

In the Matter of:

**FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES DEPARTMENT OF INTERIOR OFFICE OF ASSISTANT SECRETARY - INDIAN AFFAIRS**

Versus

**PUBLIC MEETING - INDIAN TRIBES**

*July 01, 2014*

**Serpas**  
  
**COURT REPORTING**

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FEDERAL ACKNOWLEDGMENT OF INDIAN TRIBES  
DEPARTMENT OF THE INTERIOR

OFFICE OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS

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The public meeting of the Federal  
Acknowledgment of Indian Tribes was held on Tuesday,  
July 1, 2014, at Paragon Casino & Resort, 711  
Paragon Place, Marksville, Louisiana, commencing at  
8:35 A.M.

1 APPEARANCES

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3 PANEL MEMBERS:

4 MR. LARRY ROBERTS

5 MR. STEPHEN SIMPSON

6 MS. ELIZABETH APPEL

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## PROCEEDING

2 LARRY ROBERTS:

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Good morning, everyone. We're going to go ahead and get started this morning. My name is Larry Roberts. I'm the Principal Deputy Assistant Secretary for Indian Affairs at the Department of Interior. And with me is Steve Simpson from our Solicitor's Office and Liz Appel from our office of Regulatory Affairs.

I think what we'll do here is we'll go through the power point quickly, and provide an overview of the Proposed Rule, and then take comments. We have quite a few people here this morning, and so given the number of folks let's be mindful of allowing everyone a chance to speak. So let's try to limit comments to about five minutes or so and then if there's more time, you're more than welcome to come back up to the microphone and make more comments. So all of you should have in your materials a copy this power point, which we'll be going through this morning.

As many of you know there are

1 essentially three ways in which the United  
2 States can recognize a tribe: one is  
3 judicially through a federal court  
4 decision; congressionally through federal  
5 legislation; and then administratively by  
6 the Department of Interior. And  
7 historically the Department of Interior had  
8 gone through that approach on an ad-hoc  
9 basis prior to 1978, prior to the  
10 regulations being promulgated. So the  
11 department would receive request from  
12 tribes saying, "We have received federal  
13 services, we no longer are," or "We believe  
14 we're a recognized tribe that deserves  
15 services from the federal government and  
16 the benefits that come with recognition."

17 In 1978 the department promulgated  
18 regulations to provide a uniform process,  
19 and in 1994 we revised those regulations  
20 and we had published guidance over the  
21 interim. And now we're essentially 20  
22 years later and we're looking at this  
23 Proposed Rule after the 1994 regulations.  
24 So of the 566 federally recognized tribes  
25 in the United States, 17 have been

1 recognized through the Part 83 process.

2       So over, I would say, the past 10  
3 years, maybe longer, the process has been  
4 criticized as broken and as taking too  
5 long, burdensome, expensive. That it was  
6 unpredictable because it was being applied  
7 -- the rules itself were being applied  
8 inconsistently, and that the process wasn't  
9 transparent to folks. So to give you a  
10 little bit of -- a very brief history in  
11 terms of how we got to where we are today,  
12 in 2009 Secretary -- then Secretary Salazar  
13 testified before the Senate Committee on  
14 Indian Affairs and commented that he would  
15 look at how to improve the process.

16       In 2010 the department internally  
17 worked a lot on steps to take to improve  
18 Part 83, and in 2012 we testified that we  
19 would -- that we had guiding principals on  
20 which we were working to improve the  
21 process. And at that in 2012 before the  
22 Senate Committee on Indian Affairs the  
23 department was asked -- the department had  
24 committed a year earlier to putting out  
25 proposed regulations within a year, and so

1 the committee was asking the department why  
2 they hadn't moved to issue proposed  
3 regulations at that 2012 hearing.

4 In the fall of 2012 Assistant Secretary  
5 Washburn and I joined the department, and  
6 one of the first task the Assistant  
7 Secretary was given by Secretary Salazar at  
8 the time was to move forward -- continue to  
9 move forward with the Proposed Rule, and  
10 that's a commitment that's also shared by  
11 Secretary Jewel.

12 So in 2013 the Assistant Secretary  
13 testified before the House of Natural  
14 Resources Committee that spring and  
15 discussed with the committee how it would  
16 be moving forward -- we would be moving  
17 forward with a discussion draft, and keyed  
18 on the goals of the discussion draft,  
19 essentially improving the transparency,  
20 timeliness, efficiency, the flexibility,  
21 and maintaining the integrity of the  
22 process. Many of you have been following  
23 this process closely, and I see some of you  
24 have not had enough coffee yet this  
25 morning. The eyes are glazing over. I'll

1 try to work through this quickly here.

2 So we issued the discussion draft last  
3 summer. We had lots of consultations and  
4 public meetings on the discussion draft.  
5 We worked internally on the discussion  
6 draft, comments that we received last  
7 summer and fall, and we developed the  
8 Proposed Rule, and so we -- on the  
9 discussion draft itself it was helpful. We  
10 received over 350 comment submissions.  
11 Over 2,000 participants in the -- on the  
12 discussion draft.

13 And we issued a Proposed Rule in May,  
14 the comment period is open until August  
15 14th. As part of putting out that Proposed  
16 Rule we circulated the rule, not only  
17 internally within the department, but  
18 within the tribal family itself, and so it  
19 was reviewed by OMB and DOJ, and others  
20 within the federal family.

21 So we're going to walk through very  
22 quickly some of the -- sort of bigger  
23 picture changes to the Proposed -- in the  
24 Proposed Rule. We're going to highlight  
25 the revisions to the process. The

1 revisions and the clarifications to the  
2 criteria. A clarification of previous  
3 federally acknowledgment, which is existing  
4 under the current regulations. A  
5 clarification on the burden of proof, which  
6 is not changing between the existing  
7 regulations and this regulation, and  
8 allowing for re-petitioning under limited  
9 circumstances and then providing for  
10 additional notice.

11 So in terms of revisions to the  
12 process, one of the things that we carried  
13 forward is eliminating the Letter of Intent  
14 and that requirement there. Because we  
15 have probably a couple of hundred Letters  
16 of Intent and we have very few complete  
17 applications. A lot of the Letters of  
18 Intent that we have on file we are not able  
19 to contact those folks. The addresses when  
20 we send them something it gets returned,  
21 and so we are going to start the process  
22 with a complete application. Of the  
23 department's complete applications at the  
24 moment, I believe we have 13 or 14 complete  
25 applications.

1           In terms of the review. We're  
2   improving the process to have a Phase  
3   Review, or proposing to for the process  
4   with a Phase Review to conserve resources,  
5   not only of petitioners but of the  
6   department of third parties. And so one of  
7   the stages of review is the first thing  
8   we're going to look at is Criterion E,  
9   descent from a historic tribe. And if a  
10  group cannot satisfy that threshold  
11  requirement then we will issue a proposed  
12  negative finding. If they satisfy  
13  Criterion E, then the next review we would  
14  look at Criterion A, criteria which has  
15  been revised in the Proposed Rule, and  
16  Criterion D, F and G, whether a group has  
17  been terminated, whether they have  
18  governing documents.

19           And then we would go to Phase 2 and we  
20  would look at if the group satisfies all of  
21  those criteria we would move to Phase 2,  
22  and we would look to see first whether the  
23  group has held a state reservation. Not  
24  state recognition but a state reservation  
25  from 1934 to the present, or if the United

1 States has held land for the group at any  
2 time since 1934. If that group satisfied  
3 either one of those proposed criteria then  
4 they would satisfy B and C, otherwise, we  
5 would look for community and political  
6 authority. We would look at B and C as the  
7 last part of the review, since that is the  
8 most I think document intensive and time  
9 intensive review that OFA does through the  
10 process.

11 So in terms of process it would move  
12 forward relatively similarly to how we move  
13 forward now on our proposed finding. And  
14 so we would -- OFA would issue a proposed  
15 finding as it does now, and we would have a  
16 common period on the proposed finding. If  
17 the proposed finding is positive and we  
18 have no comments from third parties that  
19 are negative to the proposed finding --  
20 proposed favorable finding, the rule would  
21 essentially codify existing practice and  
22 just issue a final determination  
23 positively. If the proposed finding is  
24 negative, one of the things that the  
25 Proposed Rule changes is allowing for a

1 hearing process before the Office of  
2 Hearings and Appeals, so that would be up  
3 to the petitioner. If you get a proposed  
4 negative finding, you would be -- the  
5 process would provide for the petitioner to  
6 ask for a hearing, and third parties could  
7 participate in that hearing. That would be  
8 up to an administrative judge within the  
9 Department of Interior.

10 And then what would happen to the  
11 hearing process is that administrative  
12 judge would make a recommended decision to  
13 the Assistant Secretary, but the Proposed  
14 Rule maintains that the Assistant Secretary  
15 would make the final decision. And that in  
16 terms of process one of the things that  
17 we've eliminated is IBIA Review, Interior  
18 Board of Indian Appeals Review, after the  
19 Assistant Secretary has made a decision.  
20 This is the only decision that is subject  
21 to administrative review that the Assistant  
22 Secretary makes at this time, and so we've  
23 suggested in the Proposed Rule that the  
24 decision be final for the department. It  
25 wouldn't affect rights of third parties to

1 do final litigation in front of district  
2 court.

3 In terms of the negative proposed  
4 finding, and OHA has proposed procedures on  
5 that process. And so the Part 83  
6 regulations that were issued in May are  
7 sort of the broader framework for federal  
8 recognition. The Office of Hearings and  
9 Appeals, which is in a separate arm of the  
10 department has proposed regulations on how  
11 those hearings will be conducted. And so  
12 for attorneys in the room it's basically  
13 Civil Procedure 101, briefing, filing  
14 schedules, those sort of things. But one  
15 of the questions that we've asked in those  
16 proposed procedures is the Office of  
17 Hearings and Appeals has various positions  
18 that could conduct these hearings. And so  
19 one question for the public is "Should it  
20 be an administrative lodge or choose more  
21 independent and hire under different  
22 authorities"? "Should be an administrative  
23 judge which reports directly to the Office  
24 of Hearings and Appeals director and  
25 routinely serves on a public board

1 matters," or "Should be an attorney  
2 designated by the Office of Hearings and  
3 Appeals director?" And sometimes attorney  
4 from that shop will conduct hearings for  
5 the office. And the other question we have  
6 is "Should the OHA judge's decision be  
7 limited to the hearing record" or "Should  
8 the petitioner and third parties, OFA be  
9 allowed to submit new evidence at that  
10 hearing?"

11 So in terms of other revisions to the  
12 process we have the petitioner may withdraw  
13 a petition at anytime before the proposed  
14 finding is published, and the department  
15 will post -- what we're trying to do is  
16 increase notice to the public and to the  
17 interested parties by posting those  
18 portions of the petition and comments and  
19 materials that are submitted that are  
20 allowable under federal law to post those  
21 materials to the internet. So we're not  
22 talking about information that would be  
23 covered by the Privacy Act and that sort of  
24 thing. We're talking about readily  
25 available information that can be released

1 to the public under FOIL.

2 So in terms of the criteria itself, the  
3 current rule as many of you know under A  
4 requires external identification from 1900  
5 to the present. And in looking at the  
6 current rule itself and that requirement,  
7 we've never had a situation where some -- a  
8 group has satisfied all of the other  
9 characteristics and all the other criteria  
10 being a tribe, but failed Criterion A. And  
11 so -- and one of the questions I think that  
12 we've had in sort of our discussions on the  
13 Proposed Rule, is if a group satisfies  
14 community, if a group satisfies political  
15 authority, if they satisfy descentiments  
16 for a tribe, does it matter whether a third  
17 party wrote about them from 1900 to the  
18 present or not. So we've proposed  
19 eliminating Criterion A and replacing  
20 Criterion A with a requirement that the  
21 petitioner provide a narrative of their  
22 history, of their existence as a tribe  
23 prior to 1900. We are not -- you know, we  
24 are recognizing tribes that have existed  
25 over time. And so this should be a

1 criteria that will show -- it's not  
2 intended to be a treatise, but it's  
3 intended to be a discussion, a narrative of  
4 that group's history with evidence prior to  
5 1900.

6 In terms of Criterion B, community. We  
7 have modified that criteria to start at  
8 1934 to the present. And one of the  
9 reasons that we picked 1934, is because  
10 prior to 1934 the federal policy was either  
11 one literally or with tribes, or a  
12 simulation, an allotment period and it  
13 wasn't until the Indian Reorganization Act  
14 that the federal policy towards tribes was  
15 going to promoting tribal elements and  
16 reversing those failed policies from  
17 earlier times. One of the other proposed  
18 changes in Criterion B is making -- having  
19 the group show that at least 30 percent are  
20 at the state community at each time. And  
21 we are explicitly putting in here that  
22 attendance at boarding schools is  
23 acceptable in terms of evidence there.  
24 That is something that we have looked at in  
25 prior acknowledgment decisions and accepted

1 that evidence to show community.

2 And then for Criterion C what political  
3 influence of authority or against, starting  
4 with 1934 to the present. And again that  
5 the group has maintained a state  
6 reservation since 1934 to the present or  
7 the United States held land for the group  
8 at any point since 1934. Those would  
9 satisfy both of those criteria. The other  
10 thing that we've done, the Proposed Rule,  
11 is to find without substantial  
12 interruption. And so as many folks may  
13 know we require that evidence to show that  
14 the group has maintained it's relations --  
15 it's community and political authority  
16 without substantial interruption. We've  
17 had a scale of that over time and so the  
18 Proposed Rule says that the period has to  
19 be less than 20 years. And in extenuating  
20 circumstances if the petitioner is able to  
21 show a good reason as to why it should be  
22 longer than 20 years we have that in the  
23 rule, but generally speaking it's 20 years.  
24 We have had situations where we've had a  
25 longer period of time than 20 years for

1 gaps and documentary evidence, but the  
2 Proposed Rule is suggesting 20 years for  
3 that.

4 In terms of Criterion E, descent. This  
5 is another proposal where we are codifying  
6 to some extent past practice. So 80  
7 percent must descend of a tribe that  
8 existed in historical times prior to 1900.  
9 That is an informal standard that the  
10 Office of Federal Acknowledgment has used  
11 over time. And then some of the other  
12 changes that we're making to E, is if the  
13 group has a role that was prepared by the  
14 Department of Interior at the direction of  
15 congress, or a tribal role that the  
16 Department of Interior prepared, we can --  
17 the Proposed Rule suggests using that role  
18 for purposes of Criterion E. If a group  
19 doesn't have a role directed by congress, a  
20 tribal role directed by congress, I'm not  
21 talking about Indian's of California role  
22 for example, which wasn't specific of a  
23 tribe. But if congress had suggested a --  
24 directed tribal role or the department had  
25 prepared a tribal role, we would use that

1 information. If a group didn't have that,  
2 then we would look to whatever the most  
3 recent available evidence prior to 1900.  
4 And we're trying to provide flexibility  
5 there for folks, but that is something that  
6 we have also done in the past and various  
7 petitions.

8 In terms of Criterion F, membership.  
9 We heard we were making a change there for  
10 those petitioners who filed a letter of  
11 intent by 2010. One of the things that  
12 we've heard in the -- on the discussion  
13 draft was that there were some groups whose  
14 members were eligible for membership in  
15 other tribes. And because they had been  
16 waiting for so long some of their tribal  
17 members had no choice but to enroll in a  
18 federally recognized tribe and then if  
19 their tribe was recognized through the  
20 process those members would come back to  
21 that group. And so we've allowed that  
22 flexibility here in Criterion F.

23 And then in G for congressional  
24 termination. We're not changing the  
25 standard itself. If congress has

1 terminated a group they're not eligible for  
2 the process. But we've shifted the burden,  
3 rather than having the petitioner show that  
4 they haven't been terminated, the burden is  
5 on the department to decide whether a  
6 petitioner has been terminated by congress.

7 So on previous federal acknowledgment  
8 I'm going to run through this relatively  
9 quickly. We've heard some comments that  
10 the current rule is unclear. We're not  
11 intending to make any substantive change to  
12 previous federal acknowledgment at all.  
13 We're trying to clarify the rule to conform  
14 with existing practice.

15 In terms of burden of proof we are not  
16 changing the burden of proof in this rule.  
17 It remains the same, but we are providing a  
18 little bit more clarification on that  
19 standard based on supreme court present.

20 In terms of re-petitioning we have set  
21 forth a process for re-petitioning that is  
22 in essence sort of a two step process  
23 before a group could re-petition through  
24 the department. First of all if a group  
25 had been denied and third parties had

1 litigated that it -- against that group in  
2 either an administrative appeal or judicial  
3 appeal, and that third party prevailed,  
4 then the group would need to get the  
5 consent of that third party that had  
6 prevailed in litigation before it could  
7 move to the next step in the process for  
8 re-petitioning.

9           The next step in the process for  
10 re-petitioning is both the petitioner would  
11 have to show to an administrative judge one  
12 of two things. That either the change in  
13 the regulations from the existing rules  
14 now, to whatever the final rules are would  
15 warrant reconsideration, or that the burden  
16 of proof was misapplied in their final --  
17 their existing final determination. If a  
18 group were able to show either of those two  
19 things to an administrative judge, then  
20 that group would be able to restart the  
21 process from the beginning.

22           Okay. We're almost done here, then  
23 I'll open the floor to all of you. I want  
24 to hear your comments. In terms of notice  
25 of petitions. We're setting forth the

1 process to make sure that essentially we're  
2 trying to provide better notice to the  
3 public on those petitions. We would within  
4 60 days publish notice in the federal  
5 register which is standard practice. We  
6 would post the petition to the website and  
7 other information to our OHA or Office of  
8 Federal Acknowledgment website. We  
9 notified the governors in the state,  
10 attorney general, which is standard  
11 practice and then we would notify any  
12 federally recognized tribe within the  
13 state, over within a 25 mile radius of  
14 where the petitioner is located. And so we  
15 have heard from some tribes that they may  
16 not be within the state, but they're very  
17 -- just across state boundaries and they  
18 have an interest in that issue. And so  
19 we've modified that for notice purposes.  
20 And then in terms of notice to the  
21 petitioner and former parties OFA will  
22 provide notice when it begins it's review  
23 when it issues a proposed finding, when the  
24 office grants extensions of time, when the  
25 assistant secretary begins their review of

1 the petition and when the assistant  
2 secretary issues a final determination.

3 So comments on the substantive Proposed  
4 Rule here for Part 83 are due August 1st.  
5 Comments on the process rule for the Office  
6 of Hearings and Appeals, which is a  
7 separate entity from the Assistant  
8 Secretary's office are due August 18th and  
9 you can send comments to the website. The  
10 next steps are that we have consultations  
11 through the month of July and public  
12 meeting through the month of July. Comment  
13 period closes August 1st and then we will  
14 essentially do the same thing that we did  
15 on the discussion draft is internally we  
16 will meet, we'll review those comments and  
17 we'll move forward with a Proposed Rule, or  
18 a final rule.

19 So I'm going to sit down and have a cup  
20 of coffee here and listen to all of you,  
21 and thank you all for coming this morning  
22 and attending this first meeting. So with  
23 that I'll start -- somebody is already at  
24 the microphone. Go ahead.

25 (CEDRIC SUNRAY COMES FORTH.)

1 CEDRIC SUNRAY:

2                   Cedric Sunray (speaking in native  
3                   language). I'd like to start --

4 MR. LARRY ROBERTS:

5                   Excuse me, you're microphone is not  
6                   working.

7 CEDRIC SUNRAY:

8                   I'd like to start with this first issue  
9                   regarding the boarding schools. There's 13  
10                  non-federally recognized tribes in the  
11                  south and east who attended the Indian  
12                  Boarding School System. Our tribe attended  
13                  6 of those schools, myself included. I  
14                  attended Haskell, which bills itself as the  
15                  most recognizable name in Indian country.  
16                  When our families attended those schools  
17                  you had to be one-quarter or more Indian by  
18                  blood to attend those schools. There's no  
19                  better observation of a continuous federal  
20                  relationship and tribe specific designation  
21                  than Indian Boarding School records. Our  
22                  website [helpaskell.com](http://helpaskell.com) has thousands of  
23                  boarding school pictures of our people, the  
24                  13 tribes in the south and east, that  
25                  include many of the tribes here today,

1 including the Houma who I've seen numerous  
2 members of, who attended those schools. So  
3 my question first and foremost is, why is  
4 this bottlement to the bottom in the  
5 community section when it clearly shows  
6 descent. Because it's tribal specific as  
7 the BIA designated us and it even has blood  
8 quantum acknowledgment attached to it, at  
9 schools where you had to be a quarter or  
10 more Indian by blood. The only reason  
11 that, that could possibly not be a  
12 requirement to fulfill the descent in  
13 tribal distance criteria is because Lee  
14 Fleming asked it not to be. And so we'd  
15 like to know, if we're having a discussion  
16 or if this is just another we talk, you  
17 listen and then you run around what we're  
18 saying and make a decision. That doesn't  
19 correlate to justice equity, morality and  
20 ethics. So why is it that the Bureau of  
21 Indian Affairs, when they are the ones who  
22 sent us to the federal Indian Boarding  
23 Schools, listed our tribe specifically  
24 since the late 1800s all the way to the  
25 present and designated our blood quantum,

1           why is that not used as a descent criteria?

2 LARRY ROBERTS:

3           I don't think that the Proposed Rule  
4           would prohibit that evidence from being  
5           used, but that's something that you should  
6           -- we have the comment here for the Record,  
7           so we'll take a look at that. I don't  
8           think that E prohibits that. I think E  
9           relies on any reliable evidence. And then,  
10          I guess the other point that I want to make  
11          to everyone before we get too far along the  
12          road here this morning is that, this is an  
13          opportunity for us to hear directly from  
14          you all in terms of how to improve the rule  
15          and what can be clarified, and so if -- you  
16          know, Mr. Sunray or others have questions  
17          as to why a particular rule is written one  
18          way or another. It's not a dodge on our  
19          part, it's basically saying, "Okay. That  
20          part of the rule is not clear. Provide  
21          comments on how we can clarify that part of  
22          the rule." Because we're not going to be  
23          writing the rule here today, we're going to  
24          be taking your comments -- today we're  
25          going to be taking comments from across the

1 country and so if you have good ideas in  
2 terms of how the rule can be improved or  
3 how the proposal can be improved we need to  
4 hear that today. And so, you know, a lot  
5 of our time here is going to be, "Thank you  
6 for your comment. We are going to look at  
7 that, but we're not going to be able to" --  
8 you know, none of us here at the table  
9 decides how the final rule is written at  
10 it's cord. There's a whole group of folks  
11 involved, Assistant Secretary, Department  
12 of Justice, Office of Management. And so  
13 we have a long process to go here, but I do  
14 want everyone to have -- speak freely and  
15 we do welcome those comments because there  
16 are probably things in the proposed rule  
17 that we missed and that's why we're having  
18 this meeting today.

19 CEDRIC SUNRAY:

20 We would like -- I'll speak on behalf  
21 of --

22 STEPHEN SIMPSON:

23 One other thing. In Criterion E -- I'm  
24 Stephen Simpson with the Solicitor's  
25 Office. In Criterion E the Proposed Rule,

1 in E too it allows for evidence, including  
2 but not limited to church, school or other  
3 similar enrollment records identifying the  
4 petitioner's present members or ancestors  
5 of present members as being descendants of  
6 a tribe or tribes that existed in  
7 historical times. And so as Larry points  
8 out we can clarify that.

9 CEDRIC SUNRAY:

10 And that's what I need, because I've  
11 read that, and we need to ask for  
12 clarification. We would like it to state  
13 directly that the Indian Boarding School  
14 Records can be used to meet the descent and  
15 tribal existence criteria. Because aren't  
16 historic non-federally recognized tribes in  
17 the south and east are cohesive legitimate  
18 communities already meet the community  
19 criteria. That's a synch for all of us.  
20 That's the easy one. It's the bottleneck  
21 created by the descent. The second is that  
22 we proposed last year that tribes who have  
23 continued their tribal language be included  
24 as a criteria. Clearly -- and my  
25 background for anyone, I have a Bachelor's

1 Degree in American Indian Studies, a  
2 Master's Degree in American Indian Studies  
3 and American Indian Linguistics and I'm 10  
4 months away from completing my Indian Legal  
5 Studies Degree at the University of  
6 Oklahoma College of Law. I taught American  
7 Indian Studies at 6 colleges and  
8 universities as well. I know a little bit  
9 about this process. I don't ask me to  
10 change the oil in my truck, I'm clueless,  
11 but when it comes to this issue this is the  
12 one thing I do know and I understand. And  
13 I know all the players in it. I know many  
14 people sitting in here today. Many people,  
15 including lobbyist and I know them well,  
16 and I know how they impact to this process.

17 So language, I was wondering why that  
18 was not including. Tribes like the Yuchi,  
19 tribes like the MOWA Choctaws, tribes like  
20 the United Houma Nation who have a language  
21 that's traditional Muscovy language that's  
22 mixed with French, how those tribes are  
23 dismissed in terms of language. Language  
24 is a clear identifying of a communities  
25 identity and cohesiveness. Very, very

1 clear.

2 The next one is the issue with  
3 reservations. Our tribe lives on a state  
4 recognized reservation. We're one of nine  
5 in the country that do. It's unfortunate  
6 that Connecticut tribes have been  
7 politicized out of this by having to have a  
8 third party approve them. And that's just  
9 a political situation. That has nothing to  
10 do with being ethical or moral in this  
11 process.

12 The other issue is getting back in  
13 line. Our tribe has 12 congressional  
14 bills, three appeals to the Indian Affairs,  
15 and our federal lawsuit thrown out, a  
16 statute of limitation argument. We've had  
17 Fifteen Million Dollars spent against our  
18 federal petition by neighboring federal  
19 tribes, and what they do is they're a  
20 gaming region. And we have a Jack Abramoff  
21 go against our tribe politically who served  
22 six years in jail, the lobbyist, for his  
23 efforts in part against our tribal  
24 community. So the idea that we should have  
25 to get back in line and wait another 20

1 years behind everyone else is outrageous.  
2 Those tribes that who put that level of  
3 effort and time into this process should be  
4 pushed to the very front, because we have  
5 expended the most money, expended the most  
6 energy, expended the most emotional  
7 capital. And so to relegate us to the end  
8 of the line again is unethical.

9 The big part that needs to be addressed  
10 here as well, is what's missing in the  
11 criteria. I used to be a head college  
12 coach. If I had consistent losing seasons  
13 I would lose my job. I'm a 15 year  
14 teacher. I teach at Oklahoma Public School  
15 System. If I was inadequate in the  
16 classroom I would lose my job. But in the  
17 federal service stature is not based on  
18 ability. It's based on tenure. Many,  
19 many, many academics, hundreds of published  
20 articles and news magazines, papers,  
21 scholarly journals, books that have been  
22 published about the federal recognition  
23 process, it's lack of leadership and it's  
24 inability to go forward. But yet the  
25 individual, who in this packet which I

1 handed out to everybody, proclaims his  
2 direct hostility to state recognized tribes  
3 and tribes he believed to have some minor  
4 black ancestry is allowed to continue as  
5 the captain of the ship. There's no other  
6 place in the country,

7 LARRY ROBERTS:

8 (Standing.)

9 CEDRIC SUNRAY:

10 Hold on, now. Hold on.

11 LARRY ROBERTS:

12 Well --

13 CEDRIC SUNRAY:

14 There's no other place in the country  
15 this directly relates to these issues.  
16 There's no other place, no other business  
17 in this country if you were manager of a  
18 business that failed financially for five  
19 years you would be terminated from your  
20 employment. He needs to be shifted to  
21 another place in the federal service, just  
22 like the previous head of the Bureau of  
23 Indian Education was, Stephanie Bergwall.  
24 When she failed there and was pushed into  
25 the Department of Veteran Affairs. And I

1 apologize to the veterans because she is  
2 now running that ship.

3 LARRY ROBERTS:

4 Okay. We're going to evoke the five  
5 minute rule. You can come back to make  
6 more comments.

7 CEDRIC SUNRAY:

8 You can't change the regs unless you  
9 change the snake that heads it.

10 LARRY ROBERTS:

11 We -- you know, this isn't going to --  
12 I'm not interested in hearing personal  
13 attacks today. Whether it's on --

14 CEDRIC SUNRAY:

15 Revise the process.

16 LARRY ROBERTS:

17 -- our good employees at the Office of  
18 Federal Acknowledgment.

19 CEDRIC SUNRAY:

20 He's a good employee?

21 LARRY ROBERTS:

22 He is a good employee. And I work with  
23 Lee Fleming everyday and he's a good  
24 employee. And so we're not going to go  
25 after with personal attacks whether it's

1 people at the Department of Interior,  
2 whether it's people here who are attending  
3 this. This is not a session to go after  
4 folks personally. This is a session to  
5 hear substantive comments on the Proposed  
6 Rule. So we welcome your comments, sir.

7 (CEDRIC SUNRAY SITS.)

8 (ROBERT CALDWELL COMES FORTH.)

9 ROBERT CALDWELL:

10 Good morning. My name is Robert  
11 Caldwell. I'm the Chairman of the Federal  
12 Recognition Committee of the Choctaw-Apache  
13 Community of Ebarb, Petitioner Number 37.  
14 We welcome the bulk of the proposed  
15 changes. We also ask for additional  
16 clarification of certain proposed changes.  
17 We agree with the proposed changes to  
18 eliminate the external parties  
19 identification of the as Indian from 1900  
20 to present. We've already said that by  
21 relying excessively on the external  
22 characterization of petitioners the OFA  
23 privilege racial and racist folk beliefs  
24 regarding Indianess. History has shown  
25 that people with African and Indian

1 ancestry are less likely to be regarded by  
2 elders as Indian, than Indian people with  
3 equal amounts of white ancestry. Similarly  
4 in the folk racial taxonomy of the United  
5 States, being a Spanish speaking community  
6 can lead to the group being conceptualized  
7 as Mexican, which is seen as somehow  
8 contradicting or excluding being Indian.  
9 The Proposed Rule recognizes the names or  
10 identification by outside entities may  
11 change over time. It should be clearly  
12 stated that various and majoritive  
13 historical references used to identify the  
14 petitioners should not weigh negatively  
15 against Indian identity and should be  
16 considered as evidence reporting our claim  
17 as being a state community.

18 It's unclear to me what evidence is  
19 expected to be included to establish  
20 credible existence prior to 1900. Whatever  
21 it is, it should be liberally applied to  
22 allow for various historical circumstances.  
23 Additional the 1900 should not be hard and  
24 fast, but a general benchmark allowing for  
25 tribes to use dates prior or reasonably

1 close and subsequent to that year. It  
2 should be kept in mind that some tribes  
3 that were previous identified as uniquely  
4 distinct communities, but due to racial  
5 tensions of the era were only subsequently  
6 identified by the term Indian. It should  
7 be clear that this is a reasonable -- must  
8 be reasonably acknowledged in order to  
9 enter into evidence.

10 For greater transparency we support the  
11 inclusion of the glossary in which all key  
12 terms are clearly explained. We think this  
13 is a great step. For example, under the  
14 new regulations historical means 1900 or  
15 earlier. It should be explicit and  
16 restated for each criteria to ensure it's  
17 application. As a community whose request  
18 for federal recognition prior to OFA was  
19 converted to a notice of intent to petition  
20 in 1978. We support the premise in 83.7  
21 where by tribes who petition under active  
22 consideration can choose to be reviewed  
23 under the new regs, but we need much more  
24 information and clarity how that's going to  
25 be done and what the (undistinguishable) is

1 going to be on the petitioners.

2 We find it in some ways puzzling, like  
3 Mr. Sunray said that you know our request,  
4 even prior to the OFA regulations in 1978  
5 and prior to them going into effect, we  
6 could be in a situation of waiting yet once  
7 again. We do believe the regulations will  
8 benefit from additional clarity regarding  
9 the meaning of descent of historic tribe or  
10 tribes, and we need to know what manner of  
11 evidence is considered sufficient. The  
12 prior OFA interpretations of tribes, which  
13 combined the function as a single  
14 autonomous political entity have been  
15 overly stringent. In the past OFA has  
16 interpreted tribes which combined and  
17 functioned as a single autonomous political  
18 entity in ways that have lead to illogical  
19 conclusions. And here I stand in  
20 solidarity with our brothers and sisters in  
21 United Houma Nation and associated groups.

22 Previous OFA interpretations have not  
23 accepted documentation that a person or a  
24 group of people is Indian as evidence of  
25 descent from historic tribe or tribes, but

1 I ask how can a group be Indian and not be  
2 descendent from a tribe. It is true that  
3 federal recognition is (undistinguishable)  
4 political promisee, the acknowledgment that  
5 Indian Nation Governments forgave United  
6 States. But Indian communities all over  
7 the United States were comprised of  
8 individuals from a variety of tribes.  
9 People whom the idea of tribe did not  
10 always have the same significance as the  
11 contemporary imagination. In other words  
12 not modeled on the European nation state.

13 And this has been historically  
14 documented by a number of leading  
15 historians, James Meriel, Richard White,  
16 Little Republic, James Herman, et cetera.  
17 The OFA needs to adopt more flexible  
18 interpretation regarding petitioners that  
19 formed in historical times through the  
20 combination of tribes and tribal fragments.  
21 For this reason it should be clearly  
22 repeatedly stated within the regs that  
23 evidence should be interpretive within the  
24 context of the petitioners historical  
25 circumstance (undistinguishable).

1           Now, as we've said before tribal  
2           recognition is a federal obligation. It's  
3           not an entitlement program. As former head  
4           of the BIA Michael Anderson said, "Tribal  
5           recognition is a federal obligation not an  
6           entitlement program." All the way back to  
7           1832 the supreme court made decisions which  
8           Chief Justice John Marshall wrote this,  
9           "Tribal sovereignty is not only  
10          acknowledged but guaranteed by the United  
11          States." Given this legal and ethical  
12          responsibility to guarantee tribal  
13          sovereignty the United States government is  
14          obligated to investigate whether some  
15          Indian nation sovereignty is currently  
16          being violated by non-recognition.

17          The regs as they are currently  
18          interpreted passively wait for tribes to  
19          conduct the extensive research required for  
20          petition for acknowledgment on their own or  
21          worse, actively prevent tribes from  
22          acknowledgment. So for this point I think  
23          it's important if there is a two-part  
24          process as you're suggesting. That if  
25          people can meet the threshold of the first

1 part there should be some assistance  
2 offered to the tribe in meeting the second  
3 part. This is not something new. Early  
4 petitioners received assistance from the  
5 bureau.

6 Now indigenous groups have survived in  
7 many forms. And it's important to nurture  
8 us where we persist. It bears repeating.  
9 The tribes that have not been federally  
10 recognized for hundreds of years are going  
11 to look significantly different from those  
12 tribes that have been recognized for  
13 hundreds of years. We're not any better or  
14 worse than the federally recognized groups,  
15 we're just different. Yet we cherish our  
16 indigenous communities and the federal  
17 government is legally and morally obligated  
18 to recognize our status as indigenous  
19 polities that have survived hundreds of  
20 years despite assimilation pressures.  
21 Thank you.

22 (APPLAUSE.)

23 (ROBERT CALDWELL SITS.)

24 (THOMAS DARDAR, JR. COMES FORTH.)

25 THOMAS DARDAR, JR.:

1                   Good morning. My name is Thomas  
2                   Dardar, Principal Chief of the United Houma  
3                   Nation. First, I would like to acknowledge  
4                   all the United Houma Nation members that  
5                   are here, assistants, counsel, staff, if  
6                   you would please stand so everybody will  
7                   see you.

8                   (MEMBERS STAND AND SIT BACK DOWN.)

9 THOMAS DARDAR, JR.:

10                   The reason why I say this is because  
11                   this is an important issue as you can see.  
12                   It's extremely important to our tribe, so  
13                   on behalf of everyone here and the United  
14                   Houma Nation members that are not here, the  
15                   17,000 citizens, we would like to say thank  
16                   you. (Speaking native language.) For your  
17                   courageous, and I say courageous effort for  
18                   changing the process that's been considered  
19                   broken for decades.

20                   We have been waiting a long time for  
21                   this meaningful change to the federal  
22                   recognition process, and we're very  
23                   encouraged by the Proposed Rule. Overall  
24                   we are very supportive of the reform set  
25                   forth in the Proposed Rule. Significantly

1 we appreciate the support and support the  
2 1934 start date for community and political  
3 influence, and inclusion of the Indian  
4 boarding school or other Indian schools to  
5 be used as evidence of community. Later we  
6 will hear from some of our elders who were  
7 forced to attend to Indian schools only and  
8 boarding schools.

9 Requiring of a brief, a brief narrative  
10 by the petitioner existed at some point in  
11 time during the historical period. However  
12 we have one major concern about the  
13 Proposed Rule. Under the Phase 1 Review,  
14 the Office of Federal Acknowledgment would  
15 first review the descendent criteria. If  
16 we met the criteria then the office would  
17 review the brief narrative and three  
18 others. United Houma Nation recommends  
19 that the Office of Federal Acknowledgment  
20 reviews the brief narrative before or in  
21 conjunction with reviewing the descendent  
22 criteria. In the brief narrative it is in  
23 the neighborhood of 10 pages or so. It  
24 should not take a very long time to consume  
25 test -- to review team -- the review team

1 and they would likely demonstrate the  
2 review team tremendously. Reading the  
3 brief narrative first would give their  
4 review team a better understanding of the  
5 petitioner and how it feels to meet the  
6 mandatory criteria. The same it would be  
7 extremely difficult for the review to jump  
8 into the genealogy report without first  
9 context on the petitioning tribe. Once  
10 again thank you for your hard work,  
11 dedication for making the federal cognition  
12 process a fair on. Thank you.

13 (APPLAUSE.)

14 (THOMAS DARDAR, JR. SITS.)

15 (KENN GREY ELK DECOMBES COMES FORTH.)

16 KENN GREY ELK DECOMBES:

17 (Speaking in native language.) I have  
18 one quick question and that was on the  
19 weight of acknowledgment, has the executive  
20 order been completely eliminated?

21 LARRY ROBERTS:

22 I'm sorry I'm not following.

23 KENN GREY ELK DECOMBES:

24 Well, of all the ways, you know, as far  
25 congressional action, has executive order

1           been eliminated or is that -- the reason I  
2           ask that, at one time I talked to Steve  
3           from BIA and he said, "Well, we're going to  
4           completely disband that because that's not  
5           fair to the people who go through the  
6           formal recognition process."

7 LARRY ROBERTS:

8                       I'm not familiar with a tribe that's  
9           been recognized through executive order, so  
10          no that's not something that's contemplated  
11          by this rule.

12 KENN GREY ELK DECOMBES:

13                    Okay. The only addition I have to or  
14          comment, we have a reduction role history  
15          that goes back. We have truck loads of  
16          this stuff. But in 1889 in Missouri a law  
17          was passed making it illegal to be an  
18          Indian at large within the boundaries of  
19          the State of Missouri. Some of those laws  
20          were started back in 1845, it was  
21          reaffirmed in 1899, reaffirmed again in  
22          1909, with the purpose of settling Indian  
23          land claims in the state. Now, what that  
24          did was of course, just smashed our  
25          continuity because even though we were

1 supposedly found out imported to Oklahoma  
2 as a rule we were (undistinguishable). And  
3 so we went underground. We became anything  
4 but (undistinguishable).

5 In my comment or addition to this is  
6 will BIA take into special consideration  
7 somebody that was just literally jumped on  
8 by a state and through no fault of our own  
9 whatsoever our continuity broken? Will  
10 there be some consideration to get around  
11 that?

12 LARRY ROBERTS:

13 I guess it's something that we'll look  
14 at. We think continuity is very important.  
15 We have the terms of -- without substantial  
16 interruption that we've defined in the rule  
17 and so, you know, I think one thing that we  
18 are maintaining through the process is --  
19 and I think it's critical to maintain this  
20 element is that while we using 1934 as a  
21 start date for BNC, we're not -- obviously  
22 tribes pre-existed the federal government  
23 and we're not creating new tribes here as a  
24 part of this process. And so, you know, if  
25 a group comes together in the '30s, '40s,

1 '50s and '60s and have that continuity, you  
2 know, my sense is that they would qualify  
3 under the current process and they would  
4 qualify under the proposed rule. So we're  
5 not changing that in anyway, shape or form.

6 And the other thing that I wanted to  
7 stress to folks is that, you know, we've  
8 been applying the rule for roughly 40 years  
9 now, the Part 83 Process, and we've never  
10 had a situation where a group has satisfied  
11 the criteria after 1934. So satisfied all  
12 7 criteria after 1934, but failed prior to  
13 1934, it's never happened. And so if a  
14 group has failed, they have failed both  
15 time periods. So '34 is -- while it eases  
16 an administrative burden it also maintains  
17 the integrity because we've never had a  
18 situation in the 40 plus years where a  
19 group has essentially satisfied the  
20 criteria after 1934 but failed it prior to.

21 KENN GREY ELK DECOMBES:

22 I'll add that in just a little bit. We  
23 -- as far as we know in our research we are  
24 a very unique case. There's no other tribe  
25 in the United States that went through

1 that, where we were literally banned a  
2 species. And so from 1889, and of course  
3 1909, we went through a period there where  
4 we literally had to run for our lives. So  
5 it made our continuity, our records  
6 keeping, our community very tight. I mean  
7 everybody had to run for it. So a special  
8 consideration is what we're after.

9 And my other comment was on this third  
10 party consideration. We've seen in the  
11 past third parties come in, even when  
12 tribes apply for state recognition. We've  
13 had third parties come in, spend millions  
14 of dollars on lobbyist and literally get  
15 thrown out of town. In some cases -- in  
16 one case in Tennessee where four tribes did  
17 achieve state recognition, they were  
18 eventually rejected. I'm trying to figure  
19 out why third parties and their comments.  
20 I'm going to call them -- you can them an  
21 interested party, I'll call them an  
22 antagonist with financial things in the  
23 back of their mind. Why are third party  
24 people, why is their opinion so valuable?

25 LARRY ROBERTS:

1           You know, pretty much every decision  
2           that we make at the Department of Interior  
3           involves input from third parties, and so  
4           that's important. That's an important part  
5           of the process. That's an important part  
6           of our decision making. And it's one of  
7           the things that we've tried to improve in  
8           the rule is third party comment and  
9           outreach there. And so at the end of the  
10          day it's a federal responsibility to  
11          acknowledge tribes, but you know, we think  
12          that more input is better.

13 KENN GREY ELK DECOMBES:

14           Okay. Well, one of your additions that  
15           I hope is passed and I consider it a good  
16           one, is you have narrowed it down, like in  
17           my state of Missouri, any other interested  
18           tribes in the state if there are in, or  
19           anybody within a 25 mile radius. That does  
20           take out people from hundreds of miles away  
21           that might be an antagonist, and we don't  
22           look at them as third parties. To us, you  
23           know, we have to call a spade a spade, they  
24           are antagonist.

25           But overall what we're looking at here

1 right now is the review of this process,  
2 the comments and some of the changes we  
3 view as compared to the old days, and we've  
4 been going through this for -- I've been  
5 going through 30 years. It's better than  
6 it was.

7 LARRY ROBERTS:

8 Okay. Thank you. And I just want to  
9 also clarify that while we have the -- you  
10 know, we will provide notice to tribes  
11 within the state of within the 25 mile  
12 radius. We haven't changed the existing  
13 part of the regulation, which provides  
14 notice to other tribes that may have an  
15 interest in the matter. And I can't  
16 remember off the top of my head what  
17 section that is in, but it's in the  
18 existing regulations, it's not a change.

19 (KENN GREY ELK DECOMBES SITS.)

20 (FRAMON WEAVER COMES FORTH)

21 FRAMON WEAVER: 56:54

22 Good morning. My name is Framon  
23 Weaver. I'm the tribal chief of the MOWA  
24 Band of Choctaw Indians and I served in  
25 that capacity for a total of -- the term

1 for a total of about 20 years. And the  
2 question of federal recognition is one of  
3 the most debated subjects in Indian  
4 country. One of which has been applied  
5 without asking for generations of counsel  
6 for academics, destroyed Indian regions  
7 have (undistinguishable) literary journals  
8 and tribal magazines, newspapers, books,  
9 publications for years. They did about 567  
10 federally recognized tribes and 62 state  
11 recognized tribes as well as other Indian  
12 communities that have neither federal or  
13 state recognition. The Bureau of Indian  
14 Affairs -- well, OFA has been letting the  
15 (undistinguishable) spend our resources and  
16 millions and millions of dollars.  
17 Collectively and man hours I can't tell you  
18 how much we spent trying to achieve and  
19 satisfy people that have written negative  
20 stuff about us. This process has been  
21 unfair from the very beginning. It's been  
22 applied unfair from the very beginning, and  
23 unless it's changed to a more fair process  
24 and I think -- you got to look at a total  
25 history of our tribe. The Indian Boarding

1 School System that Cedric Sunray just  
2 talked about. For many generations going  
3 back until the 1800s our people have  
4 attended the old schools. The earliest --  
5 I've had an uncle that depended -- that  
6 went in the 1920s, a great uncle went in  
7 the 1920s. We've had many of our people to  
8 go hundreds of miles from as young as 13  
9 years old to attend Indian Boarding  
10 Schools. So those records are all --  
11 they're real and they're ours. We're not  
12 trying to claim someone else's.

13 The local Indian Schools run by the  
14 MOWA Choctaw. They were present. In many  
15 cases they only went to the 6th grade, so  
16 in order for us to get any kind of formal  
17 education at all we had to go off to the  
18 Indian Boarding Schools in order to receive  
19 they type of education that we needed.

20 We maintained our language. Many  
21 people still speak the Choctaw language.  
22 (Speaking native language). Really fluent  
23 to speak with (undistinguishable) 1984.  
24 But we still -- many of us speak it. I  
25 speak a good bit of it myself. Over the

1 last four years federally recognized tribes  
2 have been married in the MOWA Choctaw.  
3 Their descendants that reside on and off  
4 our reservation. Some reside in private  
5 hill land that's been there and owned by  
6 Choctaws since the 1930s -- I mean, 1830s,  
7 forgive me. The tribe includes, but not  
8 limited to the Navaho, the Cherokee Nation,  
9 (undistinguishable) Apache, Creeks and many  
10 others. Our tribe currently holds  
11 resolutions and letters that support from  
12 many federally recognized tribes and legal  
13 counsel members from federally recognized  
14 tribes, state governments going back into  
15 the very beginning. I got Governor  
16 Wallace, Governor James, Governor -- the  
17 last one agreed to do that with me, and  
18 also Governor Ryan has records supporting  
19 our federal recognition, as well as Don  
20 Sealy. So we've got a long history during  
21 all my administration of state support, and  
22 numerous state resolutions. With the  
23 statewide memo (undistinguishable) in 1832  
24 with the law that (undistinguishable)  
25 Choctaw lands. State of Alabama reaffirmed

1 that recognition again in 1979 when it  
2 created the MOWA Choctaw Indian Affairs  
3 Commission. We has our own commission  
4 before Alabama actually had a real  
5 functioning commission that represented  
6 other tribal members in the state.

7 MOWA Choctaw have a community that goes  
8 back until the removal. There's been new  
9 congressional deals that have  
10 (undistinguishable). He got his start  
11 basically, he was hired by  
12 (undistinguishable) to represent him  
13 against us to block our federal  
14 recognition. The other tribes in the areas  
15 have been (undistinguishable) for our  
16 recognition. Why should it matter -- if  
17 you can prove who you are, why should it  
18 matter what someone else think of you or  
19 what they say they think of you? That's  
20 totally ridiculous, unless they got proof.  
21 Proof that you're not who you say you are.  
22 Absolutely undisputed proof that what  
23 they're saying is true, why would you even  
24 bother to listen to them. It doesn't make  
25 any sense.

1           And I'd like to conclude by saying that  
2     the federal recognition process has been  
3     ruined by people that already some in with  
4     an agenda. They want to report -- the  
5     ridiculous fictitious statement and thesis  
6     that they have written prior to them being  
7     hired by OFA. (Undistinguishable) when  
8     they've already written stuff. That's like  
9     getting a lynch mob to be a jury of people  
10    that, that plan to try. They've already  
11    made up their minds before they started.  
12    So why would -- how are people like that to  
13    make decisions about people they're going  
14    to judge. A judge would not see the jury  
15    that has people that have already done  
16    television and made public statements  
17    saying that they thought that particular  
18    person that's being tried was already  
19    guilty. They would never do that. They  
20    would get thrown out of court. Supreme  
21    Court wouldn't let anybody do that. But  
22    again we're still letting people like that  
23    make the statements about all the people in  
24    this room or being looked at by people with  
25    an agenda. That does not make any sense.

1 Thank you.

2 (APPLAUSE)

3 (FRAMON WEAVER SITS.)

4 (ANN TUCKER COMES FORTH.)

5 ANN TUCKER:

6 I'm Ann Tucker, Petitioner Number 32,  
7 active consideration. I have a couple of  
8 questions. One of them is this seems to be  
9 a fast track process, so with us on active  
10 consideration and the new process comes in,  
11 our counsel basically had to choose. We  
12 can be in the old process or we can be in a  
13 process that doesn't exist. So we chose  
14 the old process. With the new process it  
15 comes in and we are in active  
16 consideration, we will move in active  
17 consideration straight over to the new  
18 process?

19 LARRY ROBERTS:

20 I think as the Proposed Rule is written  
21 I believe that it provides the flexibility  
22 for the petitioners that are under active  
23 consideration to be decided either under  
24 the existing rules or whatever the new  
25 rules would be. And you would have that

1 choice within a period of time after the  
2 new rule is put into place. And so I don't  
3 think it envisions anyone in active  
4 consideration losing their status that's  
5 under active consideration, it just chooses  
6 which rules to proceed under.

7 ANN TUCKER:

8 Okay. We don't want to go to the  
9 bottom of the line again, because we were  
10 in the ready line for a long, long time.  
11 The second thing is when we're on active  
12 consideration it would help the tribe if  
13 the OFA would actually work with us when  
14 we're on active consideration and tell us  
15 "You have a deficiency here." Because  
16 having 180 days to answer a major  
17 deficiency is not enough time for us to do  
18 what we're doing. It's fresh on their  
19 minds when they're looking at us. If they  
20 have questions, ask us. Call us on the  
21 phone. That makes a big difference.

22 And the last thing is when we receive  
23 correspondence in active consideration and  
24 it says interested parties and informed  
25 parties, can we please know who they are?

1 LARRY ROBERTS:

2                   Sure.

3 ANN TUCKER:

4                   I would appreciate that. And thank you  
5                   for the work on the process. I think it's  
6                   going to be a good a process.

7 LARRY ROBERTS:

8                   Thank you.

9   (APPLAUSE.)

10    (ANN TUCKER SITS.)

11                                       (KENN GREY ELK DECOMBES COMES FORTH.)

12 KENN GREY ELK DECOMBES:

13                   I just have a question. When it says  
14                   it requires the external observers to  
15                   identify the petitioner as Indian, who is  
16                   this observer -- this third party observer?  
17                   Who is that?

18 LARRY ROBERTS:

19                   That's under the existing rule right  
20                   now, and that could be any third party. It  
21                   could be a state, it could be another  
22                   tribe, it could be a newspaper, it could be  
23                   a magazine. It's just any other external  
24                   third party.

25 KENN GREY ELK DECOMBES:

1           Right. I mean, is that -- what are  
2           your requirements are? In other words, who  
3           decides who the third party is? How are  
4           they utilized? I mean, you guys -- if I  
5           come in and say, "This group over here, I  
6           have something to say about," does that  
7           just automatically make you a third party  
8           observer?

9 LARRY ROBERTS:

10           Under the existing rules I think so. I  
11           think it's -- I don't thin it's -- I think  
12           external identification is by anyone who is  
13           outside the group is how the current  
14           regulations operate.

15 KENN GREY ELK DECOMBES:

16           Okay. We just -- we're always  
17           interested in the -- when those people's  
18           opinions carries.

19 LARRY ROBERTS:

20           And that's just one of the seven  
21           criteria and that's one of the criteria  
22           that we proposed to the rule to eliminate.  
23           That specific criteria and replace it with  
24           essentially a requirement that shows -- the  
25           tribe shows where it came from basically

1 prior to 1900.

2 UNIDENTIFIED FEMALE:

3 What about where the tribe has had  
4 interaction with federal --

5 LARRY ROBERTS:

6 So let's do this because we --  
7 everything is being transcribed. I know we  
8 have pretty good acoustics in the room, but  
9 if we could at least just identify  
10 yourself.

11 (BABS BAGWELL COMES FORTH.)

12 BABS BAGWELL:

13 I'm Babs Bagwell. I'm with Isle de  
14 Jean Charles Bank of Biloxi-Chitimacha-  
15 Choctaw. What about where the tribe has  
16 had interaction with the federal government  
17 in the past through the Works Project  
18 Administration. Will those records be  
19 obtained -- bureau access those records and  
20 use that as burden of proof?

21 LARRY ROBERTS:

22 Sure so let's clarify that. We've had  
23 some questions about documentation and what  
24 can be submitted. The existing regulations  
25 and the proposed regulations don't change

1 -- it don't impose any sort of limitation  
2 on what can be submitted. And we will look  
3 at whatever evidence is provided, so if  
4 it's federal records then we'll look at  
5 that to see whether it satisfies a specific  
6 criteria for that group. So we're not  
7 trying to limit any sort of historical  
8 documents or records that a group is  
9 submitting.

10 (BABS BAGWELL SITS.)

11 (CORINE PAULK COMES FORTH.)

12 CORINE PAULK:

13 First of all my name is Corine Paulk  
14 and I'm a Houma Tribe -- I'm with the  
15 United Houma Indian Tribe. The United  
16 Houma Nation. First of all I would like to  
17 say thank you to the federal acknowledgment  
18 of this Indian tribe. We're so happy that  
19 you're able to be with us, because I know I  
20 never dreamed that I would ever go to  
21 Washington DC for anything like this. And  
22 for you to come here, taking your time to  
23 speak with us and giving us your time, we  
24 appreciate you.

25 First of all I want to talk a little

1 bit, comments on the boarding schools. I  
2 attended the boarding schools when I was in  
3 high school, and I'm from Dulac, Louisiana.  
4 And I first attended a mission school in  
5 Dulac. We didn't have any school for the  
6 Indian children at the time that I was  
7 coming up. I'm 72 years old. And so we --  
8 the Methodist people moved into the bayou  
9 where I grew up. The Baptist people moved  
10 in another community and on that way, and  
11 started to educate the Indian people the  
12 communities. I think that -- I know that  
13 there was a three -- at the time that I was  
14 growing up in the early '50s there was a  
15 three race system in Terrebonne Parish. I  
16 don't know about any other parishes. And  
17 that included the schools, the churches,  
18 the social places such as theatres, dance  
19 halls and stores. Well, this affected a  
20 lot of people, but mostly in the education  
21 part. As I went on to attend the mission  
22 school the people -- the missionaries who  
23 used to work with us, went ahead and  
24 started talking to me about once I got  
25 through the Indian school that provided the

1 8th grade would I like to go on to school.  
2 And of course I did, and I was like 12  
3 years old, 13. Well, a lot of the -- my  
4 case is a little different than most  
5 boarding school students. I believe that  
6 there might've been two boarding -- two  
7 other -- well, two boarding schools in  
8 Louisiana. And I, at the time, I didn't  
9 know too much about it. I just found this  
10 out not too long ago. And some of our  
11 people and our neighbors people,  
12 communities, most of the Indian children  
13 that went there were from the bayou  
14 communities. Some of my friends attended  
15 the schools. I think one of them was in  
16 Eunice, Louisiana. But the school that I  
17 attended was voluntary. Either I stayed  
18 home after the 8th grade and maybe work in  
19 a shrimp plant or get married maybe by 16,  
20 maybe even earlier, or just do something  
21 else around home. But I knew that my  
22 parents wanted me to do better and so --  
23 and these people were so helpful  
24 educationally. So we talked about sending  
25 me to a church school in Thomasville,

1 Georgia and that was the girls' boarding  
2 school that the Methodist church had and it  
3 included girls from all over the United  
4 States. And I and another girl from  
5 Cherokee from the Carolinas were the only  
6 two Indians at the time that I went, but  
7 before I even went there, there was a  
8 couple of girls from Dulac that also went  
9 but they didn't stay.

10 Well, I'm thinking back and saying if  
11 my child at 12 years old had to be taken  
12 away and placed with total strangers for 4  
13 years, I'm not sure that I would allow.  
14 But what could my parents do. They wanted  
15 me have an education. They had to take  
16 that gamble. They had to decide nothing or  
17 an education that might give me a better  
18 chance in life. So anyway, plans were made  
19 and I went on to this girls' boarding  
20 school. And they treated me fine, it was  
21 good. But I couldn't -- it was like I was  
22 living in two worlds because of that.  
23 Because when I'd come back to Terrebonne  
24 Parish I had to be placed back into the  
25 Indian community and there were lines drawn

1 to where I knew I had to stay in my place  
2 or I couldn't go certain places. And so I  
3 stayed and finished the four years at this  
4 school.

5 And in the meantime, though, before I  
6 went over there my mother was hired -- the  
7 Terrebonne Parish School Board went ahead  
8 and hired my mother as a janitress. The  
9 first Indian woman to be hired in  
10 Terrebonne Parish, even though it was a  
11 janitress. And they went ahead and hired  
12 her and then they helped us out to -- just  
13 to talk about education but really and  
14 truly we were behind everybody else. The  
15 white people had their high school and the  
16 black people had their high school, but we  
17 couldn't dream and just want to decide that  
18 we were going to go to Terrebonne High  
19 School. We couldn't do that. So -- but  
20 even though my mother was hired as the  
21 first Indian woman and as a janitress at  
22 this Indian school in Dulac, it helped me  
23 because it kind of gave me something to  
24 say, "Well, you know what. My mother has  
25 got a lot of nerve going over there asking

1 for a job." Well, later on, much later  
2 once I moved back to Terrebonne Parish, got  
3 married, moved around and everything. I  
4 applied to Terrebonne Parish School Board  
5 for a job, the first time. And they didn't  
6 give me the time of day. They just didn't  
7 want to talk to me. About -- I don't know  
8 how many years later I went back. There  
9 was an opening for Indian education, and I  
10 just was looking for a job. I was working  
11 at a hospital, needed better hours for my  
12 children, so I decided that I would go to  
13 Terrebonne Parish School Board. And then I  
14 said, "No, I'm not going to go." And I  
15 went around the block a couple of times.  
16 And then I decided I will go. So I went in  
17 and they happened to be looking for a  
18 secretary for Indian education. And I had  
19 never heard of Indian education in  
20 Terrebonne Parish. So this man interviewed  
21 me and everything and then -- anyway the  
22 process was they hired me. And I retired  
23 30 years with Terrebonne Parish School  
24 Board. So here I am.

25 (APPLAUSE.)

1 CORINE PAULK:

2                   One of the things I've always wanted to  
3                   and dreamed with my parents that we would  
4                   finally see federal recognition for our  
5                   people. We are who we are. And we have  
6                   struggled all these years, and I have seen  
7                   the older people before me struggle. And  
8                   here I am an old person and I'm looking at  
9                   this, but I believe that we're on the right  
10                  track. And I really like the idea of this  
11                  change that came about in regards to the  
12                  acknowledgment -- the system that you have  
13                  now. So there are other tribes that are in  
14                  line with us, and I think you need to pay  
15                  attention to all of this because it just  
16                  seems like -- I don't know if it's just me  
17                  but I'm thinking that you were using  
18                  guidelines from so far back and life keeps  
19                  changing. Technology, people, everything  
20                  moves -- keeps moving, and I can't keep up.  
21                  But anyway, this is the thing that you need  
22                  to do is pay attention to us as Indian  
23                  people from the state. Thank you.

24 LARRY ROBERTS:

25                   Thank you.

1 (APPLAUSE.)

2 UNIDENTIFIED FEMALE:

3 When you worked at the hospital, what  
4 they passed you off as?

5 CORINE PAULK:

6 Can I have another moment? I was  
7 working at Terrebonne General Medical  
8 Center there in Houma, the first time  
9 before I went to the school board. And the  
10 man that -- my supervisor was born  
11 somewhere else and raised somewhere else.  
12 Anyway, he knew that I qualified for the  
13 job so he went ahead and I was the first  
14 Indian woman to be hired to work in the  
15 front office there. But he was going  
16 around telling all the other people, my  
17 co-workers, that I was from Guam. And my  
18 husband was in the service and he had -- so  
19 anyway I guess he was worried about how  
20 they would accept me. And I didn't have  
21 any problems, but at one point I did have a  
22 little problem, and you know, we had to  
23 talk about that. But the other thing was  
24 that I wanted to not forget to tell you is  
25 that as far as the school board, they

1           wouldn't -- you know, I couldn't go in the  
2           white school, but much later -- 40 years  
3           later I found out that they helped to pay  
4           my tuition at this boarding school so that  
5           I could go over there instead of them  
6           making a place for me here. And so it was  
7           ironic that this all came together and I  
8           ended up working 30 years for them. But I  
9           never knew that they really had paid to  
10          send me away instead of having me go in.  
11          Thank you.

12 LARRY ROBERTS:

13                         Thank you.

14   (APPLAUSE.)

15   (CORINE PAULK SITS.)

16   (JASON RIVERS COMES FORTH.)

17 JASON RIVERS:

18                         Good morning. My name is Jason Rivers.  
19                         I'm the current chief of the Choctaw-Apache  
20                         Tribe of Ebarb, Louisiana. I'm going to  
21                         keep it short. For the most part the  
22                         changes to Criterion A, you know, it's a  
23                         positive thing. The use of the 1934 as the  
24                         year in which a tribe must demonstrate  
25                         (undistinguishable) is a positive change as

1 well. It should be clear that the Indian  
2 Reorganization Act didn't directly affect  
3 some petitioners, whose communities  
4 evidence earlier than 1934 should also be  
5 accepted. Another thing is the use of  
6 tribal records is confusing. The  
7 historical situation of any tribe will not  
8 include former roads during certain periods  
9 of history. Including letters not taken  
10 early 20th centuries. It should be clearly  
11 stated as a guideline that each criteria  
12 should be read and applied to each  
13 petitioner. An example of the petition  
14 format would be useful. It's also good  
15 that other formats will be allowed because  
16 this is -- you know, once size does not fit  
17 all.

18 That elder that just spoke, I hear lots  
19 of things in all communities stories just  
20 like that. I feel like a youngster to some  
21 of the people that have been fighting the  
22 petition process for so many years. My  
23 hats off to y'all. It's only been 6 years.  
24 It's a battle. I'm following a career of a  
25 homicide detective. This issue of third

1 parties. The way I see that is if I catch  
2 a murderer and the judge finds him guilty,  
3 how can someone else come in and set him  
4 free. You know, it's not right to have a  
5 third party come in and judge us. That's  
6 all I want to say today. Thank y'all for  
7 y'all's time.

8 (APPLAUSE.)

9 (JASON RIVERS SITS.)

10 (STAN LONG COMES FORTH.)

11 STAN LONG:

12 My name is Stan Long. I'm the  
13 principal chief of the Cherokee Tribe of  
14 Northeast Alabama. I also serve on the  
15 Alabama Indian Affairs Commission. I have  
16 some comments that were put together by  
17 Mr. Rob Russell the executive director of  
18 the Alabama Indian Affairs Commission. But  
19 before I begin I appreciate all the people  
20 that are here today. Many of our friends  
21 from Alabama, the respect that I showed to  
22 the Houma Nation here in Louisiana. This  
23 is my first trip to Louisiana and I'm  
24 honored to be here today. The state  
25 department issued a news release, that

1 President Obama announced that the United  
2 States and this administration supports the  
3 United Nation's declaration on the rights  
4 of indigenous peoples. And in the eyes of  
5 the administration the declaration has both  
6 moral and political force. Well, the  
7 United States' support for the declaration  
8 goes hand and hand with the United States'  
9 government to address the consequences of  
10 the history in which President Obama  
11 recognized few have been marginalized and  
12 ignored by Washington for as long as Native  
13 Americans, our "First Americans."

14 The history of the southeastern Indians  
15 is unique. Different than any other group  
16 that has sought to exist. The time period  
17 1934 is referenced. This office -- the  
18 Office of the Alabama Indian Affairs, as  
19 well as myself, do not like that date of  
20 1934, without an exception clause for  
21 tribes who suffered oppressive social and  
22 more legal environments post 1934, that  
23 would prevent or hinder their ability to  
24 provide documentation of this activity  
25 during specific post 1934 time frames.

1 We've heard examples of discrimination that  
2 have occurred in the southeast that have  
3 hindered our people the American Indian,  
4 the first peoples, from participating in  
5 education, participating in employment,  
6 participating in other opportunities. So  
7 southeastern Indians have experienced  
8 issues that have been almost to a point  
9 non-existent in other communities. I make  
10 reference to the civil war, reconstruction,  
11 the Klu Klux Klan, Dr. King, and Mark from  
12 Selma are all issues where people have  
13 sought a right in the southeast and the  
14 American Indian, the First People, is no  
15 different. The date 1934 fails to account  
16 for the most unique situation faced by  
17 southeastern tribes whose history needs to  
18 be taken into consideration here. The  
19 southeastern and coastal areas were all but  
20 being populated by early settlers and  
21 shipped off as slaves to the Caribbean and  
22 northeastern colonies. Natives from  
23 smaller tribes did their best to blend or  
24 flee to areas not under pressure. Later  
25 between 1829 -- 1828 and 1829 governments

1 located Alabama, Georgia and Mississippi,  
2 passed legislation asserting that state,  
3 civil and criminal laws applied to Indians,  
4 assuming that the Indians would rather move  
5 than come back.

6 In the United States African Americans,  
7 homosexuals, Jews people and other  
8 non-whites dealt with the  
9 (undistinguishable), the Klu Klux Klan, and  
10 segregation laws. States actively altered  
11 records, as did Indian families, many out  
12 of fear of discrimination and deportation.  
13 Virginia's Racial Integrity Act of 1924 is  
14 but one example of a law that intentionally  
15 resulted in genealogical records being  
16 destroyed during the first half of the 20th  
17 century.

18 Even today Alabama has recently  
19 adjusted it's laws so that no document  
20 produced by the state that historical and  
21 in the recent past can identify race, has  
22 race listed. Indian children born in  
23 Alabama from 1991 to present will not have  
24 Indian or Native American listed on their  
25 birth certificates and the race of the

1 parents have not been on the birth  
2 certificate form since 1991 as well.  
3 Georgia does not place race on birth  
4 certificates as well and any request to  
5 replace old, lost or damaged certificates  
6 in that state will not include race even if  
7 the original did. Should an amended birth  
8 certificate from prior to 1991 be required  
9 it will be prepared on the current forms no  
10 longer showing race. The thought process  
11 behind pinning this date based on 1945  
12 Handbook of Federal Indian Law, Felix S.  
13 Cohen, does not take into consideration  
14 historic reasons. Cohen appears to be  
15 viewed by the department as the single most  
16 expert on Indian law, but his book was  
17 researched and compiled prior to it's  
18 publication in 1945. America, in  
19 particularly the south, was still  
20 segregated in 1945 and this was viewed as  
21 acceptable. The military desegregated in  
22 1948. Schools in the south were  
23 desegregated until the late 1950s, and even  
24 the 1960s. The Civil Rights movement is  
25 often depicted as occurring between the

1 1950s and the late 1960s. Before these  
2 events if you were not white in the  
3 southeast you suffered from personal and  
4 legal discrimination and physical threat  
5 that was all too well highlighted during  
6 the Civil Rights movement of the south.  
7 And I have anecdotal instances where  
8 crosses were burned in some of my citizens  
9 yards because they were Indian. One of my  
10 citizens mother -- grandmother was not  
11 allowed to be buried in the church cemetery  
12 because she was Indian. And I'm sure  
13 people here can provide those same kind of  
14 anecdotal instances.

15         Additionally the provisions most  
16 recently announced, as supported by this  
17 administration and the United States  
18 Declaration on the rights of indigenous  
19 peoples passed on 13th September 2007 as  
20 well as it's specified reference on the  
21 International Covenant of Economic Social  
22 and Cultural Rights were also not taken  
23 into consideration by Cohen and his manual.  
24 Wording allowing for this to be taken into  
25 account should be inserted when referenced

1 to 1934 as made, if the intent is to  
2 produce a set of procedures that provide  
3 equal protection and equal pertain to all  
4 petitioners, not just the ones who exist  
5 outside the southeastern United States.  
6 Those are some thing that I wanted to  
7 present that I felt were pertinent in  
8 considering this process. I am so excited  
9 about the potential that is there. And I  
10 appreciate this opportunity to speak before  
11 you and my fellow citizens as well. Thank  
12 you sir.

13 LARRY ROBERT:

14 Thank you.

15 (APPLAUSE.)

16 (STAN LONG SITS.)

17 (JANIE VERRET LUSTER COMES FORTH.)

18 JANIE VERRET LUSTER:

19 Good morning. My name is Janie Verret  
20 Luster. And I just want to comment on the  
21 chief's comments there. With our people  
22 also, please do not look as to what's  
23 written on the (undistinguishable). My  
24 aunt had seven children. She had black,  
25 white and Indian, and I think if we had

1 Vietnamese and the Mexican people come in,  
2 she probably would've had one of them too.  
3 So like I said, you know, that's very  
4 important to look. Look at our tribal  
5 records. That's the most important thing.  
6 We know who we are as a people. And I  
7 appreciate y'all taking the time to do this  
8 to revise this process of federal  
9 recognition. Thank you.

10 (APPLAUSE.)

11 (JANIE VERRET LUSTER SITS.)

12 (JOSEPH PARRIE COMES FORTH.)

13 JOSEPH PARRIE:

14 Good morning. My name is Joseph  
15 Parrie. I'm a retired US Navy man, 24  
16 years, and also retired school teacher and  
17 coach, 20 years. And I'm also a proud  
18 member of the Choctaw-Apache of Ebarb,  
19 Louisiana.

20 (APPLAUSE.)

21 JOSEPH PARRIE:

22 And I am mainly here to say that I  
23 support Criterion A the proposed change,  
24 but I also -- to thank my tribe for pushing  
25 for recognition. Because ever since I was

1           this high, you know, I've been fighting to  
2           be recognized. You know, and been  
3           discriminated like the gentleman said. You  
4           know, in the service, went to a place and  
5           they wouldn't serve me because you're an  
6           Indian. Well, I wish you would tell  
7           everybody else that. So I'm thankful and I  
8           hope this process goes forward, but my  
9           trust level is low and that's because of  
10          the history. So hopefully you prove me  
11          wrong so that our children can get the same  
12          education that are federally funded. So  
13          thank you for your attendance and I hope  
14          this goes through. Thank you.

15 LARRY ROBERTS:

16                         Thank you.

17   (APPLAUSE.)

18   (JOSEPH PARRIE SITS.)

19   (NANCY CARNLEY COMES FORTH.)

20 NANCY CARNLEY:

21                         Hello. My name is Nancy Carnley. I'm  
22                         the dodge chief of MaChis Lower Creek  
23                         Indian Tribe of Alabama and also a member  
24                         of the our Indian Affairs Commission. I am  
25                         the only existing person that's left that

1 was on our tribal council when we first  
2 started seeking federal recognition back in  
3 the early '80s. Discrimination continues  
4 today amongst American Indian people in the  
5 state of Alabama. As late as 1990s I had  
6 to have United States Formal Education  
7 Civil Rights Division intercede my children  
8 to be happy because they were being  
9 discriminate or assaulted on a daily basis  
10 in the public school that was receiving  
11 Indian ed money. And it still continues as  
12 late as 2000. I've been denied  
13 opportunities for promotion where I  
14 formally worked before the hospital close  
15 just because of my race. I was even told  
16 by the administration that my kind cannot  
17 be administration because Indians were not  
18 educated enough to be in that field, even  
19 though I had the training. I had  
20 personally paid for my education. So I  
21 know what it's like.

22 But the thing is -- my concern is about  
23 the tribes being allowed to go back for  
24 reconsideration. What if the people had  
25 died that protested your tribes

1 recognition, that wrote nasty comments that  
2 could not have been validated just because  
3 they had anti-native American redrick  
4 there? You know, I'm concerned about that  
5 because that's issue has not been addressed  
6 because there are people out there that are  
7 on the United States watch list that they  
8 have for Montgomery that talks about anti  
9 this, anti that and we have anti groups  
10 that's American Indian out there. KKK,  
11 other groups. And I have seen crosses  
12 burned in my yard. I have seen other  
13 things happen. We just need to take into  
14 consideration southeast United States and  
15 the south has a very volatile history.  
16 1830s -- started in 1813 the Creeks were  
17 removed and then it went on to the  
18 Cherokees because Cherokees had gold.  
19 Creeks, Choctaws we were all removed. And  
20 it wasn't just mainly because of where we  
21 were located, it was because the cotton gin  
22 had been created up in northern United  
23 States, they needed to get the cotton and  
24 where was the best cotton growing land. In  
25 the southeast and Alabama and Georgia and

1 Louisiana. That's why they wanted our  
2 land. They didn't care about us, they just  
3 wanted our land. And we need to take into  
4 consideration our histories of the south.  
5 Because the south has unique anti-Indian  
6 history. Anti any type of history is not a  
7 true southern white European, and I will  
8 send my written comments to you. My  
9 granddaughter drew on them, so I didn't  
10 want to submit them with her drawings.  
11 Thank you.

12 LARRY ROBERTS:

13 Thank you.

14 (APPLAUSE.)

15 (NANCY CARNLEY SITS.)

16 (JOSEPH DARDARD COMES FORTH.)

17 JOSEPH DARDARD:

18 Good morning. My name is Joe Dardard.  
19 I'm a member of the United Houma Nation  
20 Indian Tribe. And my comments or question  
21 this morning is we have negative comments,  
22 but my question is I need the BIA to look  
23 into these negative comments and determine  
24 the validity of them and so on. But I also  
25 have other comments. I was born on the

1 Island of Jean Charles Island, we called it  
2 Isle de Jean Charles in French, 1932. And  
3 to my knowledge I think I was the first one  
4 in the United Houma Nation to graduate from  
5 high school in 1950. I don't know of  
6 anyone else did that. But I can remember  
7 trying to go to school, wanting to go to  
8 school when I was younger, we couldn't do  
9 that. We were denied the privilege of  
10 going to school. So my family moved away  
11 from the island in 1941 and we moved to New  
12 Orleans East. It was disadvantage for us  
13 because we didn't speak English. I didn't  
14 speak English. There were three families  
15 that moved from the island to what is now  
16 New Orleans East and we were attending --  
17 we were able to attend public schools in  
18 New Orleans at that time. And the other  
19 two families had moved back to the island.  
20 One of the families son actually became a  
21 priest, he continued his education. Even  
22 though I was the first to graduate from  
23 high school, I was not the first to  
24 graduate from college. My college career  
25 didn't happen until I retired from the

1 United States military, from the United  
2 State Marine Corps after 23 years. I now  
3 have a Bachelors of Science in Electrical  
4 Engineering and also Bachelor in English,  
5 and believe it or not you can right fully  
6 call me a professional student because I am  
7 now pursuing a Masters in Native American  
8 Studies and Native American History. I  
9 mean, I'm retired with nothing else to do.  
10 But anyway the point I'd like to make is --  
11 or a point of history perhaps, on the  
12 Island of Isle de Jean Charles nobody spoke  
13 English. We were totally isolated from all  
14 the other outside communities. And that of  
15 course was an advantage to us because  
16 unlike some of the other members of our  
17 tribe, we were surrounded or not anywhere's  
18 close to the other non-Indian communities.  
19 We had a little bit sense of security about  
20 it. And that security kind of brought us  
21 together as a community, as a unit. We had  
22 all the things we needed. We didn't have  
23 anything, we had no telephone. We lived  
24 very primitively. No running water, no any  
25 kind of modern facilities. We lived in

1 huts with palmetto and patched roofs and  
2 what have you, but we lived very happily.  
3 Our lives were relatively healthy lives.  
4 I can tell you the story back in 1936  
5 -- 1938, I was six years old at the time.  
6 There was a team of welfare workers that  
7 came to the island and they didn't speak  
8 French and we didn't speak English, so you  
9 can imagine the communication between the  
10 two groups. They walked around and visited  
11 every family on the island. There were  
12 about 20 families at that time. And we  
13 were spread out over an area of perhaps 10  
14 miles or so. We had to walk from one place  
15 to the other. All we had was a foot trail,  
16 we didn't have any other means of  
17 transportation other than perhaps a pirogue  
18 or boat. But they visited each family  
19 trying to communicate with them. You can  
20 imagine the communication, no one  
21 understanding the other ones language. And  
22 sometimes after they left, weeks or so  
23 after, boats started coming into the island  
24 with provisions -- welfare provisions. And  
25 we didn't know what these things were, what



1           And to my knowledge the people that  
2           were on that particular welfare mission  
3           didn't want to get off of it. The fact was  
4           that we didn't need welfare. We had  
5           nature's culvert, as we call it. We had  
6           our own garden, we had the -- we didn't  
7           have the sea as it is now. The island at  
8           that time was a very high red. In fact we  
9           used to find security from hurricanes on  
10          what we called the north end of the island,  
11          underneath the canopy of oak trees. The  
12          bayous -- and our boats we just had a tarp  
13          covering up to protect it from the rain.  
14          And when the hurricane was over we'd go  
15          back to our home and we might be missing a  
16          chicken or so, but nothing -- no other  
17          damage. No flood damage. But the island  
18          at the time, like I said was a high red.  
19          We were probably around 15, 20 feet above  
20          sea level. Of course now it's not much  
21          more than a sandbar. It depresses me to go  
22          back in there now because I don't see it  
23          like it used to be, and as I remember it  
24          when I was a boy. Anyway it's a long  
25          story, and I can sit here and tell you

1 stories all day long. It what we use to  
2 entertain our children. Parents used to --  
3 parents, grandparents and uncles used to  
4 gather the kids around and tell the stories  
5 passing history on through that, and that  
6 was our form of education.

7 (BABS BAGWELL COMES FORTH.)

8 BABS BAGWELL:

9 Who was chief on the island at that  
10 time?

11 JOSEPH DARDARD:

12 At that time the chief was  
13 (undistinguishable) Victor.

14 BABS BAGWELL:

15 Victor who?

16 JOSEPH DARDARD:

17 Victor Naquin.

18 BABS BAGWELL:

19 Which is Chief Albert Naquin who is  
20 Chief of Isle de Jean Charles Band of the  
21 Western Chitimacha-Choctaw's grandfather.

22 JOSEPH DARDARD:

23 M-hm (affirmatively).

24 BABS BAGWELL:

25 He's not a Houma Indian.

1 JOSEPH DARDARD:

2                   No? Well, I don't know who tribal  
3                   leaders are. I know that the chief of the  
4                   island was passed down from uncle to cousin  
5                   or something like that. I don't know  
6                   exactly what the procedures were, because I  
7                   didn't follow that line. Thank you very  
8                   much for your time.

9 LARRY ROBERTS:

10                   Thank you.

11   (APPLAUSE.)

12   (BABS BAGWELL EXITS ROOM.)

13   (SHIRELL PARFAIT-DARDAR COMES FORTH.)

14 SHIRELL PARFAIT-DARDAR:

15                   Just a note, Mr. Dardard. The chief  
16                   was always handed down to a Naquin, always  
17                   a man. I know because I'm Grand Caillou/Du  
18                   lac, and I'm inherited from  
19                   (undistinguishable).

20   (SHIRELL PARFAIT-DARDAR EXITS ROOM.)

21   (JOSEPH DARDARD SITS.)

22   (MORNINGDOVE VERRET COMES FORTH.)

23 MORNINGDOVE VERRET:

24                   My name is (speaking in native  
25                   language.) In English it's translated as

1 MorningDove. That's my real name.  
2 MorningDove Verret, and I'm a citizen of  
3 the United Houma Nation. This is  
4 overwhelming and it's an honor to be here.  
5 And I thank you -- thank you for giving up  
6 yourselves like this so we can have a  
7 voice. I appreciate it and my people  
8 appreciate it. It's really sad when you  
9 have to stand before people to prove who  
10 you are. I think we're the most  
11 misunderstood people in the world, all the  
12 native people. But I went to a missionary  
13 school. It was just an Indian school, you  
14 know, and I didn't know how to speak  
15 English. People say, "All you learn  
16 English in school." I said, "No. They  
17 beat it in me." I got the scars. It's  
18 true. So you know, I didn't even know how  
19 to say, "I want water," or use the  
20 bathroom, or anything like that. And I  
21 attended school in this -- it was an old  
22 Baptist church house, but it was turned  
23 into a school.

24 (MICROPHONE FEEDBACK.)

25 MORNINGDOVE VERRET:

1                   Anyway this school that I attended was  
2                   on Bayou du Large --

3                   (MICROPHONE FEEDBACK.)

4 MORNINGDOVE VERRET:

5                   Can you hear me without this thing? It  
6                   was an old Baptist church house that was  
7                   turned into a school. And they had a  
8                   little room, a row of -- two rows of 1st  
9                   grade, two rows of 2nd grade, two rows of  
10                  3rd and two rows of 4th grade. And then in  
11                  another room they had the 5th and the 6th  
12                  grade. In those days we wasn't allowed to  
13                  graduate like a lot of you guys said  
14                  earlier. So to go to school and not know  
15                  the language and trying to learn it was  
16                  very hard, but in those days it wasn't  
17                  mandatory. We didn't have to even go to  
18                  school. My father trapped, fished and  
19                  hunted for a living. That's actually the  
20                  way we made our life, and you know, it was  
21                  a beautiful life. I thought it was a good  
22                  life. It wasn't until I was an older  
23                  person I realized, "Well, you know what,  
24                  we're poor," compared to what some people  
25                  would say that you're -- you know, got

1 money or whatever. We had everything we  
2 wanted like Uncle Joe said. We had all of  
3 the food that we needed and we caught  
4 everything fresh or planted and raised  
5 everything fresh right there. But to be  
6 over here with different tribes that's  
7 trying to have a voice, you know, we are  
8 all brothers and sisters. We need to agree  
9 to disagree but still leave as family,  
10 still leave as friends, because we all want  
11 the same thing.

12 (APPLAUSE.)

13 MORNINGDOVE VERRET:

14 None of us is different from the others  
15 here. We are all native in our heart. You  
16 know, my dad used to say, "I don't need the  
17 government to tell me I'm an Indian. I  
18 know who I am."

19 For a long time I understood what he  
20 was saying because of the stuff that we had  
21 to endure in school and in public, because  
22 a lot of places we couldn't go in. A lot  
23 of the restaurants we wasn't allowed to go  
24 in. I mean, they actually had a sign "No  
25 Indians allowed," and some restaurants they

1 actually we would specify "No Houma Indians  
2 Allowed." And I remember the first time --  
3 let me go back to the school bus. They  
4 would bring the white people and the black  
5 people. The black sat in the front -- the  
6 back, the white people sat in the front,  
7 and then they'd send another bus to come  
8 get the Indian people. Of course I was too  
9 young and didn't realize too much stuff  
10 that was going on. My dad died when I was  
11 12 with a massive heart attack, so I only  
12 went to the 5th grade. Although I travel  
13 all over the country now, but that's all I  
14 had was a 5th grade education, because like  
15 I said back then we wasn't even allowed to  
16 graduate. 6th grade was the highest you  
17 could go.

18 But I think one of my biggest  
19 experience one time, the first time I went  
20 to a movie I was like 12. And I thought it  
21 was great. First time I ever get to go to  
22 a movie, here I am. It costs me a quarter  
23 to go in, and with a quarter now, we could  
24 see a movie plus have popcorn and a soft  
25 drink. So I -- you know, this was great.

1 And I walked in, went sat down and I didn't  
2 know that I couldn't sit where I sat at, at  
3 that time. I wanted to get as close as I  
4 could to the front, because this was my  
5 first time going in. And it did not take a  
6 long at all for this big woman to come in  
7 and she put a flashlight right in my eyes,  
8 and she says, "You're a Houma Indian. You  
9 can't sit there." And I just looked at  
10 her, because I was dumbfounded. And I  
11 said, "Why not?" I said, "I paid to come  
12 in," and I showed her my little stub that I  
13 had. And she said, "No you cannot sit  
14 there, you have to go sit way up there with  
15 the others." So I was young and she was  
16 much older, I was going to listen. So I  
17 got up and I went where she told me to go,  
18 and when I got up there it was Indian  
19 people and black people that was sitting up  
20 there. So that was kind of my first  
21 starting to understand where I could go,  
22 where I couldn't go, where I could sit,  
23 where I can eat, where I couldn't, where I  
24 could not.  
25 And I'm trying to put a lot of years in

1 just a few minutes you guys, because I know  
2 we got timed here. But another story was  
3 we had medicine people that took care of  
4 all of our needs, just about, from child  
5 birth to you name it. But this one time my  
6 mom brought one of my little brothers to  
7 the doctor. And being young and not  
8 knowing better, when we come out I'm  
9 telling mom, "I'm hungry. Can we get  
10 something to eat?" And she's telling me on  
11 the side, "Shh, shh, no wait until we get  
12 home." But I said, "But, mom, I'm hungry.  
13 Can we get a sandwich or something?" And  
14 she says, "Well, okay. You don't think you  
15 can hold?" I said, "No. Maybe we can get  
16 some crackers or something somewheres."  
17 Well, the courthouse in Houma, which we  
18 wasn't allowed to drink out of their  
19 fountain, well, they had a little drugstore  
20 right there, which I think still stands  
21 there today. It used to be like a little  
22 place where you could get sandwiches or  
23 whatever. Anyway, we walk in, and I was  
24 fairly young, so you could've heard a pin  
25 drop when we walked in there. All of a

1 sudden everybody stopped talking. Well, I  
2 didn't know it was because we were Indians  
3 walking in a white place, you know. And my  
4 mom couldn't read, so you know, that's just  
5 the way it was. So we sat there and mom  
6 says, "Hurry up and get -- we just going to  
7 get a little sandwich, a ham sandwich."  
8 And so the lady came and she just threw the  
9 menu down, and not until I got older I can  
10 imagine what my mom must've went through.  
11 She threw the menu down and my mom -- of  
12 course my mom didn't read it because she  
13 couldn't read and write. She just pushed  
14 it and she says, "We just want a sandwich.  
15 And make the sandwich and we're going to  
16 go." So that took place, and you could  
17 still almost hear a pin drop in the whole  
18 place, you know. So as soon -- I mean,  
19 that sandwich came fast. They must've  
20 wanted to get rid of us. So when the  
21 sandwich come there with the little brown  
22 paper bag, I'll never forget it. My momma  
23 paid for it, and we wasn't even out of the  
24 door, when the waitress grabbed some Lysol  
25 and was spraying it behind us. You know,

1 it kind of hurts the heart. Sorry. But  
2 you know, that's just a sample of -- it's  
3 kind of hard for us to stand here and say  
4 who we are, what we went through in life,  
5 what we're still going through in life,  
6 because we still got a long way to go,  
7 okay. My dad used to say, "How do you know  
8 where you're going, if you don't know where  
9 you come from?" "Always be proud of who  
10 you are no matter if you got to take the  
11 blows." I think that's what make us a  
12 strong people. And yet we have to convince  
13 other people who we are. You know, they  
14 tell us who we are, they tell us what we  
15 can do, what we can't do, but then we still  
16 have to prove who we are.

17 With all of that, like Uncle Joe said  
18 we can talk for hours and hours, but we  
19 want to give other people a chance. I just  
20 want to say thank you from the bottom of my  
21 heart. Thank you for my 10 grandkids,  
22 thank you for my 7 great grandkids that's  
23 coming up. I'm an old mawmaw. Because  
24 they're the one, I'm opening this up for  
25 them. They're the one. So thank y'all.

1 Thank y'all so much for being here and  
2 letting us have a voice. Appreciate it.

3 LARRY ROBERTS:

4 Thank you.

5 (APPLAUSE.)

6 (MORNINGDOVE VERRET SITS.)

7 (KENNETH BENJAMIN SYLVAIN COMES FORTH.)

8 KENNETH BENJAMIN SYLVAIN:

9 Good morning. My name is Kenneth  
10 Benjamin Sylvain. I am the tribal chief of  
11 Avoyels Indians. I'm currently 63 years  
12 old. I'm a black Indian. And growing up  
13 in Marksville, Louisiana I attended school  
14 at Mary Beguin High School. And my mother  
15 and father told me, my brothers and sisters  
16 who we were, where we came from, who was  
17 our great grandparents. And I remember  
18 growing up we all would pile up in my  
19 father's car and he'd take us around, show  
20 us different places and stuff. But the  
21 most important thing that he said to me,  
22 because I was the youngest and I was kind  
23 of rambunctious going through high school,  
24 he said, "I know y'all be playing out there  
25 in the mound over there in the park." He

1 said, "I don't want you running up and down  
2 that mound." And I said, "Well, why not?  
3 Everybody else is running up and down the  
4 mound. Why can't I run?" He said,  
5 "Because that's where your ancestors are."  
6 And as years passed, from talking to  
7 different people and everything -- upon  
8 completing high school I joined the air  
9 force. I later joined the navy and after  
10 that I became a policeman. I retired. But  
11 the thing that strike me, once I made  
12 supervisor and being a dark skin person and  
13 having Indian ancestry, I was told that a  
14 black man should not be advising a white  
15 man or telling a white man what to do. And  
16 then once they found out that I had Indian  
17 ancestry in me, it turned out to be even  
18 worse. So as time passed I've learned to  
19 deal with certain things. And as of today  
20 I do not deny and I will not accept to deny  
21 my Indian ancestry. And I agree with  
22 everybody here of the hardships that we are  
23 going through. We're going through  
24 hardships now trying to get our recognition  
25 as the Historical Avoyels Indians.



1 My dissertation research is with several of  
2 the unrecognized native tribes in  
3 Louisiana. I have one knit picky concern,  
4 and then some more broader concerns. My  
5 knit picky concern is looking at 83.10 B, 4  
6 and 5. They say that demonstrations  
7 requiring that the criteria met on  
8 substantially continuous basis, meaning  
9 without substantial interruption, but in  
10 part by substantial interruption is defined  
11 as a gap of 20 years or less. I think from  
12 what I'm hearing from you all that, that's  
13 meant to be 20 years or more, but I would  
14 just ask that be revisited because it could  
15 create problems for petitioners trying to  
16 interpret these petitions.

17 My second comment is that the federal  
18 government insisting but trust  
19 responsibilities to native nations. It's  
20 also recognized under US law, as well as  
21 international law, that Indian tribes have  
22 an inherited sovereignty. Thus the US has  
23 responsibility to recognize inherited  
24 sovereignty of Indian people. When that's  
25 not recognized there's an encompass of a

1 harm done. I know we heard stories of  
2 cultural survival all morning long from  
3 people who have gone through things that  
4 people in my generation won't have to go  
5 through because they were there. But as  
6 some point it becomes increasingly hard for  
7 people to survive economically and  
8 culturally without recognition of their  
9 sovereignty and their ability to take care  
10 of their own lives. So I think it's  
11 important that when request petition for  
12 recognition they be given assistance, the  
13 full extent of the bureau's capacity. That  
14 they not be treated as people who are  
15 possibly fraudulent, but as people who may  
16 be claiming an inherited right. That the  
17 US is extra mandated to recognize.

18 As he said -- Robert Caldwell's  
19 comments earlier about the responsibility  
20 of the BIA to provide some assistance to  
21 tribes (undistinguishable). Criterion A, I  
22 think that's a good idea.

23 My last comment is that  
24 (undistinguishable) has this authority  
25 through statute to create objective

1 criteria for recognition, not to create  
2 subjective criteria. I think it needs to  
3 be very clearly stated in the regulations  
4 exactly how third party -- I guess, all  
5 evidence is considered. That it's  
6 considered and limited to the extent that  
7 it actually provides contradictory evidence  
8 not to the extent that the provider of  
9 those comments is someone who has power or  
10 money. And that's all.

11 LARRY ROBERTS:

12 Thank you.

13 (APPLAUSE.)

14 (REBECCA RIALI SITS.)

15 LARRY ROBERTS:

16 Well, it's -- why don't we do this,  
17 it's 10:40. Why don't we just take a quick  
18 10 minute break to 10:50 and then we'll  
19 open things up on time. Thank you.

20 (THERE WAS A BREAK.)

21 LARRY ROBERTS:

22 We're going to get started here with  
23 the next comment. Thank you so much.

24 (BRIAN KLOPOTEK COMES FORTH.)

25 BRIAN KLOPOTEK:

1           My name is Brian Klopotek. I'm a  
2 professor at the University of Oregon and  
3 I'm Choctaw from Sabine Parish. I wrote a  
4 book called "Recognition, Odysseys," it's  
5 about federal recognition policy and it's  
6 impact on the Tunica-Biloxi Tribe, the Jena  
7 Bank of Choctaws and the Clifton-Choctaws  
8 here in Louisiana.

9           And I want to begin, I guess, by  
10 acknowledging that the Tunica-Biloxi Tribe  
11 here as our host and appreciation for that.  
12 And thank you for coming and for  
13 considering revising these criteria that  
14 have been so contested for the last 40  
15 years. So I really applaud the effort to  
16 revise the criteria. In particular, I want  
17 to echo what many of the people here have  
18 said already and support that addition of  
19 the requirement that outsiders identified  
20 as an Indian tribe.

21           I want to speak -- I also support the  
22 idea of the addition of the state  
23 reservation clause. It says if you have  
24 state reservation then that counts heavily  
25 in your favor in the Criterion B, C. But I

1 want to also state my opposition to the  
2 idea of interested parties having veto  
3 power over that. So I don't know -- I  
4 didn't see any of these regulations that  
5 they're in right now, or as the revised  
6 proposal but we in the past have made a  
7 speech between informed parties and  
8 interested parties. Interested parties  
9 being ones that have some kind of property  
10 interest of jurisdiction interest involved  
11 in the case. And my understanding of this  
12 process and what it's based on, the passing  
13 of final decision and all that, is that  
14 this is supposed to be about determining a  
15 group exist as a tribe or not. So I don't  
16 see how property interest comes to bear on  
17 that and why they should have any kind of  
18 special kind of power over whether a tribe  
19 -- determining whether a tribe exist or  
20 not. So -- and as this revision is written  
21 it gives those, in particular the State of  
22 Connecticut, power to say "No, the  
23 Scatacoats can't repetition. No the  
24 Eastern Pequots can't repetition," and I  
25 want to state in no uncertain terms that,

1 that's unacceptable. That the State of  
2 Connecticut has maintained reservations  
3 since colonial times for those tribes, as  
4 you know, and so for them to come back now  
5 and say that they're not tribes is -- and  
6 then to have the power to say that they  
7 can't repetition now that, that clause has  
8 been added against the spirit of revision  
9 in the first place.

10 I support the idea of revising the  
11 interpretation of the criteria to say that  
12 evidence will be viewed in the light most  
13 favorable to the petitioner because that to  
14 me puts it in accordance with the rest of  
15 the Canada's federal Indian law that  
16 Canada's construction of federal Indian law  
17 that said the same things. That evidence  
18 must be interpreted and brought in favor of  
19 the tribes in consideration of the problems  
20 that tribes have faced in this process.

21 There are two places in this proposal  
22 or in the discussion of the proposal where  
23 you talk about keeping the policy  
24 consistent with previous practices at OFA  
25 and that these revisions are merely to

1 reflect the practice more clearly, and I  
2 object to that idea. You can't fix the  
3 problem by simply changing the wording of  
4 the policy while it's being practiced the  
5 same. So I think there's some cultural  
6 within -- that a number of people have  
7 pointed to over the years. Kind of  
8 cultural of here -- of microscopic analysis  
9 and gate keeping that seems to have  
10 prevailed and that needs to be addressed.  
11 And I know that's not in the proposed  
12 revisions but it's something that does need  
13 to be addressed and not just spoken about  
14 many times. To that end I will actually  
15 suggest that there might be some process --  
16 a broader process of over site for OFA that  
17 might involved peer review of their  
18 decisions, so it seems like the assistant  
19 secretary has the ability to review those  
20 decision, but there's not broader or  
21 academic review of the conclusions that are  
22 being drawn by OFA, and that's giving a  
23 kind of power to make decisions without any  
24 significant input from outside. So I know  
25 there's all these opportunities to comment

1 on decisions, but the power to make  
2 decisions and to say what's acceptable and  
3 what's not I think you need to have some  
4 kind of process initiated that invites more  
5 oversight. And I think that will make it  
6 more transparent to make it more pliable  
7 the kind of decisions that are being made.

8 I have questions about this new  
9 Criterion A and the idea of switching to  
10 historical times can mean anything before  
11 1900. So as it's written in the proposed  
12 changed about 83.11 A, Tribal Existence.  
13 The petitioner must describe it's existence  
14 as an Indian tribe and, et cetera, at a  
15 point in time during the historical period.  
16 So what's not clear, and I don't know if  
17 you can answer this now or if you could  
18 address it in the future. But it's not  
19 clear if that means they need to establish  
20 it at any one point in time, and then every  
21 20 years thereafter, or just any one point  
22 in time at all prior to 1900. Since I know  
23 -- and I'm looking here and thinking about  
24 actually the United Houma Nation and their  
25 petition and negative proposed finding that

1 was published by (undistinguishable)  
2 acknowledgment at the time. They said that  
3 the Houma's were a tribe in 1880, but not  
4 in 1800, and that -- the fact that, you  
5 know, that their ancestors they kind of  
6 described them accidental neighbors. This  
7 is -- how can they be a tribe in 1880 if  
8 they weren't a tribe prior to that time.  
9 Well, this is -- it's something that needs  
10 to be addressed. So does it need to be at  
11 any one given point in time prior to 1900,  
12 do you need to have established that you're  
13 a tribe or does it have to be continuously  
14 at every point in time prior to 1900. So  
15 I'd like to see that clarified in terms of  
16 what that means. Do you have any comments  
17 on that right now?

18 LARRY ROBERTS:

19 Sure. I have a couple of comments on a  
20 number of the things that you raised, but  
21 specifically with Criterion A as it's  
22 written now, it's at a point in time prior  
23 to 1900. So I think we view that as a  
24 point in time, just some point in time  
25 prior to 1900. The idea behind it and

1 request, comments on how you think it  
2 should be clarified. So this is the point  
3 in time for you to say, "Well, we think it  
4 should it clarified this way or that way,"  
5 so that we can consider that. But the idea  
6 is that, you know, we're looking at  
7 historical entities, right? And so this is  
8 sort of where did this group come from, you  
9 know, where is that history. It's not  
10 meant to be, as I said earlier a treatises,  
11 it's supposed to be a brief summary, right?  
12 And a narrative -- a brief narrative of  
13 that history prior to 1900 at some point in  
14 time.

15 So the other couple of things that  
16 you've raised that I just want to clear up.  
17 You had mentioned at the onset that the  
18 light most favorable to the petitioner  
19 standard. That was in a discussion draft,  
20 but that is not a part of this Proposed  
21 Rule. We did not include that in the  
22 Proposed Rule itself. So if there are  
23 comments on that you should -- you know,  
24 we'll have this transcript. We'll look at  
25 the transcript. We also encourage written

1 comments as well. The other thing on third  
2 parties, I just want to clarify because  
3 this has come up in a number of situations  
4 here. But we're talking about third  
5 parties in sort of two different context.  
6 One is comments on the petition itself.  
7 and those comments that we receive, I mean,  
8 we're going to look at what kind of  
9 evidence is -- are those comment of. Are  
10 they a comment that we just opposed this  
11 petition with no underlying evidence or are  
12 they providing an actual evidence that we  
13 need to take a look at and that the  
14 petitioner needs to take a look at, and  
15 evaluate that information.

16 In terms of re-petitioning, as you guys  
17 -- as most people know, right now the  
18 process does not allow for re-petitioning  
19 at all. And so like I explained this  
20 morning we have a couple of steps in the  
21 process before a group could re-petition.  
22 The discussion of third parties and  
23 re-petitioning there, the proposal -- the  
24 Proposed Rule is if a third party has  
25 litigated the issue, either

1           administratively or in federal district  
2           court, and prevailed because they have, you  
3           know, equities at a minimum and perhaps  
4           legal rights having prevailed in  
5           litigation. You know, tribes prevail all  
6           the time in litigation and we want to  
7           uphold those rights that they have  
8           litigated it. So in those situations where  
9           third parties have prevailed, you know,  
10          we're seeking the consent of those third  
11          parties. But it's not third parties that  
12          just submitted comments during the  
13          petitioning process. It's litigated either  
14          administratively or federal district court.  
15          So I just wanted to clarify those remarks  
16          and those -- how the Proposed Rule reads  
17          and we invite comments and written comments  
18          as well on how those should be addressed.

19 BRIAN KLOPOTEK:

20                        So I would actually ask for more  
21                        clarity on the historical -- what the new  
22                        Criterion A is actually looking for,  
23                        because it's not really clear at this  
24                        point. And I guess I would invite people  
25                        to ask in their written comments at that

1 time -- for pushing that direction that  
2 they want it to be as well.

3 LARRY ROBERTS:

4 And I would just speak to that, in  
5 terms of if you don't think it's clear,  
6 rather than -- across the board, if you  
7 think, not just on A but any part of this  
8 regulation, if you don't think it's clear  
9 we need to know that. But then tell us how  
10 it should be fixed. Right. Tell us how it  
11 should be clarified, because you know, we  
12 may have issued the Proposed Rule thinking  
13 it was perfectly clear, and then we've  
14 heard from you all that it's not clear. So  
15 we need suggestions as to how to clarify  
16 different parts of the rule.

17 BRIAN KLOPOTEK:

18 I support the idea of inserting those  
19 -- some definitions in particular of  
20 reasonable likelihood, and that particular  
21 phrase being enforced. And that goes  
22 along, I guess, with the idea -- I urged  
23 some reconsideration of that idea of  
24 feuding facts in a light most favorable to  
25 the tribes. That doesn't mean just making

1 stuff up. And I think that a fear that  
2 people have is that if you view something  
3 in a light most favorable to the tribes  
4 then you can state, "Well, I said it so  
5 it's true," and then you have to view it in  
6 the light most favorable to me. So I don't  
7 think that's what it means and I don't  
8 think that's ever what it meant in federal  
9 law. Maybe some lawyers can correct me if  
10 I'm wrong, but there needs to be some kind  
11 of consideration of the historical context  
12 of knowledge production in this county.

13 And last I want to say -- reiterate  
14 some comments that have also been made,  
15 which is that the federal government as an  
16 obligation to protect the sovereignty of  
17 indigenous nations. Which is the -- it  
18 goes back to those Cherokee decisions that  
19 everybody knows and federally involved,  
20 which is the United States is obliged to  
21 uphold the sovereignty of the tribes. So  
22 if there are tribes out there that are  
23 having their sovereignty violated by --  
24 simply by non-recognition, then it's an  
25 obligation of the United States Government

1 to provide assistance to those tribes and  
2 find where they are. Find them and then  
3 help them do that research. So we might  
4 think about this as like -- if you can -- I  
5 want to say creed. There have been several  
6 revisions on OFA policy over the last 15  
7 years that have been towards the goal of  
8 lightening the burden on OFA itself that  
9 have been contradictory to that actual  
10 initial critique thing, and that have been  
11 made of OFA. So for example, in 2000 there  
12 was a policy put forth that said, "OFA is  
13 no longer going to spend any time doing any  
14 research for the tribes." They have to do  
15 all their research themselves, even if it  
16 just involves running down to the national  
17 archives three blocks away. OFA won't do  
18 any of it. But I think OFA does actually  
19 have an obligation -- the federal  
20 government has an obligation to do that  
21 kind research support. And by saying OFA  
22 is going to do less, it may speed up thing  
23 for OFA but it does the opposite of the  
24 intended effect, which is that people are  
25 saying that we need more support to make

1 this go faster, not less. We need more  
2 research support. So with that federal  
3 trust obligation, that fiduciary obligation  
4 that the federal government has to  
5 indigenous nations we can think about  
6 different ways that, that can be  
7 implemented through OFA. So it may be that  
8 you guys (undistinguishable) phase 1 and  
9 phase 2 process. You know, if a tribe gets  
10 through phase 1 that may trigger something,  
11 or then at that point they documented that  
12 they're descendent from a historical tribe  
13 and you need to step up and research  
14 support and provide research help, rather  
15 than simply let that burden fall explicitly  
16 on the tribes. I imagine it being  
17 something like, you know, there's an  
18 earthquake and all these people are kind of  
19 buried under the rubble, and some people  
20 get out and that's great. And then you  
21 guys go around say, "If you get out the  
22 rubble then we'll -- we'll help you then,  
23 but we're not going to help you actually  
24 get out from under the rubble."

25 So I want to drive home that point.

1           There's a trust obligation that the United  
2           States Government has obliged itself to.  
3           This isn't -- this is through federal law  
4           that the United States has obliged itself  
5           to protect the sovereignty of indigenous  
6           nations and OFA is a part of that  
7           obligation as well.

8 LARRY ROBERT:

9                     Thank you.

10                                     (APPLAUSE.)

11                                     (BRIAN KLOPOTEK SITS.)

12                                     (CEDRIC SUNRAY COMES FORTH.)

13 CEDRIC SUNRAY:

14                     I was just asked during the break to  
15                     provide some boarding school stats, so I'll  
16                     go ahead and do that. I'll reiterate the  
17                     first one. There's 13 tribes in the south  
18                     and east, and over 20 years of research  
19                     we've shown have attended Indian Boarding  
20                     School System. There are of the 31  
21                     federally recognized tribes in the south and  
22                     east, 27 attended the Indian Boarding School  
23                     System. You can see the correlation there.  
24                     Nine of the tribes that are currently  
25                     federally recognized, but who attended the

1 Indian Boarding School System prior to their  
2 federal recognition. There are nine --  
3 excuse me, there are nine tribes who are now  
4 federally recognized, but who attended prior  
5 to their recognition. That includes the  
6 Mashpees, Narragansett, Passamaquoddy,  
7 Pequot, Penobscot, Shinnecock, Tunica-  
8 Biloxis. So there's a very strong  
9 correlation that's clear and we ask the  
10 Bureau of Indian Affairs see that  
11 (undistinguishable.)

12 (MICROPHONE FEEDBACK.)

13 CEDRIC SUNRAY:

14 There's a very clear correlation there  
15 and we think that, that needs to be fully  
16 acknowledged. The individual who just  
17 spoke, Brian. For those who are unaware, he  
18 is one of the foremost Indian Academics in  
19 this country. He's widely published. He's  
20 someone that Vine Deloria, Jr., which is  
21 probably the most foremost Indian historian  
22 ever, spoke highly of when he was a student  
23 in school. Vine Deloria, Jr. wrote the fore  
24 work to our tribes history book demanding  
25 our federal recognition. He's a Lakota.

1 Academic -- and I think the way he speaks  
2 too allows people to listen. He never has  
3 hostility in his voice. He documents things  
4 fully and he publishes things that are  
5 factually accurate in a form that's consumed  
6 -- easily consumed by all of us. So I just  
7 want to acknowledge -- and he's also not a  
8 friend of mine, so I'll just tell you that  
9 right off the bat. I know of him and I read  
10 many of his pieces. Thank you.

11 (APPLAUSE.)

12 (CEDRIC SUNRAY SITS.)

13 (RORMS ANTOINE COMES FORTH.)

14 RORMS ANTOINE:

15 Good afternoon. My name is Rorms  
16 Antoine, Chief of the Avoyels Taensa Tribe.  
17 I just have a few questions that I need to  
18 have answered, because after all I know  
19 we're all brothers and sisters here as  
20 Native American. I'm fully Native American,  
21 Avoysee on both side. My mother and my  
22 father.

23 But what I want to ask, because I'm  
24 historical, come from the historical tribe  
25 which is the Avoysee Indian. One of the

1 oldest tribes that we have in Avoyels  
2 Parish. I come from Avoyels. We -- the  
3 park is where we were partly raised up.  
4 When Mark comes through Marksville we was  
5 the historical people, come from the  
6 historical background where the people  
7 stand. Met Mark and this was what  
8 Marksville was named after.

9 But anyhow, what my concern is, is  
10 something that I don't agree with is the new  
11 proposal that the recognition proposal that  
12 is coming out -- it's okay but some of it I  
13 don't agree with. It's going back to 19 --  
14 we're going back to 1934. How we're going  
15 to prove anything from there to go back, if  
16 we don't go all the way back to our  
17 historical lineage. If we -- they going to  
18 go back to 1934 and don't let us go back  
19 there, then we have a hard time proving it.  
20 So that's my concern, and I don't agree with  
21 that part. But if it's in the new changes  
22 and they going to do that, well, then we'll  
23 have to accept that if that's what the  
24 proposal is going to -- the changes are  
25 going to call. But my thing is we have

1 already petitioned the federal government.  
2 We have petitioned in 2003, and we still  
3 sending in more information. And in 2005 we  
4 sent all our information in, back then they  
5 sent us the letter saying, "Well, we want  
6 you to send us all of your folders on all  
7 your people in your petition." We did all  
8 of that. But still they ask just for more  
9 information. After asking us for more  
10 information we give it to them, but we out  
11 of one thing they want us to do, but I'll  
12 discuss that just on my people. I don't  
13 agree with that if y'all went to this new  
14 proposal, what about the petitioners that  
15 have already for -- put their petitions in  
16 and they still roughly into Washington for  
17 review. How do we with that? Do we go back  
18 or we stay, you know, go forward with that,  
19 or we going to have to go back and  
20 repetition again? I think that somewhere  
21 along the line that those petitioners should  
22 be grandfather clause in. That's my  
23 agreement with that. If that would fit in  
24 the rules I would --

25 LARRY ROBERTS:

1           Surely. So on the question if we  
2 promulgate revised regulations, how are  
3 those groups that are currently in the  
4 process treated? And this is how the  
5 proposed rule addresses that issue, and that  
6 is if a petitioner has submitted a complete  
7 petition, documented petition. I believe  
8 OFA informs them when they have submitted a  
9 complete petition. Then they -- those  
10 petitioners will have to -- will be notified  
11 within so many days of the final rule. And  
12 those petitioners then have a choice as to  
13 whether to proceed under the existing rules  
14 or whatever the revised rules are. So with  
15 that -- so that's the proposal. If there  
16 are folks that think that we're not  
17 addressing it the right way we need to hear  
18 that. But for groups that have submitted a  
19 complete petition that's how we're proposing  
20 to address it, is that they have that choice  
21 within a certain period of time as to notify  
22 us whether they want to proceed under the  
23 existing rules or whether they cant to  
24 proceed under the new rules.

25                           (RORMS ANTOINE SITS.)

1 KENNETH BENJAMIN SYLVAIN:

2                   One question. After the --

3 LARRY ROBERTS:

4                   So let me just remind folks that we  
5                   have a transcriptionist here and I don't  
6                   want to cut off your comment at all. I want  
7                   to hear your comment, but let's just make  
8                   sure that we get everything on the Record in  
9                   terms of, you know, who's asking questions  
10                  and comments and that sort of thing.

11 RORMS ANTOINE:

12                  Thank you very much.

13                                 (APPLAUSE.)

14                                 (RORMS ANTOINE SITS.)

15                                 (KENNETH BENJAMIN SYLVAIN COMES FORTH.)

16 KENNETH BENJAMIN SYLVAIN:

17                  One question. After my chairman has  
18                  spoken, we would like to know, other  
19                  conditions that we have showed you, why  
20                  couldn't we be grandfathered in under those  
21                  rules -- those new rules that y'all are  
22                  trying to get us to go to?

23 LARRY ROBERTS:

24                  So -- I'm not sure if I understand the  
25                  question correctly, but let me take a stab

1 at it this way. I think what you're -- I  
2 don't know the specifics of your tribe and  
3 your history. That's not what this meeting  
4 is about, it's about the Part 83 process  
5 itself. I think what you're asking, though,  
6 is that you are saying that you are already  
7 -- were already recognized through the  
8 process and that's something that is very  
9 specific to your group that I can't answer  
10 today. But in terms of the process itself I  
11 understand you have submitted documentation  
12 and a petition, and as I said before if  
13 you've submitted a complete petition, which  
14 I don't know whether that's the case or not,  
15 but if you have once the rules are updated  
16 you will have a choice whether to proceed  
17 under the existing rules or whether to  
18 proceed under the new rules.

19 KENNETH BENJAMIN SYLVAIN:

20 Okay. Thank you.

21 LARRY ROBERTS:

22 Thanks.

23 (KENNETH BENJAMIN SYLVAIN SITS.)

24 (LORA ANN CHAISSON COMES FORTH.)

25 LORA ANN CHAISSON:

1           Thank you so much for being here today.  
2           We really appreciate it. I know there's a  
3           lot of work that's been going into this  
4           process and I just want y'all to know that  
5           we really appreciate it. My name is Lora  
6           Ann Chaisson. I am the Vice Principal Chief  
7           for the United Houma Nation.

8           And I want to kind of pick up where  
9           they left off at. I have a couple of  
10          questions on the -- I just need clarified.  
11          On the submission of the petition the  
12          Proposed Rules state petition to submit any  
13          documented petition under the current  
14          regulation who chooses to proceed under the  
15          revised regulation do not need to submit a  
16          new document petition. I just have a few  
17          questions for that. Would the revised team  
18          focus solely on a new timer period set forth  
19          in the Proposed Rule, such as the 1934 start  
20          date for the commencing and political  
21          influence? Would we have the option to  
22          submit a new petition geared specifically to  
23          the new proposed regulations? And how would  
24          existing conclusions made by the department  
25          on petition factors and the new proposed

1 regulations, for instance how would our  
2 proposed finding and rebuttal under the  
3 current process factor in?

4 LARRY ROBERTS:

5 Okay. So those are all great  
6 questions. I don't know that they're  
7 addressed in this Proposed Rule itself, and  
8 so I would invite you -- so I think the  
9 Proposed Rule itself just as you read said,  
10 "basically petitioners can proceed with  
11 their existing documentation." It sounds  
12 like the comment that you're making is that  
13 you want the department to consider whether  
14 a group should have the flexibility to  
15 decide whether they want to update their  
16 materials as part of the new regulations.  
17 And so that's something that we will take  
18 into account across the board on all of  
19 those issues that you raised, because we  
20 have it on the Record it here, so that's our  
21 goal.

22 LORA ANN CHAISSON:

23 And just one more. On the concierge  
24 issue was recently raised at the NCAI  
25 meeting in Anchorage, and whether or not the

1 tribes who make it through the new process  
2 will have concierge issues due to the 1934  
3 start date attached to some of the criteria.

4 Can you please speak on that issue?

5 LARRY ROBERTS:

6 I don't know that word -- so --

7 STEPHEN SIMPSON:

8 Cursory.

9 LARRY ROBERTS:

10 I don't think that word -- I mean, that  
11 sort of criteria and those impacts are sort  
12 of outside of this rule making process.  
13 We're not tying the two together. And as a  
14 practical matter those tribes that have gone  
15 through the federal recognition process and  
16 have been recognized, every tribe basically  
17 whether they've gone through the Part 83  
18 process or not, the department still does  
19 it's own separate contrary analysis because  
20 in some respects they're different  
21 questions. We're dealing with federal  
22 acknowledgment and a recognition of a  
23 government to government relationship.  
24 Criteria is looking at whether a group was  
25 under federal jurisdiction which there are

1 members of the court that basically said  
2 that could be a different question, and a  
3 solicitor has issued an opinion on that  
4 saying that those are different questions.  
5 And so we're not cutary through this  
6 process, and those tribes that have gone  
7 through the Part 83 process are still  
8 addressing -- every tribe is still  
9 addressing cutary based on their own facts  
10 before we take lineage and trust from them.

11 LORA ANN CHAISSON:

12 Thank you.

13 (LORA ANN CHAISSON SITS.)

14 (LAURA KELLEY COMES FORTH.)

15 LAURA KELLEY:

16 Hi my name is Laura Kelley, and I'm an  
17 historian at Tulane University. And I work  
18 for the Pointe-au-chien tribe and I'm here  
19 in Louisiana. I have a question about  
20 Criterion E regarding descent and the  
21 language used specifically about tribe. And  
22 tribes in Louisiana that are deep down in  
23 the bayou, such as the Isle de Jean Charles  
24 tribe and these other communities that have  
25 been related isolated due to their geography

1 and other reasons. The isolation created a  
2 community, created kinship, created all the  
3 other things that we would normally call  
4 tribe. They're recognized by other sources,  
5 the legal sources that you're seeking for  
6 documentation, but often times they're just  
7 recognized as Indian. Does that therefore  
8 disqualify them? Because what the criteria  
9 is saying descent from a tribe, if you have  
10 documents that recognize their Indianess,  
11 recognize they exist as a community, who  
12 discriminate even against them as a  
13 community, but simply call them Indian is  
14 that then -- how -- I guess, what are your  
15 thoughts about that? How does that qualify  
16 or how is that used or judged? And what do  
17 you do in a situation when you've got  
18 descendants from multiple tribes who have  
19 come together and through sort of an  
20 entheogenesis formed a new tribe so to  
21 speak, and again that community develops  
22 from there?

23 LARRY ROBERTS:

24 Okay. So I guess the -- a couple of  
25 points. One is that I think in terms of

1 your questions about needing clarity on E,  
2 again as with other parts I would request  
3 that you submit comments on how E should be  
4 clarified, if it's not clear in and of  
5 itself. We're not trying to -- we're not  
6 making substantive changes to how E has been  
7 applied in the past decisions, so -- but  
8 what we are doing is we're basically saying  
9 there's different proofs that we're going to  
10 look at and provide more weight to, so if  
11 there is like I said earlier a congressional  
12 direction for the department to prepare a  
13 census of a tribe or if the department had  
14 done that itself, or basically combing those  
15 federal records --

16 LAURA KELLEY:

17 Right. I mean, the problem we get back  
18 into is geography. It is a blessing and  
19 curse here, it's geography that allowed many  
20 of these communities of thrive because  
21 they've lived in isolated land that wasn't  
22 wanted until oil and gas and other things  
23 were discovered and then all of a sudden it  
24 became quite valuable. So they're in  
25 isolation so they're not really --

1 LARRY ROBERTS:

2                   So if they don't have that then it's  
3                   other -- whatever the most recent evidence  
4                   is prior to 1900 of ancestry from an  
5                   historic tribe. And so I will give you an  
6                   example there has been, and what we're  
7                   trying to do is make -- you know, what we've  
8                   heard is that the rules haven't been applied  
9                   consistently from one petitioner to the  
10                  next. So what we're trying to do is provide  
11                  consistency to those rules, not necessarily  
12                  change the substantive standards or provide  
13                  consistency. So for example, there have  
14                  been petitioners that we've recognized who  
15                  have had say, federal records showing -- for  
16                  E showing descent from a tribe that were  
17                  1880, 1890, 1900 records, and so --

18 LAURA KELLEY:

19                  Right. But that's not getting to the  
20                  issue of being identified as Indian versus  
21                  being identified as Chitimacha or being  
22                  identified as Biloxi or being identified as  
23                  this. I'm wondering what weight is given to  
24                  documents that say, "Yeah, there's community  
25                  down there, yeah, we know about it, yeah

1           there's all Indian," but they don't give us  
2           specific title, these outside records, what  
3           weight is given to those.

4 LARRY ROBERTS:

5                     My sense is that -- well, two things.  
6           One I'm just going to repeat that you should  
7           provide, you know, how you think we should  
8           address it. But my other sense is that all  
9           federal acknowledgment in the past has not  
10          required that there be a specific tribe name  
11          in every instance, but there has to be some  
12          sort of connection to it as for a tribe.  
13          We're not just -- we're not recognizing  
14          tribes that came out of whole cloth in 1950,  
15          just individual Indians living together. I  
16          mean, we are recognizing tribes that have  
17          existed over time. So they're good  
18          questions I would ask that you submit  
19          comments in terms of how you think the  
20          department should address those issues where  
21          we have documentation in the 1880s or 1870s  
22          or 1850s, you know, identify them as Indian  
23          but not a specific tribe. Thank you.

24 LAURA KELLEY:

25                     Okay. Thank you. And -- I'm saving

1 the microphone for Joe Dardard who is has  
2 been trying to come on up here, so I'm just  
3 hogging it for him.

4 (LAURA KELLEY SITS.)

5 (JOSEPH DARDARD COMES FORTH.)

6 LARRY ROBERTS:

7 Before this gentleman speaks, again, I  
8 just want to just get a sense of -- we're  
9 coming up to about the last half hour. If  
10 -- for those that haven't made comments yet,  
11 can you just raise your hand so we get a  
12 sense of how many folks want to make  
13 comments that haven't had a chance to do so  
14 yet.

15 (A FEW PEOPLE RAISING HANDS.)

16 LARRY ROBERTS:

17 Okay. So a couple of people. Great.  
18 Thank you.

19 JOSEPH DARDARD:

20 Thank you very much. I wanted to  
21 expand on something I had mentioned earlier  
22 in reference to the negative comment, I  
23 think I mentioned that in my earlier  
24 comments. As Indians we were treated as  
25 anything but a human being. I can attest to

1 that, because I had personally experienced  
2 it. In Lower Terrebonne Parish, and I'm not  
3 sure what the other areas were like, but I'm  
4 pretty sure it was pretty much the same. We  
5 were denied school -- denied the right to go  
6 to school. We were denied access to public  
7 places. Everywhere we went we were treated  
8 like anything but a human being. We were  
9 called anything but a human being. I  
10 remember personally being called the "N"  
11 word. And I'm going to say it because I'm  
12 going to describe to you what I think it  
13 means anymore. You don't live 83 years  
14 without learning something. The word, I  
15 think we all know what we're talking about,  
16 "nigger" or we were also called "sabine."  
17 Let me tell you what I learned about what I  
18 think a nigger is. The real definition of a  
19 nigger. Words in our language --

20 LARRY ROBERTS:

21 Sir, and I don't mean any disrespect  
22 whatsoever, but I want to just make sure  
23 that folks have a chance to talk about  
24 comments on the Part 83 process itself. And  
25 so I want to just make sure we give those

1 folks a chance to speak to that. So I want  
2 to -- if you have something with regard to  
3 the proposed rules specifically that you  
4 think can be improved or changed, I really  
5 -- this is the form to hear that. And it's  
6 no disrespect, but --

7 JOSEPH DARDARD:

8 I understand that.

9 LARRY ROBERTS:

10 Okay.

11 JOSEPH DARDARD:

12 But anyway I was just curious about how  
13 -- whether the BIA considers personally,  
14 sociological feelings towards somebody else,  
15 their demographics, what have you, in their  
16 negative comments, because as I said in our  
17 area we were not like very much. And I know  
18 that people have been opposed to our being  
19 federally recognized because of how they  
20 felt about us.

21 LARRY ROBERTS:

22 Sure. So I will say a couple things  
23 about that. One is any third party comments  
24 we receive on a petition we're going to look  
25 to the merits of those comments and the

1 facts, the evidence behind those comments.  
2 The second thing I will say is where a group  
3 has -- a petitioner has suffered  
4 discrimination, that is evidence under our  
5 criteria as it has existed over time that,  
6 that is evidence of a community and a tribe.  
7 So that's something that we do look at to  
8 say, "While that may not be true that this  
9 groups has as a group been discriminated  
10 against," and so that is a factor that we do  
11 take into consideration. Thank you.

12 (JOSEPH DARDARD SITS.)

13 (ROBERT CALDWELL COMES FORTH.)

14 ROBERT CALDWELL:

15 Robert Caldwell again. I just wanted  
16 some additional clarification. It seems  
17 like the definitions for tribe is meaning  
18 any Indian, bands, nation, quibblo, village  
19 or community. And so I want some  
20 clarification about establishing the  
21 existence of community versus the existence  
22 of tribe. If a tribe meets all those  
23 things, including community, and that's the  
24 definition of tribe, and historical means  
25 1900 or earlier, the would not it make sense



1 meetings and consultations. And I want to  
2 thank you for listening to us during the  
3 last round of the working draft and then  
4 incorporating some of the suggestions into  
5 the Proposed Rule. I have some positive  
6 comments to say with regards to support of  
7 the Proposed Rule. And I'm also -- I will  
8 also be submitting comments on behalf of  
9 Indian Legal Clinic, which I will submit in  
10 writing as a separate designation.

11 Our tribe we support the time frame of  
12 1934 for Criterion B and C. I think it's  
13 important that the department recognizes  
14 that this is a vital turning point in  
15 federal Indian policy and so we support that  
16 proposal. We also support the time frame of  
17 1900 to show descent from a historic tribe.  
18 We support the clarification and the  
19 regulation that reflects that flexibility in  
20 the format and typed evidence that submitted  
21 by petitioners. This will allow petitioners  
22 with little resources to provide things  
23 electronically and not make many copies of  
24 documents and shipping and things of that  
25 nature.

1           Also support the provision that tribes  
2           currently on active status can choose to  
3           petition under the new regs or proceed under  
4           the current regs. I agree with comment made  
5           from our sister tribes that there could be  
6           some clarity as to how to proceed once you  
7           are in that new process. For example, our  
8           tribes, the Bayou Tribes, currently meet  
9           Criterion A, which is identification from  
10          external individuals. And while we support  
11          the removal of that criteria because of it's  
12          impact on other tribes, under the new  
13          criteria there's a requirement now for a  
14          narrative. And so it seems like we would  
15          have to resubmit something to provide that  
16          narrative. So the direction on that time  
17          frame or what happens with the priority  
18          order might be maybe helpful.

19           Also with regards to Criterion A, I  
20          think, it currently says, "a point in time."  
21          It may be helpful to revise that to say, "at  
22          any point in time prior to 1900," to allow  
23          the petitioner to select. I was also  
24          reading that criteria again and it says, "a  
25          description." So I don't know if there is

1 evaluative criteria or if it's just use of  
2 -- meant what your description is, you know,  
3 or how the department is going to review  
4 that information.

5 I think that it's very important that  
6 within the regs that y'all have improved it  
7 to allow more transparency by decline OFA to  
8 provide a copy of the comments and materials  
9 to the petitioner. I think that's very  
10 important that it goes under the current  
11 regulation. I also support the proposed  
12 change to allow the petitioner to request a  
13 hearing before an independent body if  
14 there's a negative proposed finding and  
15 support the elimination of the  
16 (indistinguishable) in the process.

17 I also have a specific request that in  
18 83.2 that would be phrased for purposes of  
19 federal law be eliminated. I think that  
20 this provision is to take into account that  
21 tribes recognized through the federal  
22 acknowledgment process are eligible to be  
23 placed on the federally recognized tribes  
24 listed. But if you revise it to say for  
25 purposes of federal law, it doesn't take

1 into account that there are current tribes  
2 who are eligible to receive some or to  
3 participate in some programs and receive  
4 some benefits because of their status as  
5 tribes. So I think it would be important to  
6 clarify that.

7 I also think for Criterion A, I think  
8 the way that I read the regulations based on  
9 the preamble that it reflects back to Cohen.  
10 The Cohen criteria so it might be helpful to  
11 expand that criteria to include also a  
12 reliance on (indistinguishable) criteria  
13 because our tribes in South Louisiana may  
14 not meet some of those federal land folding  
15 but have collective land rights or have  
16 collective rights that they've exercised.

17 I have a specific comment with regards  
18 to endogamy, how tribal marriages are  
19 treated. And I think it will helpful to  
20 revise how the tribal marriages are treated.  
21 I'll give you an example. If a tribe has 10  
22 tribal members and 6 marry within the tribe  
23 and 4 marry outside the tribe, the  
24 calculation by OFA is that there's only 3  
25 marriages within the tribe and there are 4

1 outside the tribe, although we have 60  
2 percent of your tribal members marrying  
3 within. So I think that it should be  
4 tracked by individual tribal member and not  
5 my each marriage, so that the true  
6 reflection of tribal members marring within.  
7 And I think there's been some disputes  
8 anthropologist -- outside anthropologist and  
9 anthropologist within OFA with regards to  
10 that.

11 With regards to Criterion E, I do think  
12 that there should be some clarification. I  
13 heard your state, Mr. Roberts, that there's  
14 no substantive change, and I think for our  
15 tribes in South Louisiana that concerns me a  
16 little bit because it says you have to show  
17 proof from a tribe or tribes that combine in  
18 historical times. And so if historical  
19 times as Mr. Caldwell says is 1900 you can  
20 prove distinct community prior to 1900, you  
21 can prove Indian ancestry and there's no  
22 tribal roles. There were no roles created  
23 then, then OFA should assume that the tribe  
24 meets this requirement if they had existed  
25 prior to 1900. I think that this would

1 recognize the attitude of tribal life prior  
2 to 1900 and as a recognition across the  
3 United States that tribes have changed  
4 dramatically from 1835 to 1900 because of  
5 several new policies. Some were removed,  
6 some (indistinguishable) I think is going on  
7 in the south with regards to removal. There  
8 were different formations who are in the  
9 south and so I hopefully got something more  
10 clear to propose, but the way that the  
11 regulations are going to be read the same  
12 way they are now, I think that would be  
13 problematic to our tribes, because we  
14 (indistinguishable). So you know, and  
15 that's the biggest hurdle for us.

16 I do appreciate that there is a new  
17 phased process. I support the phased  
18 process of review and I think it is  
19 important to have E first. I mean E is the  
20 most important. However, I agree with the  
21 comments of Chief Dardar that you need read  
22 E into context. So maybe reading E with A  
23 so that the reviewers have some context  
24 would be helpful.

25 With regards to suspension I had a

1 comment with regards to our tribes here in  
2 South Louisiana because we've undergone  
3 numerous hurricanes, BP oil spill, things  
4 that are outside of our control that we  
5 haven't been able to impact. So I think  
6 maybe just some clarification that a tribe  
7 can request to the department to have a  
8 suspension. I think right now it said that  
9 technical or -- there are two things within  
10 it that provides for a suspension, but I  
11 don't -- maybe it was just to clarify that  
12 there are acts of god or something that  
13 would impede the petitioner from moving  
14 forward. I know you have the withdrawal  
15 part, but I think that in those  
16 circumstances a suspension is more  
17 appropriate.

18 I also think under 83.38 it should be  
19 made clear that OFA may require to testify  
20 and be cross examined by the petitioner.  
21 And with regards to the different comment  
22 periods, I agree with Ms. Ann which made a  
23 comment earlier that for petitioners without  
24 resources that the 60 day or a 90 day  
25 comment period may not be sufficient. By

1 the time you receive the notice you haven't  
2 planed for that next 60 days. This is what  
3 we're doing and so of course us non-  
4 recognized tribes we don't have resources,  
5 we're not employed with full time people all  
6 the time that work on the issues. So I  
7 think there should be some -- a revision to  
8 expand this time period. I think Ms. Ann  
9 said that 180 days wasn't long enough, but  
10 maybe even some notice in advance, "hey,  
11 we're going to be issuing a decision. You  
12 might want to get your team together," you  
13 know, so that you can prepare and have  
14 longer than 60 days. Now, with regards to  
15 have a hearing from the negative proposed  
16 finding I understand that you said that  
17 there's other regulations that were passed  
18 out. Maybe -- and so it's probably not  
19 appropriate to comment on it here, but  
20 having like a notice, like how you file a  
21 notice of appeal or something so that you  
22 can trigger the time period of when that  
23 would happen. But those are my comments and  
24 in general I'm very supportive, our tribe is  
25 very supportive and I appreciate your time

1 coming out here and working on  
2 (indistinguishable).

3 LARRY ROBERTS:

4 Thank you.

5 (APPLAUSE.)

6 (PATTY FERGUSON BOHNEE SITS.)

7 (KENN GREY ELK DECOMBES COMES FORTH.)

8 KENN GREY ELK DECOMBES:

9 I'll just be quick. I just want to  
10 encourage everybody here to continue on this  
11 comment period. Take the paperwork that you  
12 have and go home and don't just sit on it  
13 and say, "Well, let's see what happens  
14 here." Everybody go through that line item  
15 by line item and put your comments on paper  
16 and get in to these people. Because we all  
17 know no matter what there's power in  
18 numbers, and they'll pay attention if the  
19 number is right.

20 (KENN GREY ELK DECOMBES SITS.)

21 (DARBY WEAVER COMES FORTH.)

22 DARBY WEAVER:

23 My name is Darby Weaver from the MOWA  
24 Choctaw Tribe of Alabama. I have one  
25 request that I think that all of us should

1 be asking, and that is full transparency of  
2 all records. That includes any lobbyist  
3 that present themselves to OFA, that should  
4 be included for review for anybody publicly  
5 available on like an internet site.

6 And I think there's one question about  
7 the 1934 rule and criteria related and the  
8 substantial interruption. Is that  
9 substantial interruption 20 plus or minus  
10 before 1934 or after 1934, sir?

11 LARRY ROBERTS:

12 It would apply after 1934.

13 DARBY WEAVER:

14 Thank you. I think that's all I ask.

15 (DARBY WEAVER SITS.)

16 (MONICA JOHNSON COMES FORTH.)

17 MONICA JOHNSON:

18 Hello. My name is Monica Johnson. I'm  
19 the Vice Chairman of Avogel Nation of  
20 Louisiana, Petition Number is 231. I have a  
21 couple of questions. First one is we have  
22 submitted our document petition. We have  
23 met the criterias of the proposed rule. We  
24 have also submitted records dated back from  
25 the 1800s and we still haven't been notified

1 of a time date of anything. And we  
2 understand there is a time frame on getting  
3 back with us with a decision, because we  
4 haven't had anything -- we haven't gotten  
5 any decisions yet. Months have past, time  
6 has gone by and we still haven't heard  
7 anything so we're wanting to know something.

8 LARRY ROBERTS:

9 So during break if you can just give  
10 one of us your contact information we'll  
11 reach out to the Office of Federal  
12 Acknowledgment and get an update on the  
13 status.

14 MONICA JOHNSON:

15 Okay.

16 (MONICA JOHNSON SITS.)

17 (FRAMON WEAVER COMES FORTH.)

18 FRAMON WEAVER:

19 I'm Framon Weaver. Once again Chief of  
20 the MOWA Band and Choctaw Indians. We heard  
21 a lot of heartfelt talk. A lot of the  
22 things that were said about the people here  
23 in Louisiana, mirror the exact same things  
24 that happened to us in the Pinewoods and on  
25 the riverbanks of the (indistinguishable)

1 part of Alabama.

2 This process going forth, we need a way  
3 that can keep the lobbyist from having so  
4 much input on this process, because it was  
5 devastating to us. The type of thing that  
6 (indistinguishable) because of they were a  
7 rich Indian tribe that had no real interest  
8 in seeing us not being recognized  
9 (indistinguishable). This kind of process  
10 really need to be addressed in this criteria  
11 some kind of way. I don't know how you do  
12 it, but you need to do it.

13 The -- we have people with high school  
14 diplomas, some not even high school  
15 diplomas, trying to prepare petitions for a  
16 lot of these tribes, and they're going up  
17 against people with law degrees, doctorate  
18 degrees, anthropologist, historians with  
19 doctor degrees. We do need some help and  
20 guidance in preparing these petitions and  
21 then replying to the finding so that we can  
22 address it in a capacity that a lot of our  
23 tribes can really truly understand.

24 (FRAMON WEAVER SITS.)

25 (EDWARD RAGAN COMES FORTH.)

1 EDWARD RAGAN:

2                   Good afternoon. My name is Edward  
3 Ragan. I'm a historian from Centenary  
4 College in Shreveport, which as my friends  
5 from Dulac told me is the Yankee end of the  
6 state.

7   (LAUGHING.)

8 EDWARD RAGAN:

9                   I'm here on behalf of Chief Ann  
10 Richardson of the Rappahannock Tribe in  
11 Virginia, where most of my work has been.  
12 She wasn't able to attend today, so she  
13 asked me to ask for some -- or to address a  
14 couple of concerns that she has in terms of  
15 clarity. One of those pertains to Section  
16 E, when she's talking about descent, and the  
17 curiosity is what is sufficient evidence of  
18 descent? This is particularly relevant in  
19 light of her other concern that evidence  
20 should be interpreted within the context of  
21 a petitioner's historical context and also  
22 the politics or political dynamics of the  
23 area in which they live. And this is  
24 particularly relevant in places like  
25 Virginia where many of the native

1 communities there have had much of the  
2 county records and other records either  
3 burned or willfully destroyed for a variety  
4 of reasons.

5 The last concern is -- and this is  
6 really kind of one of my concerns as well,  
7 and it raises that exist currently there's  
8 this notion of identifying continuity as  
9 such since historic times. And by putting  
10 1934 in as one date, and 1900 as another  
11 date, it almost seems to add that same sense  
12 of vagary if you will. If -- in the case of  
13 boarding school issues, if it's something  
14 like 1934 valid, then why is 1900 required?  
15 It's not as if the federal government  
16 would've looked at 1934 and found groups  
17 that had not existed in 1900. I think for  
18 clarity sake there's some real value at  
19 setting the single date at which to operate  
20 from. Thank you.

21 LARRY ROBERTS:

22 Thank you for your comments. I guess,  
23 your comment about what is sufficient  
24 evidence for E. I would ask that, that be  
25 something that folks comment on what they

1 thing sufficient evidence for E should be.

2 (EDWARD RAGAN SITS.)

3 (BRIAN KLOPOTEK COMES FORTH.)

4 BRIAN KLOPOTEK:

5 I just wanted to add to something I

6 said earlier, which is that --

7 LARRY ROBERTS:

8 Just identify yourself.

9 BRIAN KLOPOTEK:

10 Sure. I'm Brian Klopotek. And it

11 seems like a few people have mentioned this,

12 or been allayed to, but we need more clarity

13 to what it means to have tribes that have

14 historically combined or descended from

15 tribes that historically combined, something

16 along those lines. So we have a few tribes

17 in the room who have been kind of complexed

18 by the current implementation or the way

19 it's been implemented by OFA so far and we

20 would like to get more clarity on that.

21 (BRIAN KLOPOTEK SITS.)

22 LARRY ROBERTS:

23 Okay. Does anyone else have any

24 comments that they want to make and stand in

25 the way of everybody going to lunch?

1 (LAUGHING.)

2 LARRY ROBERTS:

3 Okay. So I appreciate everyone coming  
4 today. I also just want to touch upon the  
5 fact that this afternoon's session is for  
6 tribal leaders of federally recognized  
7 tribes. And I know we have this issue come  
8 up when we were here on the discussion  
9 draft, and so I don't want anyone staying  
10 over lunch if you're not a tribal leader of  
11 a federally recognized tribe. That's how  
12 we're consulting with federally recognized  
13 tribes under the executive order. So as I  
14 mentioned when we were last here I would  
15 hope that everyone would respect that  
16 executive order by the President and I  
17 appreciate everyone's comments here today.  
18 Everything will be transcribed, everything  
19 will be put up on our website and I made  
20 that -- we made that commitment last time we  
21 were here for both sessions and we stayed  
22 true to our words. And so we will put the  
23 transcripts up as quickly as we can and I  
24 appreciate everyone for coming and being a  
25 part of this process. Thank you so much.

1 We have one person that wants to stand  
2 between everybody and lunch. Hold on.

3 (ED BEESE COMES FORTH.)

4 ED BEESE:

5 I have one question.

6 LARRY ROBERTS:

7 Sure.

8 ED BEESE:

9 I'm Ed Beese. I'm spiritual advisory  
10 for the Chief of Northern Cherokee. Future  
11 meetings that you're going to be holding --

12 LARRY ROBERTS:

13 Yes, sir.

14 ED BEESE:

15 -- will they be repetitious, redundant  
16 or are they going to be the same as this?  
17 How important is it that we make those  
18 meetings?

19 LARRY ROBERTS:

20 It will be the same format. I think  
21 what will change in future meetings will be  
22 the comments that are made, right? There  
23 will be different folks making different  
24 comments and we'll make those transcripts  
25 available.

1 ED BEESE:

2 I know it's expensive to go all over  
3 the country --

4 LARRY ROBERTS:

5 Yup.

6 ED BEESE:

7 -- and it is important that people be  
8 there to --

9 LARRY ROBERTS:

10 It will be the same format as today.

11 ED BEESE:

12 Okay. Thank you, sir.

13 LARRY ROBERTS:

14 Okay. Thank you. I

15 MEETING CONCLUDED AT 11:58 A.M.

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## 1 CERTIFICATE

2 This certification is valid only for a  
3 transcript accompanied by my original seal stamped  
4 on this page.

5 I, Stacey M. Verdin, Certified Court Reporter in  
6 and for the State of Louisiana, as the officer  
7 before whom this testimony was taken, do hereby  
8 certify that the meeting on the 1st day of July,  
9 2014, at 711 Paragon Place, Marksville, Louisiana,  
10 as hereinbefore set forth in the foregoing 153  
11 pages; that this testimony was reported by me in the  
12 Stenomask reporting method, was prepared and  
13 transcribed by me or under my personal supervision,  
14 and is true and correct to the best of my ability  
15 and understanding; that the transcript has been  
16 prepared in compliance with the transcript format  
17 guidelines required by statute and rules of the  
18 board, that I have acted in compliance with the  
19 prohibition on contractual relationships, as defined  
20 by Louisiana Code of Civil Procedure Article 1434  
21 and rules of the board; that I am not related to  
22 counsel, I am in no manner associated with counsel  
23 for any of the interested parties to this  
24 litigation, and I am in no way concerned with the  
25 outcome thereof.

1           This 8th day of August, 2014, Franklin,  
2 Louisiana.  
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