arizona corporation. See 78 Stat. 1195, Pub. L. 89-14. The final section of this statute, like

of Texas, 82 Stat. 93, one that was modeled on the 1956 Lumbee Act and left the Tiwas in the same legal limbo.

Like the Lumbee Tribe, the Tiwas of Texas had been long recognized by the state. In the 1968 Tiwa Act, Congress designated and recognized the Indians as Tiwas, expressly terminated any federal trust relationship, and precluded the delivery of federal Indian services -- just as it had done in the 1956 Lumbee Act. In fact, the Senate committee specifically noted in its report on the 1968 Tiwa Act that the bill was "modeled after the act of June 7, 1956 (70 Stat. 254), which relates to the Lumbee Indians of North Carolina." S.Rep.No 1070, 99th Cong., 2d Sess. According to the Department of the Interior, this 1968 Tiwa Act made the tribe ineligible for administrative acknowledgment, a decision that clearly presaged its construction of the 1956 Lumbee Act in 1989. Because of this unique circumstance, the Department expressed no opposition to special legislation extending full recognition to the Tiwas of Texas.

In 1987, Congress removed the Tiwas of Texas from the restrictions imposed upon them in the 1968 Tiwa Act. Congress enacted the Ysleta del Sur Pueblo Restoration Act, Pub.L. 100-89, Act of August 18, 1987, 101 Stat. 667, to restore the federal trust relationship with the Ysleta

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the Lumbee and Tiwa acts, provided that the Yaqui Indians would not be eligible for federal Indian services and none of the federal Indian statutes would apply to them. Congress has since extended full federal recognition to the Pascua Yaqui. See 25 U.S.C. §1300f. The position of the Pascua Yaqui was somewhat different from that of the Lumbees and Tiwas, since the earlier federal statute involved a state corporation and arguably would not have recognized a tribe, even without the termination language. Also, the Pascua Yaqui recognition legislation was enacted in 1978, before the administrative acknowledgment process was in place. Even so, the Department of the Interior opposed the Pascua Yaqui recognition bill; the Department proposed that Congress repeal the 1964 Pascua Yaqui bill and require that the Yaquis go through the soon to be established administrative acknowledgment process. See S.Rep.No. 95-719, 95th Cong., 2d Sess. 7, reprinted in 1978 U.S. Code Cong & Admin. News 1761, 1766. Congress refused to do so and enacted the recognition legislation.

del Sur Pueblo of Texas, previously known as the Texas Tiwas. Just as the 1968 Tiwa Act created a special circumstance justifying special legislation for that tribe, so does the 1956 Lumbee Act for the Lumbee Tribe.

Further, just as it did for the Tiwas of Texas, the Congress should enact comprehensive legislation as proposed by the Lumbee Tribe, legislation that resolves all related issues -- status, service delivery area, base roll, jurisdiction, etc. In its deliberations on H.R.1426 in 1991, the House Resources Committee considered a proposed substitute to a full fledged recognition bill for the Lumbee Tribe, one that would merely repeal the termination language of the 1956 Lumbee Act and require further action on the Tribe's status under the Department of the Interior's acknowledgment regulations. The committee rightly rejected the proposed substitute, the Congress never before having repealed termination legislation and required administrative action on a tribe's status. In every such case, Congress has enacted comprehensive legislation extending the full trust relationship to the affected tribe, even for the one other tribe, the Tiwas of Texas, that like Lumbee had not previously enjoyed full federal recognition. See CRS Memorandum, "Federal Recognition of Indian Tribes by Congress," R. Walke (January 29, 2001). Congress should not break with that tradition now, with the only other tribe left in legal limbo at the hands of Congress.

Major provisions of S.420

Senator Dole's bill is appropriately structured as an amendment to the 1956 Lumbee Act, thus allowing Congress to complete the task it began in 1956. Specifically, the bill provides for:

-- explicit federal acknowledgment of the Tribe, including the application to the Tribe of

all laws of the United States of general applicability to Indians and Indian tribes;

-- the eligibility of the Tribe and its members for all programs, services, and benefits provided by the United States to Indian tribes and their members, such services to be provided in the Lumbees' traditional territory of Robeson, Cumberland, Hoke, and Scotland Counties, North Carolina;

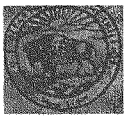
-- the determination of a service population, to be done by the Secretary of the Interior's verification that all enrolled members of the Tribe meet the Tribe's membership criteria; and

-- the granting of civil and criminal jurisdiction to the State of North Carolina regarding the Lumbee Tribe, to insure consistent and continuous administration of justice, until and unless the State of North Carolina, the Tribe, and the United States, agree to transfer any or all of that authority to the United States.

These are provisions typically found in recognition legislation and reflect the federal policy of self-determination for Indian tribes. Most importantly, it finally accomplishes the goal long sought by the Lumbee people -- treatment like every other recognized tribe in the United States.

Conclusion

Congress and the Department of the Interior have over the last century repeatedly examined the Tribe's identity and history and have consistently found the Tribe to be an Indian community dating back to the time of first white contact. There is no need for further study of the Tribe's history. There is no need for another half measure by Congress. There is need for an act of Congress that comprehensively and once and for all addresses the status of the Lumbee Tribe and all related issues. On the Tribe's behalf, I urge the committee's favorable action on S.420.



United States Department of the Interior

OFFICE OF THE SOLICITOR

WASHINGTON, D.C. 20240

In reply please address to:
Main Interior, Room 6456

BIA.IA.0929

Memorandum

To: Deputy to the Assistant Secretary -- Indian Affairs (Tribal Services)

From: Associate Solicitor, Indian Affairs

Subject: Lumbee Recognition Legislation

This responds to your request for assistance in interpreting the Act of July 7, 1956 (70 Stat. 254), the "Lumbee Act", in connection with developing a Departmental position on proposed legislation which would extend Federal recognition to the Lumbee Indians of North Carolina as a tribe.

The last sentence of section one of the Lumbee Act states:

> Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their

> status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

Your acknowledgment regulations (25 CFR Part 83) do not apply "to groups which are, or the members of which are, subject to congressional legislation terminating or forbidding the Federal relationship." See 25 CFR §§ 83.3(e) and 83.7(g). Thus, the first issue is whether the language quoted above from the Lumbee Act is legislation "terminating or forbidding the Federal relationship" within the meaning of your regulations.

If the Lumbee Act is such legislation, your staff has no authority under your current regulations to act on the extensive petition submitted by the Lumbees. Moreover, even if your regulations were changed, absent Congressional action removing or clarifying the language quoted above from the Lumbee Act, the Federal government would be precluded from providing services or acknowledging a government-to-government relationship based purely on an administrative determination if the Lumbee Act is such legislation.

For the reasons **briefly** described **below, we have concluded that,** the Department would be exposed **to substantial risks of** litigation if it provided services or Acknowledged a government-to-government relationship with the Lumbee Indians, together with the Jurisdictional consequences of such a relationship, based solely on an administrative determination. I do not believe that you as a prudent trustee for those Indian tribes which have been acknowledged would b<s justified in committing the resources at your disposal to reviewing and making an administrative determination on the Lumbee petition knowing that there are unique circumstances surrounding the Lumbees as a result of the prior legislation which make a serious challenge to your determination inevitable.

You have recognized the uncertainty of your ability to proceed with the consideration of the Lumbee petition in the testimony the Department gave before the House Interior Committee on

September 26, 1989, on H.R. 2335. In that testimony, Patrick Kayes, Acting Deputy to the Assistant Secretary - Indian Affairs (Operations), requested that Congress clarify the situation in order for you to proceed with any certainty.

The meaning of the Lumbee Act is, unfortunately, simply not clear. This Department and counsel for the Lumbees have taken different positions on the meaning of the act over the last 15 or so years.

In 1977 and '',970, before your acknowledgment regulations were final', this office Informally took the preliminary position that the Lumbee Act was legislation which either terminated or forbad a Federal relationship within the meaning of act then proposed regulations. Relying on the analysis submitted by counsel for

---

1 The acknowledgment regulations were first issued as proposed regulations on June 16, "1977 (42 Fed. Reg. 30647) and reissued again as proposed regulations in June 1, 1978 (43 Fed. Reg. 23743). They ware issued as final rules on September 5, 1978 (43 Fed. Reg. 39361) and became effective October *2,* 1978.

2 Our informal position with regard to the Lumbee Act was similar to the position taken with regard to the "1964 Pascua Yaqui Act. S. Rep. No. 95-719, 95th Cong., 2d Sess. 3, *reprinted in 1978* U.S. Code Cong. & Ad. News 1761, 1762. In March 1978, the Assistant Secretary committed on *a* bill to extend Federal Recognition to the Pascua Yaqui , He stated in part:

> In view of the foregoing [pending revised proposed acknowledgment regulations and *S.* 2375, a bill to establish procedures **and** guidelines for extending Federal services],

the Lumbees, the Department changed this position when the House (95th Cong., 2d Seas.) held hearings on H.R. 11630, H.R. 12691, H.R. 12830 and H.R. 12996 in August of 1978. A copy of the analysis by counsel for the Lumbees is attached for your ready reference.

In arguing that the Lumbees were not precluded from petitioning for acknowled9irient, counsel relied heavily on the opinion of the Court of Appeals in Maynor v. Morton, 510 F.2d 1255 (D.C. Cir. 1975). Maynor involved a claim for benefits by individuals of Lumbee ancestry who had been certified as possessing one-half or more Indian blood under the Indian Reor9&nizafcion Act of 1934 (IRA). The Court of Appeals considered the phrase "[n]othing in this Act" to be key and concluded:

> Moreover, Congress was very careful not to confer by this legislation any special benefits on the people so designated as Lumbee Indians. But we do not see that Congress manifested any intention whatsoever to take away any rights conferred on individuals by Any previous legislation [i.e., the IRA].

Id. at 1258, emphasis in the original

> The Administration recommends that the questions of extension of services to the Pascua Yaqui not be decided until **after** this Department's final regulations have been issues or general legislation has been enacted governing such extensions....
>
> Instead of S. 1633 *as* introduced, the Administration would support a bill which would amend section 4 of the Act of October 8, 1964, (78 Stat. 1196) to remove a portion of that section which now precludes any possibility of extension of services to the Pascua Yaqui under administrative regulations. The language which we would support deleting from that section states that "none of the statutes of the united States which affect Indians because of their status as Indians shall be applicable to the Yaqui Indiana."

S. Rep. No. 95-719, 95th Cong., 2d Sess. 7, reprinted in 1978 U.S.

Code Cono, & Ad. News 1761, 1766.

Counsel for the Lumbees and our position since late 1978 may have read too much into the narrow holding of the Court of Appeals in Maynor. On further review, we believe & better interpretation is that that decision can properly be cited only for the proposition that the Lumbee Act did not take away rights which had previously vested in individuals under the IRA. To read the language more broadly and conclude that the section did not prohibit the provision of Federal services to persons who had not yet been certified under the IRA at the time of the Lumbee Act could be to render the section a nullity.

The interpretation of disclaimer provisions in legislation, such as those that commence with "nothing in this act", **is** admittedly extremely difficult. See for example, South Carolina v. Catawba Indian Tribe, 476 U.S. 496 (1986). Thus. we are persuaded that, absent Congressional action clarifying or removing the language quoted above from the Lumbee Act, the Department would be exposed to serious risk of litigation if it provided services and recognized the special government-to-government relationship with these non-reservation based Indians based solely on **an** administrative determination.

The risk of litigation is even. greater in light of the substantial concentration of Lumbees in the townships around Pembroke. Absent clarifying legislation, an administrative determination that the Lumbees exist as a tribe will certainly result in substantial litigation over jurisdiction in those townships. In light of recent litigation in Vermont involving the Abenaki Indians, we would expect individual defendants to claim that these concentrations of Lumbees are "dependent Indian communities" and that the state, therefore, lacks jurisdiction. while the law in the area is unsettled, such claims are not frivolous. Legislation which addressed the jurisdictional issues, whether part of a bill acknowledging the Lumbees' tribal existence or as a separate bill, would be very helpful in maintaining law and order in the affected counties.

The position the Department took on the 1987 act **to** restore a Federal relationship with the Ysleta del Sur Pueblo (the Tiwas)is consistent with our present interpretation of the Lumbee Act. While the Department took the position that the legislation was necessary in the case of the Tiwas, there are significant differences between the Lumbee Act and the 1968 Tiwa which made it even clearer that legislation was required for the Tiwas.

[3] The Act of December 12, 1968, 82 Stat. 93 (the Tiwa Act

provided in Section 2, in pertinent part, that:

> Responsibility, if any, for the Tiwa Indians of Ysleta del Sur is hereby transferred to the State of Texas. Nothing in this Act shall

Both acts do, however, contain "nothing-in-this-act" provisions which would invite litigation if the Department were to commence providing services and acknowledge & government - to—government relationship, with its accompanying jurisdictional implications, based solely on an administrative: determination without clarifying Congressional action.

For all the above reasons, I am constrained to advise you that the *Act* of July 7, 1956 (70 Sta.1. 254), is legislation terminating or forbidding the Federal relationship within the meaning of 25 CFR §§ 83.3(e) and 63.7(g) and that, therefore, you are precluded from considering the application of the Lumbees for recognition. This clears the way for Congress to act on your recommendation to amend the 1956 Lumbee Act so that you may proceed with the recognition process under 25 CFR Part 83 or to enact H.R. 2335 which would grant recognition to the Lumbee Tribe and settle any jurisdictional questions which might arise from such recognition by providing that criminal and civil jurisdiction resides in the State of North Carolina unless and until transferred as provided in the bill.

Attachment

> make such tribe or its members eligible for " any services performed by the United States for Indians because of their status **as** Indians nor subject the United States to any responsibility, liability, claim, or demand of any nature to or by such tribe or its members arising out of their status as Indians, and none of the statutes of the Unites States which affect Indians because of their status as Indians shc.11 be applicable to the Tiwa Indians of Ysleta del Sur.

The transfer of responsibility to the State of Texas and the reference to the Tiwas as a "tribe" distinguish this act from the

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United States Senate
COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450
http://indian.senate.gov

September 30, 2003

Ms. Arlinda Locklear
P.O. Box 605
Jefferson, MD 21755

Dear Ms. Locklear:

Thank you for your participation in the September 17, 2003 hearing on S. 420, the Lumbee Acknowledgement Act of 2003. The Committee would appreciate your review of the following questions and the submittal of a written response to the Committee on Indian Affairs no later than September 19, 2003.

1. I am sure you are aware that Federal recognition policy dictates that a group must establish ties to a "historic Indian tribe."

Q. Was the "Cheraw" a historic Indian tribe, or a linguistic group such as Siouan or Iroquoian?

2. Questions of jurisdiction and land are complicated. If recognized, the tribe will have to deal with these issues.

Q. Under S.420, would the tribe be eligible to have land taken into trust? Within what areas would they be able to obtain this land?

Q. The criminal and civil jurisdiction clause in S.420 appears similar to the old P.L. 280 statute. Is that the intent? Can you explain how you think it would apply?

3. If the BAR process were made available to the Lumbee tribe, would you be supportive of seeking recognition through that route? If not, why not?

Because of hazardous mail contamination which forced the closure of the Hart Senate Office Building, new procedures have been put into effect for all written material addressed to Senate offices. Accordingly, please send an electronic version of your testimony by e-mail in WordPerfect format to: *testimony@indian.senate.gov*. Your written

response may also be submitted to the Committee by telefax directed to (202) 224-5429, however an electronic version of your response will still be required.

Ms. Locklear, I appreciate your attention to this matter and look forward to your response. Thank you.

Sincerely,

BEN NIGHTHORSE CAMPBELL
Chairman

Honorable Ben Nighthorse Campbell
Chairman, Senate Committee on Indian Affairs
836 Hart Senate Office Building
Washington, D.C. 29510-6450

October 3, 2003

Dear Senator Campbell:

This letter is in response to yours of September 30 with four inquiries regarding S.420, a bill to recognize the Lumbee Tribe of North Carolina.

1. With regard to the historic tribe issue, the Lumbee Tribe is descended from the historic Cheraw and related Indians, which tribes are classified as Siouan linguistically. Dr. Campisi's statement at the hearing contains the data in support of this conclusion. The best explication of this is Dr. John Swanton's paper titled Probable Identity of the Croatan Indians. This reported was made for the Department of the Interior, which adopted Dr. Swanton's view in its testimony to Congress on a 1934 bill to recognize the Tribe. A copy of this report was provided to the committee in Dr. Campisi's supplement to the record dated September 24, 2003.

Dr. Campisi's supplement to the record also lists for the committee the historical records that corroborate Dr. Swanton's conclusions; the documents themselves were attached for the committee's convenience. Other experts in the field have reached the same conclusion regarding the historic tribe from which the modern day Lumbees descend. The committee received copies of these statements as attachments to my letter dated September 29, 2003, supplementing the record on S.420.

2. With regard to land acquisition, S.420 would make the Tribe eligible for land acquisition under 25 C.F.R. Part 151. Section 5(b)(2) of the bill designates Robeson County as the trust acquisition area.

3. With regard to jurisdiction, it is the intent of S.420 to extend state civil and criminal jurisdiction over the Tribe, much like P.L.280. North Carolina is not a P.L.280 state and, were the Tribe recognized in the absence of such a provision, the State's jurisdiction would immediately lapse. This is particularly problematic for the Lumbee Tribe, in light of the geographic concentration of tribal members, even in the absence of a formal reservation..

As you know, Indian country includes dependent Indian communities as well as Indian reservations. Because of the imprecise nature of the dependent Indian community definition, there are likely to be large pockets of the Lumbee community that would become Indian country upon recognition of the Tribe. The precise boundaries of these would be determined by courts, most likely through challenges to criminal prosecution of tribal members. To avoid the uncertainly and the difficulties in the administration of justice this would create, the Tribe prefers that the State retain and continue to exercise the civil and criminal jurisdiction it now holds.

This jurisdictional arrangement is acceptable to the Lumbee Tribe because of the Tribe's

considerable influence over local government in the County. All elected officials and law enforcement officers of the Town of Pembroke are tribal members. A majority of the Robeson County Commissioners are tribal members. The County Sheriff, Clerk of Court, and several judges of the Superior and District courts are tribal members. The Tribe is a major political force locally, a reflection of the Tribe's determination to protect its people and interests. Thus, maintaining the jurisdictional status quo means that control over the matters that most affect tribal members is left in the hands of the Tribe.

Finally, it should be noted that S.420 contains a retrocession provision. This provision would allow the Tribe to negotiate with the State of North Carolina for the return of some or all jurisdictional authority to the Tribe and the United States, should those three parties agree.

4. I would not support a bill that requires the Tribe to petition the Department of the Interior for federal acknowledgment under 25 C.F.R. Part 83 for the following reasons.

First, administrative review of the Tribe's history and community is unnecessary. The Congress and the Department of the Interior already have a voluminous record on the Tribe, one that the Department itself generated. This record establishes the Tribe's clear entitlement to recognition under the regulations. The three most important criteria, that is, descent from an historic tribe, community, and political authority, are indisputable. As noted above, the Department itself concluded in 1934 that the Tribe descends from the historic Cheraw Tribe. Further, as the statement of Dr. Campisi shows, 67% of the Tribe resides in a geographic core that consists mostly of Indians and 70% of the marriages in the Tribe are to other tribal members. Under the regulations, these data are conclusive proof of community and political authority -- not just some evidence of tribal existence, but conclusive proof. No further study of the Tribe is necessary.

Second, the passage of special legislation that requires further administrative action is unfair. Congress has never required a tribe to obtain authorizing legislation and then administrative action on its status. In every other instance where a tribe was ineligible for administrative action because of a prior act of Congress, the Congress has recognized or restored the tribe. There is no justification for treating the Lumbee Tribe differently.

Third, the Department has opposed recognition of the Lumbee Tribe for more than one hundred years. Indeed, it is arguable that the Tribe would be recognized today had it not been for the Department's consistent opposition. Time and again the Department has advised Congress to say no to the Lumbee Tribe because of the drain on the resources available to presently recognized tribes. At this point, the Tribe simply has no confidence in the Department's ability to fairly consider the Tribe in its administrative process in light of the Department's history on this issue.

A letter in support of S.420 recently submitted by Mr. Bud Shapard supports the Tribe's view on this score. Mr. Shapard, now retired, was the author of the acknowledgment regulations and the first Director of the office that administers those regulations. Mr. Shapard expressed the view in his letter that the large size of the Lumbee Tribe "has been the primary impediment to its recognition and the basis of much of the negative bias that exists within the Bureau of Indian Affairs."

Third, as the Chairman is aware, the administrative acknowledgment process has been the

subject of numerous oversight hearings by the committee. For years, petitioners in that process have complained about inordinate delay, burdensome requests, and inconsistent results. The Department has a backlog of cases awaiting action and court orders against it for its failure to time process petitions currently in the pipeline. Because of the size of the Lumbee Tribe, it is not unlikely that the Tribe would wait twenty or more years for administrative action on its status, if the Tribe were required to petition the Department. Particularly in light of the Tribe's long wait to this point and compelling claim for recognition, it would be unjust to subject the Tribe to this process.

Finally, it is important to note that Congress, not the Department of the Interior, holds constitutional authority over relations with tribes. The overwhelming majority of the approximately 550 tribes now recognized by the United States were recognized by Congress, not the Department of the Interior. It is not correct that Congress either cannot or should not recognize an Indian tribe. Neither has Congress explicitly delegated this authority to the Department nor legislated the criteria or process to be used by the Department in its acknowledgment regulations. The acknowledgment regulations were promulgated by the Department under its general authority over Indian affairs. Thus, those regulations cannot be taken as a limitation on Congress' authority to recognize a tribe itself.

I hope this is fully responsive to your inquiries. I would be happy to provide any further response or documentation, should you so desire.

Sincerely,

Arlinda F. Locklear

TESTIMONY

of

JAMES T. MARTIN

Before the

SENATE COMMITTEE ON INDIAN AFFAIRS

Concerning

S. 420 "Lumbee Acknowledgement Act of 2003"

SEPTEMBER 17, 2003

Chairman Campbell and distinguished members of the Senate Committee, on behalf of the United South and Eastern Tribes, Inc. (USET) I thank you for allowing me to provide testimony regarding S. 420 "Lumbee Acknowledgement Act of 2003".

My name is James T. Martin. I am an enrolled member of the Poarch Band of Creek Indians of Alabama and Executive Director of USET, an inter-tribal organization consisting of twenty-four federally recognized Indian Tribes from twelve states in the South and Eastern region of the United States.

The primary function of USET is to provide a forum for the exchange of information and ideas among its member Tribes, the Federal Government, and other entities. USET appreciates the opportunity to provide testimony expounding on concerns regarding the attempts of the Lumbees of North Carolina to obtain federal recognition through legislation and not through the formal acknowledgment process administered by the U.S. Department of the Interior.

USET acknowledges that the federal recognition of Indian Tribes is a formal act, creating a perpetual government-to-government relationship between Tribes and the United States, that acknowledges the sovereign status of Tribes. Federal recognition ensures Tribes the dignity they deserve and equal opportunities that fellow Tribes enjoy. Federal recognition is a complex process, important to the sovereign and cultural sustainability of Tribes, in that federal recognition also creates an official trustee relationship and fiduciary responsibilities on the part of the United States. USET affirms that federal recognition mandates an obligation by the federal government to protect and preserve the inherent sovereign rights of Tribes.

Federal recognition enables Tribes to gain access to vital resources needed to break the yoke of unemployment, low education levels, substandard housing, and poverty, which have historically plagued our people.

Federal recognition also shields Tribes from undue federal and state encroachments. Without federal recognition, Tribes have experienced great difficulty sustaining themselves as independent sovereign and cultural entities.

Federal recognition creates the trust relationship that identifies the federal government's fiduciary responsibility to manage and protect Indian lands, natural resources, and trust assets. The member Tribes of USET realize the affirmative advantages of proper federal recognition.

Furthermore, Federally recognized tribes have inherent sovereign powers recognized by the United States to exercise criminal jurisdiction over their tribal members and civil jurisdiction over all persons, Indian and non-Indian, within their territory. Federally recognized tribes have the authority to engage in economic development activity with certain jurisdictional and tax advantages.

We recognize that Congress has the power to extend recognition to certain groups, but in its infinite wisdom Congress has considered the federal recognition process a complex and tedious one, not to be entered into lightly. Congress therefore has deferred most federal acknowledgement determinations to the U.S. Department of the Interior, which has established a set of regulations standardizing the federal recognition process and creating an administrative procedure to determine whether particular Indian groups qualify as federally recognized Indian Tribes. The BAR procedures were the result of a two-year study of the Congressionally established American Indian Policy Review Commission and the requests of Tribes across the country calling for standardized criteria in determining the future relationships of tribes with the

United States. The BAR, not Congress, is staffed with experts, such as historians, anthropologists, and genealogists, whose jobs are to determine the merits of a group's claims that it is an Indian tribe that has existed since historical times as a distinct political entity. This procedure was established in 1978 and the process was streamlined 1994. The Bureau of Indian Affairs (BIA) maintains authority to oversee the recognition procedure and has set up a Federal Acknowledgment Process (FAP). The Lumbees are seeking immediate recognition without going through the BIA FAP process and meeting BIA/Branch of Acknowledgment Research (BAR) guidelines, thus circumventing an established system.

Seven criteria outlined in the Mandatory Criteria for Federal Acknowledgment, 25 C.F.R. sections 83.7 (a)-(g) were established through a formal notice and comment process with input from the tribes and other interested persons. The criteria are: (a) continuous identification since 1900 as American Indian; (b) existence as a distinct community since historical times; (c) maintenance of autonomous Tribal political influence/authority over members; (d) furnishing of a copy of the Tribe's governing document; (e) furnishing a list of all known members and show they descend from a single Tribe; (f) proof that members don't belong to any other American Indian Tribes; and (g) proof that the Tribe was not the subject of congressional termination legislation. These are complicated tasks to accomplish and require years of work by expert historians, genealogists, attorneys, professors, tribal members, and a host of others, but the

thorough process of gathering information and scrutiny of that information provides greater credibility to those Tribes that gain recognition.

USET member Tribes believe that the formal act of recognition, even though complex, is an essential act for Tribes to establish a productive, meaningful, and above all, creditable trust relationship with the United States government and other tribal governments. USET believes it is essential that the United States affirm the existence of Tribes as distinct sovereigns within the established system.

USET has a long-standing public tradition of supporting any Indian group seeking to go through the federal acknowledgement process. This position is reiterated in USET Resolution No. 93-15LA, *Restating Position on Lumbee Recognition*, duly passed at the Annual Board meeting on December 8, 1993 (attached). This resolution expressly rejected the concept of legislative recognition of Indian groups and favored the participation in the FAP by the Lumbees of North Carolina on an equal basis with other petitioning groups. It is not the intent of USET to encourage the denial of recognition of any Tribe, but it is our intent to demand that the FAP process and BAR guidelines for federal recognition be administered equally for all groups seeking federal recognition and that groups not be allowed to bypass the process. While we recognize that an interior Solicitor's opinion states that the Lumbees cannot access the BAR because of federal legislation, USET believes the appropriate remedy is for Congress to clear this barrier through legislation that would allow the Lumbees to access the

administrative process. A bi-partisan bill that would accomplish this has been introduced on the House side.

Additionally, federal legislative acknowledgement of a group gives unfair preferential treatment to that group over all other groups who are in the BAR process and patiently waiting for determination. Moreover, providing federal acknowledgement to a group through legislation invariably leads to inconsistent and subjective results. Without the use of uniform procedures and criteria, the process of according a group federal recognition as a tribe will inevitably be based on emotion and politics. The relationship that all federally acknowledged tribes have with the United States and the public perception of those tribes is diminished if a group is afforded federal acknowledgment without serious technical review. Thus, Congress should take the politics out of federal acknowledgement and allow the expert agency to do its job.

As I conclude my testimony, I thank the Committee for the opportunity to provide comments and restate the USET position on the request for federal recognition by the Lumbees of North Carolina.

Again, I thank you for the honor of appearing before you to discuss this significant issue. I will be happy to answer questions at this time.

UNITED SOUTH AND EASTERN TRIBES, INC.

Resolution No. 93-15LA

RESTATING POSITION ON LUMBEE RECOGNITION

WHEREAS, the United South and Eastern Tribes, Inc. (USET) is an inter-tribal organization comprised of twenty-one (21) federally recognized tribes; and

WHEREAS, the actions taken by the USET, Inc. Board of Directors officially represent the intentions of each member tribe, as the Board of Directors is comprised of delegates from the member tribes' leadership; and

WHEREAS, legislation, H.R. 334, which would extend federal recognition to the "Lumbee Tribe of Cheraw Indians of North Carolina," is now pending in the Congress, and

WHEREAS, a non-legislative mechanism for federal recognition of Indian groups, as recommended by the American Indian Policy Review Commission and implemented by the Bureau of Indian Affairs, presently exists, and

WHEREAS, an Interior Solicitor's opinion has been issued that states that the Lumbee Tribe does not have access to this non-legislative recognition mechanism because of the wording contained in the June 7, 1956, Lumbee Act, prohibiting the group from receiving "any services performed by the United States for Indians because of their status as Indians," and

WHEREAS, it is preferable that federal recognition of groups be accomplished through an objective process based on the weight of evidence, and not upon the current opinion of the Congress; but it is unfair to any group seeking federal recognition to be excluded from such an objective process for any reason,

NOW THEREFORE BE IT RESOLVED, that the board of directors of United South and Eastern Tribes, Inc., does hereby reject the concept of legislative recognition of Indian groups and does hereby endorse legislative efforts, including the amendment in the nature of a substitute to H.R. 334 offered by Congressman Thomas of Wyoming in the House of Representatives October 28, 1993, to amend the 1956 Lumbee Act to cure the Interior Solicitor's interpretation of Lumbee participation in the Federal Acknowledgment Process and to provide for such participation, on an equal basis with other petitioning groups.

CERTIFICATION

This resolution was duly passed at the Annual Board meeting at which a quorum was present in Lafayette, LA on December 8, 1993.

Eddie L. Tullis, President
United South and Eastern Tribes, Inc.

Keller George, Secretary
United South and Eastern Tribes, Inc.

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United States Senate
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September 30, 2003

Mr. Tim Martin
Executive Director
United South and Eastern Tribes
711 Stewarts Ferry Pike, Ste. 100
Nashville, TN 37214

Dear Mr. Martin:

Thank you for your participation in the September 17, 2003 hearing on S. 420, the Lumbee Acknowledgement Act of 2003. The Committee would appreciate your review of the following questions and the submittal of a written response to the Committee on Indian Affairs no later than September 19, 2003.

1. I understand that some of the members of USET were legislatively recognized, even though the organization has a standing resolution opposing legislative recognition by the Lumbee tribe.

Q. Has USET always had a formal position against legislative recognition? Or was the 1993 resolution the only time it was put on paper?

2. I have always cautioned tribal groups from looking at legislation as a quick solution for obtaining recognition. Much mischief can happen before a bill becomes law.

Q. Do any of your members express regret for choosing to go the legislative route over the administrative route?

Because of hazardous mail contamination which forced the closure of the Hart Senate Office Building, new procedures have been put into effect for all written material addressed to Senate offices. Accordingly, please send an electronic version of your testimony by e-mail in WordPerfect format to: *testimony@indian.senate.gov*. Your written response may also be submitted to the Committee by telefax directed to (202) 224-5429, however an electronic version of your response will still be required.

Mr. Martin, I appreciate your attention to this matter and look forward to your response. Thank you.

Sincerely,

BEN NIGHTHORSE CAMPBELL
Chairman

October 15, 2003

Senator Ben Nighthorse Campbell
United States Committee on Indian Affairs
Washington, DC 20510-6450

Dear Senator Campbell,

Thank you for allowing me to address the Committee at the September 17, 2003 hearing on S. 420, the Lumbee Acknowledgement Act of 2003. In response to your questions:

1. I understand that some of the members of USET were legislatively recognized, even though the organization has a standing resolution opposing legislative recognition by the Lumbee tribe.

   A. Has USET always had a formal position against legislative recognition? Or was the 1993 resolution the only time it was put on paper?

   A. Opposition to legislative recognition has been the long standing position of USET as evidenced in other resolutions: USET Resolution No. 2/95-191MP "Strong Opposition to S. 292, Recognition of the MOWA Band of Choctaw Indians", adopted in 1995 and Resolution No: 75-07 Lumbee Bill. USET has supported Tribes through the BIA/BAR process as evidenced in Resolution No. B-88-193 Support of Groups Meeting BIA Criteria for Federal Recognition, adopted in 1988 and Resolution No. USET 96:30, To Support Federal Recognition of the Mashpee Wampanoag Tribe, adopted in 1996.

2. I have always cautioned tribal groups from looking at legislation as a quick solution for obtaining recognition. Much mischief can happen before a bill becomes law.

   A. Do any of your members express regret for choosing to go the legislative route over the administrative route?

   A. Tribes who have received recognition through the legislative route have expressed problems related to understanding the Congressional interpretation of the process. These Tribes have been more closely scrutinized, for example, regarding whether Congress bestowed to them full or partial rights and tribal sovereignty. For this reason, USET supports recognition through the BAR process where the recognition will be clearly understood.

Please feel free to contact me if I can be of further assistance.

Sincerely,

James T. Martin
Executive Director

Testimony of: Dr. Helen Maynor Schierbeck
Regarding Senate Bill 420, to:
Extend Full Federal Recognition to the Lumbee Tribe of North Carolina, Submitted to the U.S. Select Committee on Indian Affairs

Honorable members of the Senate Select Committee on Indian Affairs, thank you for allowing me to submit a statement about Senate Bill # S. 420 introduced by Senator Elizabeth Dole.

My name is Helen Maynor Scheirbeck, a member of the Lumbee Tribe of North Carolina. Currently I serve as the Assistant Director of Public Programs at the Smithsonian National Museum of the American Indian, in Washington, DC. However, today I am speaking through this statement as a member of the Lumbee Tribe, whose headquarters are in Pembroke, North Carolina.

I have worked nationally for thirty-five years in Indian Affairs, directing Federal Programs for American Indians living both on and off Federal Reservations or working on the international rights of young Children with both Federal agencies and private organizations in the United States. I have had the honor to visit and work in the majority of Indian tribal communities in the United States.

I wish to illustrate in this statement, through a few examples, why full Federal Acknowledgement of the Lumbee Tribe and its members is one of the most important and humane things this Committee and Congress can do in the area of human and constitutional rights.

I understand that you have heard about the many times over the past one hundred years, Lumbee leaders and elders have come to the U.S. Congress to receive their full rights as Indian citizens, both in the eyes of the Congress and through legal acknowledgement by the Bureau of Indian Affairs (BIA), as well as the Department of Interior. Lumbees have battled at the county, state, and federal levels for full recognition of who they are—an Indian tribe and Indian people. The Lumbee history as an Indian tribe and Indian people has been documented since their discovery in the 1600's and especially since 1885 by the State of North Carolina. I have included as an attachment my own doctoral research that illustrates the many times that the federal government has sent representatives either to the Lumbee community or Lumbees came to Washington, DC to clarify our status as Indian people. Not once do these reports state that we are not Indians. (Instead, It is interesting to note that the conundrum caused by the fact that our people were experienced as "more advanced" than Indians living on reservations, as if progress were to be punished somehow.)

Our legacy as Native peoples of the Southeast is quite clear. The issue at hand, however, speaks most directly to the question of the federal government providing full federal acknowledgement of the Lumbee people as an Indian tribe. While there is considerable legitimate debate regarding the cultural impact and issues of personal sovereignty involved in continuing to foster a system that allows the Federal government to "label" Native peoples, the power of historical precedent cannot be ignored. Right or wrong, the standard of acceptance by Indian tribes and

the Bureau of Indian Affairs. While the Lumbees are Federally recognized as an Indian people by the U.S. Congress, the lack of full acknowledgement by the BIA of the Lumbees as a tribe of Indians politically denies Lumbees their human and Constitutional rights as Indians in this country.

What are we denied?

- Thousands of Lumbees have been denied full acknowledgement of the fact that they are members of an Indian Tribe and are Indian peoples with generations of leaders and people who lived as Indians, with a strong cultural identity and senses of family and extended family. Such denial has undercut the self-esteem of thousands of Lumbee people at the county, State and Federal levels.

- Many federal programs for federally recognized tribes have been denied the Lumbee tribe and its members.

- Programs for individual educational scholarships and health services given to federally recognized tribes have been denied to Lumbee tribal members.

- Many colleges have tuition scholarships for federally recognized Indian students. Because of their legal status, Lumbee students cannot qualify for many of these programs.

- Lumbees students have been able to qualify for Indian Health scholarships to study to be doctors. In fact, Lumbees have been quite grateful for the medical scholarships, as there have been a large number of Lumbees who have finished medical school and served Indian country (i.e. federally recognized tribes) with distinction. But their primary homeland, Robeson County, North Carolina does not qualify as a hardship post for these same students to serve their medical requirements for these scholarships.

- Recently one of the gaming tribes opened a talent search company to identify Native People interested in acting on television or the movies and generally in the entertainment world. Several Lumbees who aspire to be actors could not even file with this talent-scouting group because they are not Federally Recognized Indians.

From a personal perspective, let me illustrate how some of these violations have recently impacted my own family:

- In 2003, I attempted to file for my social security benefits from the State of Virginia. Unfortunately, the papers documented my race as "White". I felt unable to sign the forms without correction. I had to insist and threaten to refuse my own earned benefits because I refused for my race to be listed as "White". I had to insist that the Virginia Social Security office review the listing of race on the benefits card. This literature listed under racial categories, Native Americans and Alaska Natives. Finally, my race was changed to American Indian/Alaska Native – Lumbee Tribe.

- My daughter was recently called by the Turtle Mountain Indian Agency (BIA) to participate in the probate of her late father's estate. In discussing the probate application, we were informed that my daughter and I were listed as "White" because we were not federally-recognized Indians. Twice, I corrected the woman who was inputting the data. I asked that she note on the application form that my daughter was Turtle Mountain Chippewa-Lumbee Indian Tribe (a state recognized tribe). I was informed that the Bureau of Indian Affairs did not recognize or acknowledge that there were such Indian groups. My daughter has refused to be listed as White. Therefore she will be denied participating in her late father's estate. In this example, it is not the relatively little value of the land at stake, but the broader personal ethics of being unable to be recognized as one's self, even in relation to one's own family's estate settlement.

These personal examples also highlight another important aspect of the continual federal mismanagement of the Lumbee "identity" – the failure to respect our people's unique community. There is a principled issue at stake here – the right to self-determination and the right to receive respect in the eyes of the federal government, regardless of race, color, or culture.

When the abolitionist's movement began its expansion from the North to the South, Indians in the Southeast were labeled and treated as "Colored". This term was greatly misunderstood by many Indians. Historically it is a term from the British Empire meaning "non-White". However many Indians, Blacks and White viewed the term as denoting that Indians were Black. During those years, many white anthropologists and political leaders gave many names to Indian tribes in the Southeast; some of these names were real racial slurs. Anthropologists have also called us "mixed blood crew", Colored and tri-racial isolates. All terms of derision are insulting to our dignity as Indian people.

Lumbees have suffered years of segregation in our education, our churches and our economic life. Indeed it was the Civil Rights Movement of the 1950's, 1960's and 1970's that tore down the barriers of segregation. These years integrated our schools, provided federal funds to help bring new programs into the public schools and opened many opportunities for us as Indian people.

Mr. Chairman and Honorable members of the Committee, I submit to you that it is time for the United States Congress and the Federal Executive Branch quit double dealing the Lumbee tribe and its people.

The issue may be least of all about resources. Whether or not the Lumbees ever receive a single penny from the Bureau of Indian Affairs, it is necessary and deserved that a clear statement of the Lumbee people as a "Federally Recognized Tribe" (Lumbee Tribe) to tribal peoples is issued forth from the U.S. Congress and implemented by the President, and Executive Offices.

Federal recognition or acknowledgment for the Lumbee People must become a reality. It is a shame on America that the Native peoples, who first met the newcomers to this land historically referred to as "Sir Walter Raleigh's Lost Colony," have been denied their human, civil and constitutional rights for more than five hundred (500) years.

Thank you.

Education: Public Policy and the American Indian

By: Helen Maynor Scheirbeck

Dissertation Submitted to:
Virginia Polytechnic Institute and State University in partial fulfillment of the requirements for Doctor of Education in Administration

Approved: January 1980

Appendix: List of Significant Actions Regarding Lumbee Indians of North Carolina

Pages: 413 - 435

1888 - Petition to U.S. Congress from Croatan Indians for aid in educating their children. Petition referred to Commissioner of Indian Affairs, and then referred to Mr. J. W. Powell, Director, Bureau of American Ethnology for comment. He did not comment on theory of White's Lost Colony but said, "it is probable that the greater number of the colonists were killed; but it was quite in keeping with Indian usages that a greater or less number, especially women and children, should have been made captive and subsequently incorporated into the tribe."

1890 - August 10, the Commissioner answered the petition as follows: "While I regret exceedingly that the provisions made by the State of North Carolina seem to be entirely inadequate (for the education of these people), I find it quite impracticable to render any assistance at this time. The Government is responsible for the education of something like 36,000 Indian children and has provisions for less than one-half this number. So long as the immediate wards of the Government are so insufficiently provided for, I do not see how I can consistently render any assistance to the Croatans or any other civilized tribes."

1911 - N.C. changed name of Croatan Indians to Indians of Robeson County.

1912 - N.C. changed name of Indians of Robeson County to Cherokee Indians of Robeson County.

- S. 3217 introduced as a bill providing for acquisition of a site and erection of a school for Indians in Robeson County, North Carolina, and appropriating $50,000 for same with continuing appropriations of $10,000 annually. Such school to be under supervision of Secretary of the Interior. (Introduced Feb. 1912, passed Senate, Aug. 8, 1912).

- H.R. 20728 introduced in House of Representatives as an amendment to the Bureau of Indian Affairs appropriations for $50,000 for the Department of Treasury to acquire a site and erect a school for Indians living in Robeson and surrounding counties and for $10,000 to be appropriated annually for conduct and in maintenance of said school under supervision of Secretary of the Interior in accordance with the provision of law for conduct and maintenance of schools for the Indians by the U.S. Government (Introduced Feb. 26, 1912 -- No action reported.)

- March 2nd - report of Charles F. Pierce, Supervisor of Indian Schools, Fifth District, Pipestone, and Minnesota to Commissioner of Indian Affairs regarding visit to Croatan Indians, Pembroke, N.C. Pierce described the Croatans and their school and suggested, "In regard to giving federal aid to this institution, no doubt it would be of great benefit, at the same time it appears to me that it would be taking a backward step in our Indian school policy. It is the avowed policy of the Government, to require the states having an Indian population to assume the burden and responsibility for their education as soon as possible." "North Carolina, like the state of New York, has a well organized plan for the education of Indians within her borders; I can see no justification for any interference or aid, on the part of the Government, in either case."

- March 30 - First Assistant Secretary, Department of the Interior letter to Sen. Robert J. Gamble, Chairman, Committee on Indian Affairs stated, "it is firmly believed it will be unwise and unnecessary to appropriate for the establishment of a school for Croatan Indians."

1914 - June 30, S. Res. 410 authorized the Secretary of the Interior to investigate rights of the Indians of Robeson and surrounding counties.

1915 - Jan. 5 - report on condition and tribal rights of Indians of Robeson and adjoining' counties in North Carolina by special agent O. M. McPherson.

1916 - Feb. 11, letter from Assistant Commissioner E. B. Meritt to O. H. Lipps, Superintendent, and Carlisle Indian School noted "with the present attendance at the Carlisle School of approximately 500 and an enrollment far below its capacity, there seems no reason why there should not be enrolled those of the Cherokee children from North Carolina who will be eligible in accordance with the course of study. I will request you give this matter your special attention and report to me how far you can cooperate in getting these children to Carlisle."

- March 2nd, the new Secretary, Franklin K. Lane replied to the Chairman of Senate Committee on Indian Affairs, "Whether this information would justify an appropriation by the Federal Government to supplement the educational facilities afforded these people is, of course, a position for determination by Congress, but I doubt the wisdom of the Government's assuming this burden."

1923 - Dec. 11, report from James Henderson, Superintendent, U.S. Indian Service, Cherokee, N.C., on conditions existing among Croatan Indians of Robeson County, N.C. He made a number of recommendations: (1) that state of N.C. revise its 1884 roll of Croatan Indians; (2) that graduates of Pembroke Normal School who wish to prepare themselves as teachers, attend Haskell Institute until state puts normal training courses at: Pembroke Normal School; (3) that further investigation be made concerning Indians unable to send children to district schools and to Pembroke because of lack of funds. if this is so, Congress should pay board at Pembroke Normal School of those who have graduated from the district schools.

1924 - Feb. 10, H.R. 8083 introduced to change name Croatan to Cherokee Indians of Robeson and adjoining counties in North Carolina. The bill did not confer upon such Indians any Cherokee tribal rights to lands or money and stated, "nothing herein shall be construed as prohibiting the attendance of children of said Croatan Indians in Government Indian schools."

1924 - March 18th, Sec. Hubert Work transmitted an amendment on Croatan Indians as follows: "Provided however that nothing herein shall be construed as prohibiting the attendance of children of said Croatan Indians in Government Indian schools." Letter to Hon. H. L. Lyons, U. S. House of Representatives.

- April 11, letter from Sec. Hubert Work to Congressman Homer P. Snyder on H.R... 8083 bill to designate Croatan Indians of Robeson and adjoining counties in North Carolina as Cherokee Indians. "Department notes first section of bill already accomplished by General Assembly of N.C. March 11, 1913; second proviso intended to allow children of Croatan Indians to attend the Government Indian schools and receive benefits of an education. Department sees no objection to a change in the designation of the Croatan Indians, and recommends enactment of the measure."

1926 - January 10, H.R. 5365 (73rd 1st Sess.) introduced providing that the name Croatan be changed to Cherokee and that these Indians should be recognized and enrolled as such. The bill also noted that "such designation, recognition, and enrollment shall not in any manner affect the present status or property rights of any such Indians or prohibit the attendance of children of such Indians at Government schools. The provisions of this act shall not be construed to give such Indians any rights in or to the tribal lands or moneys of other bands of Indians in the United States."

1926 - March 10, S. 1632 identical to H.R. 5365 introduced. The Secretary of the Interior wrote to Chairman of Senate Committee on Indian Affairs as follows: "As the Federal Government is not under any treaty obligation to these Indians, it is not believed that the United States should assume the burden of the education of their children, which has heretofore been looked after by the State of North Carolina. In view of the foregoing, I do not favor the bill in its present form. However, I do believe that legislation to clarify the status of these Indians is desirable." He recommended that the bill be limited to designating a name for these Indians, with the proviso "that nothing contained herein shall be construed as conferring federal wardship or any other governmental rights or benefits upon such Indians." Bill was not reported out of committee.

- May 26th, a brief was filed with Commissioner of Indian Affairs on behalf of Cherokee Indians, Robeson County, N.C., Ellwood P. Morey, Attorney.

- June 1, response by Commissioner Charles Burke stated, "the United States is in no way indebted to them and that their claims for assistance, etc., have no merit other than that which would attach to ordinary needs of citizens.

1932 - May 24 (72nd Congo 1st Session) S. 4595 introduced in the Senate. It was identical to H.R. 8083 described above. Commissioner of Indian Affairs wrote to Secretary of Interior as follows: "We believe that the enactment of this legislation would have the effect of providing educational facilities for some of them at the expense of the Government. Since the Federal Government does not have any responsibility for these people, it is not for us to say whether or not they should be classed as Cherokees."

1933 - April 22, Delegation of Robeson County Indians referred to Dr. John Swanton, Bureau of American Ethnology, by Commissioner John Collier. Swanton recommended that a proper designation for these people might be Cheraw or Siouan Indians of the Lumbee River.

1934 - Jan. 10th letter from Secretary Harold Ickes to Senator Burton K. Wheeler, Committee on Indian Affairs, reporting on S. 1632 which provides for the enrollment of the Croatan Indians of North Carolina as Cheraw Indians, and would permit their children to attend government Indian schools. Secretary Ickes indicated he did not favor the bill in its present form. He suggested legislation to clarify the status of these Indians. His suggestion was as follows: "That those Indians in Robeson and adjoining counties, North Carolina, who were formerly known as Croatan Indians, shall hereafter be designated Siouan Indians of Lumbee River, and shall be so recognized by the provided that nothing contained herein shall be construed as conferring Federal wardship or any other governmental rights or benefits upon such Indians."

1934 - April 3, Memorandum on Indian groups in the southern states appeared in files from Director of BIA education W. Carson Ryan who stated: had, as I understand it. a definite office policy regarding the numerous groups of Indians in the southern states. During the Wilson administration an attempt was made to round up these various groups and find out whether anything should be done for them by the Federal Government. It is chiefly from this period that our present work with the Seminoles of Florida and the Choctaws of Mississippi dates. "It is customary to refer to these Indian settlements as small, scattered groups. As a matter of fact, however, there are between 5,000 and 9,000 people of Indian blood in the group usually known as 'Croatans' (in and around Pembroke, North Carolina..."

"In view of the pending Wheeler-Howard Bill (which interests many of the Indians in these groups very much), and the present difficulties securing educational and other services for people of Indian blood in the southern states, it seems especially important to have some data on hand as a basis for a policy. In any recommendations that appear in the following statements, I have assumed as an Indian Service policy that, while we do not desire unduly to interfere with au existing situation, particularly with a satisfactory situation, the Federal Government has an obligation to all people of at least one-fourth Indian blood Who have a diminished social, health, and educational service in the communities in which they are living as a result of the fact that they are Indian. We some-times refer to Indians as adequately adjusted when what we really mean is that they are resigned to a discrimination that is neither fair nor socially desirable."

In Dr. Ryan's accompanying report, he described Indians and their educational conditions in North Carolina, Louisiana, Mississippi, Florida, and South Carolina. The report said this about the Croatans of North Carolina: "Estimates of the number of these Indians (formerly called Croatans, but more exactly known as Cheraw Indians of the Siouan stock) vary, but there must be at least 5,000, or possibly as many as 9,000, located mostly in Robeson County, North Carolina. These Indians have been officially recognized as Indians by the State of North Carolina. They have an Indian teachers' college (accredited) furnishing two years of training beyond the high school, 42 schools, of which four are high schools, two being accredited. With a few exceptions all the teachers in the elementary schools are Indians trained in their own state teachers' college and one of the high school teachers is also Indian. The Indians feel especially the need for some advanced training so that one or two of their better qualified people may have university work and prepare for high school teaching and other positions requiring university training. There are two things the Indian Service can do in this matter, (1) we can pay instruction costs for a few Indian students who without such aid would not be able to attend the State Normal School at Pembroke; (2) we can furnish scholar- ship, loan, instructional costs, or residence for university training of one or more qualified individuals. The representatives of the tribe have agreed to submit candidates for this and they have been assured that we would give very careful consideration to any well qualified candidate with the requisite degree of Indian blood."

1934 - October 15, letters from J. E. Sawyer, Superintendent, Cherokee Indian Normal School, Pembroke, North Carolina to Dr. W. Carson Ryan, Director, Education Bureau of Indian Affairs regarding assistance from Federal funds in paying instructional costs of several students at your institution. "We have authorized the following amounts:

James Bell, Jr. $38.00
Stella Graham $38.00
Gertrude Locklear . . . $18.00.

This money is to be disbursed through Superintendent Harold W. Foght of Cherokee Agency, Cherokee, North Carolina. Our reason for asking Mr. (Joe) Brooks for recommendations is that Mr. Brooks has been generally recognized in Washington as representing the interests of the Indian group in Pembroke area. . .

"As to the use or the name 'Siouan' or 'Cherokee', this would have nothing to do with the granting of aid. The only questions for us in connection with Federal aid are as to of blood and sufficient ability to indicate service to Indian people. So far as I know, Mr. Brooks has never indicated to us that Indians applying as Siouans were to be preferred over any others; as a matter of fact the applications presented to us carried both names. My own understanding of the situation regarding the name was that ethnologists who are acquainted with the North Carolina groups had indicated that some other name than Cherokee would be more accurate but I assume that is something for the Indian group itself to determine so far as its own affairs are concerned."

"We shall be very glad to have your recommendations for on scholarship aid, but may I suggest it will be very much easier for us if you folks will agree on some policy and present a united front."

1934 – Dec. 5th, Dr. W. Carson Ryan, Director of Education, BIA, was a briefing paper on the North Carolina, no recommendations were contained.

- December 10, Letter to Superintendent J. E. Sawyer, Cherokee Indian Normal School, Pembroke, North Carolina from BIA Education Director, W. Carson Ryan which stated, "We have. . . given our word, both to you and Mr. Brooks, as to help for three students this year and if you are sufficiently interested in the welfare of these three students to have us do it, we will be glad to change the designation in the applications to North Carolina Indians in order that you and your board may be able to accept."

1935 - Feb. 18th, Commissioner Collier wrote Solicitor Felix Cohen a memorandum indicating Mr. Joe Brooks of the Siouan Indians of North Carolina had asked the following questions--can Indians, half or more bloods, and members of a tribe not under U.S. jurisdiction; organize under the Wheeler-Howard Act to receive a constitution, charter, etc.? Or would the benefits to them be exclusively individual ones, such as land purchase and scholar- ship loans, predicated on their showing half or more blood?

- Feb. 19th letter from James E. Hillman, Division of Curriculum Instruction, State Department of Public Instruction, Raleigh, North Carolina to Dr. W. Carson Ryan, Director of Education BIA, regarding the Indian Normal school at Pembroke, North Carolina which stated: "We recognize the institution as a standard two-year Normal School. While this is true, there are evident weaknesses which need to be overcome. In general the quality of work would not quite measure up to work of a similar nature in our other institutions. It has been necessary to be somewhat lenient in our interpretation of and in. the enforcement of the standards with reference to accrediting this institution. In spite of this concession, however, graduates of the institution are generally allowed full credit for work done there when they attend a senior college. I would say that any institution would be justified in allowing a conditional rating for those students who graduated from Indian Normal School at Pembroke. I am quite certain the Federal Government would be justified in allowing a small payment toward meeting the instructional cost for Indians planning to teach and who would attend the Normal School. The opportunities which Indians have for education are quite limited. They should be given such encouragement as possible, consistent with a sound Federal program. As far as I know the State Department of Public Instruction has no immediate plan for changing the type of work in which the Normal School engages. We are anxious, however, to strengthen this school in every way possible. This would involve, among other things, an improvement in the qualifications of the faculty. If the Federal Government could assist Indians who are now on the faculty to attend a University and acquire graduate degrees, it would hasten the day

when the faculty would be in a position to render a high order of teaching service. The school does not seem to attract outstanding white teachers. We believe that improvement in the faculty would involve securing properly qualified Indian teachers. Any financial assistance which could be afforded to carefully selected Indians to prepare themselves for teaching in this institution would hasten the day when it could be manned by well-qualified Indian teachers."

- April 8th response of Solicitor Felix Cohen stated "these Indians could participate in the benefits of the Wheeler- Howard Act only insofar as individual members may be of one half or more Indian blood. Such members may not only participate in the educational benefits of Section II of the Wheeler-Howard Act, in the Indian preference rights for Indian Service employment granted by Section 12 of the Wheeler-Howard Act, but may also organize under Sections 16 and 17 of the Wheeler- Howard Act, if the Secretary of the Interior sees fit to establish for these eligible Indians a reservation."

- April 10th letter regarding Cohen opinion to Secretary of Interior Ickes from Joe Brooks, Siouan Indian Robeson County. April 25th response from Secretary Ickes stating that he fully concurred with Solicitor Cohen's opinion.

- July 9, Indian agent Fred A. Baker from Sisseton Indian Agency, South Dakota, was sent to Robeson County, N.C. to report on suitability of establishing a land purchase and rehabilitation project among those Indians. Baker stated "as an official of the government I give it (the project) my unqualified approval." He recommended individual farms of 40 acres and a neighborhood plan where each family had their land and their homes and all shared a community building. Agent Baker said this about federal assistance to these Indians: "We feel strongly that the United States is justified in coming to the aid of a people already recognized by the laws of the State of North Carolina as Indians. It is true that they have no treaty or other legal relationship with the United States Government. Under many handicaps and beset with many difficulties they have, up until now, made their own way. I would not have the Government assume that measure of control which is now exercised over many Indian tribes, as I feel that this would tend to bring about a spirit of dependence which would tend to destroy that sturdy spirit of self-reliance which now prevails. But the measure of relief recommended herein, if properly carried out, will not, in any way bring this to pass. This plan is intended to give Work Relief and to take Indians off the rolls by giving them employment at reasonable wages."

- October report compiled by John Pearmain, for the Resettlement Administration on history, background, and socio-economic status of the Siouan Indians of Robeson County, N.C. Pearmain combined his finding with those in Baker Report described above. No recommendations were included in report to the Resettlement Administration.

1936 - Jan. 2 letter from L. C. Gray, Assistant Administrator, Resettlement Administration, and Washington, D.C. to H. B. Mask, Regional Director, Resettlement Administration, and Raleigh, N.C.: indicates authorization for land acquisitions on Pembroke Indian Resettlement Project and notes this project will be handled as a resettlement project.

April 22 memorandum from the Commissioner of Indian Affairs regarding policy of various folk groups in southeastern and northeastern United States. The memorandum notes, "The problem is whether these peoples should be treated as Indians under the Reorganization Act and therefore be brought under the guardianship of the Federal Government. These groups have never had an explicit relationship to the Federal government. It is even doubtful whether they are recognized by prior colonial governments. They have lived amidst the general population for hundreds of years--and have made their social and economic adjustment as human beings and as citizens not under the guardianship of the United States. .

. . The budgetary allowance for these Indian groups, about whose legal status and rights there is no question, are and will continue to be insufficient to meet their needs. Adding further strains on the Indian Bureau budget would either jeopardize the work with those Indians already under Federal guardianship or arouse hopes with newly-made guardians that could not be met. . . . For these reasons the conclusions reached by the Indian office is that these folk groups should not be brought under Federal guardianship. "

- June 2, Commissioner John Collier appoints an Enrolling Committee to go to Pembroke, N.C. to investigate the claims of Indian blood of a group of people in Robeson County, N.C. Purpose of the claim was to see if group could qualify under Section 19 (one-half Indian blood or more) of the Indian Reorganization Act of 1934. A physical anthropologist was included to determine scientifically whether any applicants were one-half or more Indian blood. Report submitted January 26, 1937.

1938 - February 24, letter from Commissioner John Collier to Joe Brooks, Pembroke, N.C. informing him of the 209 examined by Dr. Carl Selezer, some 22 were found to be one-half or more Indian blood. Collier states he does not know whether these findings will be enough for the Secretary of Interior to rule on whether "22" can be declared Indians under the Indian Reorganization Act.

- November 8, letter from General Council of Siouan Indians, Pembroke, N.C. to Commissioner of Indian Affairs, John Collier, urging that 22 Indians be accepted to participate in benefits of Indian Reorganization Act and seeking advice on how other Indians should organize.

- December 12, letter from Assistant Commissioner, William Zimmerman, Jr. to Joe Brooks, Pembroke N.C. informing him that Secretary Ickes had recognized 22 out of 209 applications from Robeson County Indians as eligible for enrollment as persons of one-half or more Indian blood. These persons are entitled to benefits established by the Indian Reorganization Act and no other rights. Mr. Zimmerman states he is preparing notices to individuals so approved. These benefits were tuition loans, economic development loans, Indian preference in BIA employment and right to petition the Secretary to take land in trust and organize as a group.

1941 - June 14, letter from Commissioner of Indian Affairs, John Collier to Mr. D. J. Brooks, Route 3, and Maxton, N.C. gives long history of attempts to organize Indians in Robeson County, North Carolina under the Indian Reorganization Act. Collier states, "it is our conclusion, after careful study, that the Indian Reorganization Act does not afford a solution to your problems, and that organization under that Act would intensify rather than solve your problems." He also observed, "The Robeson County Indians have a special status under state law, with special schools and a special normal school. For the Federal Government to recognize as Indians only a small fraction of this group might weaken the special status of the great majority I think it is right and proper for the state to give this special recognition. The fact that the Federal Government is debarred by law from so recognizing the whole group merely means that the Siouan people have gone so far along the road of social assimilation and of self-support that they do not need the special guardianship of the Federal Government that is still being given to tribal Indians living on reservations. The lack of such Federal recognition does not imply that the Robeson County Indians are not Indians, but merely that they are not eligible for the special protection afforded to Indians who have not been sufficiently assimilated into the predominant culture."

1951 - Robeson County Indians voted 2,169 to 35 to change" their name from Cherokee Indians of Robeson County to Lumbee Indians of North Carolina.

1953 - April 20, North Carolina passed a law recognizing this group as Lumbee Indians of North Carolina.

1956 - January 18. H.R. 4656 a bill to recognize and designate certain Indians as the Lumbee Indians of North Carolina were reported out of the House Committee on Interior and Insular Affairs. The Department of the Interior recommended against enacting the bill and requested that the bill be amended to indicate clearly that it does not make these persons eligible for services provided through the Bureau of Indian Affairs to other Indians." Bill became Public Law 570, 84th Congress, June 7, 1956.

1970 - April 20, Office of Native American Programs/DREW ruled Lumbees could receive money based on their status as Indians from Economic Opportunity Act.

1971 - December 4th S2763 bill introduced to repeal clause in Lumbee Law of 1956 which makes them ineligible for federal programs because of their status as Indians. S. 2763 would repeal this disclaimer.

1972 - March 20, letter from Deputy Commissioner of Indian Affairs to Eastern Carolina Indian Organization stating Lumbee Act of 1956 had terminated rights of 22 Indians recognized under the Indian Reorganization Act.

- November 28, Opinion from Associate Solicitor, Indian Affairs, Department of Interior, stating that passage of Lumbee Act, with its final clause reflects congressional intent to terminate all federal services to Lumbees including the "22" because of their status as Indians.

1973 - January 10, Deputy Assistant Secretary of Interior stated "in the absence of corrective legislation or a court order to the contrary, this Department is prohibited by law any assistance to Indians in Robeson and adjoining counties as defined in Lumbee Act, 1956."

1974 - April 5, H.R. 12216 introduced to repeal disclaimer clause in Lumbee bill. No action.

- September 30, Indian Education Act granted money for Lumbee students, because they are Indians, to Robeson County schools and Lumbee Regional Development Association.

1975 - April 4, Maynor vs. Morton case held that Indians as defined in Section 19 *of* Indian Reorganization Act unaffected by Lumbee Termination Act *of* 1956.

- August 5, Bureau *of* Indian Affairs sent officials to explain agency's new position as a result *of* case cited above and what benefits "22" are entitled to from the agency.

1977 - January-June, Bureau of Indian Affairs builds houses for remaining "22" and informs them they are entitled to scholar- ships, vocational training, housing, and economic development loans.

1978 - February and July, hearings on S. 2037 a new procedure for recognizing Indians by Federal Government.

- Education Amendments of 1978 extend the Indian Education Act until 1983. Mandates a "definition of Indian" study to look at options contained in Title IV, Indian Education Act. .

1980 - Indian Definition Study convened. Recommendations due to Congress May 30, 1980.

STATE OF NORTH CAROLINA

MICHAEL F. EASLEY
GOVERNOR

September 16, 2003

The Honorable Ben Nighthorse Campbell, Chair
Senate Committee on Indian Affairs
Room SH-838
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The Honorable Daniel K. Inouye, Vice Chair
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Room SH-838
Hart Senate Office Building
Washington, DC 20510

Dear Senator Campbell and Senator Inouye:

Thank you for the invitation to submit written comments about pending legislation for federal recognition of the Lumbee Tribe of North Carolina by the Congress of the United States of America. I believe full federal recognition of the Lumbee Tribe is long overdue.

Recognition of and interaction with the Lumbee people as a unique, distinct Indian tribe began when white settlers from Virginia, South Carolina and Europe first arrived in the Cape Fear and Pee Dee River Basins after the Tuscarora War (1711-1715). There, the settlers encountered a well-populated, cohesive Native American community situated mostly along and to the west of what is now known as the Lumber River in Robeson County. Historical records show a well-developed tribal group living and using the land. As early as 1890, the U.S. Department of Interior acknowledged this fact among others as evidence that the Lumbee people are Native Americans.

A proclamation by colonial Governor Matthew Rowan on May 10, 1753 stated that Drowning Creek (in Robeson County) was "the Indian Frontier." Other historical records of the eighteenth and early nineteenth centuries including Revolutionary War pensions for Lumbees who fought for American independence attest to the Lumbees as American Indians. Logically, it is reasonable to conclude that these individuals were members of what is today known as the Lumbee Tribe.

In 1885, North Carolina's General Assembly passed a bill recognizing and naming the Lumbee tribe Croatan. In 1953, the State officially changed the tribe's name to "Lumbee Indians" following a 1952 tribal referendum.

For more than a century, North Carolina Governors, various state legislators and Members of the North Carolina Congressional delegation have supported the effort by the Lumbee Tribe to obtain federal recognition, beginning with a petition to Congress in 1888. Enclosed are copies of letters by former Governors James G. Martin (R) and James B. Hunt, Jr. (D) – my immediate predecessors – attesting to the strong bi-partisan support for federal recognition that the Lumbee Tribe has enjoyed during the last generation.

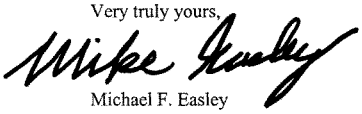
In the past, federal recognition has been denied because of opposition by the Bureau of Indian Affairs and Department of Interior on budgetary grounds. Each of several federal investigations into the Lumbees' history, genealogy and ethnicity has concluded that the Lumbees are in fact Native Americans. It follows that federal recognition should be authorized for this long standing American Indian Tribe.

Personally and on behalf of North Carolina, I offer to our fellow Lumbee citizens and to the Congress our full, unqualified support for Congressional recognition of the Lumbee Tribe. I encourage your support for the Lumbee Tribe and for the adoption of this bill.

I thank the Senate and the Indian Affairs Committee in particular for holding this hearing and for inviting me to offer written comments about the Lumbee Tribe recognition bill.

With warm personal regards, I remain

Very truly yours,



Michael F. Easley

6-18-03; 9:13PM;

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES G. MARTIN
GOVERNOR

July 30, 1991

Senator Daniel K. Inouye
Chairman
Senate Select Committee on Indian Affairs
Hart Senate Office Building, Room 838
Washington, D.C. 20510

Dear Senator Inouye:

I have asked James S. Lofton, Secretary of the North Carolina Department of Administration to represent me at the Joint Hearing regarding S. 1036, the Lumbee Recognition Bill, which will be held on August 1. Secretary Lofton will be accompanied by Henry McKoy, Deputy Secretary of the Department of Administration, Patrick O. Clark, Chairman of the North Carolina Commission of Indian Affairs, and A. Bruce Jones, the commission's executive director.

I fully support the passage of S. 1036 and am requesting the support of the Senate Select Committee on Indian Affairs. The State of North Carolina has recognized the Lumbee Tribe as a separate and viable Indian entity since 1885. The passage of S. 1036 will entitle the Lumbee to enjoy the same rights, privileges and services enjoyed by other federally recognized tribes in the nation and will, further, be a major step toward rectifying the inequities suffered by the Lumbee people for centuries.

I thank you for your attention to this matter and will appreciate your favorable consideration of my request.

Sincerely,

Jim Martin

James G. Martin

cc: Senator Jesse Helms
Representative Charlie Rose
Representative Charles Taylor

6-18-03; 9:13PM;

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES G. MARTIN
GOVERNOR

October 18, 1991

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The United States House of Representatives recently passed H.R. 1426 which provides for full federal recognition of the Lumbee Tribe of Cheraw Indians of North Carolina.

I am in support of this legislation as evidenced by the enclosed testimony given on my behalf by Secretary James S. Lofton of the North Carolina Department of Administration at a joint hearing of the Senate Select Committee on Indian Affairs and the House Interior and Insular Affairs Committee held August 1, 1991. H.R. 1426 is now before the United States Senate, as is its companion bill, S. 1036.

I am requesting your support of the passage of this legislation and its subsequent signing into law following its successful passage.

Sincerely,

Jim Martin

James G. Martin

JGM:lf

Enclosure

6-18-03; 9:13PM;

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT, JR.
GOVERNOR

March 11, 1993

The Honorable Bruce Babbitt
Secretary
U. S. Department of Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Bruce:

I am pleased that you were able to be in our state recently and I appreciated the opportunity to meet with you.

There are approximately 40,000 Lumbee Indians living in North Carolina and they have been officially recognized by the State of North Carolina since 1885. The Lumbees have been seeking federal recognition since 1888. Seven studies have shown them to be an independent Indian community.

I would like to reiterate my strong support for the Congressional process for federal recognition of the Lumbee Indian tribe in North Carolina. As you know H. R. 334, introduced by Congressman Charlie Rose of North Carolina, would provide such recognition. We support that legislation as stated in my letter of January 28, 1993.

Federal recognition of the tribe has been endorsed by the N.C. Commission of Indian Affairs, the Governors' Interstate Indian Council, and the National Congress of American Indians which is the oldest and largest Indian organization in the country.

The Honorable Bruce Babbitt
March 11, 1993
Page 2

In 1956 a bill was passed by the Congress to recognize the Lumbee tribe, but it denied the tribe the benefits or protections afforded to Indians by the U.S. of America.

For over 100 years the Lumbees have tried to obtain federal recognition, but to no avail. It is my opinion that the administrative recognition process that was proposed by the previous administration simply is too cumbersome, time-consuming, costly and has not worked effectively. Therefore, I would urge you to support the Congressional recognition process as proposed by Congressman Rose.

I want to work with you and the President in any way possible to help the Lumbee Tribe receive Congressional recognition. I am confident that this recognition is not only in our state's and the tribe's best interest, but in the interest of the United States as well.

Sincerely,

James B. Hunt, Jr.

6-18-03; 9:13PM;

FEB 03 '93 12:54 GOV'S COMMUNICATIONS P.1

STATE OF NORTH CAROLINA
OFFICE OF THE GOVERNOR
RALEIGH 27603-8001

JAMES B. HUNT, JR.
GOVERNOR

January 28, 1993

Post-it™ brand fax transmittal memo 7671 | # of pages ▶ 1
To: Linda Koontz | From: [illegible]
Co. | Co.
Dept. | Phone #
Fax # (301) 403-5124 | Fax # (202) 232-4300

The Honorable Bruce Babbitt
Secretary
U.S. Department of Interior
Washington, DC 20240

Re: Federal Recognition of the Lumbee Indians

Dear Bruce:

This letter is to ask for your assistance in obtaining federal recognition for the Lumbee Indian tribe, which has many members in North Carolina. Congressman Charlie Rose (D-N.C.) has introduced a bill (H.R. 334) that would provide such recognition.

Before the House Subcommittee on Indian Affairs considers H.R. 334, I understand that the Clinton Administration will release its position on the bill. I ask that you and the President support the bill.

The Lumbee have 40,000 enrolled members in the United States and should be recognized. In fact, seven studies in this century have shown them to be an independent Indian community.

I appreciate your consideration of this letter. Please contact Congressman Rose or me if we can assist you in any way with this matter.

My warmest personal regards.

Sincerely,

James B. Hunt, Jr.

From: Bud Shapard [bud1@citcom.net]
Sent: Thursday, September 11, 2003 11:47 AM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Senate Bill S-420

274 L. R. Campground Road

Pisgah Forest, NC 28768

828-884-2710

September 11, 2003

Chairman Ben Nighthorse Campbell

U.S. Senate

Committee on Indian Affairs

Washington, DC 20510-6450

Dear Mr. Chairman:

This letter is in support of S.420, the Lumbee Recognition Bill. I retired from the Bureau of Indian Affairs in 1987. At the time of my retirement, I was the Branch Chief for the Branch of Acknowledgment and Research. That branch is responsible for the evaluation of petitions for federal acknowledgment from unrecognized tribes. I was the author of the original regulations (25 C.F.R. Part 54) which were published in 1978, amended in 1994, and republished as 25 C.F.R. Part 83. I was the Branch Chief of the Acknowledgment Branch for the first ten years of the branch's operation.

Unless they have uncovered another tribe of which I am unaware, at 53,000 members, the Lumbees represent the largest unrecognized tribe in the country. At least three times larger than the next largest petitioner. It is my opinion that the group's size has

been the primary impediment to its recognition and the basis of much of the negative bias that exists within the Bureau of Indian Affairs. Other mid-level supervisors, who were involved with the process in one capacity or another, shared this opinion with me. The Acting Chief for the Division of Tribal Government, once told a national conference of Tribal Government employees and Superintendents that "The Lumbees would have been recognized in the early 1900s if there were not so many of them."

Aside from the fact that size has been a major detriment to the Bureau's acknowledgment of the group, it is my opinion that because of the size of the Lumbee Nation, it is important that the tribe be recognized by legislation, and not through the Bureau's administrative process. The bureau's cumbersome procedure was not designed to handle the unique size of the tribe. When the branch was established, it was anticipated that the size of petitioning groups would run from between 250 and 2000 members. It was expected that a few that might have populations of 5000. The Lumbees, at 53,000, are in a class all to themselves. During my time as Branch Chief, it was generally agreed that the branch, as it was constituted then, simply could not handle the Lumbee petition unless an entirely separate staff was employed and established in offices in Lumberton, North Carolina. Time frames fixed in the regulations would be meaningless. The costs would be astronomical. Only one of the requirements, genealogical proof of Indian ancestry for 53,000 people would take years to verify. The Houma Tribe from Louisiana, the next largest petitioner, is only one-third the size of Lumbee and has been in process within the branch for twelve years. The case remains unresolved.

It appears to me that the Lumbee Nation has an extraordinarily strong case under the standards set in the regulations. They are recognized by the State of North Carolina; they have a clear and obvious community and polity; and can present documented proof of their existence as a tribe living in one location back to the earliest census. I am a Carolinian, born and bred. There has never been a time in my life that the Lumbees were not considered an Indian tribe, and that fact was so taught in the public schools as far back as the 1940s, and most likely before that. At one point the federal government did a eugenics study on the group. Outrageous as it was, the study determined that a number of the Lumbee people surveyed were bone fide Indians, eligible for services from the Bureau. Despite the fact that the Lumbees were eligible, the group was prevented from organizing by bureau officials. Some of the people who were declared to be Indians were still alive after the recognition regulations were drafted. Efforts were made to have these survivors organize as a tribe in the 1980s, but this too was blocked by the B.I.A. Further, in 1989, the Associate Solicitor for Indian Affairs ruled that the Lumbee Tribe was not eligible to petition through the administrative process. At this point, it would be a waste of time, money, and personnel to force the present tribe to enter into the convoluted, never-ending regulatory process. It is common knowledge that Congress retains the unlimited power to recognize Indian tribes. Given the history of negative bias within the Bureau against the Lumbees; the extraordinary costs and time it would take to process a 25 C.F.R. petition through the acknowledgment procedures for a group this size, and the fact that absolutely nothing new will be learned about this group by forcing the tribe to go the regulatory route, it simply makes sense for Congress to pass legislation recognizing the Lumbees.

Bud Shapard

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