

TRIBAL CONSULTATION

DRAFT REVISIONS TO FEDERAL ACKNOWLEDGMENT REGULATIONS
(25 CFR 83)

PARAGON CASINO RESORT

MARKSVILLE, LOUISIANA

AUGUST 6, 2013

Panel Members:

Larry Roberts, Deputy Assistant Secretary - Indian
Affairs

Kaitlyn Chinn, Office of the Solicitor - Division of
Indian Affairs

Elizabeth Appel, Office of Regulatory Affairs - Indian
Affairs

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BY LARRY ROBERTS:

My name is Larry Roberts. I am the Deputy Assistant Secretary for Indian Affairs. It is out of respect for Chief Earl Barbry's family that we are going forward with this tribal consultation and public meeting this morning.

Shortly after Chief Barbry passed we reached out to his family, and his family asked that we go forward with both of these meetings. So as you all can understand, there's no one from leadership that's available this morning from the Tunica Biloxi Tribe, so I would ask that we take a moment of silence at in memory of Chief Barbry at this point in time.

In terms of today, what we are going to do is I am going to ask Katie Chinn from Solicitor's office to go through the presentation; it should take about fifteen to twenty minutes. At that point we will open it up for comments from tribal representatives. A couple of points to flag at the onset,

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that is that the redlined version that everyone has of the regulations, that's the redline against the existing regulations. As we are going through this rule making process, we will change the language in the regulations to plain language. It's just something that we do generally as we are promulgating or amending new rules. So whatever the proposal we move forward with, it will put in plain language. In the interest of time, we are going to go forward with the presentation this morning, and then we will hear comments from tribal representatives.

BY KAITLYN CHINN:

Again, my name is Katie Chinn. I'm a citizen of the Wyandot Nation of Oklahoma and I work in the Solicitor's office. There are three ways in which the U.S. Government can acknowledge or recognize an Indian tribe. The first is as a result of a Federal court decision. The second is through legislation from Congress. And the third is

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administratively, which is a determination by the Assistant Secretary of Indian Affairs. And that's what we are talking about today. Before 1978 the assistant secretary reviewed petitions by groups seeking Federal acknowledgment as tribes. On September 5th, 1978, the Department promulgated regulations that established a uniform process for the assistant secretary to review petitions. In 1994, the Department revised the regulations, leaving the criteria unchanged, but adding a section for unambiguous previous Federal acknowledgment. In 2000, 2005 and 2008, the Department published guidance with internal processing changes but did not change regulations themselves. Of the five hundred sixty-six (566) Federally recognized tribes, seventeen (17) were recognized through the Part 83 process. We've heard that and many have criticized the process as broken. They say it's too long, that it's burdensome,

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that it's expensive, that it's unpredictable, and that it's not transparent. In 2009, Secretary Salazar testified before the Senate Committee on Indian Affairs and committed to examining ways to improve the process. In 2010, the Assistant Secretary's office, the Solicitor's office, and the Office of Federal Acknowledgment worked on a draft of revisions to Part 83. In 2012, Assistant Secretary representative Brian Newland identified guiding principles, which are the goal. In 2013, Assistant Secretary Washburn testified before the House Committee on Indian and Alaskan Native Affairs, and promised to release a discussion draft of the initiatives. On June 21, the assistant secretary released the discussion draft. And that discussion draft was developed by a DOI workgroup that consisted of people from the assistant secretary's office, people from the Office of Federal Acknowledgment, and people from the

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solicitor's office. The goals of the discussion draft are transparency. Making the petitioning process more easily understood and open. Timeliness. Moving petitions through the process, responding to requests for information quickly, while ensuring an appropriate level of review. Efficiency. Being mindful of limited resources of petitioners and the government. Flexibility. Accounting for the unique histories of tribal communities. And integrity. Maintaining the accuracy and integrity of decisions. This slide provides an overview of the primary changes the discussion draft puts forward. First is the discussion draft eliminates the Letter of Intent. It also adds for expedited favorable and negative proposed finding. It clarifies some criteria. It allows a petitioner to withdraw after active consideration begins and any time before a proposed finding is released. It provides for automatic final determinations under

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certain circumstances. It examines who issues the final determination. And it eliminates Interior Board of Indian Appeal's review. And it also includes placeholders for input. The elimination of the Letter of Intent. So under the discussion draft the process begins when a petitioner files a documented petition. And that's meant to streamline the process. The draft also provides for expedited negative review at the beginning of active consideration. Under the expedited negative review, the Department looks at three criteria. First is criterion (e), descent from historical Indian tribe. (F), membership principally of persons who are not members of another acknowledged tribe. And (g), Federal relationship was not terminated or forbidden. If a petitioner is not able to establish any of these three criteria, the Department issues a proposed finding declining to acknowledge the group within six (6)

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months after beginning active consideration. If the petitioner meets all three of these criteria, then the petitioner proceeds to a full evaluation of the petition or an expedited favorable evaluation if that was asserted. The draft also puts forward an expedited favorable review. And this is only done if the petitioner asserts that they are eligible for that review. And it's done after the petitioner passes the expedited negative review of criteria (e), (f), and (g). A petitioner is eligible for an expedited favorable if it can show either that it has maintained since 1934 a reservation recognized by the state, and continues to hold that state reservation. Or that the U.S. has held land for the group at any point in time since 1934. So if a petitioner can provide a governing document, which is criterion (d), and it meets either of the above criteria, in addition to meeting criteria (e), (f), and (g), then the Department will issue

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a proposed finding acknowledging the tribe within six (6) months after active consideration begins. If a petitioner does not meet those criteria, then the Department will undertake a full evaluation. The draft also deletes criterion (a), which is external observers identify the group as Indian. And this is under the idea that identification of an Indian tribe shouldn't require outside identification as such. The discussion draft also modifies criteria (b), which is community, and ©, which is political influence or authority. And under the discussion draft the Department only looks at 1934 to present. Though this is intended to limit the administrative burden on petitioners and the government, we chose 1934 because that was the year that signified a shift in Federal Indian policy from assimilation and allotment to self determination. The discussion draft does not change criteria (e), descent from a historical

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tribe. So it does suggest that historians' and anthropologists' conclusions are allowed as evidence of descent from a historical tribe. And also the discussion draft asks for your input on more objective criteria. So we have placeholders in criteria (b), which is community, and criteria (e), which is descent from a historical tribe. We're asking for your input on whether we should add numbers to make that close criteria more objective. Under the discussion draft a petitioner can withdraw their petition at any time before a proposed finding is released. In this situation the Department will cease consideration upon withdrawal, and the petitioner will be placed at the bottom on the numbered register if they later resubmit their petition. Under the current regulations a petitioner cannot withdraw their petition after active consideration begins. The draft also provides for an automatic final determination if a proposed finding is

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positive and if the Department does not receive any timely arguments in opposition to acknowledgment from either an acknowledged tribe located in the same state or from the state or local government where the petitioner's office is located. The discussion draft also looks for your input about who should issue the final determination. Under the current regulations, the Office of Federal Acknowledgment prepares and the assistant secretary's office issues both the proposed finding and the final determination. What we are hoping for feedback from you is whether the Office of Hearings and Appeals or the assistant secretary's office should issue the final determination. The Office of Hearings and Appeals conducts hearings and decides appeals from decisions of the DOI bureaus and offices and is meant to be an impartial forum. The draft also deletes Interior Board of Indian Appeals review. Currently, a final determination from the assistant

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secretary under the current regulations is the only Assistant Secretary/ Indian Affairs decision appealable to the Interior Board of Indian Appeals. The discussion draft deletes the opportunity to challenge the final determination before the IBIA, which exists currently for petitioners and interested parties. Under the new draft all challenges to final determinations are instead filed in Federal court. Under the draft the new regulations would automatically apply to anyone who hasn't yet reached active consideration. And anyone who is on active consideration would have the choice to proceed under the new regulations or the old regulations. The draft also provides for re-petitioning for petitioners that have been denied Federal acknowledgment under previous regulations if a petitioner can prove by a preponderance of the evidence that a change from the previous version to the new version warrants reversal of the final determination. We are also

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seeking comment from you on anything in the draft that you think needs revision. So that's just very open-ended. Anything that you think needs to change. Specifically we're wondering if the definitions should be revised, and, if so, how. We're also looking for your input on whether we should have a standard form for the petitioners or whether that standard form should be optional. As I said before, we are looking for input from you on the suggested forms of evidence for community and whether we should have specific percentages in there. We are also looking for feedback on whether we should incorporate the bilateral relationship idea into criterion ©, which is political influence or authority. And we're looking for input on what the percentage should be for criterion (e), descent from a historical tribe. So what percentage of the group's membership should descend from the historical Indian tribe. And also

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if there are any other objective standards that could be used to show descent. We are also looking for input on page limits. Do you think that we should have page limits for each of the documents required under this process. Comments on the draft are due by August 16th. You can e-mail them or you can mail them to Liz. And going forward, we will be reviewing the comments and making any appropriate changes to the regulations, and then we will be publishing a proposed rule in the Federal Register.

BY LARRY ROBERTS:

Thanks, Katie. So that's sort of a brief overview of the discussion draft. As Katie said, this is - you know, we've issued a discussion draft before we even started the rule making process here to get as much input from everyone as possible. So with that, I will turn now to the tribal leadership in terms of any questions or comments that they have. Before everyone speaks, everything is

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being transcribed, so if you could just state your name and which tribe you are with.

BY AUDREY GARDNER:

I'm Audrey Gardner, Eastern Shawnee Tribe of Oklahoma. If you could go back to 11. One of the problems I see initially is that second paragraph where it says an acknowledged tribe located in the same state as petitioner. When you are talking about the Shawnee tribe, we have a historical territory of twenty-eight (28) states and were removed to Oklahoma. So I think for us that would pose a problem. You know, we were removed, so we're located in Oklahoma. I don't really see why we would not have input on somebody petitioning in Ohio or Missouri, Mississippi, somewhere like that where we have a historical presence there. Initially that's the one that stood out to me as being problematic.

BY CEDRIC ROBERTS:

Cedric Sunray, Mowa Band of Choctaw Indians. The question I have with that is how it's framed. I know Earl Barbry, some of the forces stood

1 up for our tribal community. In the packet I
2 handed out you will see a letter of him
3 supporting our tribe's Federal recognition.
4 The gentleman whose funeral many of our
5 tribal members are at today. And my question
6 is why should Federal tribes with gaming
7 venues in close to petitioning tribes have
8 any say whatsoever in this process. Our
9 tribe, the Mississippi Band of Choctaw
10 Indians (inaudible) and the Poarch Creek
11 collectively spent Fifteen Million Dollars
12 against our Federal petition and used Jack
13 Abramoff as the catalyst to fight our Federal
14 petition. He then served six years in jail
15 as a convicted felon for his role in fighting
16 against our Choctaw community. That's a well
17 documented process. So is it expedient to
18 take Federal tribes in the regional areas of
19 petitioning tribes, (inaudible) groups, and
20 use them as a barometer for recognition when
21 it's very clear as to why they fight against
22 those communities. I'm not talking about
23 just any old group. I'm talking about tribes
24 like in the back, of historically attended
25 generationally Federal Indian boarding

1 schools who live on state recognized Indian
2 reservations. My tribe is intermarried with
3 thirty (30) different Federal tribes,
4 including members of the Cherokee Nation,
5 Creek Nation of Oklahoma, Eastern Band of
6 Cherokee Indians, and many, many more,
7 Kickapoos from Kansas, Ottawas, Navajo
8 Nation. That's my question. Why would they
9 be allowed to even have a say.

10 BY LARRY ROBERTS:

11 So what we are talking about here
12 is one part of the discussion draft that
13 essentially embodies the Department's
14 current practice, which is if a - this
15 is only limited to a proposed favorable
16 finding. If the Department issues a
17 proposed favorable finding, and
18 essentially no governments within the
19 area object to that favorable finding,
20 that it go automatic. So this is an
21 automatic finding favorable. So this is
22 the discussion draft. We've gotten some
23 comments on this sort of across the
24 board. We appreciate your earlier
25 comment. We appreciate your comment.

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It's something we will look at as we are
looking forward with the proposed rule.

BY PERRY SHELL:

Perry Shell, Eastern Band of Cherokee. Flying out here I had the opportunity to sit next to a gentleman from Florida. And he claimed to be part Cherokee. I don't know how many people come through the park; it's nine million, I think now, that come through the national park. We're at the eastern entrance. But the vast majority claim to be part Cherokee. There are, I'm not sure how many groups now, over two hundred (200) that claim to be Cherokee that many of them are seeking Federal recognition. So if have twelve percentage of petitioning groups just show they derive their ancestry from a historical tribe, I think a hundred percent should show. Otherwise, I think a good portion of the United States would be members of the Cherokee Nation. I mean, I think what that does, I think, when we lower this, it waters down the authenticity of those people who fought and who protected their culture and their society for years. You know, your

1 culture is what defines you as a people.
2 It's your world view, it's what you eat, it's
3 what you think. It's how you live your life.
4 You know, where we are located in Cherokee,
5 we probably had the most extensive
6 archaeological study ever done in the
7 southeast where we have our school. We
8 showed in that location over ten thousand
9 years of continuous habitation. To us it is
10 insulting many times, and there may be people
11 out there that have a percentage or they are
12 a part Cherokee. There's been intermarriage,
13 you know, for three hundred years now or
14 more. But I think that when we lower the
15 standards here we take the authenticity of
16 all native people. This process, when you
17 put an arbitrary number like 1934 on it, too,
18 you know, our interaction and many tribes in
19 the east with non Indians goes back to the
20 1600s or more documented, you know. Why
21 start at 1934? Is this to help some tribes
22 that can't prove their authenticity, to give
23 them some authenticity? I think that we need
24 to be very careful when we look - I know we
25 are going to put this in writing, but I think

1 this is so important to the future of all
2 tribes. Especially, I think, as more tribes
3 have interaction in this greater society that
4 we will become communities more and more. I
5 think this is a step toward that, the
6 advancement of Indian tribes whenever you
7 allow so many others to become a tribe, a
8 sovereign, reigning, self governing nation.
9 That's just an opening statement. There are
10 other items I want to talk about later.
11 Thank you.

12 BY LARRY ROBERTS:

13 Is there anyone here that hasn't
14 had a chance to speak yet that would
15 like to speak at this point in time?

16 BY WILSON PIPESTEM:

17 I'm Wilson Pipestem. I'm here with the Eastern
18 Band of Cherokee Indians. I just want to
19 start off by thanking the Department, Bureau
20 of Indian Affairs and the officials who are
21 here endeavoring to streamline a process that
22 certainly cries out for some changes to
23 ensure that the process becomes more
24 efficient for both the petitioners and the
25 Interior Department decision makers. I think

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we agree that the process is inefficient, takes too long, needs to be more transparent. And the principles that Assistant Secretary Washburn has put forward makes sense as a basis for changing the regulations. So I do think that, and on behalf of Eastern Band, that this effort to make the regulations more fair, fundamentally more fair are well received. At the same time we have concerns about lowering the standards. So as Councilman Perry Shell has said, the 1934 date, we are still trying to understand better. We assume that that meant that the Indian Reorganization Act was a basis for that number change or that year change. But based upon our experience, tribes particular in this area, native people who are from this general region can demonstrate a relationship or can document histories, many back to the 1600s. So picking a date can be somewhat arbitrary for determining historical existence, but it seems to me as a principle, maintaining and requiring of showing historical tribal identity is something that is particularly important to ensure and

1 maintain legitimacy of the Federal
2 acknowledgment process and, as Councilman
3 Shell put it, the authenticity of existing
4 Federally recognized tribes. I just want to
5 make one quick - there's a number of other
6 statements I know other council members here
7 are going to make statements as well. But I
8 just want to open by thanking you by
9 endeavoring to begin this process. One more
10 thing, though. You mentioned the August date
11 for providing comments is August 16th. I
12 would like to request that we could be
13 granted an extension because, one, we would
14 like to look at the other transcripts to be
15 able to comment on the draft rule with as
16 much understanding of the rule as we can.
17 This is our first time to go through this
18 presentation. It was very helpful. But to
19 kind of better understand where the
20 Department, what its goals are through this
21 consultation process, we could use more time.
22 I don't think it has to be an extensive
23 period of time, but additional time, maybe
24 thirty (30) days, to provide comments so they
25 can be as prepared a possible.

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BY LARRY ROBERTS:

Thanks. And this is, again, an initial step that we normally start just a proposed rule. So there will be additional opportunities of time. But we will take that request under advisement in terms of extending the deadline. In terms of the 1934 date, it is tied to the shift in Federal policy from one of allotment, assimilation to tribal self determination. So it's tied to the passage of the Indian Americanization Act. That doesn't preclude petitioners from submitting information prior to 1934. But it's a starting date for all of the criteria except for descent from a historic tribe.

BY CEDRIC SUNRAY:

What I tend to be hearing in all these meeting is the term authenticity. So when I was a student at Haskell Indian Nation University and I'm sitting next to a Cherokee Nation of Oklahoma tribal member and he shows me a CEIB and it says 1/1024. Is that individual

1 someone that raised in the Cherokee culture,
2 spoke the Cherokee language, was affiliated
3 with historic Cherokee churches and/or
4 ceremonial grounds? Is this someone that
5 they're referring to in terms of
6 authenticity? Or are those individuals on
7 the board back there who generationally
8 attended the Federal Indian boarding schools,
9 including my own family, whose yearbook
10 photos are there, whose bloodlines are listed
11 on the board by the Federal government, and
12 who attended the boarding schools when a
13 requirement by the Office of Indian Affairs,
14 which was then the Bureau of Indian Affairs,
15 became that, and the Bureau of Education that
16 stated you must be one quarter or more Indian
17 blood to attend those school. But yet those
18 tribes sit in denial. In the Cherokee Nation
19 those fifteen thousand tribe members every
20 six month period (inaudible) with three
21 hundred forty thousand tribal members. I
22 lived in Balko, Oklahoma. I was a Cherokee
23 language instructor at Balko High School and
24 (inaudible) State University, and my wife
25 worked at the Cherokee Nation Health

1 Department. We know very, very well the
2 community. So I think terms like
3 authenticity need to be stricken in terms of
4 defining what that is. Because I have lived
5 the social reality of those individuals, and
6 they certainly weren't people that were
7 quote, unquote, as authenticity being thrown
8 around here, "authentic."

9 BY LARRY ROBERTS:

10 So one of the things that we're
11 looking at in terms of the
12 acknowledgment process that Katie set
13 forth is what criteria should we be
14 looking at in terms of "community,"
15 quote, unquote, what objective criteria
16 can we use to demonstrate so that
17 everyone knows when a petition comes in
18 that those objective criteria are met or
19 not met, and what is a clear process.
20 And I think one of the challenges we
21 have is having objective criteria so
22 everyone knows what the rules of the
23 road are, but flexible enough so that,
24 you know, every tribe's history is
25 unique, right, and so we need to have

1 that objectivity but also have the rules
2 flexible enough to cover different
3 situations. So what we are really
4 looking for in terms of comments from
5 everyone is objective criteria. What
6 are the objective criteria that we use
7 and, you know, how can we best move
8 forward and prove this process. So
9 thank you for your comments.

10 BY AUDREY GARDNER:

11 Audrey Gardner, Eastern Shawnee Tribe. Is it
12 Cedric?

13 BY CEDRIC SUNRAY:

14 Yes.

15 BY AUDREY GARDNER:

16 I can understand the comment you just made as well
17 as the earlier comment about tribes that are
18 in the state. I guess the point I would like
19 to make is I think when there is a group
20 coming forward wanting to be a band of a
21 certain tribe of associated descendent from a
22 certain tribe, I think going back to that
23 tribe is, to me, a logical step. I mean,
24 there are three examples I want to give with
25 the Shawnees in particular. The first was in

1 one of the national park services in the
2 Cumberland Gap, there they advertised on a
3 national park site that there was to be a
4 (inaudible) dance. Now, without really
5 divulging information, those are ceremonials.
6 Those aren't things that get advertised.
7 Those aren't things that should be held at
8 national parks. So when you have groups
9 coming in trying to be Indian, trying to
10 present to the public things that are sacred
11 to us that are ceremonials, I think that's
12 where we take offense to that. That's where
13 - you know, we fought for so long to maintain
14 things that were taken away from us that we
15 do hold them sacred. And when you are
16 misrepresenting them or over representing
17 them to the public, that's offensive. And I
18 think a lot of times that's where these
19 French groups or these state groups give a
20 bad name to groups that...

21 UNIDENTIFIED SPEAKER:

22 Whoa, whoa.

23 BY AUDREY GARDNER:

24 Let me finish what I was saying. Give a bad name
25 to groups who do have that history, who have

1 maintained that. Because there are groups
2 out there that don't know or they read on the
3 internet and try to learn ways. And there is
4 that difference there between people who have
5 maintained that and who do have that culture
6 and that heritage and people who don't and
7 who misrepresent that. And I think that
8 gives a bad name, not only to the Federally
9 recognized tribes, but to tribes that are
10 trying to gain that recognition and having
11 those other groups represent what their cause
12 is which is not true.

13 BY B. CHERYL SMITH:

14 B. Cheryl Smith, Jena Band of Choctaw Indians.
15 Recognized in 1995. We began this mission in
16 the '70s to get recognition. I think we are
17 the perfect example of what a tribe has to go
18 through to meet the seven (7) criteria to
19 show that you are a real Indian tribe. To
20 meet the criterion we've had inefficiencies.
21 You name it, we have done it. Have had to
22 have a (inaudible). I mean, we have done
23 the whole gambit of whatever Federal
24 government to prove that we were an Indian
25 tribe. My first question is, I see that

1 you've had all these comments, Oregon,
2 California, Michigan, Maine. Have you had
3 good input and have you had good tribal
4 tribes come to these meetings or are you
5 mostly receiving state tribes who were
6 against the policies? What is your ratio of
7 Federal tribes coming to these consultations?

8 BY LARRY ROBERTS:

9 I would say general attendance of
10 Federally recognized tribes have been
11 relatively low. A handful in Oregon, a
12 handful in California, Michigan. So
13 it's been primarily the public and non-
14 Federally recognized tribes that have
15 attended these sessions.

16 BY B. CHERYL SMITH:

17 I assumed that. I assumed that. Well, today is a
18 bad day for people who are traveling and
19 coming to something like this. But I am just
20 speaking for my state of Louisiana. I am
21 speaking because, I mean, from the 70s, and I
22 know what my people fought for to become
23 recognized. It is not an easy process. This
24 state of Louisiana has so many Federal tribes
25 - excuse me. I mean state recognized tribes,

1 I can't even begin to name them. I don't
2 even know their names. It's such a simple
3 process here to get state recognition. I
4 honestly believe that we are the last tribe
5 that's going to be recognized in the state of
6 Louisiana. And I hate that; they fought the
7 battle and fought the battle. But at some
8 point I don't - like Cherokee, you have to
9 have criteria, you have to meet those
10 criteria. How can we (inaudible) when my
11 people suffered and died and were gone before
12 we could ever prove that we were Indian
13 people. And never were able to receive any
14 services from the Bureau of Indian Affairs.
15 But I do see points where there are tribes
16 out there. This is overwhelming. It is
17 expensive. I can't tell you dollars that we
18 spent to fight to get recognized. And if it
19 hadn't been through AMA grants and so forth
20 we would have never reached recognition as we
21 did in 1995. But there has got to be some
22 criteria. I think every tribe got to stand
23 up and say there are criteria; these other
24 tribes have to meet them just like our tribe
25 met them. But there has to be a place - and

1 a lot of these state tribes, there's no way,
2 I know there's no way they can meet these
3 seven (7) criteria that we did. But there
4 are legitimate tribes out there who have been
5 turned down. So there is the few tribes out
6 there I know who should get another chance.
7 And that's not the kind of communities that -
8 I see both worlds, but in Indian country, I
9 know what my people went through, I know what
10 we fought for this, and I'm not going to
11 stand by and let twenty (20) tribes in
12 Louisiana get Federal recognition just
13 because they want it and they say they are -
14 that's not fair. We have John Darden, the
15 Chitimacha. I don't know how you stand on
16 this Earl - Earl, God. John Paul. But it's
17 a very emotional day and I know that Earl
18 supported the Indian people. He knew who the
19 Indians were just as I do. And it is a hard
20 thing to prove that you are Indian first.
21 And it shouldn't be like that. But the
22 Federal government makes it like that. But
23 then if your tribe has fought hard and
24 received it, other tribes should fight the
25 right way. You can either get along with the

1 Federal government or you can buck the
2 system. It will get you nowhere. I don't
3 care how much - if you're a teacher, those
4 things don't matter. When you deal with the
5 Federal government, you have to cooperate and
6 you have to at some point realize if you are
7 fighting for something, you have to get along
8 with people and you do have to follow rules.
9 And that's not right, but we did that and we
10 finally prevailed. There is a way to do it.
11 If you go by the rules, if you abide, you
12 meet the criteria, and there are too strict
13 criteria; it takes too long. When we were
14 waiting recognition, I think we were a
15 hundred and something on that list. How
16 crazy is that? I think that we were told
17 that they only got to three a year. That's
18 crazy. How can you wait that long. It was
19 terrible. It was horrible. Things need to
20 be changed. They do. Everything needs to be
21 changed. But there are some changes I think
22 that we cannot just loosely change, because
23 that's not right for the real Indian people
24 who have suffered like my people have and
25 have fought to get recognition. And that's

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my only comment.

BY LARRY ROBERTS:

Thank you.

BY JULIE WILKERSON:

Julie Wilkerson, Jena Band of Choctaw Indians. I didn't start working with the tribe until 2000. They were recognized in 1995. But I have had the good fortune and honor of being able to listen to the stories about what they have been through from Chief Smith and then our late former Chief Jerry Jackson. One of the things that a comment was made from the lady with the Shawnee is correct. I think that the Mississippi Band of Choctaw tribe can show that they have emanated from and came from Newton County. And the Mississippi Band of Choctaw were contacted, and they actually sent a letter in saying, yes, the Jena Band of Choctaw were part of our community at one time. I think that was what I understand from Chief Smith or Chief Jackson. That was very instrumental in assisting them also in the process. And I'm sure - because I see two were Federally recognized in 1981. I heard talk about the

1 long term relationship she had with Chairman
2 Barbry where that was during their process of
3 trying to get Federal recognition and support
4 that the Tunica Biloxi, especially Chairman
5 Barbry, supported the Jena Band of Choctaw.

6 BY GENE CROWE:

7 Gene Crowe, Eastern Band of Cherokee. First of
8 all, I'd like to state that we are not a
9 Cherokee Nation; we are the Eastern Band of
10 Cherokee. We're out of North Carolina.

11 BY CEDRIC SUNRAY:

12 And I know that.

13 BY GENE CROWE:

14 So I want to clarify that.

15 BY CEDRIC SUNRAY:

16 Yes, I know that. You don't have to explain that.

17 BY GENE CROWE:

18 Just so you understand that.

19 BY CEDRIC SUNRAY:

20 Yeah, I understand that. You don't have to talk
21 to me like that. Don't talk down to me.

22 BY GENE CROWE:

23 Is this necessary?

24 BY LARRY ROBERTS:

25 Let's just talk about regs, please.

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BY GENE CROWE:

The regs is what I'm talking about here. You know, the Eastern Band, we support anybody, any legitimate tribe to be Federally recognized. Chief Smith, I stand with you on the Houma Indians. Those guys, they've been here since back - they've got documentation back in the 1600s. I'll support them a hundred percent. The state tribes, so many pop up every day because, you know, "I want to be an Indian." They wake up one morning "I want to be an Indian." So that happens daily. It happens throughout the United States. We don't support that. And we hope that the rules and the regulations that you guys are putting down here, like Wilson stated earlier here, we want to make sure that those - the standards aren't lowered. There's a process to go through. We are not against anybody going through the process. If you can go through that process and gain Federal recognition, then we support that a hundred percent. You know, we are behind you. But, you know, being a legitimate tribe, we know what it takes to have to do

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that. We've been there; we've done it. So that's my comments there, sir. I appreciate the opportunity to be able to speak.

BY CEDRIC SUNRAY:

Can I ask this question of everybody? When you see those people there on those boards, when you see those individuals on those boards that generationally attended Federal Indian boarding schools that were sent there by the Board of Indian Affairs. My family attended Choctaw Central High School, a BIB run school on Mississippi Choctaw reservation where our family members were boarded out because we were not allowed to attend the black and white schools in our area, we were sent to Haskell, we were sent to Bacone, we were sent to Acadia, how with any modality of ethics could you look at this small number of tribes back there - we're not talking about these groups you guys are talking about. Everybody knows that groups spring up all over the place. We all know that. That they certainly should not be Federally recognized tribes. Of course not. There is a small minority, however, that certainly are

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legitimate communities. And throwing the baby out with the bath water, which is the way the Cherokee Nation has been pumping millions into this...

BY LARRY ROBERTS:

Sir...

BY CEDRIC SUNRAY:

Q. ... is not the issue. But I'm asking them. Are they telling me, these Federal tribal leaders in here, are they telling me that those people on those boards are not Indians?

BY LARRY ROBERTS:

Sir.

BY CEDRIC SUNRAY:

That's my question.

BY LARRY ROBERTS:

Right. But the dialogue is between us and you all, not the dialogue...

BY CEDRIC SUNRAY:

Okay, well, I'm asking you. Those people that were sent to BIE schools by the Bureau of Indian Affairs for generations, are you saying now that the BIA who sent them and who sent them and who listed their bloodlines, are you saying now that they are not Indians?

1 Because when Beth Norwood, who graduated from
2 Aspen Institute in the 1950s, she's a
3 Nanticoke from Delaware. She applied to
4 attend Haskell in 2008. She's a Haskell
5 Institute graduate. She applied to go back
6 and get her bachelor's degree, and she was
7 rejected. A Haskell Institute graduate was
8 rejected from Haskell. They said she wasn't
9 Indian. She's listed as half Indian by blood
10 by BIA in the 1950s. She attended the
11 school. She was sent there as a thirteen
12 (13) year old, eleven hundred (1,100) miles
13 away from home because she could not attend
14 the black and white schools and because she
15 was an Indian. And now the same agency who
16 sent her there is saying she's not an Indian.
17 So I am asking you are you saying that.

18 BY LARRY ROBERTS:
19 I'm not making determinations.

20 BY CEDRIC SUNRAY:
21 Of course not. That wasn't a question because
22 it's a moral and ethical question that no one
23 wants to answer.

24 BY LARRY ROBERTS:
25 What I need from everyone in terms

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of comments and suggestions here, in terms of whether it's written comments or verbal comments, I need objective criteria. So if you think...

BY CEDRIC SUNRAY:

That's my criteria. If you attended a Federal Indian boarding school generationally, your tribe, obviously you should be a Federally recognized tribe. No question about it.

BY LARRY ROBERTS:

We will take a look at that. Chief Smith.

BY B. CHERYL SMITH:

Cedric, I understand what you are saying. I don't think anyone is talking down to you today. I don't think Indian people should talk down to Indian people at all, because we know we don't do that. Indian people treat Indian people as brothers and sisters. At least we do. And I don't appreciate your comment, but I will tell you, all those pictures you've got on those board, my tribe could put twenty of those pictures on that board. My people did not go to school either with the whites, nor with the blacks. My mother went to the

1 first grade at thirteen (13) years old,
2 finally.

3 BY CEDRIC SUNRAY:

4 (Inaudible)

5 BY B. CHERYL SMITH:

6 Let me speak, please. You're right. I agree with
7 you. I agree with everything you say on that
8 board. But you must meet the set of criteria
9 or either you loosen some of these things up
10 for people like your tribe. And I think that
11 your attitude needs to change. That nobody
12 is fighting you. Nobody is against you. If
13 you can prove that you are an Indian tribe
14 and you meet the criteria just as all of the
15 rest of us had to go through this, then you
16 can get recognition.

17 BY CEDRIC SUNRAY:

18 We meet all seven (7) criteria without question.

19 BY B. CHERYL SMITH:

20 Well, you need to reapply to the Bureau of Indian
21 Affairs. And I think this consultation, I
22 hope, will lead to something that is to the
23 betterment of your people in your tribe. But
24 I think that cooperation is fifty percent
25 (50%) of where you need to go today. And I

1 do appreciate the comments. I hope that they
2 are good comments from all over the country
3 on changing the bar. It is really, really an
4 instrumental thing to get recognized.
5 Because at one point I was ready to give up
6 myself. I knew we were Indian people. And
7 it is very, very hard to do. But if you've
8 got the criteria, you've got the leadership,
9 you can show everything that you've done,
10 there should be some place some time for
11 these groups who are really Indian tribes
12 that have criteria to come back and reapply.
13 At that point, I'm not saying another word.
14 This is my comment. I will just say for
15 twenty (20) years we fought for it; I know
16 what we fought for. I am leaving this
17 meeting. I hope this afternoon that you have
18 a peaceful, peaceful - but I doubt it will
19 be. You may want a security guard in here
20 because some of these tribes I've seen and
21 dealt with this morning or heard this morning
22 already. Indian tribes are not going to
23 respect that kind of talk or comments if they
24 cannot act in a formally civilized brother
25 and sister forum. And I would suggest that

1 you have some security in here. I will come
2 back this afternoon and I would like to hear
3 what these tribes have to say, and I want to
4 know why they think they should be recognized
5 through the state of Louisiana. So thank you
6 for coming. I appreciate all of you. I am
7 going to say my farewell to my dear friend
8 Chairman Barbry. Thank you.

9 BY LARRY ROBERTS:

10 Thank you.

11 BY JOHN DARDEN:

12 John Darden, Chairman of the Chitimacha Tribe.

13 Everything I am hearing is the same thing all
14 the tribes face. Luckily for us as a tribe,
15 we've always been recognized here. So we
16 didn't have to fight for the Federal
17 recognition. We already had it where each
18 government that came in. When the U.S.
19 Government came in back in the 1850s gave
20 some of our lands back. So we've always been
21 recognized. So we haven't had to fight for
22 recognition. But what we have had is, and I
23 hear all the tribes, you know, you have
24 splinter groups. For me, we need to have
25 criteria there that we can live with.

1 Because, yes, there are some tribes now that
2 - Houma, I support Houma as well. They are
3 great friends and have been allies. I've
4 known them for years. My parents and my
5 grandparents knew a lot of the tribal members
6 there. I know they have been fighting for
7 recognition, trying to get it. I hope that
8 one day they do get it. But I don't want to
9 see this loosened up so much where, you know,
10 any group could come in and get it. Because,
11 I mean, there are right now - we have issues
12 all the time. I have people coming to the
13 chairman - the past chairmen have had the
14 same thing where you have people coming out
15 saying they're Chitimacha with no proof that
16 you are Chitimacha whatsoever, no tie to our
17 community. And for us, where our community
18 is - I mean, archeologically, we've been
19 right there for - we've been in southeast
20 Louisiana for a long time. We've been there
21 almost six thousand years. So we've been
22 here a long time. And when you start coming
23 in and saying you're Chitimacha and you're
24 part of the Chitimacha. And you see their
25 Chitimacha names and add three or four

1 different names. For me, when you decide
2 you're going to be a tribe, you know, pick
3 the tribe that you are. I'm Chitimacha.
4 Although I'm half white, my mom is white, I'm
5 Chitimacha. So if you ask me, I'm
6 Chitimacha. For me, first you choose that.
7 And then if there is a tribe - and for us, if
8 there's another tribe in Louisiana claiming
9 to be Chitimacha, I would want the right to
10 respond to that. You know, if they were a
11 group, I would like some comments on that.
12 Because our people would like some say on
13 that, too. We've been here for a long time.
14 But I would like proof. And I do want to see
15 the proof here. And I like the criteria.
16 You maybe need to loosen up a little bit, but
17 also we've got to find a medium that we all
18 can live with. Because we don't want just
19 anybody to get recognized saying they're a
20 tribe.

21 BY CEDRIC SUNRAY:

22 We don't want that either.

23 BY JOHN DARDEN:

24 We've run into that. I've seen people wanting to
25 be destroy mounds and different things in the

1 state, sites that we have, putting poles on
2 them. I've seen so many things over the
3 years with some groups that are wanting to be
4 recognized. I know we've all seen that.
5 We've all seen the education issues. I mean,
6 our grandparents, our great grandparents were
7 sent off to schools elsewhere because we
8 didn't have schools on the reservation. My
9 great grandfather...

10 BY CEDRIC SUNRAY:

11 Your family went to school with my family at
12 Haskell. I've seen pictures of the
13 Chitimachas with us.

14 BY LARRY ROBERTS:

15 If we could have just one person
16 speak at a time.

17 BY JOHN DARDEN:

18 That's all I wanted to say. I do agree - I mean,
19 there are some things that I seen in there,
20 and I will send in some comments on some of
21 this stuff. But I thought it was important
22 to be here today, too, so I could listen to
23 what everyone had to say. I do understand
24 the state tribes, you know, it's unfortunate
25 - you know, I had no problem with them being

1 in here. But I know sometimes it causes a
2 lot of tension and you can't speak freely.
3 So I understand both ways. For those of us
4 that would like to stay for the evening,
5 we'll stay for the evening session. Thank
6 you.

7 BY LARRY ROBERTS:

8 Thank you. And just to make clear,
9 the discussion draft doesn't change the
10 process for input from tribes or the
11 public. So if it's a proposed negative
12 or proposed positive finding, there's
13 still that opportunity for public input
14 before it goes final. So there are no
15 changes with regard to that.

16 BY CEDRIC SUNRAY:

17 When I look through here, like with the boarding
18 school tribes that aren't recognized, we've
19 got a full unanimous resolution promised
20 American Indians passed in 2011 supporting
21 it. Tunica Biloxi is supporting our tribe,
22 and NAACP. National Congress of American
23 Indians supporting our Federal recognition.
24 Poarch Band of Creek Indians supporting our
25 Federal recognition. And anyone (inaudible)

1 they started calling us mulattos. Another
2 rule from 2006 saying they will support us if
3 the rates change. Council member from the
4 Mississippi Band of Choctaw Indians
5 supporting our Federal recognition. Listen
6 to me for a second. Census records listing
7 every one of our tribal members as Indian,
8 all of our military records listing all of
9 our tribal members as Indians. Kevin Gover
10 saying he made a mistake, that he was fooled
11 by Lee Fleming. He said that in
12 congressional testimony in 2004, that he
13 denied our tribe after he was only on the job
14 for two days. Lee Fleming purposely waited
15 for the new assistant secretary to come in,
16 and asked him to sign off on a negative
17 determination. I have a letter here of Lee
18 Fleming showing his hostility for state
19 recognized tribes as well as calling some
20 blacks. Now, the reason I am saying all
21 this, why is some little governmental arm
22 that's a low level group, the Office of
23 Federal Acknowledgment was changing its name
24 and then turned into a new process. Why is
25 it that national Indian organizations,

1 Federally recognized tribes that support us -
2 (inaudible), Jr., the most prolific Indian
3 author in the history of Indian country
4 writes the forward to our history book
5 demanding our Federal recognition. Why does
6 OFA have that weight above all of these
7 Federal Indian entities who supported us?
8 That's my question.

9 BY LARRY ROBERTS:

10 They're the institutional body,
11 right?

12 BY CEDRIC SUNRAY:

13 If you're seeking Federal input, there's input.

14 BY LARRY ROBERTS:

15 I hear your comment. Your comment
16 is should there be a process in place in
17 terms of support from - what weight
18 shall we give support from other
19 Federally recognized tribes and tribal
20 organizations.

21 BY CEDRIC SUNRAY:

22 Lee Fleming said that our language tapes recording
23 our speakers and our dates on our boarding
24 school records were received out of time,
25 therefore couldn't be considered. As if

1 there's an out of time. How convenient. How
2 politically convenient for him to say that
3 our Federal boarding school records, our
4 Federal schools as listed in the Library of
5 Congress, was built in 1835 and we still are
6 in it. It's the only Indian school in the
7 state of Alabama. Built by the bureau. And
8 he said that was received out of time, too.
9 So if you guys keep him on in this new
10 revised process, everyone already knows the
11 result. There's no tribe that is as clearly
12 shown through Federal Indian support,
13 national Federal organization support that we
14 are clearly a tribe. We even live on a state
15 recognized historic reservation. What more
16 do we need to do to get relief?

17 BY LARRY ROBERTS:

18 So in terms of the process and how
19 we have developed a discussion draft,
20 the Office of Federal Acknowledgment has
21 been involved in that discussion draft.
22 And then the other point to be made is
23 that the discussion draft does suggest a
24 process where after the proposed finding
25 is issued, there is question for tribes

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and the public here, should that process then transition over to the Office of Hearings and Appeals. Which is separate from IBIA. IBIA is one component in the Office of Hearings and Appeals. But there's actually a component within the Office of Hearings and Appeals which is staffed by administrative law judges that are within the Department of Interior. They may not have background on Indian issues and Indian history and policy and legal issues, but they are administrative law judges that are appointed there. And should that entity issue a final determination based on materials that would be provided to it from petitioners and interested parties. It would essentially be an administrative judicial proceeding. That's a question we need comment on. So is there anyone else that has comments today, this morning?

BY CEDRIC SUNRAY:

You need to take these four guys sitting right here and they should make the decision on my

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tribe. Y'all won't have to hire nobody else.
They've got it figured out.

BY LARRY ROBERTS:

We're not here on any specific
tribe. It's the regulations, itself.
Any else? The reason I'm asking is does
anyone object to ending this now so that
we can attend the funeral for Chairman
Earl Barbry. If anyone objects or has
final comments, please let me know.

BY WILSON PIPESTEM:

Let me say one thing. I think it's a priority to
pay respects to Chairman Barbry, but at the
same time the Eastern Band of Cherokee
Indians has come here for a government to
government consultation. And it's difficult
to have that sort of conversation and that
dialogue that we are promised by this
presidential memorandum on consultation when
this sort of conduct is going on. So I would
ask you again, we are trying to have a
review, we've got other things to say.
Understanding, though, that you've got an
unusual situation where the chairman is lying
here and has passed on. But we would like to

1 have government to government consultation
2 that's meaningful. And it's difficult to
3 have that in this kind of environment.

4 BY CEDRIC SUNRAY:

5 When you're being held accountable it is
6 difficult. You're right.

7 BY LARRY ROBERTS:

8 We're not going to have people
9 interrupting folks. So please.

10 BY CEDRIC SUNRAY:

11 I don't say anything else.

12 BY LARRY ROBERTS:

13 So don't interrupt. I am happy to
14 keep this consultation open as long as
15 you guys want to stay and talk. We are
16 happy to stay here. We scheduled it
17 until noon, and I am going to be here
18 for that entire time.

19 BY PERRY SHELL:

20 Perry Shell, Eastern Band of Cherokee. I don't
21 think this dialogue has been very effective
22 this morning. This probably would have
23 happened had we kept all of the groups in
24 here, you know, even worse than it is now.
25 But there are other things that we wanted to

1 touch on, and we'd like to have that
2 opportunity. It's difficult to get away,
3 come down here to do this. But at some point
4 we would like to have just a meeting with
5 you.

6 BY LARRY ROBERTS:

7 Okay. We're happy to have a
8 meeting if the Eastern Band is - I mean,
9 we're not going to do separate
10 consultations for every recognized
11 tribe. That's not really consultation.
12 But we are always happy to meet with
13 tribal leadership on any issue.

14 BY PERRY SHELL:

15 I think the circumstance of this meeting...

16 BY LARRY ROBERTS:

17 Yes, and the circumstance of this
18 meeting...

19 BY PERRY SHELL:

20 I think needs consideration.

21 BY LARRY ROBERTS:

22 Yes. Like I said earlier,
23 obviously this meeting had been set up
24 way in advance of the chairman's
25 passing. We did reach out to his family

1 and ask whether they wanted us to move
2 the meeting. And they actually asked us
3 to move forward with the meeting out of
4 respect for him. But I understand the
5 Eastern Band of Cherokee, they are
6 requesting a meeting, and we are happy
7 to meet with them.

8 BY AUDREY GARDNER:

9 Audrey Gardner, Shawnee. I guess I'm just a
10 little bit curious, kind of piggy-backing on
11 that. Why wasn't a meeting held in Oklahoma
12 where there is a large population of
13 Federally recognized tribes? I mean, I would
14 agree it's difficult to get time away from
15 your schedule and travel. You know, one of
16 the reasons I am here instead of Chief is
17 because of that. She doesn't have the time
18 to take two days of travel to come down here
19 with such a busy schedule. I guess I would
20 be curious as to why a state with so many
21 Federally recognized tribes wasn't considered
22 as a location for this consultation.

23 BY LARRY ROBERTS:

24 We had a lot of comments in terms
25 of, you know, why haven't you been to

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our state or different locations. The fact of the matter is that we are having five tribal consultations and public meetings. That's more than typically do. This is a discussion draft. It's not a proposal we're making. So, for example, on the tribal leasing regs, which impacted all tribes across the country, I think we had three tribal consultations throughout the country. So as we move forward with the proposed rule where there will be additional opportunities for comment, and tribal consultation will be looking at going to areas and regions where perhaps we didn't visit this time around. The other thing I would add is just that sequestration has hit the Department pretty hard. We have a Hundred Twenty-Six Million Dollar budget. It's hit the Department, it's hit tribes hard. Tribes have been feeling it on the ground in terms of those budget cuts. So while we have done more here than we normally do, it's also difficult to hit

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every state. Are there any other
comments this morning? Any objection to
ending this at 10:30? That's okay?
Okay. If that's okay we will go off the
record and we will be back at 1:00.

(MORNING SESSION CONCLUDED AT 10:30 A.M.)

(AFTERNOON SESSION BEGINS AT 1:10 P.M.)

BY LARRY ROBERTS:

I would like start the public
meeting today with just a moment of
silence for Chairman Earl Barbry, who
was a longstanding leader for the Tunica
Biloxi tribe. We will take a moment of
silence to pay our respects to him.

Okay. So as we return for this
afternoon, a couple of just basic
housekeeping issues. One is whenever
you have a question or comment, please
state your first and last name and who
you are with for our court reporter so
that she can get that down and make sure
that your comments are preserved for the
record. The records of all of our
tribal consultations and public meetings
will be on our website, as well as it's

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our attempt to have all of our written comments that we receive be posted on our website as well so that people can see what comments were made at all of the various tribal consultations and public meetings, and then written comments that the department has received.

In your packet of materials that you have received today there is a red line, that is the discussion draft that we will be talking about. That is a red line against the existing regulations. As we're going through this process to issue a proposed rule, what we'll be doing is putting the regulations in plain language. That's one of the requirements that we have at the Department in terms of whenever we amend or promulgate a rule, that we put it in a format that is easier to read.

There is coffee and water on the other side on the table there. And the other thing that I would ask is that if someone is talking with a comment, that

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whoever has the microphone, that you allow them to finish whatever they are saying so that everybody has an opportunity to provide comments. At earlier consultations and public meetings we've had situations where everyone in the room essentially wanted to comment. That's great; that's what we're looking for. If we get into a situation where everybody wants to comment and their comments are running, say, longer than five (5) minutes, what we would ask is that you take - you take five (5) minutes. If you have a line of folks behind you, have them be able to give their comments, and then we would be more than happy, you are more than free to speak again and provide additional comments. But I want to make sure that everybody has an opportunity to share their comments with everyone in the room.

So does anyone have any concerns with those sort of basic ground rules, rules of the road? Okay. Great. So

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thank you for coming this afternoon. We are going to get through a presentation that is going to take about twenty minutes, and then we are going to open it up for comments and questions. It's just a general overview of the discussion draft.

So very briefly, though, there are essentially three ways that a tribe can become Federally recognized. It can be through congress, by legislation. It can be through a court order, and it can be through the Department of Interior. And what we are here to talk about today is the Part 83 Process for Federal acknowledgment. So prior to 1978 we had the Department of Interior address petitions for acknowledgment on a case by case basis. So we addressed those on a case by case basis. And then in 1978, as most of you know in the room, the Department promulgated regulations. In 1994 the Department revised those regulations, in large part adding a section to address petitioners who

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argued that they had previous or ambiguous Federal acknowledgment. In 2002, 2005 and 2008, the Department issued guidance to the public, to petitioners and to the Office of Federal acknowledgment staff on how to basically work under those existing regulations. Of the five hundred and sixty-six (566) Federally recognized tribes today, seventeen (17) have gone through the Federal acknowledgment process. And as many of you know in the room, Tunica Biloxi was the first petitioner. They were petitioner number one.

So some of the criticisms that the Department has heard is there have been a number of comments that the process is broken: That it takes too long, that its burdensome, that it's expensive, that it's not transparent, that it's unpredictable in its results and that the criteria is too subjective. And so in response to those comments we've started working to look at the Part 83 process. And our efforts started in

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2009 with Secretary Salazar. Secretary Salazar, who was the Secretary of the Interior at the time, testified before the Senate Committee on Indian Affairs that he would examine ways to improve the process.

And later that year, in November of 2009, the Department again testified to the Senate Committee of Indian Affairs, and at that testimony the Department said that they would look at eliminating unneeded steps, that they would take a hard look at the standards. And in 2009, the Department testified that it would take approximately a year to issue a proposed rule and approximately another year to issue a final rule. In 2010, the Department internally started working on potential revisions to the Part 83 Process.

Then in 2012, the Department again testified before the Senate Committee of Indian Affairs in response to questions from the Senate Committee in terms of why the Department yet issued a proposed

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rule. The Department testified that they were identifying a handful of goals in their revisions and that they were still working through what those revisions might look like. And so some of the goals that they testified to, that the Department testified to was transparency, timeliness, efficiency, flexibility and maintaining the integrity of the process.

Earlier this year the assistant secretary and myself testified before the House Natural Resources Committee, a subcommittee that works directly on tribal issues. In that testimony we laid out a certain path that we're on now, that we would issue a discussion draft, that we would hold tribal consultations and public meetings, that we hoped to issue a discussion draft this summer - by this summer, and that we would go forward with our normal rule making process after that.

So this is - what the Department is doing here with the discussion draft,

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typically, for those of you that don't follow the regulatory process in terms of how the Department has changed their rules, typically the agency just issues of proposed rule and asks for comment. On this one, what we've done is we've taken an early additional step to get maximum involvement from the public in terms of comments on how to improve the process.

So that's why we're starting with the discussion draft. And then we'll start our normal rule making process after we've received comments on the discussion draft.

So I'm not going to read all of these changes in the discussion draft. We're going to go through and talk about them in more detail, each one, and you are following slides, but this sort of identifies some of the primary changes in the discussion draft.

So the first change is to eliminate the letter of intent. Right now, as most of you may be aware, the

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regulations provide for a petitioner to submit a letter of intent, and then it may take some time, it's really up to the petitioner, in terms of when they actually submit a petition.

And so this process, what it would do essentially is just eliminate the letter of intent and start the process with when a petition is filed.

We added a process criteria for expedited negative findings. What we are looking for comment on on these changes, this criteria, whether we've got it right or whether there is other criteria we should be looking at for expediting negative rulings. And essentially how it would word in the discussion draft is a petitioner would submit a petition, the Department would review the petition for criteria (e), descent from historical Indian tribe, (f), that its membership is not primarily composed of a Federally recognized tribe, and (g), that Congress has to pass legislation that forbids a government to government

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relationship. So if Congress has terminated a tribe or has basically forbidden the Department from acknowledging a tribe, we obviously cannot process that petition. That would take an act of Congress to change. And so if a petitioner did not satisfy all three of these criteria, then we would issue an expedited negative finding with the six (6) months of active consideration. If the petitioner met all three of those criteria at the onset, then we would go to the next stage to see whether the petitioner is asserting a basis for an expedited favorable finding or processing under the remaining criteria.

So we've added provisions in terms of expedited favorable finding, again, we're seeking comment and input on whether these criteria are appropriate or whether we should be looking at other criteria. But that expedited favorable finding would be for those petitioners that can satisfy that they've maintained

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a reservation recognized by the state since 1934 to the present or if the United States has held land for the group at any point in time since 1934.

If a petitioner satisfies either of those two criteria, then it would - the Department would issue a proposed favorable finding, in which case we would then receive notice and comment from - or we would receive comment from the public essentially. If a petitioner failed one of those two expedited favorable criteria, then they would be processed under the remaining criteria.

In terms of the remaining criteria, the discussion draft proposes elimination of criteria (a), which is external identification of the group as Indian from 1900 to the present. That is primarily for the purpose that if a petitioner satisfies all the other criteria for a tribe, to constitute a tribe that should be Federally acknowledged, it shouldn't matter whether an external observer chronicled

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the existence of that tribe from 1900 to the present.

In terms of criteria (b) and ©, community and political authority, the discussion draft proposes to start that review at 1934 to the present. And the reason that the discussion draft has 1934 is because that's a date in our nation's history where Federal policy shifted from one of allotment and assimilation to tribal self-determination with the passage of the Americanization Act. That would preclude petitioners or others from submitting evidence prior to 1934, but we would start our review in 1934 and take into account any information submitted prior to that date that may be relevant to the criteria after 1934.

In terms of criteria ©, the only change in the discussion draft is to provide - right now as the process currently stands we rely currently on genealogy information to prove criteria (e). This would allow historians' and

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anthropologists' conclusions to be submitted as evidence of descent from an historical Indian tribe.

And then you'll see throughout the discussion draft we have placeholders for input in terms of what numbers we should have for the criteria. And we're looking for suggestions in terms of other objective criteria that we could use to improve the process.

The discussion draft has provisions in it that would allow a petitioner to withdraw a petition at any time before a proposed finding is published. We have heard some comments that sometimes petitioners may want to withdraw their petition for whatever reason and they're sometimes not allowed to do so. The discussion draft would allow them to do that as long as they have - as long as a proposed findings hasn't been published yet. And essentially OFA would then cease consideration and the petition would be resubmitted. If a petition were resubmitted, it would essentially

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lose its place in line and be considered - it wouldn't regain its initial priority number.

So we also have a provision for automatic final determinations if the Department is essentially embodies existing practice by the Department. That is if a proposed finding is issued and it's favorable, and the department doesn't receive any arguments or evidence in opposition to acknowledgment, then that would go - essentially be finalized as a favorable finding. What we have added here is if we don't receive any arguments or opposition from either the other Federally recognized tribe in the state or from the state or local governments where petitioner is located. If we didn't receive evidence or arguments in opposition, then it would just go to automatically be final.

One area that we're seeking input on is who should make a final determination for Federal

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acknowledgment. As the process currently stands, the assistant secretary makes that final determination. The discussion draft leaves placeholders for input after a proposed finding is issued whether the process should then shift to the Office of Hearings and Appeals, which is an office within the Department that is essentially independent from the rest of the Department. It's staffed by administrative law judges. And the discussion draft asks whether after a proposed finding is issued, should the process then move over to an administrative law judge, who would then receive comments from the public, set a briefing schedule, and then based on all the evidence before that administrative law judge, make a final determination.

In terms of a review by the Interior lawyer to eliminate that review, right now Federal acknowledgment decisions are the only decisions that are made by the assistant secretary that

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are subject to administrative review.
And so we delete that administrative review. The assistant secretary's decision would be final for purposes of the Department and any challenges to that final decision would go to Federal court.

While we're very early on in the process, we thought we should address for those petitioners that are already in the process and maybe under active consideration how would their petitions be handled if we issue an amended rule.

And the discussion draft addresses it by basically saying for those petitioners that haven't received an active consideration, that they would fall under the new rules where if those would be in a final rule maybe. And anyone who is under active consideration would have a choice as to whether to stay under the existing rules or be processed under the new rules.

And so that's something that we're looking for comment on in terms of how

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should the new rules apply to petitioners as we're going through this rule making process, knowing that it's going to be some time before the final rule is in place.

Finally, the discussion drafts as for an opportunity for a petitioner who has been denied Federal acknowledgment under the previous regulations to repetition if they can prove by a preponderance of the evidence, either through the assistant secretary or the Office of Hearings and Appeals that the changes from the previous version to the new version warrants reversal of the final determination.

So we are seeking comments on all aspects of the rule. There may be ideas or suggestions that you have that are not incorporated in the discussion draft that are not in the existing rules that we would welcome that input and comment. Specifically, any changes to the definitions. When we've talked about should the Department put out a standard

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form for petitioners, not requiring petitions to utilize that form, because we know every tribe's history is unique and petitioners may need flexibility in their petitions to show that. But it could be optional, at least stating some sort of guidance to petitioners in terms of what the Department is looking for in a petition.

In terms of the various criteria, and I'm going to flip through these relatively quickly, but what objective criteria should we be using, and are there additional objective criteria that we haven't considered that we should consider.

Same thing with political influence and authority and the (inaudible) for a tribe.

One of the things that we're asking and seeking comment on is should there be page limits applied to the process and should there be page limits, for example, applied to the petition. I'm not talking about the source of

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historical documents that a petitioner would rely upon. I'm talking about the narrative petition that a petitioner may submit in terms of summarizing that instead of preparing. Should the proposed finding have page limits. I think our proposed findings have gone over time from less than a hundred (100) pages to maybe hundreds of pages. And could we - would it be an improvement to the process, would it be more readable for the public, for petitioners and everyone involved if we impose page limits on ourselves as part of a proposed finding. And then in terms of comments, should we impose page limits.

Comments are due August 16th, and you can e-mail them to the e-mail or site in your materials. You can mail them to Liz Appel. August 16th won't be your only opportunity to provide comments as we go through this process. As I mentioned, once we receive all the comments and look at those we will move forward and issue a proposed rule. And

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once we issue a proposed rule, the public will have another opportunity to make comments on that proposed rule.

The proposed rule will be based on the comments that we receive, and our internal incorporations in proposed rule may not look like the discussion draft, but we want to have early input and early comments. But once the proposed rule is put out there for public comment, we will probably have a period of somewhere between thirty (30) to sixty (60) to ninety (90) days for further comment. And then we'll move forward with a final ruling.

So with that, I am going to open it up to questions and comments. And I think it would be helpful if, if you can, if you could please come up to this microphone, I think that would be helpful in terms of allowing everyone to hear. For whatever reason, if you can't make it to this microphone, just raise your hand and we'll bring a microphone around to you so that we can have your

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comments. Thank you.

BY THOMAS DARDO:

My name is Thomas Dardo, Principal Chief of United Houma Nation. I would like to thank everybody for coming down and giving us this period to comment. I have three points. I support and agree with the changes in time line for criteria (b) and ©, and ask that OFA set the same time line for criteria (e). The requirements for historical time is overly burdensome and makes no allowance for the oral tradition of our people. Secondly, the second concern of our tribe is that ensuring that qualifying staff are assigned in appropriate cases where they are knowledgeable in the preparation of historical, region and tribal relations. This would lead to consideration in decision making relative to applicants. For instance, in our petition John Swine (spelled phonetically) was discredited for his work in our tribe, and yet in a prior petitioner he was revered for his work. Finally, the final thing is we ask for clarification regarding

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our tribe's choices of following the new proposed regulation. Will we be required to start from the beginning? Recommendations that the tribes that have been in the process for the longest period of time be considered first.

BY LARRY ROBERTS:

Thank you.

BY CEDRIC SUNRAY:

Cedric Sunray, Mowa Band of Choctaw Indians. I set out packets here. Various people have them. I want to give you my background real quick. My background is useless outside of this room. It's not anything to brag about, but in this room it's something that will tell you it's part of my involvement. I am an enrolled member of the historic (inaudible) tribe, as well as a Federally recognized tribe. I hold a bachelor and master's degree in Indigenous Nations/American Indian studies. I taught American Indian studies in six colleges and universities, and I'm currently a student at the University of Oklahoma's College of law.

1 So my involvement - I've reviewed every
2 single petition denial from the beginning to
3 the end. I've wrote extensively and I have
4 seventy-five (75) published articles on the
5 issue of Federal Recognition in both
6 academic journals, as well as national
7 magazines and newspapers. I have also
8 written two book drafts as well regarding the
9 subject. So that's my background. But like
10 I said, once I leave this room, who cares.
11 So the first one is living language
12 communities should be immediately considered
13 or reconsidered for recognition. Any current
14 non Federally recognized tribe who has
15 obtained their tribal language to the
16 present. Not revitalized it, but has
17 maintained it consistently throughout their
18 tribe's history should be reconsidered
19 immediately. That's the MOWA Choctaws,
20 that's the (inaudible) of Oklahoma, that's
21 the Houmas, and related communities in
22 Louisiana who has had a mixed language of
23 French and Muskogee/Choctaw language that has
24 been documented by a PhD linguist to show
25 that that is a viable continuous indigenous

1 language form. Second, would be those tribes
2 who attended the Federal and closely related
3 mission and boarding schools. In the back of
4 the room you will see many documentations
5 regarding photos, direct correspondence with
6 the Department of the Interior, direct
7 communication with Indian Affairs of twenty-
8 two (22) tribes nationally who attended the
9 Federal Indian boarding schools. A
10 generation. I, myself, attended Haskell
11 Indian Nations University in Lawrence,
12 Kansas. My family members attended Choctaw
13 Central High School on the Mississippi
14 Choctaw reservation. Which, interestingly,
15 in Congress, the former chief of the city
16 Choctaw said he never heard of our people,
17 yet his office was directly across the street
18 from the very boarding school on his
19 reservation that our families attended, and
20 our attendees were friends with his children
21 and stayed at his home. Third, would be
22 those tribes who continue to reside on
23 reservations officially designated by the
24 colonial state governments. So that's
25 already something that they're talking about

1 now. Those tribes immediately be
2 reconsidered or have consideration. Four,
3 place those tribes who have high rates of
4 intermarriage with other Federal tribes. And
5 this is what I'm saying. It's not trying to
6 be a part of the colonial project and say if
7 you were married (inaudible) more than
8 anybody else. What it is saying is in our
9 tribe we have thirty different recognized
10 tribes from across the country married in our
11 community. Our children, our grandchildren
12 and great grandchildren are enrolled members
13 of Federal tribes all across the nation.
14 There is no way that that many Federally
15 recognized tribes would have married into a
16 non Indian community in rural Alabama with no
17 job opportunities or anything of that nature.
18 It's a social impossibility. So it speaks to
19 itself very clearly. Fifth, in line may be
20 those tribes who were disallowed attendance
21 at area white and black schools. And set up
22 Indian schools in their local communities.
23 Our school was set up by the Bureau Indian
24 Affairs, which had a different name at that
25 time back in those days. And our school was

1 continually inhabited, and it continually
2 today is now run by the State of Alabama, the
3 very same school. And it's in the Library of
4 Congress. Every record attests to that.
5 Sixth, may take into account the tribes with
6 Indian designations on census, military and
7 education records. When I look at our title,
8 our military records, our census records,
9 except for a couple censuses, and insofar as
10 educational records we're listed as Indians
11 from the very beginning to the end. But
12 (inaudible) shows two census time periods
13 where we were listed as mulattos and
14 (inaudible). Okay? And that's the ones that
15 he put forth. Notice of our language,
16 everything else that was submitted, he sent
17 all those (inaudible) received at the time,
18 how convenient to say something like that
19 when they were submitted with the initial
20 petition. Seventh, I will say that tribes
21 who have retained separate languages and
22 cultural spaces from Federal tribes who have
23 politically consumed them, should be afforded
24 an opportunity to remove themselves from
25 their legal grip. The Shawnees, there's a

1 Shawnee in here, they are separating
2 themselves from the Cherokee Nation of
3 Oklahoma, as did the Delaware Nation, the
4 Ugee (spelled phonetically) tribe attempted
5 to do that for many years in Oklahoma; they
6 have a separate language, separate ceremonial
7 grounds, separate historic Indian churches.
8 But, like us, millions of dollars and
9 congressional time has been spent against in
10 order to prevent them to proceed and be a
11 possible future gaming competitor. Our tribe
12 had Fifteen Million Dollars (\$15,000,000)
13 spent against it, and Jack Abramoff, the
14 lobbyist involved in it, went to jail for six
15 years because of his direct involvement.
16 Finally, these tribes who demonstrate all
17 these issues, those who have already been
18 denied and demonstrated, many of these here,
19 should be immediately brought to the front
20 for reconsideration. Because what's going to
21 end up happening in this process is the
22 twenty (20) or thirty (30) years it's going
23 to take. The issue is not with the previous
24 set of criteria. The issue is how the set of
25 criteria was applied. Lee Fleming, you will

1 see in these packets, had open hostility
2 that, under affidavits people said from
3 various (inaudible), that he exhibited
4 towards non- Federal tribes prior to him
5 joining the Bureau of Indian Affairs. He's
6 now the man who makes that decision for
7 everybody. Any registered lobbyist should be
8 completely removed from any involvement in
9 this process whatsoever. Registered
10 lobbyists should have no say. Anything in
11 writing, respond to or hired as hired guns of
12 multi-gaming Federal tribes should be removed
13 from the process completely. (Inaudible) who
14 has fought religiously against non-Federal
15 tribes, (inaudible) 2004, passed a resolution
16 saying that (inaudible) same thing. Will not
17 support any tribe going through the
18 congressional route. They will not support
19 any. That's interesting because (inaudible)
20 tribe recognized by the US Congress and not
21 by the (inaudible) of Federal acknowledgment.
22 If that's not the pot calling the kettle
23 black, throwing stones in glass houses, then
24 I've never seen one that clear and that
25 obvious. My final statement. The Assistant

1 Secretary of Indian Affairs, when our
2 petition was denied, was Kevin Gover. He's a
3 member of the Pawnee Nation of Oklahoma. Mr.
4 Gover, Lee Fleming waited until he was only
5 two days on the job and asked him to deny our
6 tribal petition, because the previous
7 assistant secretary would not deny it. So he
8 waited until the new assistant secretary was
9 on the job for two days and got him to deny
10 it, in 1999. In 2004, Kevin Gover got up in
11 front of the US Congress, and you will see
12 the US Congressional testimony in the packet,
13 and, in essence, apologized for making a
14 mistake with our tribe. He apologized to me
15 personally over the telephone. He said he
16 hadn't reviewed the petition, he had only
17 been there two days, and he took the word of
18 Lee Fleming in making the decision. And
19 that's all I have to say.

20 BY LARRY TOWNSEND:

21 Good afternoon. I am Larry Townsend, and I am
22 here today in my capacity as the Southeastern
23 area Vice President of the National Congress
24 of American Indians. I strongly support the
25 Bureau of Indian Affairs' efforts to revise

1 the Federal acknowledgment process Part 83.
2 There are numerous petitioning tribes who are
3 members of the NCAI and who have a vested
4 interest in this endeavor. The process for
5 Federal acknowledgment is broken. And there
6 is a dire need to amend the process. As one
7 great leader said, "Justice delayed is
8 justice denied." It is long past time for
9 our government to do the right thing for all
10 American Indian tribes. I commend the
11 Assistant Secretary Washburn and his staff
12 for eliminating the process with the current
13 Federal acknowledgment process. And I
14 commend the attempt to make the process more
15 transparent, timely, efficient and flexible.
16 The proposed changes will certainly enhance
17 and maintain the integrity of future
18 decisions for all of our people. I look
19 forward to the positive outcomes of these
20 efforts. Thank you.

21 BY MR. CALDWELL:

22 Hello, I'm Robert Caldwell. I am representing the
23 Choctaw/Apache Community of Ebarb. We are
24 petitioner #37. If you'll please, if someone
25 will let me know when I'm at four and a half

1 minutes, because we have a lot to say and I
2 don't want to take all of your time
3 immediately. The Choctaw/Apache Community
4 Ebarb welcomes the opportunity to discuss the
5 proposed changes to the Federal
6 acknowledgment Regulations today, to explain
7 our concerns and to ask questions. We offer
8 comments on the preliminary discussion draft
9 as well as problems we have seen with
10 interpretation of the regulations from 1978
11 to present. First, we agree with what other
12 people said in that support 83.6 (e-1), which
13 clarifies that evidence should be viewed in
14 the light most favorable to the petitioner.
15 We think that evidence must be always be in
16 the light most favorable to the petitioners.
17 But OFA policy suggests that there's a bright
18 line between groups who are tribes and
19 others. However, in reality, they are many
20 competing definitions of tribal existence.
21 Critics have suggested that the OFA uses the
22 most restrictive notions of tribal nation, a
23 practice that seems to be rooted in the fear
24 of criticism more than sound conclusions.
25 The cannon of interpretation of Federal

1 Indian law and tribal sovereignty demanded an
2 ambiguity to be resolved in the favor of
3 tribes. The correct standards of the OFA
4 action should be also to resolve ambiguities
5 in favor of petitioners. In that light we
6 appreciate the modified 83.6 (b-1) requiring
7 that applicants be viewed in the light most
8 favorable to the petitioner. Secondly, we
9 assert that OFA interpretations of tribes
10 which combine and function as a single
11 autonomous political entity have been overly
12 stringent. OFA has interpreted tribes which
13 combine and function as a single autonomous
14 political entity in ways that we believe has
15 let to illogical conclusion. The case of
16 United Houma Nation and related groups is
17 illustrative of this. In this finding
18 regarding the Houma, the OFA concluded that
19 the Houma family ancestors were a group of
20 accidental neighbors who happened to be
21 Indian rather than a group who chose to live
22 with each other because they could live as
23 Indians together. The fact that they and
24 their descendants stayed together and
25 maintained an Indian community identity is

1 certainly evidence of their intention to form
2 a political and cultural community with one
3 another. While most would prefer to have had
4 written constitution or a declaration of
5 independence to provide proof of their
6 political community, historical contingencies
7 meant that many communities did not.
8 Previous OFA interpretations have not
9 accepted documentation that a person or group
10 of people is Indian as evidence of descent
11 from historical tribe or tribes. How can a
12 group be Indian and not be descended from a
13 tribe? While it's true that Federal
14 Recognition is rooted in indigenous political
15 primacy, acknowledgment that Indian nations
16 governments predated United States. However,
17 Indian communities all over the United States
18 were comprised with individuals from a
19 variety of tribes. People from whom the idea
20 of tribe did not always have the same
21 significance. And if you want historical
22 documentation of this, James Merrill's work,
23 The Catawbas, Little Republics; Richard
24 White's work and Harmon's work are probably
25 all useful here. Third, we maintain that

1 tribal Federal Recognition is a Federal
2 obligation. It's not an entitlement program.
3 As former head of the PIA Michael Anderson
4 has said "Tribal recognition is a Federal
5 obligation, not an entitlement program."
6 Supreme Court's 1832 decision, Chief Justice
7 John Marshall wrote that tribal sovereignty
8 is not only acknowledged, but guaranteed by
9 the United States. Given this fiduciary
10 responsibility to guarantee tribal
11 sovereignty, the United States government is
12 obligated to actively investigate whether
13 some Indian nations sovereignty is currently
14 being violated by non-recognition.
15 Recognitions has been a currently
16 interpretive, passively way for tribes to
17 conduct the extensive research required to
18 petition for acknowledgment on their own.
19 Official OFA policies specifically ordered
20 its employees to do no research work to
21 assist petitioning nations. This might speed
22 up the notoriously slow rate in which
23 petitions are reviewed, but have the opposite
24 effect of what criticisms of their speed
25 intended. Rather than obtaining more

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attention for each petitioners case from the
Federal government, this regulation results
in less attention.

BY LARRY ROBERTS:

Let me just stop you there just for
a second and ask these gentlemen waiting
whether - how much longer your comments
are?

BY MR. ROBERT CALDWELL:

I have a number, but I could finish this thought.

BY LARRY ROBERTS:

Sure.

BY MR. ROBERT CALDWELL:

Research support and advice should be an ongoing
obligation of the Federal government for
groups showing evidence of Indian ancestry up
until the moment of final decision. Ongoing
eligibility for such support could be tied to
various progress markers as grants typically
are in order to prevent abusive ways, while
not delivering much needed support to tribes.
We certainly have the need for ongoing
support. The process as it currently exists
is very costly, and we believe that we could
benefit from support.

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BY LARRY ROBERTS:

Thank you.

BY FRAMON WEAVER:

My name is Framon Weaver. Good afternoon, ladies and gentlemen. I am an elected tribal chief of the MOWA Band of the Choctaw Indians of South Alabama. On behalf of my people, thank you for the opportunity to provide a few comments on the Federal Recognition process and the changes. It is widely accepted that the Federal Recognition process is broken. So I'm not here just to simply reiterate that strong belief. But what I'd like to do is remind everyone that you can't legislate hearts and minds, nor can you regulate them. That being said, the problems that we seek to solve are not only found in these regulations, but mostly in those who administer them. As your job is to follow the regulations that essentially provide a fair, uniform and systematic approach to evaluate the facts as presented; they do little to ensure that the bureaucracy charged with administering them would do so according to strict protocol and limit bias, politics

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and all other forms of outside influence. They do nothing to ensure that the Department will evaluate the facts as presented in an independent and objective manner instead of using the might and power and resources of the Federal government at their disposal to seek out evidence to support a prejudicial notion. Make no mistake about it, the very same individuals who purport to provide help and resources to petitioners have the power to actively and secretly work to derail their efforts; which they do. Our experience was one of both patronizing misdirection and spin. Any evidence that they felt served to support a denial was presented in esteem regard while more solid and compelling evidence that supported our petition was either completely and totally disregarded or was marginalized. They knew full well and in advance what the decision would be, as they did not evaluate the mound of evidence we spent years gathering. The expedited rules process should be more seriously evaluated as it has allowed OFA to take the path of least resistance in its evaluation of documented

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petitions by granting them the authority to pick the area that a tribe's petition is most vulnerable to denial, while not even having to evaluate other areas where strong supporting evidence may be found. We were naive to believe we would receive a fair evaluation. Instead, the BIA completely disregarded any and all evidence that could serve to support our claim while actively and aggressively working to find any evidence they could find to support a denial. Please allow me to share with you the thoughts of a few renowned experts after we were denied under the existing process. Renowned legal scholar and member of the Standing Rock Sioux, Professor Vine Deloria wrote "The Federal acknowledgment process today is confused, unfair, and riddled with inconsistencies. Much of the confusion is due to the insistence that Indian communities meet strange criteria which, if applied to all Indian nations when they sought to confirm a Federal relationship, would have disqualified the vast majority of presently recognized groups." He further wrote, "The

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MOWA Choctaws have a typical profile for Southeastern Indians. Their traditions are solid and the historical data that identifies them as Indians extends to the days when they were integral villages in the Choctaw Nation. Few people realize that not all people removed when the army marched the Nation to the West. Indeed, the fragmentation of the Five Civilized Tribes before, during and after removal makes their history a fascinating store of persistence and survival, but certainly does not eliminate them from the groups of people that should rightfully be recognized as Indians." Dr. Richard W. Stoffle, PhD, Department of Anthropology, University of Arizona wrote in response to the BIA decision to deny recognition, "I can only express my deepest disappointment in the BIA's decision. As someone who has reviewed your petition at length and has talked with your elders, there is no just argument against recognizing your status as an American Indian Tribe. After working for twenty-seven (27) years with more than eighty (80) American Indian tribes, it

1 is my considered opinion that the MOWA
2 Choctaw people are a persistent tribal
3 society. It is difficult for me to
4 understand how that point could have been
5 missed by the BIA." Dr. Kenneth York, PhD,
6 member of Mississippi Band of Choctaw
7 Indians, after critical review of our
8 evidence writes, "It is my belief as a member
9 of the Mississippi Band of Choctaw Indians
10 that members of the MOWA Band are descendants
11 of the Great Choctaw Nation which was
12 disbanded by the U.S. Government during the
13 Indian Removal Period. It is my professional
14 opinion that the MOWA Band has provided
15 documentation regarding the history, culture,
16 and ancestral relationship as well, if not
17 better, as any tribal petition in recent
18 years." Dr. Loretta Cormier, PhD at the
19 University of Alabama at Birmingham wrote,
20 "As you are well aware, I have had the
21 opportunity to work among the MOWA Choctaw
22 over the course of the last three years and
23 have researched your cultural history. Let
24 me say unequivocally that I have no doubt
25 that the MOWA Choctaw are an American Indian

1 community. I am astounded by the BIA's
2 denial of your Federal Recognition and find
3 the technical report they prepared to be
4 seriously flawed in terms of its historical,
5 cultural, and even logical analysis of MOWA
6 Choctaw history." Dr. Gregory A. Waselkov,
7 PhD and professor at the University of South
8 Alabama wrote to say, "I am more than willing
9 to testify before the United States Congress
10 on behalf of the MOWA Choctaw people in your
11 quest for Federal tribal recognition. After
12 years of historical and archaeological
13 research on the prehistory and history of
14 south Alabama, I am convinced that the MOWA
15 Choctaw deserve Federal recognition as an
16 American Indian tribe." Even former
17 Assistant Secretary Kevin Gover testified
18 before the U.S. Senate on these very same
19 problems when he explained, after acting on
20 our petition and several others, that he was
21 taken advantage of by his own staff and, as a
22 result, remained disturbed by his decision to
23 deny our tribe and several others. For this
24 reason, we praise the committee for allowing
25 the possibility for reconsideration under

1 these new proposed regulations. At least for
2 us, the underlying credibility and integrity
3 of the process, not so much the criteria
4 themselves, is at issue. Since most
5 petitioners can't afford the likes of
6 Abramoff or Scanlin, please do more to ensure
7 that petitions are evaluated with
8 independence and objectivity free of any
9 undue influence. Thank you.

10 BY LARRY ROBERTS:

11 Thank you. I notice that you were
12 reading. If you want to share that with
13 us or give it to us, we'll make sure
14 that the transcriptionist has that to
15 make sure that everything is accurate.

16 Thank you.

17 BY EARL SYLVAIN:

18 My name is Earl Sylvain. I am an elder with the
19 Avoyel-Taensa tribe. My information is not
20 as long as theirs. But I do have a question.
21 As I stated in this room this morning, we are
22 a recognized tribe. I have the paperwork
23 that's stated we were recognized on December
24 the 4th of 1980 along with the Tunica, the
25 (inaudible-Offen) and the Avoyel tribe was

1 recognized in 1980. But yet and still, we
2 have been denied the privilege of being or
3 receiving the benefits that we were supposed
4 to get under those recognitions, those
5 Federal recognitions. As a member of the
6 tribe, I was told by the person that we
7 memorialized this morning, "I know who you
8 are, but the roles are closed and we're not
9 going to let you in." My point is this, how
10 can you be a recognized tribe, you use
11 thirty-seven (37) chiefs names to get your
12 recognition. And that's what the Tunica
13 Biloxi did. They used thirty-seven (37)
14 chiefs names of the four tribe - the last
15 known four chiefs prior to 1976, when the
16 last ones died, were Joseph Sylvain, who was
17 my great grandfather; Ursin Thomas, Ursin
18 D'Augusine; and Chief Valentine. The last
19 known chief of my age was my uncle, Grover
20 Sylvain. And he was recognized as Chief
21 Sylvain of the Sylvain tribe. Now, saying
22 all of this, my questions are these. Avoyels
23 tribe was recognized with several other
24 tribes, why is it that this tribe has to
25 reapply for Federal recognition. If we've

1 already been recognized, why do we have to
2 reapply. Second, why is it that the Avoyels
3 tribe is unable to receive Federal land grant
4 when this tribe is an historical tribe.
5 Third question is as an historical descendent
6 of the original Avoyels ancestry, having been
7 said to be extinct. You can see they're not
8 extinct. There are six hundred (600) members
9 of our tribe that are still actively living
10 at this time. And I am pretty close to -
11 just remember, I was born in 1936. I'm
12 seventy-seven and a half (77½) years old. My
13 brother Ken is now the chief of the Avoyels
14 tribe. He is in his late sixties. So you
15 can see, we are not extinct. My mother died
16 about eight (8) years ago. She was ninety-
17 two (92) years old. She was born in 1910.
18 Her grandmother was Blackfoot. Her mother
19 was Blackfoot. Her father was a Benjamin who
20 was Apache. Like I said, there are two
21 hundred (200) family members right now of the
22 Avoyels/Taensa tribe. There are six hundred
23 (600) and something members total that are
24 still here that are direct descendant. All
25 of us are still pure. We did the DNA tests

1 like we were supposed to do, and it came out
2 ninety-nine point nine (99.9) still pure.
3 Because anybody we marry, anybody we marry
4 within this area, we're related to them.
5 We're either first, second, third cousin down
6 the line. All the people, would you stand,
7 please? Please stand. Every one of us here
8 are related. We have different names, but
9 we're either first or second cousin. We come
10 from the same root. So what I can't
11 understand is how can you use thirty-seven
12 (37) chief from a group that's still living,
13 you use their names, and yet deny them the
14 benefit, but you give it to a couple of
15 people that you want to come in, but you deny
16 the rest. Thank you for coming. Thank you
17 for letting me speak my peace.

18 BY LARRY ROBERTS:

19 Thank you. I'm not sure that we -
20 and it's not just with your comments,
21 but a lot of people's comments. I know
22 that we have comments on specific
23 matters, issues that are very factual,
24 specific to your circumstance. We're
25 more here to talk about sort of the

1 broader approach of the Part 83 process.
2 But if you want, we can certainly take
3 your comments, we'll have it all
4 transcribed, and maybe we can talk
5 during break.

6 BY EARL SYLVAIN:

7 But my point is I can't understand how we can be
8 recognized but then not given the benefit.

9

10 BY MR. KENNETH SYLVAIN:

11 Sir, that is only part of the complete
12 recognition. This is the complete
13 recognition. Do you want it?

14 BY LARRY ROBERTS:

15 Sure. Why don't we - I don't want
16 to get into the specific matters as part
17 of this public meeting.

18

19 BY MR. EARL SYLVAIN:

20 He just asked if you wanted the complete
21 recognition paper.

22 BY LARRY ROBERTS:

23 Sure.

24 BY KENNETH SYLVAIN:

25 That is the complete recognition.

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BY LARRY ROBERTS:

Okay. Thank you.

BY MR. BOBBY REDHAWK STERLING:

Hello. My name is Bobby Redhawk Sterling. I am the Chief of the Cherokees of Alabama. We meet all of the criteria to be Federally recognized. We have been working on it for quite a while. The only problems that we have, and I'm sure every Native person in Alabama, our the people did not go on the Trail of Tears. My great great grandfather was John (inaudible). He was Chief. He was born in North Carolina in 1794, and he died in (inaudible) County in 1876.

BY LARRY ROBERTS:

Hold on one second. I'm sorry.

All right. Continue.

BY MR. BOBBY REDHAWK STERLING:

But all of our members in our tribe are direct descendants of Native blood, full. And Dr. Earl keeps asking me where was your chief fifty (50) years ago. In the state of Alabama fifty (50) years ago you couldn't live as an Indian group or an Indian tribe because it just was illegal. They would not let you. Our people had to hide out, work as sharecroppers, be black, mulatto or whatever. But they could not live as

1 an Indian tribe. So we can't prove that. But our
2 genealogy proves who we are. That's the problem that
3 we have with our Federal papers. We've got our
4 petition that's #322. I would love for them to change
5 that in the criteria. We will make the rest of it.
6 But that's the one what we have problems with, because
7 it's just impossible. You couldn't do it. You just
8 could not do it. When I was a kid growing up, my dad
9 had twenty (20) brothers and sisters. And our house
10 was always full of people and they did some Native
11 studies. The law was (inaudible). So what we're
12 doing, we are losing our heritage, period. We cannot
13 do our ceremonies the way they should be done. And we
14 are not asking the government for money. We put in our
15 letter of intent "We do not want your money." We just
16 want to be able to be who we are, and we can create our
17 own funding. We would love to have schools, clinics,
18 houses, raise our own food, process it, not be filled
19 up with all these hormones and stuff that they shoot
20 stuff up with. We would just like to be who we are.
21 That's what the Creator made us; why can't we be that.
22 Thank y'all.

23 BY LARRY ROBERTS:

24 Thank you.

25 BY ROBERT CALDWELL:

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Robert Caldwell again, Choctaw/Apache Community of Ebarb. Petitioner #37. We agree with the deletion of the criteria (a), external observers identify group as Indian. By relying excessively on external characterizations of petitioners, the OFA is privileged racial and racist, quote, "police" regarding Indianness. History has shown that people with African and Indian ancestry are less to be regarded by others as Indian than Indian people with equal amounts of white ancestry. Similarly, in the full racial taxonomy in the United States, being a Spanish speaking community can lead a group to be racialized or conceptualized as being, quote, "Mexican." Which is seem as exclusive of being Indian, regardless of how much indigenous ancestry they may have. Such outsider misidentification of an Indian tribe should not be weighed against a tribe, but rather be considered as evidence supporting petitioners' claim of being a distinct community. So we'd like to know if the elimination of 83.7 (a), outside characteristics of a group, that if they

1 will actually no longer be taken into account
2 or if there is (inaudible). Next, we believe
3 that interested parties have too much power
4 in this process. Potentially affected
5 property owners and economic motivations for
6 ensuring the tribe is never recognized should
7 not have a louder voice than those who know
8 the tribe's history and ethnology. If the
9 (inaudible) supposed to be an objective
10 social scientific process for ethno-
11 historical determination whether a tribe
12 exists or not, there is no justification for
13 considering potentially affected property of
14 legal interests. Interested parties
15 currently have the power to appeal
16 recognition decisions based not upon
17 historical facts, but upon their supposed
18 property interests. For this reason we would
19 like to see 83.11, the deletion of 83.11,
20 independent review, reconsideration and final
21 action. Next, we believe there should be a
22 timely transition from the moment of proposed
23 positive findings. As soon as a proposed
24 positive finding issues, the transition
25 process should begin towards the

1 establishment of Federal services and
2 government to government relations. The
3 process should be initiated at this point
4 rather than waiting up to six (6) months as
5 stated in 83.12 (d). Navigating the Federal
6 bureaucracy and Federal Indian policy is no
7 easy task. And the formalized process of
8 advising and needs assessment should begin
9 immediately to make it easier and faster for
10 newly recognized tribes to access available
11 services and protections. For this reason
12 the 83.12 © seems unnecessary against the
13 spirit of acknowledgment. I'm just going to
14 read one more for now.

15 BY LARRY ROBERTS:

16 There's no one lining up behind
17 you, so...

18 BY ROBERT CALDWELL:

19 Okay. The Office of Federal Acknowledgment
20 decisions too often read like a prosecutor's
21 brief. In responses to petitioner's, OFA's
22 language has occasionally been unrealistic
23 and unbalanced, saying there is, quote, "no
24 evidence" of Indian ancestry in communities,
25 when there is at least, at very least some

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evidence, even if it is not the kind the OFA accepts as proof. The change of working in the 83.6 (d) is appreciated in the spirit. And evidence should be viewed, again, in the light most favorable to the petitioner. I'll continue later. Thank you.

BY ANN TUCKER:

I am Ann Tucker from Muscogee Nation of Florida group. We are petitioner #32, and we are currently on active consideration with the Office of Federal acknowledgment. I have been at two testimonies on the process and problems that our tribe has encountered. We were in the original process before this, in 1977. We had documents filed. They were returned to us. We started again. And that's something that I know my tribal council doesn't want to happen to us this time. But what I wanted to tell you was, while we are on active consideration, while your offices are looking at us, call us. In the last year no one has contacted us while we have been extended six (6) months. We have now been suspended by regulation. This is a process that we have been in for over thirty

1 (30) years. So I ask that when you are
2 working with the tribe, work with the tribal
3 government. If there are questions that you
4 have, we can answer them. A lot of the times
5 we can put some of this aside that is of
6 concern if we are simply contacted. And I
7 just - I want to thank you for this, because
8 I know this is a difficult process and I know
9 this is a complicated process. And I
10 appreciate what you are trying to do. All of
11 our tribe government does. So thank you.

12 BY NANCY CARNLEY:

13 Nancy Carnley, the Ma-Chis, and that's spelled M-
14 a, hyphen C-h-I-s, Lower Creek Indian Tribe
15 of Alabama. I really appreciate what all the
16 government is doing to create and try to
17 clarify the process. We appreciate you
18 coming to the South and having a meeting with
19 us. The first thing I'd like to say is we
20 really need someone to take into
21 consideration the southern history of the
22 United States. We went through Trail of
23 Tears, Removal of the Five Civilized Tribes.
24 After it was promised us "You will become
25 U.S. Citizens. You become assimilated into

1 the white nation, the white world, you can
2 stay." That promise was broken to us, along
3 with other promises. And we can't hold what
4 our ancestors done no more than can we hold
5 what your ancestors done to us. So we need
6 to let bygones by bygones and start a whole
7 fresh new page. And do it in a loving,
8 caring, Christian or whatever faith you want
9 to do it, but have good faith to it.
10 Secondly, everything needs to be transparent.
11 There needs to be some checks and balances.
12 There needs to be a watch person, a watch
13 group created from both state and Federally
14 recognized tribes to come together and create
15 and watch, make sure that no one is trying to
16 back door, back stab, or any of the other
17 things that went on in the past. Also, we
18 need to create deadlines and use business
19 days instead of calendar days for everybody.
20 Forty-five (45) business days. Forty-five
21 (45) business days for the other groups. And
22 I'm going to go through a brief history of
23 Alabama history. We first started with the
24 settlers coming in from Georgia. They set
25 illegally in my home - in one of my home

1 communities, one of my home villages of what
2 is now present day known as Eufaula, Alabama.
3 The government forced them back into Georgia.
4 Then we went through all the war, the Creek
5 war, the Creek-Seminole war. Removal. Then
6 we come along to the Civil War. From the
7 Civil War, we go to the Era of
8 Reconstruction. The Era of Reconstruction,
9 our houses got burned. Then we went to the
10 history KKK. I don't know how many of you
11 have ever had KKK visit. I can be a true
12 witness of KKK in 1965. My daddy was
13 threatened; we was threatened. And it went
14 on up into the 1990s. They created us a
15 racial cleansing law in the state of Virginia
16 in 1924 when we became U.S. citizens. And it
17 just trickled on down. As today in the state
18 of Alabama, if you had an Indian child or an
19 Indian to die, you cannot have American
20 Indian put on your birth certificate. It
21 doesn't hurt another race but American
22 Indians. It doesn't hurt the Hispanics; it
23 doesn't hurt the African Americans; it
24 doesn't hurt the Caucasians. It hurts us.
25 We are not allowed to identify ourselves in

1 hospitals. They will identify you with what
2 they think you are. We have gone through so
3 many racial remarks and prejudice. As far as
4 1995 in the state of Alabama public school
5 system my children were being assaulted just
6 because they were American Indian. 1995, we
7 should have been long past this. I had to
8 get the United States Department of Education
9 Civil Rights Division involved. That is
10 discrimination. They had to rule and say
11 "You stop. These are Indian children.
12 They're entitled to a free and public
13 education." Our tribal house that held our
14 documents got burned in 2004 because we were
15 Indian and, heaven forbid, they thought they
16 might get something. Just for a few greedy
17 people, which the state never could prove who
18 it was. To this day I could probably tell
19 you who it was, but because I don't have the
20 proof, I'm not going to slander that person
21 or persons. It's over and over again what
22 the American Indian faces in the south. We
23 have a unique history, different from any
24 other group in the area of the United States.
25 The last thing I'd like to say, state tribes,

1 I know the state of Alabama, North Carolina,
2 South Carolina, Louisiana, other states, they
3 have a criteria to go through. We have the
4 criteria, we went through it. We went
5 through it and we got the state recognized.
6 We weren't one of the first tribes that got
7 state recognized. We were one of the first
8 tribes that did go through state recognition.
9 And I feel like the tribes that has to go
10 through the state recognition, it has rules
11 similar to y'all's, we should get an extra
12 point or something. Thank you.

13 BY LARRY ROBERTS:

14 Thank you.

15 BY YVONNE FERGUSON BOHNEE:

16 Yvonne Ferguson Bohnee, Point-Au-Chien Indian
17 Tribe. First, thank you very much for being
18 here and having a meeting for the
19 stakeholders, for all of the stakeholders to
20 participate. We know that the process is
21 broken, and we think that this is a step
22 forward. On behalf of the Point-Au-Chien
23 Indian Tribe, I'd like to make a couple of
24 comments about the working draft. And one
25 refers to some comments other folks have made

1 with regards to active consideration. There
2 are five (5) tribes in Louisiana who are on
3 active consideration right now. We have
4 amended - four of us have amended proposed
5 findings. And with the new regulations in
6 place, we agree that it's good to allow the
7 tribes to choose which process they would
8 like to be considered under. But I am
9 wondering whether we would receive a new
10 amended proposed finding or whether it would
11 be a final decision once we submit to the new
12 process. And that's - I'm not sure...

13 BY LARRY ROBERTS:

14 I think we're open to suggestions
15 at this point because we're at an early
16 stage in the discussion draft in terms
17 of mechanics, how that should work. So
18 if you have suggestions, especially
19 those petitioners that are in active
20 consideration, you know, we would
21 appreciate that input. I think as the
22 discussion drafts for right now, if you
23 chose to go under the new regulations,
24 then it would start over essentially.

25 BY YVONNE FERGUSON BOHNEE:

1 Yes. It wasn't clear to me, but I appreciate
2 that. I'll take another look at that and
3 we'll make a proposal. Also, we agree with
4 the changes to 1934 to the present in (d) and
5 ©. And I'd like to focus on criterion (e),
6 because for our tribes in Louisiana it's the
7 hardest criterion. Obviously, none of the
8 other criterion matter if you can't meet
9 criteria (e), which is the historical tribe.
10 And I appreciate that there is one added
11 subsection in criterion (e) to allow for
12 historians and anthropologists. And I heard
13 that you noted earlier that that is to deal
14 with sometimes the controversies with the -
15 the controversies or how the genealogists may
16 view individuals because they're looking for
17 specific information. For the tribes of
18 Louisiana, specifically they're looking for
19 who are the parents of the progenitors from
20 1767, which is a time period that we don't
21 have information for. So I would - if that
22 is something definitely that you're looking
23 at, I would suggest that that is clearer in
24 the regulation. Because over time I think
25 the interpretation is changed within the

1 office. And we've seen over time with the
2 fact process, or Federal acknowledgment
3 process, that interpretations change and
4 become more difficult. And our friends here,
5 the Tunica Biloxi, they descend from five (5)
6 tribes. They're a small tribe and they were
7 able to meet this requirement over time, the
8 interpretation of what it means to establish
9 a historical tribe and how you join together,
10 how you meet that criterion has changed. So
11 one of the suggestions we have is that if you
12 actually exist as a political unit from - I
13 would say from when the time your state
14 became part of the United States, that you
15 would look at that and not go back prior to
16 that time period where you may not have any
17 historical evidence. I know that there was
18 some guidance that was issued by Carl Artner,
19 I think it was in 2008 or 2009, stating that
20 the sustained contact for historical time to
21 the present begins at 1789. I don't see this
22 in the working draft, but I also don't see
23 sustained contact in the criteria. So I
24 would just make that suggestion, that the
25 Federal relationship can't start when the

1 United States hasn't been created. And so it
2 shouldn't go back prior to, at a minimum,
3 1789. And for those states in which they
4 weren't part of the United States yet, it
5 should go back to whenever that state became
6 part of the union. Just because that - if
7 you were existing as a political unit, I
8 think that should satisfy it. I have a
9 couple more comments that deal more with
10 transparency, because I think that's a big
11 issue for our tribe. I don't think that
12 there is a solution in this working draft for
13 the lack of transparency. And what I mean by
14 that, although it says that third parties
15 must submit copies of their comments to
16 petitioning tribes, I don't know how you
17 enforce that. And there are lots of third
18 party individuals who submit comments, and we
19 shouldn't have to FOIA those documents. We
20 know what's in the file. And I know that
21 within the working draft they say - it says
22 during the response period they shall make
23 available any records not already held. And
24 I just want to mention our experience dealing
25 with FOIA. We made an initial FOIA request

1 in 2002 for a specific document. It was one
2 document. And it took the Department after
3 two years only fifteen (15) minutes to obtain
4 the document, but I received it two years
5 later. When we went on active status, there
6 were a ton of documents which we didn't have
7 access to. We didn't know what was in our
8 file. We submitted a FOIA request for copies
9 of the materials, and it took over seven (7)
10 years, several additional FOIA requests, and
11 numerous visits to OFA. And these documents
12 were finally received, not all of them, but
13 most of them, in November of 2012. And we're
14 on active consideration. And all of these
15 documents, initially we were told it would
16 cost us over Five Thousand Dollars (\$5,000).
17 And all of these documents are scanned in.
18 So, you know, and over time they waived the
19 cost of producing it because it took so long.
20 But I think that's a huge consideration and
21 something that should be looked at. And it
22 goes towards the transparency of the process.
23 And also a lot of notes were withheld, the
24 expert notes. And I think that is something
25 that we would want to look at. Within

1 litigation, I appreciate that in the working
2 draft there is an opportunity to basically
3 cross-examine the expert. I appreciate that.
4 I think that tribes appreciate that
5 opportunity, because we feel like we don't
6 receive real answers to our questions. But I
7 would caution eliminating any review. I know
8 that the IBIA review right now is not
9 effective. But you may want to consider some
10 review. Over time, under another
11 administration, the regulations may be
12 interpreted differently. They may not apply
13 the standard of proof as it's set out. And I
14 think there should be an opportunity for
15 review. Thank you.

16 BY LARRY ROBERTS:

17 Thank you.

18 BY MARY SIXWOMEN BLOUNT:

19 My name is Mary Sixwomen Blount. I am the tribal
20 administrator for the Apalachicola Band of
21 Creek Indian. We have had the pleasure of
22 already responding to your draft proposal.
23 So I just wanted to come and say just a
24 couple of things at this time. One, our
25 disappointment in everything, underscoring

1 from what the council said of last meeting,
2 was we were disappointed in that there was no
3 option in which we have input on staffing.
4 Because, as so many of the people who have
5 spoken before, it tells me that we are an
6 international multi-cultural group of very
7 important people. Our cases are being
8 reviewed by people who apparently do not
9 fully understand either the cultural
10 significance of each tribe, or they would not
11 just be saying "Let's hire an intermediate
12 bureaucrat to review all Indians who are all
13 the same." Each culture has its own nuances
14 and differences. And it seems to me - like,
15 say, even the cultural piece of it. Our
16 tribe, particularly, was the first tribe that
17 was ever contrived by the United States as a
18 gift from President Andrew Jackson. And we
19 have the metal. We have the documents. I
20 have the surname of the first chief. And
21 it's taken twenty (20) years and we have
22 still not been reconstructed or re-recognized
23 as a standing organization. So let me say
24 this, the Bureau of Indian Affairs or DOFA,
25 whoever it was that wrote these or will write

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anything in the future, you are excellent, absolutely excellent at writing rules. What you have a little bit of problem with are the people that you hire to administer and to judge that which they do not know and lack major understanding of. We have no input for that. All we can do is respond to what you have said you need or would like to hear from us. But we have no say over who reviews our case or how ugly or how nice we are treated by any of them. And that brings us great sadness. Thank you.

BY MR. LARRY ROBERTS:

The idea, if I haven't said before, the idea with the regulations is to have input from everyone in terms of objective criteria, so everybody knows the rules of the road as they're going in. I mean, that's the goal of the objective criteria. So any public comments on that or written comments would be appreciated.

BY LORA ANN CHAISSON:

Hi, my name is Lora Ann Chaisson. I am elected

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Vice Principal Chief for the United Houma Nation. It's great concerns to me with the current system is its handling of the splinter groups. Allowing for the preferential treatment by attaching to a host tribe and picking and choosing the pieces of historical data submitted by the host tribe. And they are allowed a second bite at the apple by being given the opportunity to submit their vision after the fact. This process has encouraged splinter groups and political strife. The draft regulations don't say how it will treat splinter groups. We don't think we should continue to all be treated as one petition. If and when we proceed under the new regulations, we think that we should be separated from the other petitioners, and each required to submit their own separate petition. We recommend splinter groups not be allowed to attach to host petition, and have to start as new applicants. If splinter groups want to stand on their own feet, then they should start from scratch like we have. I am also concerned that the proposed changes include

1 the removal of the proposed finding and
2 rebuttal process. In our own petition, due
3 to the size and volume of our documentations
4 on file, some of the materials were
5 overlooked in the initial review. Through
6 the rebuttal process we were able to reach
7 our OFA staff to inform all the information
8 that was overlooked. So our recommendation
9 was that they actually keep that.

10
11 BY LARRY ROBERTS:

12 I don't think we've changed that
13 proposed finding and rebuttal process
14 So that when the proposed finding is
15 issued, then third parties can submit
16 evidence and given an opportunity to
17 rebut that. So if you are reading that
18 that has changed in there, I don't think
19 that that was our intent. So we will
20 take a close look at that. And if you
21 are able to point us to the particular
22 sections, that would be helpful.

23 BY JACKIE WOMACK:

24 Hello, I'm Jackie Womack, and I'm Chief or
25 Chairman of 4 Winds Cherokees in Louisiana.

1 I don't know if Ms. Appel is here or not, but
2 her crew has been real good to me these last
3 two days, answering questions for me. And
4 it's interesting to me that, just listening
5 to the comments, it seems like everybody in
6 the South is about having the same problems
7 over and over. It's interesting. And it's
8 good that y'all brought us together here so
9 we can hear each other's concerns. And for
10 y'all to see what we are facing, you know.
11 Of course, I'm from the Eastern Cherokee.
12 Our tribe had went to Georgia and got some
13 way in the Trail and Tears and got lost off
14 down towards Louisiana from the Trail of
15 Tears. And ours has been a hard time trying
16 to get our history together. But we have
17 finally, we think we are ready, and we're
18 fixing to apply for our recognition.
19 Hopefully we will. But I thank y'all for
20 having this. I think it's real good. I've
21 heard some wonderful comments today that was
22 interesting, you know, about all of this.
23 And it helps us to learn more from others by
24 having this meeting. We thank y'all for
25 having us.

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BY LARRY ROBERTS:

Thank you.

BY ROBERT CALDWELL:

Robert Caldwell, Choctaw-Apache Community of Ebarb. I guess the next point that I really wanted to make is that we appreciate the plain language that's going to be forthcoming. We think it is absolutely necessary. And the Powerpoint is also useful. So we will be sharing that. We think, in addition to plain language, it would be useful to have some kind of explanation to achieve, you know, full and effective public comment, some kind of explanation of the reasons for various proposed changes. Now, I know a lot of this stuff has been demanded by us, you know, those seeking acknowledgment, but we would really like to know what the justification is on each one so that we can get a better sense of the implications of some of them.

BY LARRY ROBERTS:

If I could interrupt you on that.

When we do issue a proposed rule, we

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will have a preamble for that proposed rule that will attempt to sort of explain why we're making various changes. But we wanted to get out the discussion early on to receive comments on it to see how we are moving and how we should be moving forward. But the proposed rule will have it, a discussion in terms of those changes.

BY ROBERT CALDWELL:

Secondly, I know we've already addressed this, but I think it's important that the limit on pages in the petition should clearly exclude supporting documentation, and petitioners should be able to request additional pages for good cause shown. There may be cases where, you know, I don't what the proposed limit is, what XX means. If it means fifty (50) pages, I mean, our prior petition said, you know, basically it was way too short, and it was, you know, in that range. So if it's three hundred (300) pages or five hundred (500) pages, you know, maybe that makes more sense. But I would certainly note that

1 shorter might be easier for those of us in
2 the room to achieve. But some way in which
3 it's clear that this does not include
4 supporting documentation. We also support
5 the proposal to add the expedited favorable
6 finding for tribes mentioned in 83.10. We
7 think that a proposed expedited finding
8 process would help clear the backlog of
9 petitions and help even those of us who
10 wouldn't qualify under that expedited
11 finding. Lastly, we think - not lastly, but
12 we believe that the changed regulation should
13 clarify that the assistant secretary's role
14 is to adjudicate a petition; not to act as an
15 adversary party. Lastly, I think it's
16 important for us just to say until you hear
17 this, indigenous scripts have survived in
18 many forms. And it's important to nurture
19 them where they persist. I think it bears
20 repeating the tribes that have not been
21 Federally recognized are not always going to
22 look exactly like the tribes that have been
23 Federally recognized for hundreds of years
24 for a variety of reasons. Brian Papodic
25 (spelled phonetically) has written about that

1 through Tribes in Louisiana, and there are
2 others that I could suggest good readings on.
3 But I think it's important to say that we are
4 not any better or worse than Federally
5 recognized groups; we're just different. Yet
6 we cherish our indigenous communities. And
7 Federal government is legally and morally
8 obligated to recognize our status as
9 indigenous peoples under the UN framework,
10 and as indigenous peoples who have survived
11 hundreds of years despite simulation and
12 pressure. So I want to end on thanking you
13 for bringing us all together, as other people
14 have said, and turn it over to my chairman,
15 John Procell.

16 BY JOHN PROCELL:

17 Good morning. I just want to let y'all know that
18 we really appreciate what y'all are doing
19 here. But, you know, I never did understand
20 why it shouldn't be all right, hey, why don't
21 y'all come out and visit some of the people.
22 Y'all have got all the good jobs. Come out
23 and see who we are. Come out and see that we
24 have the first Native American school in the
25 state of Louisiana. Come see our people. I

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invite all of y'all to come be with us and see who we are. Thank you very much.

BY STEPHANIE WEBB:

Good afternoon, my name is Stephanie Webb. I am a member of the Avoyel Tribe of Louisiana. This is new to me. I want to thank y'all for doing this. We put application in in 2000, and we are still waiting. I want to thank y'all. We have hit a lot of obstacles trying to get recognized. One of them is the Tunica, when they got recognized in 1981, there were five (5) tribes that was listed to get recognized. One was the Ofo, the Tunica, the Biloxi, the Avoyel. We're state recognized. We're not Federally recognized like the Tunica. The only thing our tribe is looking for is to be Federally recognized. We are not looking for money. We're not looking for things like this. We just want to show people in the nation the kind of people. Our tribe, we've always helped people. We've been here since 3000 B.C. When man first came here we took them in, we taught them our ways. And because of the things that we did for these people to have a

1 better life when they settled here, our
2 people lost their life for that. We're not
3 here to slander anyone. A lot of our history
4 was pretty much pushed under the rug, because
5 people think that the tribe that existed here
6 when Avoyelles Parish was formed was the
7 Tunica. It wasn't the Tunica. It was the
8 Avoyel. The Avoyel took the Tunica tribe in
9 because the Natchez Indians were going to
10 kill them. So to keep them from being killed
11 off, the Natchez Indians asked the Avoyel
12 tribe to take them in. And we did that.
13 Because they were dying. And today we just
14 ask to be recognized the same way they are.
15 And it's been a hard road for us. What we
16 don't understand is for this tribe to be
17 recognized they have five tribes. We are one
18 of those tribes. And we've been fighting to
19 get recognized and we keep getting pushed
20 off. As a tribe, I mean, I'm not going to go
21 through a lot of things we've - we've been
22 through a lot of hardship, we lost lives.
23 And we want people to know that we are not
24 extinct. We still exist here in Avoyelles
25 Parish. And I appreciate y'all taking the

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steps to make it a little bit easier for us to get recognition. Thank you.

BY LARRY ROBERTS:

It's now 2:40. Given that there's no one at the microphone to provide comments at this point, why don't we take a ten (10) minute break here. We will reconvene at 2:50. Thank you.

(Briefly off the record)

BY LARRY ROBERTS:

We are back. If there are any comments or questions, the microphone is yours.

BY SHIRELL PARFAIT DARDAR:

Hi, good afternoon. I am Chief Shirell Parfait Dardar with the Grand Caillou Dulor Band of the Biloxi-Chitimacha Choctaw. Thank you very much for having this meeting and letting us get the chance to give our comments and suggestions. One of the issues that we are concerned about is we are not exactly very comfortable with the page limit on the petition submission. One thing you need to understand is that each tribe is very unique.

1 And in a lot of cases, if we limit the amount
2 of pages that they are allowed to submit,
3 that could take away from the chances of
4 gaining Federal acknowledgment by being able
5 to explain it thoroughly. The other thing is
6 we do agree that we should be allowed to
7 submit it in any readable format. I think
8 that is a pretty good change, and it is less
9 expensive tribes, and we like trees, so I
10 think that's why it's a very good point. The
11 other thing is if you are going to have a
12 hearing, we would prefer that they be held in
13 or near the tribal community so that is it
14 less expensive for the tribe, but it also
15 gives you guys the opportunity to experience
16 our communities as well. Thank you.

17 BY LARRY ROBERTS:

18 Thank you.

19 BY VIOLET HAMILTON:

20 I am Violet Hamilton. I'm another one of the
21 state recognized Indians from Alabama. I'm
22 one of your senior citizens. I've lived in
23 Indian country all my life. I was one of the
24 final six that we had four years of working
25 before we were recognized by our legislation

1 as a union. When we first started, started
2 talking to the legislators, they said there
3 wasn't no Indians in Alabama. And I said
4 "Well, they're here." But we had to suppress
5 our lineage. We could not talk about being
6 Indian. Our children were told to be quiet,
7 don't answer family questions. Part of that
8 was because it was 1927 before it became
9 illegal to kill an Indian in Alabama. And
10 it's well documented that they would have
11 Indian hunts and chase the Indian down like
12 they were running a deer or something of that
13 nature, in my own family. I remember some of
14 the elderly people when I was growing up, the
15 women wore bandanas tied in a knot. And I
16 began to ask why. And their reply was "We
17 don't want our hair long." And several of
18 them wore it until they went to the grave.
19 In fact, their family put the bandanas on
20 them. And we went through a very lengthy
21 process for state recognition. We are
22 governed by the administrative code, and it's
23 very strict. And I do feel that the Indians
24 who are state recognized and have been for
25 many years should be given extra preference

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for Federal recognition.

BY LARRY ROBERTS:

Thank you.

BY CHARLES YOW:

My name is Charles Yow. Last name is spelled Y-o-w. I am with the United Cherokee Ani-Yun-Wiya. We are a state recognized tribe in the state of Alabama. We've actually gone through an administrative process very similar to the BIA process. It's standard but it's in place in Alabama. The administrative process that was mentioned just a second ago relies on a very large amount of the same criteria that are already in place with the BIA. Our concern isn't so much for the criteria. One of the biggest concerns that we really do have is the way that the BIA's bureaucracy has really had a floating interpretation of the way that the Federal regulations should be interpreted. And this can be seen very clearly through the Federal acknowledgment process in provisional tribes that went through the process had actually quite a bit smaller applications when all was said and done than some of the

1 more recent tribes. The (inaudible) when all
2 was said and done their application would
3 have filled an eighteen wheeler truck
4 basically. Whereas the original applications
5 were only a couple hundred pages long. That
6 revolving and changing process is one that we
7 think is a serious problem. And we certainly
8 appreciate the revisions that have been made
9 and are very supportive of those. I'd also
10 like to point out that, as has been mentioned
11 several times, there is a long history of
12 state recognition of Indian tribes in the
13 United States, particularly here in the state
14 of Louisiana. The Tunica Biloxi were state
15 recognized before being Federally recognized.
16 The Jena Choctaw were state recognized before
17 Federally recognized. In the state of
18 Alabama, the Poarch Creek were state
19 recognized before being Federally recognized.
20 And the list goes on. It's really an issue,
21 I think, that we see the states recognize on
22 a local level the existence of Indians
23 (inaudible) The locals recognize the
24 existence of Indians in their communities.
25 And it just takes a while for the Federal

1 government to catch on that we actually do
2 exist. So we welcome the revisions. We do
3 appreciate them. One final suggestion would
4 be if the appeal is going to be a negative,
5 adverse finding, if it's going to get a
6 Federal court to review would be a good way
7 to address that. That would take a lot of
8 the concerns that the tribes have addressed
9 over issues with certain innate bureaucrats
10 that we've addressed repeatedly in various
11 meetings, take it out of their hands and give
12 it a little more transparency and a stronger
13 sense of justice and fair play if a Federal
14 court is actually reviewing that decision
15 from the very beginning instead of just
16 reviewing whether or not the steps were
17 followed. Thank you.

18 BY LARRY ROBERTS:

19 Thank you.

20 BY JAMES WRIGHT:

21 Chief James Wright of the Ma-Chis Lower Creek
22 Indian Tribe of Alabama. I just have one
23 brief comment or recommendation for the
24 criteria. That if your tribal community was
25 ever on Federal land, such as a national

1 forest, Department of Defense, land being
2 held, or after 1900 your tribal community was
3 removed from land that the Federal government
4 become ownership of, or they had, for
5 instance, came in to do work in a national
6 forest and find a community alive there and
7 remove them, you know, I think that should be
8 placed somewhere in the criteria, because you
9 have so much wilderness that you're taking
10 into consideration when you deal. Because
11 the Native American community a lot of times
12 didn't want to be found due to the removal or
13 the killing of the people. So you would
14 literally hide out. Sometimes it would be in
15 the deepest forest. And just like if you
16 tried to go out now and find like - I was
17 going to mention on the unabomber. He was
18 not hiding out on Wall Street. He was hiding
19 out in a one room shack in the mountains.
20 That's what took us so long to find him
21 because he didn't want to be found. So many
22 of the Native American didn't want to be
23 found in the 1900s due to fear. So with that
24 being said, any time that they was found
25 living or removed from U.S. Government land,

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I think that should be considered in the
criteria some way. Thank you.

BY LARRY ROBERTS:

Thank you.

BY GARY WALLS:

My name is Gary Walls, Chief of the Cherokee tribe
of Mississippi, petition #326. I understand
that you want to make the rules a little more
transparent. But I'd like to suggest we
establish some kind of precedent on what is
acceptable for proof. Other tribes will do
something for proof, and then they tell us
that we can't use the same thing. We need
some kind of definition of why we cannot use
the same information that has been acceptable
for someone else. And that has happened to
us. There should be, in my opinion, some
sort of precedent on proving criteria. If
it's been accepted before, why disallow it
next time.

BY LARRY ROBERTS:

Okay. Thank you very much.

BY RUFUS DAVIS:

I'm Rufus Davis, Chief of the Adai Nation,
Robeline, Louisiana. First of all, I'd like

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to thank you guys and thank President Obama for initiating changes to the regulations. Our tribe certainly supports those changes in them. And hopefully it will just be a start to do better things. It's many things that I think can be done. But it's hard to just get these comments out. What I'd like to do is - we will get minutes of this meeting, right, the morning and the afternoon meeting?

BY LARRY ROBERTS:

It will be put up on our website.

BY RUFUS DAVIS:

On your website, okay. And is your website on this paperwork?

BY LIZ APPEL:

It's on the back.

BY LARRY ROBERTS:

It's www.bia.gov.

BY RUFUS DAVIS:

Okay. Appreciate it. We can sit up here all day and talk about it, but what I'd like to do is just take a minute and read the criteria that's being proposed and have our professional team evaluate, and we can write

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- we've got until August 16th, right, to write in comments?

BY LARRY ROBERTS:

Yes, and then we will issue - we will move forward with proposed ruling, and then you will have an opportunity to provide comments on that proposed ruling.

BY RUFUS DAVIS:

Okay. Thank you very much.

BY YVONNE FERGUSON BOHNEE:

I have one additional comment. Yvonne Ferguson Bohnee. I have one additional comment, because this has come up several times with regards to endogamy and how that percentage is developed. Whether you have two tribal members who are married to each other, is that considered as two marriages or one marriage. Because you could have a significant number of your population who inter marries, but it doesn't rise to fifty percent (50%) because of the way it's treated. And I think having some sort of guidance as part of the process with regards

1 to endogamy, since it is relied upon already.
2 Whatever that percentage is, fifty (50)
3 percent or whatever. What is the standard
4 for determining endogamy.

5 BY NANCY CARNLEY:

6 Nancy Carnley with Ma-Chis Lower Creek Indian
7 Tribe, Alabama. I have two questions. When
8 will y'all put the hearing, the stuff that
9 we're doing now, when it is going to be where
10 we can go on and listen to it on the website?
11

12 BY LARRY ROBERTS:

13 There will just be paper
14 transcripts. There won't be audio.
15 Well, it depends on each court reporter,
16 their time frame. So we're hoping that
17 we will get them on the website a couple
18 of weeks after - this is our last one.
19 So hopefully we will start seeing some
20 of the earlier public meetings and
21 consultations on our web page pretty
22 soon.

23 BY NANCY CARNLEY:

24 And my second question I have, when you put it out
25 in the Federal register for the final - for

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the public comment section, any changes that people are submitting, will they be taken into consideration for possible changes on your final rule or are they just going to be ignored?

BY LARRY ROBERTS:

We will consider all comments.

BY JOHN VOTTA:

John Votta Potawatomi Ottawa Ojibwe. I believe I was adopted in the late 60s, early 70s. So my situation is said to be, not necessarily unique, but different from any of the people here today. I probably represent a class of people. And while whatever their intent might have been, some of us later found ourselves happy living in the woods. So when you recognize us as such, if you could just be helpful as to find our proper place with our proper tribal affiliation, that would be very helpful and effective. Thank you.

BY MELISSA WRIGHT:

Melissa Wright, Ma-Chis Lower Creek Indian Tribe of Alabama. I just want to make a comment. You said that you are receiving comments - it says would a standard form for petitions be

1 helpful. I believe it would. That's is what
2 I have to say.

3 BY MR. LARRY ROBERTS:

4 Okay. Thank you. It's 3:10 now.
5 I don't want to rush anyone. I think we
6 will give it a couple more minutes to
7 see if you have any comments you want to
8 make. If not, we will end early this
9 afternoon. I certainly don't want to
10 preclude anyone from making comments
11 that want to do so. Is there anyone
12 else that wants to make any final
13 comments?

14 BY UNIDENTIFIED SPEAKER:

15 I wanted to say thank you to the Lieutenant Moot,
16 I think was his name, who made arrangements
17 for us after we were dismissed from the
18 morning meeting. He made arrangements for us
19 to have a caucus room upstairs. It was very
20 comfortable, offered drinks. And I am, and I
21 am sure everybody who is with me here was
22 very, very pleased to get a chair, because
23 there was nowhere to sit. There were many
24 elders and many disabled people here. So we
25 appreciate that courtesy from the local

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tribe. Thank you.

BY LARRY ROBERTS:

Okay. It looks like there are no other comments or questions for today. I want to thank you all for attending. I encourage you to submit written comments by August 16th. I want to say thank you to the Tunica Biloxi tribe for opening this suite.

(CONCLUDED AT 3:13 P.M.)

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C E R T I F I C A T E :

I, Dori Glisson Ard, to hereby certify that the foregoing 143 pages are a true and accurate transcription to the best of my understanding and ability, recognizing the "public forum" nature of the meeting not under my control.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this, the 27th day of August, 2013.

DORI GLISSON ARD