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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
710 LOCUST STREET, FEDERAL BUILDING
KNOXVILLE, TENNESSEE 37902

MARGARET GREENE, et al. Appellants,	)	
v.	)	Docket No. Indian 93-1
BRUCE BABBITT, et al., Defendants.	)	

AFFIDAVIT OF PATRICA SIMMONS

1. I am a Tribal Relations Specialist in the Branch of Tribal Relations, Division of Tribal Government Services, Office of Tribal Services, Bureau of Indian Affairs, Washington, D.C.

2. I have served in my capacity as a specialist since 1966.

3. One of my assigned duties has been to compile a list of tribes with which the Bureau has dealings.

4. During the 1970's and 1980's I prepared the list on a nearly annual basis. In recent years I have prepared it less frequently.

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5. The tribes on my list have commonly been grouped according to the nature of their form of government, i.e., a) those with a traditional form of govenment without written governing document, b) those with a written governing document or documents approved by the Secretary under his general authority over Indian Affairs, and 3) those with a written governing document approved by the Secretary pursuant to Federal statute.

6. The lists were initially prepared by my making a list of the names of the tribes in our files and distributing them to our Area offices and others for comments and revisions.

7. Initially, my lists included the names of tribes which were recognized only for limited purposes, such as pursuing Indian claims.

8. I am prepared to testify about the lists I prepared and the lists of tribes prepared by others with which I am familiar.

I declare under penalty of perjury that the foregoing is true and correct.

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Executed on _____.

_____
Patricia Simmons

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CERTIFICATE OF SERVICE

I, Scott Keep, certify that on August ____, 1994, I faxed a copy of the foregoing AFFIDAVIT OF PATRICIA SIMMONS to:

Russel Lawrence Barsh, Esq.
Rachael Paschal, Esq. 206-293-9431
Samish Indian Tribe
2704 Dundee Place
Anacortes, WA 98221

And that on August _____ , 1994, I mailed a true and correct copy of the same to:

Russel Lawrence Barsh, Esq.

Rachael Paschal, Esq.
Samish Indian Tribe
2704 Dundee Place

Anacortes, WA 98221

Allan E. Olson, Esq.
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_____
Scott Keep
Assistant Solicitor

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Docket No. Indian 93-1

Tribal Government and Alaska
Division of Indian Affairs

AFFIDAVIT OF
PATRICA SIMMONS

Certificate of
Service Page - 2

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1 UNITED STATES DEPARTMENT OF THE INTERIOR
2 OFFICE OF HEARINGS AND APPEALS
3 FEDERAL BUILDING, SUITE 116
4 710 LOCUST STREET
5 KNOXVILLE, TN 37902
6 MARGARET GREENE, et al.,)
7 Appellants,)
8 vs.) Case No.
9 BRUCE BABBITT, et al.,) Indian 93-1
10 Defendants.)
11 ----------
12 Proceedings Held before
13 David Torbett, Administrative Law Judge
14 on August 23, 1994
15 VOLUME II
16 1200 Sixth Avenue, 21st Floor
17 Seattle, Washington
18 --o0o--
19 APPEARANCES
20 For the Appellant: MR. SCOTT KEEP
21
22 For the Defendant: MR. RUSSELL BARSH
23
24 Reported by
25 MARCIA L. FERRELL, CSR

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1 (Recess.)
2 ALJ: Let's go back on the record.
3 PATRICIA SIMMONS, witness herein, having been duly sworn,

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4 was examined and testified as follows:
5 ALJ: Have a seat.
6 DIRECT EXAMINATION
7 BY MR. KEEP:
8 Q. Ms. Simmons, would you state your full name and
9 current work address for the record, please?
10 A. My name is Patricia Simmons, S I M M O N S, I work for
11 the Branch of Tribal Relations for the Bureau of Indian
12 Affairs, 1849 C Street Northwest, Washington, D.C., 20240.
13 Q. How long have you worked for the Bureau of Indian
14 Affairs?
15 A. Approximately 30 years.
16 Q. And have you always been working in your current job?
17 A. In my current -- I've worked for the Division of
18 Tribal Government, which has the Branch of Tribal Relations,
19 Branch of Acknowledgement. I worked in several branches
20 within that division.
21 Q. In connection with your duties in the Branch of Tribal
22 Relations, would you describe what your duties are?
23 A. My primary duties are working with Indian tribes in
24 developing constitutional forms of government, reviewing those
25 constitutions for the secretary, technical reasons, approving
0346
1 those constitutions, providing technical assistance to the
2 tribes in those areas.
3 Q. In connection with your duties in the branch, have you
4 ever prepared a list of tribes that the United States deals
5 with?
6 A. Yes, I have.
7 Q. And would you describe the first time, to the best of

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8 your recollection, when it was you first prepared such a list,
9 and under what circumstances?
10 A. In the mid-60's, as a result of frequent calls to our
11 branch to define or respond to what types of organizations
12 different Indian tribes had, I was instructed to prepare a
13 list of tribal organizations of those Indian groups with whom
14 we had dealings. In other words, if they had a constitution,
15 what was the type or form of government that each had. It was
16 designed primarily to facilitate our own purposes to respond
17 to these calls more quickly, rather than having to stop and do
18 research on each call. The list was a preliminary list, and
19 each entry was based on a review of the files at the branch.
20 Q. When you say the list was a preliminary list, was that
21 the first one you prepared, or what -- in other words, what
22 did you do with the list, the first time that you can recall
23 having prepared one?
24 A. I prepared what essentially was a preliminary draft
25 list for my boss, we ultimately circulated it to all our area
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1 offices for review and comment.
2 Q. And after you prepared the initial list, have you
3 prepared subsequent lists?
4 A. Yes, I have.
5 Q. And what have you done with those lists?
6 A. Well, as I said, it was a preliminary list, and it was
7 generally intended to identify the types of organizations that
8 the Indian groups had. It was never intended to be a list of
9 federally recognized tribes as such. Ultimately, it may have
10 evolved into that as a result of the pressures from the
11 Congress to develop the federal acknowledgement project.

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12 Q. Did you assist me in responding to inquiries for
13 production of documents from the appellants in this case?
14 A. Yes, I did.
15 Q. And those are the lists that we're talking about, is
16 that correct?
17 A. Yes. The lists that were just styled Organizations,
18 Categories.
19 MR. KEEP: Your Honor, I have no further questions.
20 ALJ: All right. Mr. Barsh?
21 MR. BARSH: Thank you.
22 CROSS-EXAMINATION
23 BY MR. BARSH:
24 Q. Good afternoon. Ms. Simmons, just for clarification,
25 the first time that you carried out this assignment of trying
0348
1 to prepare a consolidated list, what year was that?
2 A. It was around 1966.
3 Q. And you continued to revise or review that up to about
4 when?
5 A. There have been ongoing lists over the years.
6 Generally we would try to update it annually, or every couple
7 of years. The initial lists, as I indicated, were to set
8 forth a type of organization, were they organized under the
9 Indian Organization Act, did they have a constitution, was it
10 a non-IRA, Indian Organization Act type, but had some form of
11 approval. We also included in the initial preliminary lists
12 those groups that we dealt with on the basis of claims
13 purposes. There were many groups who for purposes of claims
14 under the Indian Claims Commission Act required attorney
15 contracts to be approved by the bureau.

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16 Q. To the best of your recollection, when did the issue
17 of whether groups were recognized or not recognized begin to
18 get mixed into the process?
19 A. Well, after we circulated it, the preliminary list, to
20 the area offices, they were concerned that it might convey an
21 impression other than it was intended for. So ultimately, in
22 the late 60's it was recast, and restricted to those groups
23 who had a formal organization approved by the department.
24 Constitutions. In terms of those tribes that had documents
25 under federal statute and those that were simply approved
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1 under the commission regarding delegation of authority, were
2 those tribes that we had some dealings with.
3 Q. So at that point there was a reclassification based on
4 some sense of the need to apply different standards to who got
5 on the list and who didn't?
6 A. I don't know so much that it was to apply different
7 standards. It was simply for our purposes didn't want it
8 to -- we wanted it for internal purposes, to list those tribes
9 that we had a formal relationship with.
10 Q. Right. And if I understood you correctly, but please
11 elaborate if you could, at that stage your basic concern was
12 whether there was a formal relationship in the form of an
13 approved constitution, a statute, or some of the other things
14 that you referred to.
15 A. Yes.
16 Q. As opposed to just whether they were out there or not,
17 or whether you knew about them.
18 A. Yes.
19 Q. When you did your initial work in 1966, what kind of

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20 documentation were you able to compile to bring this all
21 together? What records or files did you have access to and
22 use in doing that?
23 A. As I say, it was simply a chronological review of the
24 files within the branch. We, the bureau, and the branch
25 itself gets lots of correspondence from Indian groups, from
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1 citizens inquiring about different Indian groups, whether or
2 not they're Indian, or whether they were recognized, different
3 things. So it was simply -- the initial list was a
4 chronological look at the files, and we just listed everybody
5 that there was a file records section for.
6 Q. That implies that you didn't contact the
7 superintendents, for example, and see if they agreed with it
8 or not, specifically.
9 A. That was the purpose of sending the list out for
10 review and comment to the area offices.
11 Q. Did you maintain any kind of regular record of their
12 responses and critique, I guess is more of the way you would
13 classify it, to represent the different groups?
14 A. I'm sure we did, but over the years our files have --
15 we've moved in the time, and many of our files have
16 disappeared, so there's not a complete record of that.
17 Q. When it came time to finally mix in the question of
18 recognition, was there any formality, any formal procedure or
19 review to deal with the cases that you took off the list
20 because you didn't feel there was any evidence of a formal
21 relationship with the group?
22 A. It was based on the representations of each area
23 office of those tribes that they dealt with on the formal,

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24 federal basis.

25 Q. So each area office was consulted to confirm its

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1 understanding of which groups were in a formal relationship,

2 administered by them at the area level, is that correct?

3 A. Yes, that was the purpose of submitting the list for

4 their review.

5 Q. And that would have been 19 --

6 A. The same year, 66.

7 Q. Late 60's?

8 A. 66. 1966, after I did the initial draft and submitted

9 it to my boss, it was ultimately circulated to the areas under

10 a letter dated August 1966 for their review and comment.

11 Q. And I take it from one of your earlier answers that

12 the records of the review and comment are no longer in

13 existence.

14 A. I've not been able to find them.

15 Q. Did you continue to participate in this kind of a -- I

16 guess I would call it an advisory capacity on this question,

17 into the 70's, past the 1960's that we've just been talking

18 about?

19 A. Yes, we maintain internally a list of those tribes

20 that we have a formal relationship with. Periodically it was

21 updated as new groups were recognized. Whether it was by act

22 of Congress, or court order.

23 Q. In your experience, was that pretty much routinely

24 what was consulted, if a question arose at the central level

25 about whether a particular group was recognized or not?

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1 A. I don't quite understand your question.

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2 Q. In your experience in that period from 1966 to, say,
3 the early 70's, as far as you know, is this the list that was
4 consulted if a question came up about a particular group's
5 legal status?
6 A. Generally so. But you have to remember initially, and
7 for a number of years prior to the federal acknowledgement
8 process, the list was pretty much categorized as the
9 organizational status of federally recognized Indian tribes.
10 Q. So the issue is organizational status.
11 A. Yes.
12 Q. And the problem was what kind of a structure are we
13 dealing with, rather than what's the legal status of the
14 entity.
15 A. Yes. People would be interested in whether or not a
16 particular group had an Indian organization, constitution,
17 whether it was a non-IRA constitution, or whether they had
18 none at all.
19 Q. Just moving ahead for the moment to the early 70's,
20 say between 70 and 75, to give it a kind of a broad spread.
21 Do you recall any consultations concerning the tribes in this
22 area, the Pacific Northwest, in relation to fishing rights and
23 their status as recognized or nonrecognized tribes? Were you
24 included in those discussions?
25 A. No, I was not.
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1 Q. Would you have any knowledge of whether your list
2 became an issue in those discussions, or was relied upon?
3 A. I have no way of knowing.
4 Q. Let me just give you a couple of copies of documents
5 we've received in discovery, so that perhaps you can take us

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6 very briefly through a page or two of them and help explain
7 them. I marked them as Exhibits P-3 and P-4.
8 MR. BARSH: Since we haven't had a chance, your Honor,
9 yet to make photocopies, I hope it's all right for me to give
10 the witness these originals, and then we'll pass them on to
11 the court reporter. I think defendant's counsel, who has
12 provided them to us, is already aware of their contents.
13 ALJ: All right, that will be admitted.
14 MR. KEEP: Your Honor, if I may, I'd just like to
15 look. We've given them a pile of copies, and just make sure
16 we know which ones are going to be in fact --
17 (Marked Exhibit Nos. P-3 & P-4.)
18 Q. (By Mr. Barsh) Could I direct your attention
19 momentarily to the early date of the two, which I believe is
20 dated 1966. Is this a copy of your original listing of
21 tribes?
22 A. No, it's not. The original list was dated July 21st,
23 1966.
24 Q. Okay. What's the status of this document? Do you
25 recall where in the sequence of editions or revisions this
0354
1 fell?
2 A. I would assume that it was another draft. I can't
3 tell you for sure, because it's been a long time. It appears
4 to very much look like a second draft of the preliminary list.
5 Q. Could I direct your attention to page 14 in that
6 document. That's part of a list of what I've seen on my copy
7 of this is entitled Unorganized Tribes. Do you find the
8 Samish listed among the unorganized tribes under the Portland
9 area, on page 14?

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10 A. Yes, I do. But I would also like to note that the
11 page two of the cover memo indicates that these unorganized
12 tribal groups and villages may be organized for a specific
13 purpose, but not including governmental. Many of the groups
14 that are listed under the Portland area there were recognized
15 for claims purposes only.
16 Q. Is that your understanding of why the Samish are
17 there?
18 A. Yes.
19 Q. When you're referring to page two, is that the cover
20 letter?
21 A. Yes.
22 Q. Could you read that section to us, as it appears on
23 page two? That sentence?
24 A. Yes. The main title is categorized Unorganized Tribal
25 Groups and Villages. Under the Lower 48 it says, paren, "May
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1 be organized for a specific purpose, but not including
2 governmental."
3 Q. Okay. Why I was curious was because it doesn't say --
4 as such it doesn't say only for claims purposes, it says for
5 specific purpose, but not including governmental. I wonder if
6 you could make a distinction for us, there, between what a
7 specific purpose might be other than either governmental on
8 the one hand or claims on the other. Receiving federal
9 benefits, for example?
10 A. No, it was never intended to be a list of groups
11 eligible for federal benefits.
12 Q. Do you recall any documents that confirm that
13 interpretation?

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14 A. No, not offhand.
15 Q. Directing your attention to the other document, which
16 is marked as Plaintiff's Exhibit 4. It's dated 1969, and I
17 take it, and please elaborate if necessary, that this is one
18 of the later versions, perhaps even at the stage the question
19 of recognition began to get mixed into the considerations of
20 preparing this list. Is that correct?
21 A. I'm sorry?
22 Q. Does this 1969 document reflect what you were
23 referring to earlier as later work that began to take into
24 consideration the question of federal recognition?
25 A. The December 5th, 1969 is a revision of the list
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1 following comments received from the area.
2 Q. It took three years to deal with problems?
3 A. Sometimes it does.
4 Q. Okay.
5 A. And then you will note that the subject matter was
6 recast somewhat.
7 Q. Could you elaborate on that, how you see it being
8 redefined as a list?
9 A. Well, basically it indicated the areas were concerned
10 the initial list would convey other than what it was intended.
11 So it was recast to strictly reflect only those Indian tribes
12 with who we had some dealings in the form of IRA
13 constitutions, other constitutions, and those that were
14 unorganized, but that we had some formal dealings with. Other
15 than for claims purposes, so forth.
16 Q. Just to confirm, to clarify what you said earlier,
17 this was based on the area office reports and not of research

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18 done in your office?
19 A. This list?
20 Q. Yes.
21 A. They were primarily based on the files of the areas
22 offices, the listing of those groups that we thought that we
23 had a formal political relationship with.
24 Q. I take it that sometime between 1966, when the Samish
25 were listed on that earlier version as an unorganized tribe,
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1 and 1969 when, I hope without the need to have the witness
2 read it, I easily could see that the Samish do not appear on
3 the list, the 1969 list, that some decision was taken
4 somewhere that the Samish were not one of the tribes that the
5 United States had a formal political relationship with.
6 A. That's correct. The Portland area office indicated to
7 us their only dealings with the Samish were claims purposes
8 only.
9 Q. Is there any record of the way in which that decision
10 was taken?
11 A. Not that I've been able to find. As I said, our
12 files --
13 Q. Right.
14 A. There were, however -- for instance, the Portland area
15 office, many of our offices would submit to the central office
16 a tribal directory, which would contain a list of officials of
17 specific groups under their jurisdiction. And it would set
18 forth, for instance, what type of organization they had,
19 whether it was an IRA group, whether they had a tribal
20 council, a general council, when they formed, how often it
21 might meet, what they were recognized for, and whether they

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22 had a reservation, acreage, different things like that.
23 was in the early 70's, and could be prior to that. I'm sure
24 there were, for the Samish tribe, there was a directory sheet
25 that indicated they were recognized for claims purposes only.

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1 Q. A directory sheet?
2 A. Yes.
3 Q. Is that one of the documents you provided to us?
4 A. Not that I'm aware of.
5 Q. Is that the source of your decision to put them on
6 this list at the place that you did?
7 A. I'm sure it had something to do with it, but as I
8 indicated, 30 years is a long time, and I don't remember all
9 the specifics of what transpired.
10 Q. Okay. One last question. Do you know whether there
11 were any formal requests circulated, whether there were any
12 formal requests circulated to the area offices or to the
13 superintendents for this kind of information, whether there
14 were questionnaires or circulars that you're aware of in the
15 60's, saying who's out there, who do you deal with, who's not?
16 A. Not that I have any recollection of. Which isn't to
17 say they didn't exist.
18 Q. And no list of -- no formal list that you can recall
19 during the 1960's of criteria that we use to classify tribes
20 into these categories of organized, unorganized, unorganized
21 but dealt with for certain specific purposes, any kind of
22 general kind of criteria or standards that were used by your
23 office at that time?
24 A. Our office, as I indicated, is the repository for
25 tribal constitutions. The secretary is called upon to approve

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1 by statute those constitutions adopted under the Indian
2 Reorganization Act. We have a collection of those, we have a
3 collection of most constitutions, whether they were approved
4 by the secretary, by the Commissioner of Indian Affairs. We
5 even have sometimes a collection of constitutions that a tribe
6 may use that had no formal federal approval whatsoever.
7 Q. So you worked from those documents, too?
8 A. Yes. But generally, the criteria that may have been
9 used to classify these I would assume were those that are
10 listed in Felix Cohen's Federal Law. That was the basis of
11 recognition over the years. Which ultimately evolved into the
12 approval process.
13 Q. Excuse me, I thought maybe I misunderstood. I thought
14 earlier you made these classifications, you decided which
15 tribes fit under which classification.
16 A. You asked me two separate questions. You asked me
17 what the 1966 list evolved from, and then you asked me about
18 criteria for recognition, I thought. If that's not what you
19 asked me then I misunderstood.
20 Q. I'm sorry, criteria for doing the classifications that
21 you did both in 66 and 69.
22 A. Oh, there was no criteria other than going through the
23 branch files and listing in a preliminary list all those file
24 sections that were in there for each group.
25 Q. I see. Then in 1969, when it became a recognition

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1 question, I should understand your answer is that you
2 understood your area office used Felix Cohen's criteria when
3 they told you who to decide to keep on the list?

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4 A. No, that's not exactly what I said. In 1969 it wasn't
5 necessarily a question of federal recognition, per se. We
6 just felt that we should stick to what we knew, and those
7 groups that we dealt with on an organizational basis. Not
8 technically or necessarily federal recognition, per se.
9 Q. Just one last matter. Were you still dealing with
10 tribal organization documents in 1974?
11 A. In 1974? I believe I was in the Branch of Tribal
12 Relations at that time, and we continued to review tribal
13 constitutions.
14 Q. Please forgive me if this is calling too much on
15 powers of recollection, at this distance of time, but do you
16 recall the Samish Indian tribe's proposed constitution coming
17 through your office in 1974?
18 A. Not offhand, I have no recollection of that. But that
19 isn't to say that it didn't, and I may not have been working
20 in that particular area.
21 Q. Okay. The reason for asking the question is because
22 in the record of this case, in the administrative record
23 already formed, there was some correspondence about the
24 submission to the office, to the Branch of Tribal Relations,
25 of a proposed constitution with a letter of endorsement from
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1 the superintendent and from the area director. So one of the
2 things that we have been unable to understand is what happened
3 when it got to your office in 1974. But you have no specific
4 recollection of that, you may not be able to help us.
5 A. No, that's not a case I worked on.
6 MR. BARSH: Okay, thank you.
7 ALJ: Anything else, Mr. Keep?

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8 MR. KEEP: Yes, your Honor, I think I just have one
9 brief question. If I can see Exhibit 4, it was.
10 REDIRECT EXAMINATION
11 BY MR. KEEP:
12 Q. Ms. Simmons, I'd like to direct your attention to page
13 14 of Plaintiff's Exhibit No. 3, entitled at the top
14 Unorganized Tribes, Portland Area. Would you look down that
15 list of tribal names under the Portland area. This is the
16 list that you were looking at, I think, before, that showed
17 the Samish?
18 A. Yes.
19 Q. Are you familiar with all or most of the names on
20 there, of the groups?
21 A. Yes.
22 Q. Are you familiar with whether or not there are other
23 groups on that list that may have been on there only for
24 claims purposes?
25 A. Yes.
0362
1 Q. Can you identify some of the ones that you believe
2 were on there or may have been on there by virtue of the fact
3 that you had to approve, you said, attorney claims contracts
4 or similar documents?
5 A. There are a number of groups listed here that were
6 recognized for claims purposes only. For purposes of
7 approving their attorney contracts, such as Chinook, Cowlitz,
8 Duwamish, Kikiallus, Samish, San Juan, others. As I said,
9 this was simply a preliminary list that was circulated to the
10 field for their review and comment. It was not intended as a
11 list of federally recognized tribes. I myself do not have the

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12 authority to issue such a list, such a list would have to be
13 approved by the secretary or designated representative.
14 MR. KEEP: Thank you. I have no further questions,
15 your Honor.
16 MR. BARSH: Your Honor, very briefly, if I might.
17 ALJ: Go ahead.
18 RECROSS-EXAMINATION
19 BY MR. BARSH:
20 Q. Just building on what Mr. Keep has -- please, hang
21 onto that. Same page, page 14 of that 1966 document. Since
22 Mr. Keep asked about other groups there that you might have
23 recognized as having been involved at least for claims
24 purposes, if perhaps nothing else, do you you recognize any
25 groups in that Portland area list on page 14 which are now
0363
1 recognized as Indian tribes in a government-to-government
2 relationship to the United States?
3 A. I believe the Jamestown band is one of the groups that
4 was acknowledged by BAR. I believe Stillaguamish was
5 ultimately recognized by the department several years ago.
6 There may be others.
7 Q. How about the Nooksacks?
8 A. The Nooksacks are now federally recognized, I believe.
9 Q. Since 1971?
10 A. 1971?
11 Q. How about the Lower Elwha? Act of Congress, 1936.
12 A. I believe that is a federally recognized tribe now,
13 yes.
14 Q. So I see a couple of tribes on here that -- at least
15 several that are now federally recognized, and one thing that

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16 puzzles me in your description of this is that the Lower
17 Elwha, at least, had a reservation established by an act of
18 Congress about 35 years before you prepared this list. Yet
19 they're here as unorganized, and by your description,
20 essentially on this list only because they had a claim against
21 the United States.
22 Could you clarify for us, does this have, first of
23 all, any implication in terms of the judgment of your office
24 at that time as to the eligibility of any of these groups to
25 have a federally recognized relationship with the United
0364
1 States?
2 A. I don't believe that's exactly what I said with regard
3 to the Lower Elwhas. I don't believe I listed them as a group
4 that was recognized for claims purposes only.
5 Q. Excuse me, but you said that all of these unorganized
6 tribes were on this list for claims purposes only. That was
7 your interpretation of the statistical table on page two of
8 your letter. When I asked you what it meant to be an
9 unorganized tribal group, you said it was a group that was
10 organized for claims purposes only, and --
11 A. I don't believe that's what I said. I said some of
12 them may have been recognized for claims purposes only.
13 MR. BARSH: I think I'm going to -- your Honor, may I
14 ask the reporter to go back and read the witness's answer?
15 THE WITNESS: That's what I said, that --
16 MR. BARSH: We can talk about it if --
17 ALJ: Wait just a second, let her -- she may respond,
18 that will clear it up.
19 MR. BARSH: Very good.

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20 ALJ: Go ahead, what were you going to say?
21 THE WITNESS: As I recall, what I said was that the
22 groups that were listed on there were not all categorized as
23 those that have a constitution which the federal government
24 had approved. The list did include -- the preliminary list
25 did include groups that were not organized under a
0365
1 constitution. I read to you, Mr. Barsh, the title on page
2 two, which indicated that some of those groups listed in that
3 category may be organized for a specific purpose, but not
4 including governmental.
5 MR. BARSH: Okay.
6 ALJ: Is that satisfactory, or do you --
7 MR. BARSH: Let me build on that, I'll take that and
8 just --
9 ALJ: All right, I take it back. I forgot we do have
10 a certified reporter, she could have read it back. I was
11 immediately reacting planning on a reporting machine, and this
12 never works.
13 MR. BARSH: We're doing just fine.
14 ALJ: Okay, all right.
15 Q. (By Mr. Barsh) Building on what you just said, then,
16 it seems to me it would follow that some of these groups that
17 are listed as unorganized tribes might be here for other
18 reasons besides just being claims groups.
19 A. Yes, that's possible.
20 Q. Okay. What's your basis for recalling that the Samish
21 are here for claims reasons?
22 A. The basis for that is information provided our
23 Portland area office, including the tribal directory for each

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24 group under their jurisdiction, which included those that they
25 may have -- the reservation groups that were recognized versus
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1 the nonreservation groups that were recognized for a specific
2 purpose, i.e., generally for claims purposes only.
3 Q. Just to be precise, forgive me for this, you had
4 mentioned before circulating versions of this list for
5 comments from the area offices, but I understand you to say
6 now that this list we're looking at, the 1966 list, puts the
7 Samish down here because of claims, because the area office
8 told you that they were recognized only for claims purposes.
9 A. The area office told us that ultimately after we
10 circulated the list. You will recall that I said this list
11 evolved from a perusal of our entire files in the branch,
12 which could have included apples, oranges and peaches, i.e.,
13 those that had some formal recognition in the form of a
14 constitution, and those that did not.
15 Q. So I take it that at the time you put the Samish on
16 this list, you didn't know whether it was for claims purposes
17 or not, it was just because they were in the central files as
18 one of the groups that you had correspondence with.
19 A. They were in the central files that we had
20 correspondence with, I don't recall whether I may have known
21 at the time that they were recognized for claims purposes
22 only.
23 Q. So you wouldn't have known at that time what the
24 extent of the United States' relationship with them was, other
25 than that they didn't have a recognized organization?
0367
1 A. Probably not.

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2 Q. Great, thank you.
3 ALJ: Okay anything else.
4 MR. KEEP: Nothing further, your Honor.
5 ALJ: All right, the witness may come down. Now, you
6 were going to quit after this witness today?
7 MR. KEEP: Yes, your Honor, we'd like to, it's now --
8 ALJ: Of course, I had been thinking a little bit more
9 about your rebuttal. The only thing he can rebut after
10 tomorrow is what she presented, and I would ask him to do
11 that, but he can't do his rebuttal for what you present next
12 week.
13 MR. KEEP: No, your Honor, I didn't mean to suggest
14 that. I would like to find out if the witnesses who have
15 testified, if counsel anticipates asking to try and recall
16 them. I don't anticipate recalling Dr. Paredes or
17 Ms. Simmons. I want to find out if they're now clear to go,
18 or if by virtue of his wanting to put on a rebuttal -- he can
19 put his rebuttal of --
20 ALJ: Just those witnesses.
21 MR. KEEP: Just those witnesses, that's all I was
22 thinking of.
23 ALJ: Let's do it tomorrow if you have any rebuttal to
24 those witnesses, because I can't expect you to put rebuttal on
25 for people you've got next week. But if you put that on this
0368
1 week, that would allow those witnesses to go.
2 MR. BARSH: Your Honor, with respect to Dr. Paredes, I
3 would think that we would probably not be using our earlier
4 witnesses in rebuttal. My intention in reserving Dr. Suttles
5 and Dr. Sturtevant as possible rebuttal witnesses was more to

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6 address the specifics of the Samish case which will be
7 presented by Dr. Roth and by Dr. Hajda at a later date, so
8 that will be later. And the only other concern I would raise
9 is that the last witness has possibly raised some other
10 questions about the state of the documentary record and the
11 information that has been shared to this point between the
12 parties, and I would need perhaps a day to decide whether or
13 not we might want to talk about some need for further
14 documents. But I'm not sure we're talking about another
15 witness, a live witness at this point that we can think of.
16 ALJ: Okay, you can get into that later, then. All
17 right.
18 MR. BARSH: Very good.
19 ALJ: Okay. We'll start tomorrow at 9:30.
20 (Recess.)
21
22
23
24