

In the Matter of:

EXECUTIVE SESSION OF FEDERALLY RECOGNIZED INDIAN TRIBES DEPARTMENT OF INTERIOR OFFICE OF ASSISTANT SECRETARY - INDIAN AFFAIRS

Versus

EXECUTIVE SESSION - INDIAN TRIBES

*July 01, 2014*

**Serpas**  
COURT REPORTING

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EXECUTIVE SESSION OF FEDERALLY RECOGNIZED  
INDIAN TRIBES  
DEPARTMENT OF THE INTERIOR

OFFICE OF THE ASSISTANT SECRETARY - INDIAN AFFAIRS

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The public meeting of the Executive Session of  
Federally Recognized Indian Tribes was held on  
Tuesday, July 1, 2014, at Paragon Casino & Resort,  
711 Paragon Place, Marksville, Louisiana, commencing  
at 1:98 P.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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1 PROCEEDING

2 LARRY ROBERTS:

3 We're going to go ahead and get  
4 started. My name is Larry Roberts. We're  
5 starting a little late this afternoon, a few  
6 minutes, for folks to finish up lunch and  
7 get here. I want to stress that this is a  
8 consultation with tribal leaders under the  
9 executive order, and so I'm going to ask  
10 anyone who is either not a tribal leader or  
11 is not accompanying a tribal leader to leave  
12 this portion of the session. And so we have  
13 --

14 CEDRIC SUNRAY:

15 Can I say what I got to say?

16 LARRY ROBERTS:

17 -- one person to say what they want to  
18 say on the Record and then they're going to  
19 leave.

20 CEDRIC SUNRAY:

21 I'm an enrolled member of a federally  
22 recognized tribe with my blood quantum  
23 listed here with my CDIB. See look at this,  
24 y'all don't even have the integrity to look  
25 at somebody when they're talking to you.

1 LARRY ROBERTS:

2                   Sir, we're not going to give personal  
3                   attacks.

4 CEDRIC SUNRAY:

5                   No, no, no. But it's this whole --

6 LARRY ROBERTS:

7                   Sir, don't look at them, look at me,  
8                   because it's my -- it's the President's  
9                   rules, it's my rules.

10 CEDRIC SUNRAY:

11                   I'm a tribal educator, which I've been  
12                   informed being an educator in the country is  
13                   not a leadership role. I've been informed  
14                   of that. This is my understanding now.  
15                   Thank you.

16 LARRY ROBERTS:

17                   Okay.

18 CEDRIC SUNRAY:

19                   Because I thought being an educator was  
20                   definitely something that provided  
21                   leadership to youth in tribal communities.  
22                   The reason that I'm being asked to leave is  
23                   because you all don't want what you're going  
24                   to say contested. And the fact that non-  
25                   Indian lawyers and attorneys are going to be

1           allowed to be in here today, when an  
2           enrolled federally recognized tribal member  
3           isn't, speaks to the lack of integrity in  
4           this process completely. And, Wilson, you  
5           need to tell people --

6 LARRY ROBERTS:

7                     Sir, we're not going to do personal  
8           attacks and I'm going to ask you to leave.  
9           Thank you.

10 CEDRIC SUNRAY:

11                    -- (indistinguishable). And don't  
12           smirk at me either, because I will see you.  
13           Don't smirk at me.

14 LARRY ROBERTS:

15                    I'm going to ask you to leave.

16 CEDRIC SUNRAY:

17                    Don't smirk at me.

18                                   (OFF THE RECORD.)

19 LARRY ROBERTS:

20                    So in terms of background we have three  
21           processes which tribes are recognized. We  
22           have judicial recognitions, we have  
23           congressional legislation and we have  
24           administrative decisions, which the  
25           department has been making over time

1 probably since it's existence as a  
2 Department of Interior.

3 Prior to 1978 we reviewed these request  
4 on an ad hoc basis, and in 1978 we  
5 promulgated regulations to provide a uniform  
6 process. In 1994 we made revisions to the  
7 regulations. I think one of the primary  
8 revisions was an addition of previous  
9 federal acknowledgment and that process.  
10 And then OFA has issued guidance on this,  
11 the Assistant Secretary has issued guidance  
12 in 2000, 2005, 2008. And so within the  
13 process we have recognized 17 tribes under  
14 Part 83 and we've denied roughly 30  
15 applications.

16 So the process for years has been  
17 criticized as broken, and that it takes too  
18 long, and it's burdensome. It's expensive.  
19 That's it's not applied equally. That it's  
20 unpredictable. And so in 2009 the Secretary  
21 Salazar -- then Secretary Salazar testified  
22 before a senate committee, committing to  
23 look at ways to improve the process. In  
24 2010 the department started working  
25 internally on ways to revise the process.

1 And I also believe in 2010 the department  
2 testified again before the committee and  
3 promised to -- didn't promise but suggest  
4 that they were going to get out a Proposed  
5 Rule within a year. When the department  
6 again testified before the committee in 2012  
7 the committee pressed the department as to  
8 why they hadn't put out a proposed rule. So  
9 the Assistant Secretary Washburn and I,  
10 joined the department in the fall of 2012.  
11 Secretary Salazar at the time asked the  
12 assistant secretary to move forward on this  
13 process and make it a priority. It remains  
14 a priority of Secretary Jewell and the  
15 administration. The assistant secretary  
16 testified before the house subcommittee on  
17 Indian affairs and talked about the process  
18 moving forward. So at that time a  
19 discussion draft was in the process of being  
20 formulated here within the department. We  
21 put that out last summer. We have received  
22 comments on that. And the goals of the  
23 process here to improve Part 83 is to make  
24 it more timely, make it more efficient,  
25 transparency, maintaining the integrity of



1 the process and have transparency.

2 And so we've got a lot of comments on  
3 the discussion draft and then we moved  
4 forward with the Proposed Rule. It was  
5 issued in May of this year and we have a  
6 comment deadline of August 1, 2014. And so  
7 the Proposed Rule went through a process  
8 within the department itself for review and  
9 then was sent to OMB and we've had a lot of  
10 review by the other federal agencies as  
11 well.

12 So I'm first going to touch upon  
13 revisions to the process and then touch upon  
14 revisions to the criteria. So in terms of  
15 revisions to the process, and I know some  
16 tribes that are attending here today have  
17 gone through the process and so this will be  
18 -- I won't have to explain the existing  
19 process to you, but here are the revisions  
20 that we are proposing.

21 One is just eliminating the letter of  
22 intent all together. That we start the  
23 process when an application is filed with  
24 the department. So that -- you know, we  
25 have lots of letters of intent that are

1 never followed up on and never carried  
2 forward. We have a lot of -- if you go to  
3 the OFA website you will see that we have a  
4 number of letters of intent that may have  
5 been received 10, 12 years ago, but we  
6 literally have bad addresses where we can't  
7 contact those folks anymore.

8       So start the process as we start with  
9 every process with an application, and then  
10 what we're proposing is a phase review. So  
11 that we're not reviewing all seven criteria,  
12 but we're phasing the review so that if a  
13 petitioner doesn't satisfy Criterion E,  
14 descent of a historic tribe, that we get  
15 that decision made quickly and so at the  
16 next valid decision if they're not -- if  
17 they don't -- if they're not -- if they  
18 don't have tribal ancestry.

19       Then we will look at under the Proposed  
20 Rule whether they've met Criterion A,  
21 Criterion D, F and G. Looking to see  
22 whether, if for example, groups have been  
23 terminated by federal legislation they're  
24 not eligible for the process. And so we're  
25 trying to structure the review so that we

1 can make timely decisions and we know that  
2 Criterion B and C for community and  
3 political authority are more time intensive  
4 reviews. And so we structured it where B  
5 and C under the Proposed Rule would be held  
6 to the last step in this phase review  
7 process.

8 In terms of proposed findings. You  
9 know the Assistant Secretary currently  
10 issues a proposed finding. Under the  
11 Proposed Rule we would have the Office of  
12 Federal Acknowledgment issue a proposed  
13 finding. We would have a common period on  
14 the proposed finding just as we would  
15 normally do. If it is positive and we  
16 receive no substantive comments and  
17 opposition, then the Assistant Secretary  
18 will just automatically issue a final  
19 determination and a positive final  
20 determination. And that's how the process  
21 has functioned at times in the past. So  
22 that's trying to provide consistency to the  
23 process. If the proposed finding is  
24 negative, what we're proposing in the rule  
25 is that the petitioner can ask for a hearing

1 before the Office of Hearing and Appeals,  
2 and third parties can intervene in that  
3 hearing if they choose to do so.

4 In terms of a final determination, if  
5 there is a proposed negative finding,  
6 there's a hearing, the administrative judge  
7 would then provide a recommended decision to  
8 the Assistant Secretary. And under the  
9 current process the Assistant Secretary  
10 makes the final decision. That would remain  
11 the same under this Proposed Rule. The  
12 difference is, is that the final decision  
13 under the Proposed Rule would be final for  
14 the department just like all other Assistant  
15 Secretary decisions. There would be the  
16 Proposed Rule proposes to eliminate IBIA  
17 review.

18 In terms of the procedures for the  
19 hearing, Office of Hearings and Appeals has  
20 proposed a rule on those process and  
21 procedures for the hearing itself. And one  
22 of the questions that they've asked is  
23 whether it should be an administrative law  
24 judge, which is in a category that is very  
25 independent. There are -- there's another

1 level of review which could be just an  
2 administrative judge. They are -- they  
3 report to the Office of Hearings and Appeals  
4 director, and routinely serves on public  
5 matters. And the third option would be for  
6 the Office of Hearings and Appeals director  
7 to designate an attorney to conduct these  
8 hearings. And those attorneys may or may  
9 not have conducted hearings in the past. So  
10 that's sort of one of the questions that's  
11 asked as part of that just process matter.

12 And then the other question is when the  
13 Office of Hearings and Appeals would hold a  
14 hearing are they limited to -- is the  
15 administrative judge's decision limited to  
16 that hearing record. Are there other  
17 records that could be supplied during that  
18 hearing process or is it the record that was  
19 essentially before OFA at the time of its  
20 decision or proposed finding.

21 So in terms of process we also have a  
22 change where the petitioner may withdraw a  
23 petition at any time before the proposed  
24 findings is published. And if they withdraw  
25 that petition then they would basically move

1 to the end of the line in terms of  
2 consideration if they would choose to do  
3 that. And the other thing is that we're  
4 trying to promote transparency and improve  
5 -- take advantage of this 21st Century  
6 technology that we call the internet, by  
7 posting records that are publicly available  
8 on the OFA's website so everyone has access  
9 to those. If they are not -- if that's  
10 prohibited by federal law, such as the  
11 privacy act and other things, we wouldn't be  
12 posting those on the internet and OFA's  
13 website but we're trying to provide better  
14 notice to the public.

15 In terms of criteria themselves we have  
16 the existing Criterion A, which is external  
17 identification by third parties, so the  
18 entity from 1900 to the present. We're  
19 proposing to eliminate that criteria and  
20 instead place it with a narrative of the  
21 petitioners existence at sometime prior to  
22 1900 with evidence. We're not expecting  
23 this to be a multi-volume treatise. We're  
24 expecting this to be a brief narrative that  
25 essentially requires a petitioner to show

1 where they're coming from. And so I want to  
2 make clear that we are maintaining in the  
3 process that we're recognizing tribes, we're  
4 not recognizing groups that came into  
5 existence in the '30s, '40s, '50s, '60s and  
6 '70s, '80s and '90s. So we're maintaining  
7 the integrity of the process so we're asking  
8 for the petitioners to provide this summary,  
9 this narrative with evidence, as to where  
10 they come from.

11 In terms of Criterion B, community and  
12 Criterion C, political influence and  
13 authority. The Proposed Rule starts its  
14 review at 1934 and looks forward. The  
15 reason we picked 1934 is that when congress  
16 changed its policy of one from being at war  
17 with tribes or allotment and assimilation to  
18 actually promoting tribal governments with  
19 the enactment of the Indian Reorganization  
20 Act, and the other important fact, aside  
21 from the policy considerations. Policy  
22 consideration of the Indian Reorganization  
23 Act and congress' change in policy, is that  
24 over the 40 years we've been -- roughly 40  
25 years that we've been administering the Part

1 83 process, we've never had a situation  
2 where a group satisfies all the criteria  
3 from 1934 going forward, but failed it prior  
4 to that. So we don't have a situation where  
5 a group as made itself up and demonstrated  
6 it's existence and satisfied all their  
7 criteria moving forward but failed it prior  
8 to that. They've always passed or failed in  
9 both time periods.

10 We think that by revising the criteria  
11 in B and C this way that it'll save  
12 administrative expense, and not only on  
13 behalf of petitioners and third parties, but  
14 also the department in reviewing that  
15 documentation.

16 In terms of Criterion B, community, we  
17 propose having at 30 percent of the  
18 membership show distinct community for each  
19 time period. That 30 percent is also drawn  
20 from the IRA. That's the percentage that is  
21 required under the Indian Reorganization Act  
22 for a tribe to adopt a constitution to vote  
23 on a constitution. So we're re-utilizing  
24 federal law there. We're making clear that  
25 attendance of students at Indian boarding



1 schools could be acceptable evidence in B.  
2 And finally if a state has maintained a  
3 reservation for a group from 1934  
4 continuously through the present or if the  
5 United States has held land for the group at  
6 any point in time since 1934 that, that  
7 would satisfy those two criteria B and C.

8 Finally -- well, not finally, but one  
9 of the other changes that were including in  
10 the proposed rule is trying to provide some  
11 consistency within the department. We've  
12 had our regulations basically show  
13 continuance existence without substantial  
14 interruption. And that has varied in our  
15 positive determinations from group to group,  
16 from tribe to tribe. It's been as few as a  
17 requirement of 10 years to as much as over  
18 25 years, where we've allowed a lack of  
19 evidence of -- without substantial  
20 interruption. So what we're doing here is  
21 we're proposing 20 years as a period of time  
22 where they have to -- where documents could  
23 be missing or evidence could be missing  
24 without substantial interruption. And that  
25 gap, that 20 year gap period, the department

1 has applied that both pre-1934 and after  
2 1934 on all of its acknowledgment decisions.  
3 And so what we're trying to do is we're  
4 trying to provide a standardized time frame  
5 there.

6 In terms of E, descent from a tribe.  
7 The department has utilized that 80 percent  
8 must descend from a tribe that existed,  
9 historical tribes, we're trying to codify  
10 that. What that means is not that 80  
11 percent of the group can be non-Indian.  
12 We're not saying that. The department has  
13 never said that. What we have said is as  
14 long as a group has -- as long as 80 percent  
15 of the group and document their Indian  
16 ancestry under E that, that's sufficient.  
17 There may be reasons why some records may be  
18 missing for certain members of that group,  
19 and so this is codifying existing practice  
20 for this 80 percent rule.

21 In terms of descent, what we're also  
22 proposing in the rule is that congress has  
23 directed us to prepare a tribal role for a  
24 particular tribe, or the department has  
25 prepared a tribal role for a particular

1 tribe. That we're going to utilize those  
2 federal records that we created and if a  
3 group does not have that, then we're going  
4 to use whatever the most recent evidence is  
5 pre-1900 for E to show that. And that could  
6 vary over -- for each petitioner that could  
7 be as early as 1850 or as late as 1890.  
8 That will just vary by group to group. And  
9 that is something that the department has  
10 also done in the past in various decisions.

11 In terms of F, membership, we've heard  
12 from petitioners in the process that their  
13 members are eligible for enrollment in  
14 federally recognized tribes and eligible for  
15 enrollment in their petitioning group, and  
16 that because the process has taken so long  
17 some of their members have left to go enroll  
18 in that federally recognized tribe. And  
19 that if they -- if we had been more timely  
20 and if we do make a decision and do decide  
21 to recognize them, that those members would  
22 come back, but they're making a decision  
23 just based on life circumstances on the  
24 ground with that. And so what we've  
25 proposed in the Proposed Rule is to say that

1 those petitioners that have filed by 2010,  
2 that we're not going to penalize them if  
3 their membership acts in that way.

4 And then finally for termination. In  
5 the past we would require the petitioner to  
6 show that they haven't been terminated, and  
7 this Proposed Rule would shift the burden to  
8 the department to show that a petitioner was  
9 terminated.

10 So previous federal acknowledgment  
11 we're not making -- we're not intending to  
12 make any substantive changes to the previous  
13 federal acknowledgment. We're trying to  
14 codify existing practice there. And in  
15 terms of the burden of proof, we're not  
16 changing the burden of proof. Is today a  
17 reasonable likelihood, and in the Proposed  
18 Rule we're maintaining the burden of proof.  
19 We are clarifying that to make it consistent  
20 with the Supreme Court president, since the  
21 '94 rule was revised.

22 And then re-petitioning. We are  
23 setting up tiered process where groups could  
24 possibly re-petition the department. And  
25 the way that we have it structured in the

1 Proposed Rule is that if a groups has gone  
2 through the process and has been denied, and  
3 third parties challenge that recognition,  
4 either in an administrative litigation or  
5 federal litigation and prevail then the  
6 group would have to get the consent of that  
7 third party because this other party had  
8 litigated and prevailed in court. They  
9 would have to get the consent of the third  
10 party to move forward to the next step. And  
11 the next step is that in the Proposed Rule  
12 would be an administrative judge that would  
13 look to see one of two things: if the  
14 petitioner had shown that the changes in the  
15 regulations -- the new regulations warrants  
16 reconsideration, or that the department  
17 misapplied the burden of proof and that  
18 warrants reconsideration. If the  
19 administrative judge declined one of those  
20 two things, then that group could start the  
21 process all over again.

22 In terms of notice on the petition  
23 itself, we are trying to provide greater  
24 notice to the public on it. And the power  
25 point that you have in front of you lays out

1 the different days in which we'll provide  
2 notice to various folks. Some of the  
3 additions are that we -- as I mentioned  
4 before we will post the information on OFA's  
5 website. That's publicly available. And  
6 then we would also notify federally  
7 recognized tribes within the state or within  
8 a 25 mile radius of the petitioner if they  
9 were outside that state, but say just across  
10 state borders. And we're maintaining the  
11 current status, which is notifying other  
12 recognized tribes that the petitioner may  
13 have a historical or a present relationship  
14 with to provide them notice.

15 The next line about notice and  
16 petitions, talks about when various -- the  
17 petitioner and third parties will be  
18 informed as it makes it way through the  
19 process. So we have as I mentioned earlier  
20 the proposed rule was issued in May, the  
21 comments on the Proposed Rule are due August  
22 1st and then the Office of Hearings and  
23 Appeals has put out a Proposed Rule on just  
24 its process of how it would conduct a  
25 hearing and those are basically civil

1 procedure rules, and their common period on  
2 that closes August 18th. And so in your  
3 materials are where you can submit comments.  
4 Our next steps are, once we receive all the  
5 comments, we'll review those and move  
6 forward accordingly.

7 So that's sort of a nutshell of sort of  
8 the primary changes in the Proposed Rule  
9 compared to the existing rule and at this  
10 point I'm going to stop talking and open it  
11 up for any comments tribal leaders have.

12 GENE CROWE JR.:

13 My name is Gene Crowe. I'm one of the  
14 tribal council members from Eastern Band of  
15 Cherokee. We would just like to make a  
16 statement, you know, that we don't disagree  
17 with this process going forward. We're  
18 actually -- we submitted documentation  
19 showing support for it. But one fo the  
20 things that we disagree with is lowering the  
21 standard to where it makes it easier for  
22 somebody to become a federally recognized  
23 tribe. So knowing that -- and just to give  
24 you an example, we've got 35 different  
25 tribes supposedly right now that's trying to

1 gain federal recognition through the  
2 Cherokee name. So we're fighting that from  
3 North Carolina all the way to California,  
4 people that's popping up, you know, along  
5 the way saying, "Well, I'm going to be a  
6 Cherokee tribe." So that's happening  
7 everyday that we're having to fight in  
8 different courts throughout the United  
9 States, but going through this process  
10 hopefully that'll help us maintain the order  
11 of going through this process and  
12 transparency is the best thing. Being  
13 transparent about it, we agree with that a  
14 hundred percent, but lowering the standards  
15 that's one thing that we disagree with. I  
16 know that there are some -- probably are  
17 some legitimate tribes out there that's  
18 trying to gain federal access at this point  
19 in time and they're having a rough time then  
20 they have been in other years, but I hope  
21 that those people are allowed the process to  
22 go through and become federally recognized.  
23 But I do know that, you know, that there's a  
24 lot of different groups that are made up  
25 groups and that's what we want to make sure



1           that don't pass through the cracks and end  
2           up getting federally recognized. But that's  
3           pretty much my stance and that's why I'm  
4           here today is to make sure that we get this  
5           on Record. And with that I'll turn over to  
6           my partner here, Perry Shell.

7 PERRY M. SHELL:

8                    Thank you. I'm Perry Shell a tribal  
9           council representative of also Eastern Band  
10          of Cherokee and retire soldier as well. I  
11          think that this is very, very important to  
12          the future to I think all tribes. Because  
13          you know, (indistinguishable) what they  
14          about being Cherokee. I don't know how many  
15          people claim to be part Cherokee, you know,  
16          for whatever reason. We have that. With  
17          the removal in 1838 prior to that time we  
18          had a lot of interaction with United States  
19          and there was a lot of intermarriage. But I  
20          know also with time removal that if the  
21          family's head of household was not Cherokee,  
22          then they got to stay, whether that was on  
23          Roan, Georgia or whether that was in  
24          Chattanooga, or Knoxville or Cherokee, or  
25          where ever. And I think a lot of it has

1 come from that and I think a lots of time,  
2 you know, it's always Cherokee princesses.  
3 You never hear about my great, great  
4 grandpa. They don't say that. It's always  
5 my great, great, grandmother and I think a  
6 lot of that has a lot to do with that.

7 But to be recognized as a tribe is so  
8 -- it's almost sacred. You know, it's what  
9 our people fought for. It's what we died  
10 for. It's what we bleed for. It's what a  
11 core of us died on the Trail of Tears for.  
12 We were a tribe long before 1934. I think  
13 using that arbitrary number does a lot to  
14 disservice to the millions out -- you know,  
15 everything that happened before that time.  
16 Other tribes have used our name to get  
17 recognition prior to that time that come to  
18 you now under a different name. They have  
19 nothing to do with our culture, nothing to  
20 do with our beliefs, nothing that has to do  
21 with our language, but come to you now. One  
22 tribe in particular with over 54,000  
23 members. I don't know why but during the  
24 removal that General Winfield Scott and  
25 Andrew Jackson did not recognize them, you

1 guys have recognized them. They didn't  
2 recognize them either, they walked right  
3 past them to get to us and get to the  
4 Choctaw and Creek and the Seminole and the  
5 Chickasaw, and we died and fought for that.  
6 But to put this on ten pages I think is  
7 doing a disservice to tribes that had  
8 government relationships, not only with the  
9 United States, but also France and England  
10 and Spain and numerous others, the  
11 confederate states of the United States,  
12 whatever. You're doing away with a lot of  
13 history.

14       Where we live -- you've been to our  
15 reservation. And I've said this before  
16 where our new school was built, there was  
17 probably the most extensive archaeological  
18 excavation ever done in Southeastern United  
19 States, and they found 10,000 years of  
20 continuous habitation. There was no break  
21 for 20 years or whatever number you're  
22 putting on this. It should be hard to  
23 recognized as a tribe.

24       There maybe party -- and I think a lot  
25 of these people are rough, you can do DNA,

1 you can decline us, you know, but I think to  
2 be a tribe is too important to make it easy.  
3 If you weren't recognized there's a reason  
4 you weren't recognized. But I think -- I  
5 don't know all the different details in this  
6 group. Probably have our lawyers look at it  
7 and come up with some good definitions to  
8 make it as difficult, but it should be as  
9 difficult as possible for this. And we're  
10 not talking about free government money for  
11 these groups or whatever. This is more  
12 important than that. This is about belief.  
13 This is about world view. This is about our  
14 ancestors.

15 Groups that left have disassociated  
16 themselves as Indians. Used whatever --  
17 they would come up with whatever they can  
18 now to justify that, well, it was because of  
19 the -- whatever south or whatever it is.  
20 But the fact is that tribes know who they  
21 are. I don't know how to say this. I'm not  
22 good a long speeches and all this stuff.  
23 But I know what I believe and I know what a  
24 tribe is. So anyway I just wanted to make a  
25 couple of comments on that. I would give no

1 credibility whatsoever to state recognized  
2 or to state Bureau of Indian Affairs, most  
3 of them are made up of people who are asking  
4 to be federally recognized now or part of a  
5 state recognized group. But I would  
6 (indistinguishable) hearings. One of them I  
7 went to, I think two years ago in Nashville,  
8 Tennessee before the Tennessee State House  
9 and the main criteria for one of these  
10 particular group, I guess their legitimacy  
11 as a tribe was to bring business to east  
12 Tennessee and also to west Tennessee. They  
13 were going to have -- in the west they were  
14 going to have -- I forget what it was.  
15 What's that place in Florida? No, it wasn't  
16 Disney Land, it was that other place. But  
17 anyway they were going to have this one  
18 tribe, I think -- Epcot Center. Yeah, they  
19 were going to be one Chattanooga, Tennessee  
20 but it was going to be Cherokee. It was  
21 going to bring millions of dollars and  
22 millions of jobs. But that was their main  
23 justification before the state house, so  
24 they had supporters from the state that  
25 would support this for the economic benefit

1 it would bring to their people.

2 But I think that as these meetings go  
3 on, as we formulate our on response, maybe I  
4 would have more to say about this, but I  
5 just wanted to make a few points here this  
6 morning -- or this afternoon. Anyway, thank  
7 you.

8 LARRY ROBERTS:

9 So I appreciate both of your comments,  
10 and want to, I guess, emphasize that  
11 maintaining the integrity of the process is  
12 important to us as well. And so that's why  
13 I wanted to touch upon some of the things  
14 that -- you know, we're not looking to  
15 recognize groups that came into existence in  
16 the '40s and '50s, '60s and 70s, and new  
17 groups. We're not trying to lower those  
18 standards at all. What we're looking at is  
19 the documentary evidence and relying upon  
20 the experience of the agency. And sort of  
21 seeing that we've now processed 55 plus  
22 applications. We haven't -- and you know,  
23 this may reign true to you or not, but the  
24 fact of the matter is that tribes that have  
25 made it through the process haven't been

1           able to -- or have failed the process  
2           haven't made it up where they have satisfied  
3           the criteria of '34 going forward, but  
4           didn't exist before then. They've all  
5           existed continuously. And so I appreciate  
6           your comments, I appreciate you being here  
7           today and I want to open it up to other  
8           tribal leaders that want to make comments.

9 JOHN PAUL DARDEN:

10           John Daren, Chairman of the Chitimacha  
11           Tribe here in Louisiana. We're aboriginal  
12           to Louisiana, it's where the tribe has  
13           always been. And we're constantly having  
14           the same issue that they're having. I mean,  
15           we have people who constantly coming in  
16           groups saying they're Chitimacha. I mean,  
17           we've been in Louisiana, always in  
18           Louisiana, we originated here according to  
19           our legends and stuff. We can be traced  
20           back archaeological, what, 7,000 years here  
21           in Louisiana. And our legends say we've  
22           always been here. And now today what we're  
23           faced with is we have groups coming in  
24           saying they're Chitimacha, you know, they  
25           attach Chitimacha to their names and stuff.

1 And when you're doing that, we've been here  
2 this long, how can a group that -- from  
3 different areas in the state come in and say  
4 they're Chitimacha and add other things to  
5 their name. But to me if they're saying  
6 they're Chitimacha then you apply for role  
7 -- on our roles as Chitimacha. If you don't  
8 fit the criteria, then you're not  
9 Chitimacha.

10 You know, it is possible from hundreds  
11 of years ago, maybe you have a bloodline  
12 somewhere, but you did not exist these last  
13 100 or 200 years, which is what we're  
14 seeing, people coming in from the 1700s  
15 saying they have a descendent so they have  
16 -- they're traced back to somebody that  
17 married into -- a slave back in the 1700s so  
18 now they want to be a tribe. You know, and  
19 they never existed from that time to this  
20 time as a native, as Indian people, so they  
21 know no culture, none of the language, all  
22 those things that have been lost and they've  
23 been immersed in the other culture that they  
24 took on, that their families had taken on  
25 all these years. Now, all of a sudden they



1 see that it seems to be beneficial to be an  
2 Indian so they're a native. They want to be  
3 native and take part in the benefits that  
4 you are Indian, because they think you're  
5 doing well now. And that's the real reason  
6 behind a lot of it, is people are doing it,  
7 you have groups that are doing it. And for  
8 me, if they're Chitimacha, then we're  
9 recognized Chitimacha, we've always been in  
10 Louisiana. So if you were going to  
11 recognize a group that says -- has  
12 Chitimacha attached to it you should consult  
13 with us before you would recognize that  
14 group. The same thing if you're recognizing  
15 a group you should consult with that -- if  
16 they're splintered from a certain group then  
17 you should talk to that group that they're  
18 splintered from.

19 LARRY ROBERTS:

20 And we do that. We'll do that now.  
21 Yeah. We provide notice when we start  
22 actively working on those petitions we do  
23 provide notice to those groups. So we do  
24 that. And you know, I think it will be --  
25 (GROUP TALKING.)

1 JOHN PAUL DARDEN:

2                   You provide notice, but how much does  
3                   our input have to do with your decision?

4 LARRY ROBERTS:

5                   Well --

6 JOHN PAUL DARDEN:

7                   I mean, asking us is one thing, but  
8                   does it -- does our input matter, I guess,  
9                   if we would have some input on it.

10 LARRY ROBERTS:

11                   Yeah, we need to look at all of the  
12                   evidence that's submitted. So if the  
13                   Chitimacha tribe was to submit evidence  
14                   saying, "No, actually this is not" -- then  
15                   we would look at that, just as we would look  
16                   at any other evidence that we have before  
17                   us.

18 GENE CROWE, JR.:

19                   Would that be part of the third party  
20                   that you were talking about, identifying the  
21                   third parties?

22 LARRY ROBERTS:

23                   Right. So in the existing regulations  
24                   itself we already have a provision where we  
25                   provide that notice. That already happens,

1           so we're not proposing to change to that in  
2           anyway.

3 JOHN PAUL DARDEN:

4                   I'll give you an example. I've  
5           recently been addressed by some communities,  
6           less than 10 miles from our community. The  
7           other community they came in and said  
8           they're the little Chitimacha. You know, I  
9           grew up there all my life with my dad, my  
10          grandparents. Our whole family has been  
11          there forever as far back as you can trace.  
12          There's no knowledge of any connections or  
13          any ties with this community. It's ten  
14          miles from us. So they said -- they want  
15          our support and they're planning on applying  
16          for federal recognition. Well, if you can  
17          apply for federal recognition you're not  
18          going to -- 10 miles from us you would think  
19          that if we had some ties with that community  
20          and if they were truly Chitimacha we  
21          would've had some type of connection. I  
22          mean, we had Chitimacha's within the state  
23          that we know, you know, throughout the state  
24          that still have ties to us that we know are  
25          our people. But this is a community that

1 has no ties to us and no connections and not  
2 related to anyone or anything, so just to  
3 come up now and say this. And you have  
4 others and lot of them it's within -- they  
5 say, "Well, they've been trying for the last  
6 20 years." Just coincidence 20 years ago  
7 the tribe started doing a little better and  
8 we actually opened our casino 20 years ago  
9 and it was at that point that some of these  
10 started trying to prove their ancestry and  
11 prove -- state that they're part of our  
12 tribe.

13 So I don't believe you need to make the  
14 process easier, I think it needs to be hard.  
15 But I just feel that comments from us, but  
16 our comments should have some bearing.

17 KIMBERLY S. WALDEN:

18 I see the rationale for the 1934 change,  
19 but I agree with everything that's been  
20 said, and it should be difficult. I mean,  
21 if you're a legitimate tribe you can prove  
22 your ancestry back eons before 1934. And I  
23 do think that's unfair, because tribes that  
24 exist today fought to be where they are.  
25 And for people just to wake up one day, and

1 quite literally that's what is happening.  
2 They go to bed and they're enrolled in a  
3 state tribe. The next thing you know, they  
4 put Chitimacha on the end of their name and  
5 they're knocking at our door. Or they're on  
6 the news saying that we're discriminating  
7 against them because we won't let them in.  
8 You know, with the internet and ancestry.com  
9 they're misreading census roles. They're in  
10 the media saying that they're supposedly  
11 legitimate roles, they are not legitimate  
12 roles. They're smearing our reputations.  
13 We're fighting this everyday and it's real,  
14 and it should not be easy. So we'll  
15 probably comment saying we want it to go  
16 back further.

17 LARRY ROBERTS:

18 Okay. I appreciate that and I  
19 appreciate the comments that everyone is  
20 making on this point. I guess, the one  
21 question I would ask is, and I hope we can  
22 get some comment or dialog on this. If an  
23 example of a group that came into existence  
24 20 years ago, let's say, I think that, that  
25 number was thrown out earlier in discussion.

1           They wouldn't pass under the Proposed Rule.  
2           All right. We're not recognizing groups  
3           that came into existence 20 years ago. It's  
4           much longer than that.

5                     And so I appreciate the comments, but  
6           also looking forward to further dialog and  
7           also looking forward to any further  
8           comments.

9 JOHN PAUL DARDEN:

10                    But the say the group is 20 years ago,  
11           but they're saying Chitimacha and we've been  
12           around forever. So this group is  
13           identifying their self as Chitimacha which  
14           has been around. That's us.

15 LARRY ROBERTS:

16                    Sure, but I guess under the current  
17           rules and the Proposed Rules that group is  
18           under our process has to show that they  
19           independently have been exercising political  
20           authority and community from 1934 to the  
21           present. So for groups that just came  
22           together 20 years ago, 30 years ago, 10  
23           years ago, they're not going to be able to  
24           use your history to show their political  
25           authority in their community. At least

1           that's not the intent of the change.

2 KIMBERLY S. WALDEN:

3           What about communities that have been  
4           different, but identified themselves as some  
5           other ethnic group until now. They still  
6           have probably functioned that way  
7           politically and they were different than the  
8           surrounding community, and now they're  
9           saying the reason for that is they were  
10          Chitimacha all along. So I guess that's our  
11          fear. Because we don't know. We're not  
12          sitting where you're sitting. We know what  
13          we know, and we hope that they would not get  
14          through.

15 LARRY ROBERTS:

16          Well, that's why we're having a  
17          conversation, right? We need to know what  
18          you guys are experiencing day to day. So we  
19          want a process that maintains integrity of  
20          the process. We also want a process that  
21          reduces the administrative burden on both  
22          the department and groups that are  
23          petitioning to the process. So we're trying  
24          to provide some clarity there and I do  
25          appreciate your comments.

1 B. CHERYL SMITH:

2 I guess I can put myself in everybody's  
3 position today, because the Jena Band, oh  
4 Lord, our struggles to get recognized were  
5 just -- I can't explain how long it took,  
6 how hard it was for us to get recognized.  
7 So I can see what state tribes, because we  
8 were just a state tribe too, same time Houma  
9 started. We all worked together and form  
10 the consortium that we did and there were  
11 three federal tribes, us and Houma. And  
12 we've been in this together all this time,  
13 so I can relate to these tribes we are  
14 fighting and trying because we were that  
15 tribe for over 20-something years trying to  
16 get recognized. But then again I know the  
17 price that we paid through blood, sweat and  
18 tears and money that we did not have. So I  
19 can see both sides of the story. And it's  
20 true we fought so hard to be recognized and  
21 I definitely don't want it to be any easier  
22 because there are criterias that Indian  
23 tribes should meet, that we had to meet and  
24 the other tribes do to. So that is what it  
25 has to be.



1 I think my issues would be that, oh  
2 God, the time that it took y'all to look at  
3 us. The time frames, the waiting list. I  
4 mean, the waiting list we were at the bottom  
5 of the waiting list. It was just so time  
6 consuming, and I guess you are going to make  
7 that faster now, maybe, for the tribes that  
8 are out there that are working. I don't  
9 know but it was just forever on the waiting  
10 list. We got to two or three tribes -- it  
11 was terrible back then. I guess, I have --  
12 I know there are some Indians in these  
13 tribes. I really know there are some  
14 Indians in these tribes that are possibly  
15 are Houma, they're possibly whatever they  
16 are, but I don't think that necessarily  
17 means that they are an Indian tribe.

18 I see I'm in dilemma here. But I don't  
19 want it to be any easier for anybody,  
20 because if you do you're going to have  
21 hundreds and hundreds of tribes that are  
22 going to get recognized over night and that  
23 wouldn't be fair for us who have stood the  
24 ground to fight and believed. At one point  
25 I just wanted to give up. We knew we were

1 Indians. We knew we were Choctaws, and I  
2 felt like I don't need the federal  
3 government to tell us who we are. But we  
4 didn't give up because it was the things  
5 that our people would get as Indian  
6 education. We saw the other three tribes in  
7 the state getting things, you know, this is  
8 before gaming too. We were pre-gaming so it  
9 wasn't all about gaming, that it might be  
10 now. And I know those are some of the  
11 reasons why a lot of these tribes are doing  
12 it. And for us it wasn't about that. For  
13 us it was benefits that we saw the other  
14 three tribes getting in the state and it was  
15 -- I guess, the biggest thing that ever  
16 happened for the Jena Choctaws, but even  
17 today with recognition we're still fighting  
18 a battle. The other three tribes have  
19 gaming, the Jena Band can only do Class 2  
20 because the governor won't give us compact.  
21 So we're still fighting our wars with the  
22 federal government, with bureaucracy,  
23 politicians. I mean, it hasn't ended for  
24 us. So I just in a way I'm very in a stance  
25 about we fought for our -- we've paid our

1           dues and other tribes have been paying their  
2           dues they need -- if they can meet the  
3           criteria please recognize them. That's all  
4           I'm saying. Is we paid our dues, we met the  
5           criteria, just look at them faster. If you  
6           can fast track something, just don't let  
7           them hang on for so many years like we did.  
8           If they're out there you should be able to  
9           tell. If they meet the criteria they are a  
10          tribe and recognize them. And I guess  
11          that's my only comment, that I can see both  
12          sides of it because we were there for over  
13          20 years. But now we're here now, so it's  
14          -- I don't know. I'm glad it's your problem  
15          to recognize them, not mine.

16 GENE CROWE JR.:

17                   I'd like for Wilson Pipestem to be  
18                   recognized.

19 WILSON PIPESTEM:

20                   I'm not sure if recognized is the right  
21                   word for approaching this consultation, but  
22                   councilmen from the Eastern Band have asked  
23                   me to speak. My name is Wilson Pipestem, I  
24                   represent the Eastern Band of Cherokee  
25                   Indians, and my wife Brenda Toineeta

1 Pipestem is an Eastern Band Cherokee member  
2 as are our four children. And I just want  
3 to underscore some of the things that  
4 leaders here have said today. The Eastern  
5 Band has been on the Record as supporting  
6 reforms to the process that will make the  
7 process more transparent and efficient. So  
8 petitioners will have a fair opportunity to  
9 demonstrate that they are an historic tribal  
10 nation and that the individuals who make up  
11 that tribal nation are Indians that can  
12 demonstrate by genealogy that they descend  
13 from the historic tribal nation. The  
14 biggest concern and we will provide written  
15 -- specific written comments, so this is  
16 more of an overview today. But one concern  
17 that's been expressed related to the 19 --  
18 pre-1934 history of a petition group. And  
19 so you mentioned that 1934 being an  
20 important period of time where change in  
21 federal policy, and I think that's relevant  
22 and important. But if you think about the  
23 federal policies before that, and you  
24 mentioned war and allotment and  
25 assimilation, all that, treaty making.

1 Speaking for the Eastern Band that was a  
2 period of time, though, where there was very  
3 important history that would only have to be  
4 explained a way with a brief narrative. And  
5 I understand way that's an important date,  
6 but if you think about the history of  
7 tribes, particularly in the southeast and  
8 I'll use -- but I'll limit that to Cherokee,  
9 they literally fought and died to maintain  
10 their separate tribal identity. They  
11 maintain their tribal relations, tribal  
12 language, their clan relationships and so  
13 that history is relevant and I think it's  
14 very important to a determination about  
15 whether a particular group or petitioner is  
16 an Indian tribe that is worthy of federal  
17 acknowledgment. Being able to exercise  
18 sovereign powers, criminal jurisdiction over  
19 it's members and now non-Indians to a limit  
20 extent, to tax and to exercise other  
21 jurisdiction. Obviously very important  
22 powers. So that -- again that pre-1934  
23 history there should be some more obligation  
24 of the petition of them to provide just a  
25 brief narrative. I'll give you one specific

1 example as Councilman Shell referred to,  
2 there's been groups pre-1934 that claim to  
3 be Cherokee that have now disavowed their  
4 Cherokee name, and claimed other tribal  
5 identities. That should be relevant in a  
6 determination as to whether that group is --  
7 should meet a federal standard for tribal  
8 identity. If they have -- said, "No, I'm  
9 this tribe. No, we're this tribe, and now  
10 we're another tribe," all pre-1934 that  
11 absolutely should be relevant to a  
12 determination of tribal identity today.

13 And so I'll also -- just with regard to  
14 this rule making process. Again as I  
15 mentioned the Eastern Band will be  
16 submitting specific comments on this  
17 process. But what we'd like to specifically  
18 request is more time to provide comments.  
19 This is a -- as Councilman Shell said,  
20 Councilman Crowe said, enormously important  
21 endeavor on the part of the federal  
22 government. And for tribal governments to  
23 be able to provide meaningful input on this.  
24 To understand it all, because we were here  
25 before when we had the discussion -- the

1 consultation related to the discussion  
2 draft. And at that time we only had a red  
3 line to review and so we were trying to  
4 understand what it meant. And even though  
5 we had tribal leaders look at it, I looked  
6 at it, there's so much to that. That trying  
7 to understand what those revisions mean, and  
8 even these revisions, we're learning a lot  
9 along the way. I can say I've learned a lot  
10 about the substance of the proposal today,  
11 just through the information you provided.  
12 But we're literally in the process of hiring  
13 an expert or experts to help us interpret  
14 what this actually means. And so that is  
15 all going to take some time, and now we're  
16 already in a -- what we see as an  
17 abbreviated consultation period. So we  
18 would appreciate the opportunity for an  
19 extension of time to submit comments. Again  
20 we're within a month of a deadline, and  
21 again trying to understand all the  
22 implications of what these proposals mean is  
23 going to take some time for us to really  
24 understand that before we can give  
25 meaningful detailed comments. And again for

1 the Eastern Band so many of the groups that  
2 claim to be tribes claim to be Cherokee.  
3 And so I've learned from my in-laws pretty  
4 quickly that they care deeply about  
5 protecting their tribal identity, because if  
6 you ask not just their tribal leadership,  
7 tribal members they have very, very strong  
8 reactions to people claiming Cherokee  
9 identity. They feel very strongly about the  
10 history that the Eastern Band claims as --  
11 because of the way that they have protected  
12 that separate identity. And so I've heard  
13 people say a number of times at different  
14 meetings that, you know, the federal  
15 government can't tell us whether we're  
16 Indians or a tribe, well, that maybe the  
17 case, but federal recognition and federal  
18 acknowledgment does have great meaning, not  
19 only to the identity of a tribe, but also  
20 with the regard to the exercise of sovereign  
21 rights and privileges. So I would just  
22 encourage the department to, one, give us  
23 time to be able to really let this soak in  
24 and give meaningful comment, but also again,  
25 what's at stake here is the ability of an



1 existing established federally acknowledged  
2 tribe to protect it's identity and the  
3 United States needs to be an entity that has  
4 it's government that has a trust obligation  
5 to federally recognized tribes. It needs to  
6 not undermine that ability of tribes to  
7 protect their separate identity. So thank  
8 you for the opportunity.

9 STEPHEN SIMPSON:

10 How much time are you looking for,  
11 Wilson?

12 WILSON PIPESTEM:

13 I didn't talk to -- I need to talk to  
14 the leadership about that, about exactly --  
15 again, we are literally in the process of  
16 hiring experts. So I wish I could give you  
17 something, but I need to confer with them.

18 STEPHEN SIMPSON:

19 I'm not set -- well, I need to confer  
20 with them, too, so.

21 WILSON PIPESTEM:

22 We will make a request in writing --

23 STEPHEN SIMPSON:

24 Okay. Good.

25 WILSON PIPESTEM:

1           -- sometime very soon. So -- and I  
2           really do appreciate the dialog that the  
3           department is willing to engage in on this,  
4           but even as we have a dialog, I'm just  
5           making a list of questions here because I'm  
6           not sure what's the answer to all of these.  
7           For those of us who work tribal law and  
8           tribal government and grew up in it, all  
9           that sort of stuff, even that doesn't mean  
10          you understand what this means because it's  
11          technical nature. It's outside the normal  
12          area of dealing with federal Indian policy.  
13          So that's -- we'll get back to you soon on  
14          that, but it's -- we're in a technical area  
15          of where we got to figure -- find the  
16          decoder ring that says what some of this  
17          actually means in a practical sense and from  
18          the perspective as stated by tribal leaders  
19          about their willingness to protect the  
20          tribal identity that they have fiercely  
21          fought to protect for many, many years.

22 GENE CROWE, JR.:

23                 One other question, I guess, that I've  
24                 got and one concern is on one of your slides  
25                 there I heard or showed that there were 566

1    federally recognized tribes, I think, is  
2    what we've got in the United States.  And  
3    knowing that and knowing the representation  
4    of what we got here today from the southeast  
5    that's unreal, you know, of the few people  
6    that are here representing federally  
7    recognized tribes.  On my way down here I  
8    stopped off at the Choctaw Nation and spoke  
9    to some of their council members.  And it's  
10   a 12 hour drive, but I broke it up within  
11   two days of driving down here, but they told  
12   me that they didn't know about this meeting.  
13   I called some friends out at Coushatta, they  
14   didn't know about this meeting.  When I told  
15   them it was too late for them to make plans  
16   to come here.  So my question to you all  
17   would be, number one, is this getting out in  
18   the Indian country.  Number two, I  
19   understand, you know, and I've seen the list  
20   of places that you're having the meetings,  
21   why couldn't there be one in Oklahoma where  
22   that's the largest representation of Indian  
23   federally recognized tribes?  Why couldn't  
24   there be a meeting there, you know, in  
25   different places?  I know they're having one

1 in Montana, but different places other than,  
2 you know -- like there's -- how many tribes,  
3 4 in Louisiana? You probably got 20 of them  
4 -- maybe 20 in Oklahoma, then new Mexico and  
5 Arizona and those places. There's several  
6 tribes there to get more federal input from  
7 these tribes I feel like that we should have  
8 more meetings before, and that maybe  
9 something that we can move forward with if  
10 we get an extended period of time is having  
11 more of these acknowledgment meetings at  
12 some of these different locations where we'd  
13 get a good census of 566 federally  
14 recognized tribes. That was, I guess, a  
15 recommendation.

16 LARRY ROBERTS:

17 Thanks.

18 JOHN PAUL DARDEN:

19 I think also it would help if -- you  
20 know, I'd like to hear what some of the  
21 other comments in meetings in other parts of  
22 the country. So I mean, would it possible  
23 for you to set it so we could Skype or  
24 something where we could call in from where  
25 ever when another meeting is held, just to

1           hear the others first hand too.

2 LARRY ROBERTS:

3           Yeah, we'll consider these comments,  
4           and also want to let you know -- and we'll  
5           look into whether that's something that's  
6           possible in terms of having something Skyped  
7           or technology, some sort of conference call  
8           or something that would could consider that  
9           and look into it. So we are -- either the  
10          Assistant Secretary sent out  
11          (indistinguishable) all 566 federally  
12          recognized tribes. I think, there's over  
13          200 plus just in Alaska. And so while we  
14          didn't have time to do a -- to notice a  
15          tribal consultation in Alaska we did attend  
16          the session at NCAI and provided an overview  
17          of the Proposed Rule there. But we have  
18          this Record and we're put the transcripts  
19          out so that everybody can -- if you can't  
20          make a tribal consultation you'll be able to  
21          at least have your staff look at the  
22          transcripts and hear what other folks are  
23          saying as well.

24 B. CHERYL SMITH:

25                    Any more comments?

1 (LAUGHING.)

2 KIMBERLY S. WALDEN:

3 I'm looking at my notes.

4 LARRY ROBERTS:

5 See that's a leader over there. She's  
6 running a tight ship here. So as a number  
7 of folks have mentioned this is the first  
8 tribal consultation that we're having under  
9 the rule and so it sounds like folks are  
10 thinking about things and coming up with  
11 questions. And hopefully if you're not able  
12 to attend another tribal consultation, I  
13 hope you can attend those, but if you can't  
14 obviously we look forward to getting your  
15 comments in writing as well.

16 KIMBERLY S. WALDEN:

17 Question on the last line on page 5,  
18 criteria of 80 percent. Can you elaborate a  
19 little bit on that? Because what we're  
20 having is people claiming -- and it could be  
21 just one single person from a person that  
22 was an Indian or -- I don't even know if  
23 it's documented at Indian. And they're  
24 assuming that because a person was a salve,  
25 and Chitimacha was mostly the salve people

1 at that time, that this one person from the  
2 1700s is Chitimacha. So how many people --  
3 I guess blood quorum. There's no -- so can  
4 a tribe apply -- so if you have 5 or less  
5 people that are possibly of Chitimacha  
6 descent from 300 years ago. What's their  
7 chances of getting recognized? They can --  
8 even if they do successfully, which would be  
9 hard, tie to us a historic tribe?

10 LARRY ROBERTS:

11 I mean, I can't speak in hypotheticals,  
12 but I can say that we never recognized a  
13 tribe that was 5 people. I think the  
14 smallest group has been a couple of hundred  
15 people. So in terms of where the 80 percent  
16 comes from --

17 B. CHERYL SMITH:

18 It was us.

19 (LAUGHING.)

20 B. CHERYL SMITH:

21 I think it was 186.

22 LARRY ROBERTS:

23 So the 80 percent rule is something  
24 that essentially codifies existing practice,  
25 so it's basically -- and it has to do with

1 documentation. So a petitioner, a tribe,  
2 may say, "We know that this 20 percent of  
3 our people we know that they're us," they're  
4 whatever tribe you want to say, but for  
5 whatever reason they don't have the  
6 genealogy records to tie it back to that.  
7 And so what is done over the years is  
8 basically said we have to have documentary  
9 evidence that 80 percent, at least 80  
10 percent of your group can show descent from  
11 a tribe. So that's just codifying. So  
12 that's like -- that's the existing practice  
13 that we apply right now. That's just  
14 codifying.

15 KIMBERLY S. WALDEN:

16 Okay. Another question.

17 JOHN PAUL DARDEN:

18 You got my mind working on that one.  
19 I'm thinking about it, 80 percent you have a  
20 group, it's a small group, should you have a  
21 minimum number besides 80 percent rather  
22 than -- so you wouldn't run into an issue of  
23 5 or 10 people trying. Shouldn't that be 80  
24 percent or a number can't be less than this  
25 amount.



1 LARRY ROBERTS:

2                   So we'll take that comment for the  
3                   Record.

4 KIMBERLY S. WALDEN:

5                   Yeah, because one person -- defend us  
6                   from one person, I mean, is that really a  
7                   tribe in our opinion. Another thing is --  
8                   coming back to blood quorum. If a community  
9                   has a so called tribe and they want to be  
10                  recognized and the tribe does have  
11                  descendants from say 5 Chitimacha, but  
12                  they've been -- they're primarily black or  
13                  some other ethnicity where does that factor  
14                  in? If they've been self identified as --  
15                  in some of the cases we're dealing with as  
16                  creole or one was calling himself the black  
17                  Chitimacha. So again, I'm just throwing out  
18                  scenarios. I don't know what the answers  
19                  are. I don't know how to fix it, but that's  
20                  the people that we --

21 JOHN PAUL DARDEN:

22                   It's actually things that we're facing  
23                   right now, today.

24 KIMBERLY S. WALDEN:

25                   -- see are wanting to come in as a

1           tribe.

2 LARRY ROBERTS:

3           One of the things that we do need,  
4           though, in terms of -- and I appreciate your  
5           comment, that you're throwing out scenarios,  
6           and I appreciate Chief Smith's comment that  
7           she's glad she's not making these decision,  
8           but we need suggestions. We understand you  
9           have scenarios, but we need comments that  
10          provide -- okay. For example we have in our  
11          existing regulations that we're not going to  
12          recognized splinter groups, so I think we're  
13          going to get comments on how splinter groups  
14          are defined and how you treat splinter  
15          groups. And so we need comments in terms of  
16          how -- how to address issues that you guys  
17          are raising, how do you think the rule  
18          should be improved to address those issues.  
19          So I appreciate the factual stuff that you  
20          guys are raising in terms of the day to day  
21          concerns that you have, but we also need  
22          your ideas.

23 GENE CROWE, JR.:

24           Let me make a comment to what you said  
25          about the blood. In our tribe you get half

1 of what your mother's blood is and you get  
2 half of what your father's blood is. Every  
3 time when you move down the road that's how  
4 it works. If you don't have at some point  
5 -- if those people aren't full bloods, every  
6 year you go down eventually it's going to  
7 run out within two or three -- three or four  
8 generations. So, you know, thinking about  
9 and looking back to what you're talking  
10 about that's a way to look at that based on  
11 what blood percentage is of when that line  
12 runs out. And it all depends on who you  
13 kids marry. You know, who you marry, are  
14 they tribal members or not, on where that  
15 blood quantum lies. That's the way it works  
16 within our (indistinguishable.) Eventually  
17 it runs out -- if they keep marrying -- if  
18 they marry non-Indians then it goes away.

19 JOHN PAUL DARDEN:

20 And on that it does make it difficult,  
21 though, because you have some that even  
22 though the blood quantum is down to like  
23 this, that they were born and raised and  
24 they've always lived. You know, they even  
25 practice the culture, the history and all

1           this. So I mean, it may be down to like  
2           this, but still in their hearts they're more  
3           tribal than you have some that are maybe  
4           full blooded. So that makes it difficult.

5 KIMBERLY S. WALDEN:

6           Yeah, our tribe is small so we have  
7           (indistinguishable) and not everybody can  
8           marry. My grandparents were both tribal and  
9           so I represent four of the five families.  
10          (Indistinguishable) so that's different for  
11          us. When you have no blood quantum and you  
12          have no language, no culture, no nothing and  
13          one day you just decide (indistinguishable.)  
14          Just choose it for convenience.

15 GENE CROWE, JR.:

16          We even do DNA. We make sure DNA is  
17          done, so that we know that baby is who they  
18          said it is.

19 KIMBERLY S. WALDEN:

20          We've do paternity test as well. Now,  
21          we have people that are coming us saying I'm  
22          going to exhume my great grandmother because  
23          she lived near the reservation, and we're  
24          going to DNA. They laugh quite literally in  
25          my face, because -- when I tell them it's

1 not that simple. It's not going to tell you  
2 Chitimacha, Cherokee, Choctaw, but they're  
3 going to dig her up anyway.

4 JOHN PAUL DARDEN:

5 They don't realize what it will take to  
6 get that done, but they'll make  
7 (indistinguishable) and say they're going to  
8 do that, but they actually try the exhume  
9 process. It's not as easy as they think.

10 KIMBERLY S. WALDEN:

11 Lots of challenges on this side.  
12 You've guys got challenges, but we've got  
13 challenges and it seems like it's getting  
14 more and more frequent. And social media  
15 and television they're using those avenues  
16 to really attack.

17 JOHN PAUL DARDEN:

18 She's right because those things --  
19 with all the positive that the tribes do in  
20 the community and stuff, then you'll have  
21 something like this comes out and they go to  
22 the media and it's all negative. You know  
23 everyone's past history, but you tend to  
24 hang on -- people hang on to the negative  
25 more than the positive.

1 LARRY ROBERTS:

2           All right. Does anyone else have any  
3 additional comments? I appreciate y'all  
4 coming this afternoon, and I think we're  
5 going to close the Record then, unless  
6 anyone has anything else to say.

7 WILSON PIPESTEM:

8           Just one thing I want to add. Ask for  
9 more time. I would think -- I know what it  
10 does take, the time that it does take, maybe  
11 you can give them an idea an extra 60 days,  
12 you think besides after the 30 day period.  
13 Just me thinking that might be ample, you  
14 know, something for them to think about from  
15 the meaning today. Because if you add 60 to  
16 the already 30 you have that's 90 days so  
17 that might be time.

18 STEPHEN SIMPSON:

19           Again that's above my pay grade on that  
20 regards. That's for these guys.

21 LARRY ROBERTS:

22           And we have had -- we're in a 60 day  
23 comment period right now.

24           (INDISTINGUISHABLE DISCUSSION.)

25 KIMBERLY S. WALDEN:

1 I'm also concerned about the numbers of  
2 federally recognized tribes and the  
3 percentage seen here. Do you know how many  
4 comments you've received and what percentage  
5 of the federal tribes have commented?

6 LARRY ROBERTS:

7 I don't know how many comments received  
8 today on the Proposed Rule and pretty much  
9 whether it's this Proposed Rule or any  
10 Proposed Rule, people wait until the  
11 deadline to submit comments. But we've  
12 received -- I think we had over 2,000  
13 commentors in the discussion draft process  
14 and that's from state, local government,  
15 federally recognized tribes. Thank you all.

16 MEETING CONCLUDED AT 2:25 P.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 62 pages;  
11 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 11th day of August, 2014, Franklin,  
2 Louisiana.  
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