

**Dr. Jack Campisi, Anthropologist
Consultant, Lumbee Tribe of North Carolina**

**Statement to the Committee on Natural Resources
United States House of Representatives**

**Legislative hearing on H.R.65, “*To provide for the acknowledgment of the
Lumbee Tribe
of North Carolina, and for other purposes.*”
April 18, 2007**

I hold a doctorate in anthropology, have dedicated my career to research in tribal communities, and have taught these subjects as an adjunct professor at Wellesley College. Between 1982 and 1988, I conducted a number of studies for the Lumbee Tribe of North Carolina. Each of these included fieldwork in the community for periods of time varying from a week to three weeks. In all, I spent more than twenty weeks in Robeson County carrying out a variety of research projects. Besides being responsible for synthesizing the thousands of pages of documentation collected during the ten years it took to carry out the archival research, and for designing and carrying out the community research, I had the honor of writing the petition that was submitted on December 17, 1987, to the Branch of Acknowledgment and Research (now the Office of Federal Acknowledgment) under the federal regulations that govern acknowledgment of eligible Indian tribes, 25 C.F.R. Part 83. Specifically, I drafted the Historical Narrative section, and researched and wrote the sections dealing with community and political continuity. Subsequent to the completion of the petition, I continued research with the Lumbee Tribe, most recently in 2002. The material that follows is based on my twenty years' research on the Tribe's history and community.

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

An Overview of Lumbee Tribal History

Aboriginal origins of the Tribe

At the time of sustained white contact, there existed a Cheraw Indian community precisely where the Lumbees reside today and this Cheraw community had the same, unique surnames as those common to the modern-day Lumbee community. A 1733 Moseley map showed the Tribe between the Pee Dee River and Drowning Creek, in 1737 John Thompson purchased land in the area from Robert, Chief of the Cheraw, and in 1754, Governor Arthur Dobbs of North Carolina identified on "Drowning Creek on the head of Little Pedee 50 families a mixt Crew [or Breed] a lawless people filled the lands without patent or paying quit rents shot a Surveyer for coming to view vacant lands being enclosed by great swamps." A document written in 1771 refers to "the Charraw Settlement" on Drowning Creek, and another document dated 1773 contains a list of names that connect this community to the Cheraw in 1737. Some of the same surnames as today's Lumbee population appeared on the list: Ivey, Sweat, Groom, Locklear, Chavis, Dees, and Grant (see Dr. James H. Merrill letter to Congressman Charlie Rose, October 18, 1989 for further discussion). The 1790 federal census identifies families with these same surnames around Drowning Creek and modern day enrolled Lumbees can prove genealogical descent from those Indians. Thus, the community mentioned in the references cited in above and the community of Indians described in nineteenth century documents was the same, and were the antecedents of today's Lumbee Tribe.

Early land records link the modern day Lumbee community to the historic Cheraw Tribe located on Drowning Creek. A 1754 deed refers to Major Locklear, who resided at the time on the north side of Drowning Creek. Present-day Locklears in the Tribe

descend from or are related to Major and his brother John Locklear. These early Locklears and their descendants intermarried with other members of the Indian community whose surnames (Oxendine, Chavis, and Lowry) are prevalent among present day Lumbees. Genealogical records of present day members show that the vast majority descend from Locklear, Oxendine, Chavis, or Lowry families with many descending from more than of these family groups who comprised the early Cheraw settlement.

These places are shown in relation to the boundaries of modern day Robeson County on this map. As you can see, the Cheraw settlement (spelled Saraw at the time) first identified on the 1733 Mosely map, is located within the Cheraw old fields, which in turn are identified in early land records as the location of families with traditional Lumbee surnames, and nearby Drowning Creek. In 1809, the North Carolina Legislature changed the name of Drowning Creek to the Lumber River. The modern day Lumbee Tribe, many of whose members trace back to families residing at the Cheraw old fields near Drowning Creek in the early eighteenth century, still reside today on and around that river. This genealogical connection is demonstrated by this overlay which shows the descent of the current tribal council members from those families.

The federal census records are by far the best source of evidence concerning the early Lumbee community. It is clear from the names of the heads of households that the area of Robeson County around Drowning Creek, now the Lumber River, was occupied almost exclusively by tribal members. Based on the 1850 census (the first census to provide the names of the individual's resident in each household), it is possible to describe the residency patterns of the Lumbee community. We can identify 168 households headed by ancestors of present day Lumbees from the 1850 census. These households were clustered in three settlements that were almost exclusively Lumbee, with white settlements between them. The data also show that the Lumbee ancestors in these three settlements were all closely related, including multiple first cousin marriages. All of the signers of the 1887 and 1888 petitions for assistance to the Tribe, the first to the State of North Carolina and the second to the United States, appear as heads of households in these settlements. Thus, there can be no doubt that there was an Indian community present along Drowning Creek from the mid-1700s, separate from other communities in the area. It is also certain that this community had a well-established leadership structure and that it managed its affairs with relative autonomy.

The oldest Lumbee community that can be continuously documented was called Long Swamp, now called Prospect and located within the core area in Pembroke and Smith townships - the heart of the modern day Lumbee community. It is also located right in the heart of the so-called old field of the Cheraw, documented in land records between 1737 and 1739. The earliest census records show the presence in this community of an extended Locklear family continuously since 1790. Members of this extended family appeared among the tribal leaders, both by descent and marriage, who petitioned Congress for federal recognition in 1888. Members of this extended family were also among those who were tested by physical anthropologist Carl Seltzer in 1936 for blood quantum. This includes Duncan Locklear and Henry Locklear, whose pictures are attached. The Tribe's attorney, Arlinda Locklear, is also descended from this extended family.

The Civil War period

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

Added to the problem of tribal survival was the steadily worsening relationship between whites and "people of color" in North Carolina following Nat Turner's uprising in 1831. In 1835, the state passed a constitutional amendment denying tribal members rights they had previously enjoyed. Many refused to abide by the changes and some were charged with violations. One case, in particular, went far toward recognizing the Lumbees as Indians. In 1857, a William Chavers was arrested and charged as "a free person of color" with carrying a shotgun, a violation of state law. He was convicted, but promptly appealed, claiming that the law only restricted free Negroes, not persons of color. The appeals court reversed the lower court, finding that "Free persons of color may be, then, for all we can see, persons colored by Indian blood, or persons descended from Negro ancestors beyond the fourth degree." The following year, in 1859, in another case involving a Lumbee, the appeals court held that forcing an individual to display himself before a jury was tantamount to compelling him to furnish evidence against himself. These cases generally resulted in the Lumbees establishing a special status under the law as Indians, one outside the limitations placed on others who were classified as "free persons of color."

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

Matters came to a head in 1864 when members of the Allen Lowrie family, a leading Indian family, and the local authorities came into armed conflict and a number of individuals on both sides were killed. In March of 1865, the Home Guard captured Allen

Lowrie and his son, William, and after holding them for a short time, executed them in a field near the father's house. This was followed by a virtual reign of terror during which the Home Guard tortured members of the Lowrie family and their kinsmen in order to learn the whereabouts of the band. With the death of his father and brother, Henry Berry Lowrie, who was barely twenty years old, took over the leadership of the band. For the next decade, led by Henry Berry Lowrie, and with the Indian community's support and protection, the band fought against local authorities who sought by a variety of means to oppress the Indian population in Robeson County. The Lowrie Band led a struggle that ended only after the disappearance of its leader in 1872, and the capture and death of the last of the band members in 1874. Henry Berry Lowrie remains a folk hero to the Lumbee Indians and his story is told every year in an outdoor drama called "Strike at the Wind."

By the 1870s, the Lumbees were openly acknowledged to be Indians. While the Lowrie Band was carrying out its defense, others in the tribe were taking equally effective actions to assert their independence. Lumbees were denied access to the white schools in the county and they refused to attend the schools for blacks. This impasse was broken in 1885.

Formal State recognition of the Tribe and efforts to obtain Federal recognition

In 1885, the State of North Carolina formally recognized the Tribe as the Croatan Indians as a means of addressing the school issues. The state statute established a school system for the children of tribal members only. Tribal members exercised complete control over who could attend the schools. Each Lumbee settlement had a school committee that determined eligibility. In order to be eligible, an individual had to prove Lumbee ancestry back through the fourth generation, that is, back to the 1770's. Because of the rigorous manner in which these rules were enforced in the nineteenth century, school enrollment records provide an accurate basis for determining present-day membership.

Officials at the Bureau of Indian Affairs have acknowledged the particular significance of this early state recognition of the Lumbee Tribe. George Roth, an anthropologist who recently retired from the office that processes applications for acknowledgment from Indian tribes, wrote regarding the Lumbees:

North Carolina legislation in 1885 established in law a distinct status as Indian for the Lumbee (designating them as Croatan Indians) and provided for a school system separate from blacks. Though not colonially derived nor involving the distinct legal status of the colonially derived reservations, this North Carolina action was perhaps the earliest and strongest postcolonial state-Indian relationship before the modern era.

Roth, G., *Indians of the Southeastern United States in the Late 20th Century* (1992 U. of Alabama Press).

In 1887, tribal members petitioned the state legislature again, requesting the establishment of a normal school to train Indian teachers for the Tribe's schools. Permission was granted, tribal members raised the funds, and along with some state assistance, the normal school began training teachers for the expanding Lumbee school system. That normal school has been in operation continually since, evolving into Pembroke State University and, recently, the University of North Carolina at Pembroke.

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

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

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

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

cropping and credit system then the predominant means of Lumbee livelihood. Baker reported to Congress:

It may be said without exaggeration that the plan of the government meets with practically the unanimous support of all of the Indians. I do not recall having heard a dissenting voice. They seemed to regard the advent of the United States government into their affairs as the dawn of a new day; a new hope and a new vision...

I find that the sense of racial solidarity is growing stronger and that the members of this tribe are cooperating more and more with each other with the object in view of promoting the mutual benefit of all the members. It is clear to my mind that sooner or later government action will have to be taken in the name of justice and humanity to aid them.

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

Twentieth Century efforts to obtain Federal Recognition

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

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

With the passage of the Indian Reorganization Act, Brooks and his supporters attempted to organize the Tribe under a federal charter. Because the Tribe did not possess a land base, it was advised by Assistant Solicitor Felix Cohen to organize under the half-blood provision of the act. Cohen urged that the Tribe apply for land and a charter under the name of the "Siouan Indian Community of Lumber River." Brooks immediately submitted a proposal that mirrored Cohen's recommendations. Over the course of the next two years, the two projects of establishing recognition under the IRA and receiving land through the Bureau of Indian Affairs proceeded, when suddenly, in 1936, the land acquisition proposal was shifted from the BIA to the Rural Resettlement Administration of the Department of Agriculture, and the land that was to be purchased

solely for Lumbee use, was opened to non-Indians. After a lengthy struggle, Brooks was able to have a part of the land set aside for tribal members, and incorporated under the name of the Red Banks Mutual Association.

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

After the Second World War, the Lumbees again tried to achieve federal recognition of their status as an Indian tribe. The issue of their name continued to cause them problems so, in 1952, the Lumbee leadership conducted a referendum on the name; at the Tribe's request, the state funded and provided other assistance for the conduct of the referendum. Of 2,144 tribal members who voted, all but 35 favored the use of the name "Lumbee," derived from the Lumber River upon which they had always dwelled. Armed with this overwhelming support, the leader of the movement, D.F. Lowry, asked the state legislature to adopt the change. The legislature approved the name change in 1953. The Lumbee Tribe then took its case to Congress, which in 1956 passed the Lumbee Bill.

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

Recent Lumbee History

Challenges to the Lumbee community and independence

Since the passage of the Lumbee Act, the Tribe has faced a steady string of problems, beginning with an attempt by the Ku Klux Klan to intimidate tribal members in 1958 by a rally held within the Lumbee community. The Tribe's reaction to this threat was a spontaneous gathering that drove the klansmen from the field and broke up their rally, a confrontation that focused national attention for a time on the Lumbee community. The tribal members have exerted their influence in other ways. In the 1960's they organized voter registration drives that made their influence felt on local politics, electing members of the Tribe to state, county, and local public offices. When the local school authorities attempted to integrate only the black and Indian schools in the county, tribal members staged sit-ins and filed lawsuits to prevent the loss of tribal

control over the schools. It must be understood that the school system was and is a key and integral part of tribal identity, and any threat to the Tribe's control would be resisted. And resisted it was!

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

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

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

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

The distinct and strong Lumbee community

There is a variety of definitions of the term "Indian tribe" employed in a variety of contexts. Most experts agree that the most exacting definition is that used by the Department of the Interior in its federal acknowledgment regulations, 25 C.F.R. Part 83. Even as judged by this definition, though, there is no question that the Lumbee Indians constitute an Indian tribe.

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

and visit each other on an almost daily basis.

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

This kinship pattern is well illustrated by the mapping of all Lumbee heads of household based upon the 1850 federal census that I prepared for the Tribe's petition for federal acknowledgment. I identified 168 households headed by Lumbees in 1850. These heads of household are the ancestors of present day Lumbees and include descendants of the Locklear extended family documented on the old Cheraw field in 1790. The households were clustered in what is the core area today of the Lumbee Tribe; some areas, such as the Prospect community, were almost exclusively Lumbee. The households showed an extremely high rate of in-marriage, resulting in complex and multiple kinship and marriage ties among the members. This same kinship pattern persists today. When the relationships, both marital and kin, between the list of tribal leaders who appear on the 1887 petition to the state and the 1888 petition to Congress are mapped, it again reveals a remarkably tight community. And as I mentioned before, the modern day tribal leaders are related in the same way to the Tribe's historic leaders and households.

Religion also serves to maintain the social boundaries of the Lumbee Tribe. By social boundaries, I mean that there are membership rules, special beliefs and values, a unique history, and a system of political authority and decision-making that marks the Lumbees as a separate community. There are more than 120 Lumbee Indian churches in Robeson County, and with one or two exceptions, each has a Lumbee minister. There are also two all Lumbee church conferences – the Burnt Swamp Baptist Association and the Lumber River Holiness Methodist Conference. Church membership crosses family lines and settlement areas, thus drawing together different sectors of the Tribe.

For the Lumbees, church is more than a religious experience; it is one of their most important social activities. It involves many of them on a daily basis. The churches have Sunday schools, youth organizations, senior citizens' programs, Bible study programs, and chorus practices, to mention but a few of the activities available. It is common for members of the same household to attend different churches, and this behavior further acts to bring the tribal membership together.

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

Today, there are other avenues for the demonstration of leadership qualities, but family, education and religious values still command attention.

The importance of the role played by the Lumbee churches in the political life of the Tribe cannot be overstated. During the 1990s, it was the leadership from the churches that initiated and sustained the process for preparing a tribal constitution. The delegates to the constitutional convention were selected by the churches and represented every segment of the Tribe. After nearly ten years of meetings, negotiations, court actions, and re-drafts, the constitution was presented to the tribal members for their approval. On November 6, 2001, the tribal members voted on the constitution. Eighty-five [85] percent of those voting voted in favor of adoption. The approved constitution is recognized by the State of North Carolina, and it is the Tribe's governing document.

Geographic concentration of Lumbee Tribe

Today, there are approximately 55,000 enrolled Lumbee tribal members. Each of these members completed a documented application for enrollment to establish that he or she meets the enrollment criteria. There are two membership criteria: first, that he or she descends from an individual who appears on the Tribe's base roll; and second, that he or she maintains contact with the Lumbee Tribe.

Historically, there has never been a complete list of tribal members, since no federal or other purpose required the compilation or maintenance of such a list. So the base roll used by the Tribe consists of a collection of documents dating back to the late nineteenth or early twentieth century that consists of partial lists of tribal members. These records include the 1900 federal Indian census, Indian school records, and church records. In the few instances where an individual cannot identify an ancestor in these documents (which are, by definition, incomplete lists of tribal members), the person's ancestry is considered by an Elder's Review Committee. This is a group of tribal elders with great, personal knowledge about Lumbee kinship.

The maintenance of tribal contact means that the tribal member maintains ties to the Tribe, through visits and otherwise, even if the member does not reside in the area. Again, if there are questions regarding a member's maintenance of contact, the Elder's Review Committee will make a determination. Individuals who do not maintain contact are not eligible for enrollment; those already enrolled can be disenrolled if they fail to maintain contact.

Even though the Tribe is large, the Tribe remains concentrated even today in the area in and around the historic Drowning Creek, known today as the Lumber River. To determine the level of geographic concentration, a random sampling of tribal members was prepared. This is a methodology approved by the Bureau of Indian Affairs in its analysis of a tribe's community in the administrative acknowledgment process. A 1 percent systematic sample was drawn from the Lumbee membership files as of December 2002. Of the 543 files drawn, 29 were found to contain names of deceased individuals, or were missing from the files, leaving a balance of 514 files. This corresponds closely with the number of active members (52,850) as reported to the Lumbee Tribal Council in December 2002.

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

exclusively Lumbee geographical areas; those living somewhere in North Carolina; and those living elsewhere. Included in the first category are the following communities in Robeson County: Pembroke, Maxton, Rowland, Lumberton, Fairmont, St. Paul's, and Red Springs. Within these communities, there are areas that are exclusively (or nearly so) occupied by Lumbees. This is consistent with the analysis of tribal membership concentration used by the Office of Federal Acknowledgment, Department of the Interior, under its acknowledgment regulations.

The data show that of the 511 for whom there was residency data, 330 (64.6%) live in the core area. One hundred and two (19.9%) live in the State of North Carolina, and the 79 (15.4%) live elsewhere, almost all of them in the United States. This high degree of geographic concentration establishes the existence of a Lumbee community, even without any further evidence (see discussion below). Based on census and other data, the Tribe demonstrates the same high level of geographic concentration going back well into the nineteenth century, or as far as there are data available.

A second indication of community is the level of in-marriage within a community. Using the same sample, there were 276 records that provided information on the age and marital status of individuals. Of these, 49 were younger than 16, the age selected as marriageable. Another 23 were identified as single, leaving 204 with known marriage partners. Of this number 143 (70%) were married to another Lumbee tribal member. Of the remaining 61, 59 were married to non-Indians and 2 were married to members of other tribes. Again, this high in-marriage rate establishes the existence of a Lumbee community, even without any further evidence (see discussion below). As with residency, based on census and other data, it is certain that the Tribe can demonstrate comparably high in-marriage rates for the preceding periods, going back well into the nineteenth century, or as far as there are data available.

Political leadership among the Lumbee

As discussed above, the Lumbee Tribe of North Carolina organized, ran, and largely financed its own school system and teacher's training college for nearly one hundred years. It has had and continues to have a complex network of churches that exclusively or nearly exclusively serve the tribal members. All of these demonstrate clear political authority within the community that is accepted as such by the outside world.

A specific example of tribal political authority in the education context is illustrative. In 1913, State Attorney General Thomas Bickett issued an opinion that the Robeson County Board of Education, then controlled by non-Indians, had authority to overrule a Lumbee Indian school committee's decision to exclude a child who did not meet the Tribe's eligibility requirements from an Indian school. This was unacceptable to the Tribe. Tribal leaders sought and obtained state legislation in 1921 that reaffirmed the Tribe's authority to determine eligibility to attend the Lumbee schools.

Another example of Lumbee political autonomy outside the context of education involved the ultimate political control - the ability to directly elect leadership for the Town of Pembroke - located in the heart of the Lumbee community and occupied almost exclusively by Indians (excluding the students and employees of the University of North Carolina, Pembroke). At the time of its incorporation in 1895, state law required that public officials of the town be appointed by the Governor rather than elected - the only

incorporated town in the state so governed. Under pressure from Lumbee tribal leaders, this state law was changed in 1945 to allow for direct election of town officials by the residents there, just as in all other incorporated towns in the state. Since then, the mayor and town council of Pembroke have all been Lumbee Indians.

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

Lumbee Tribe of North Carolina and The Federal Acknowledgment Regulations

In 1978, the Department of the Interior established a regulatory process for the acknowledgment of Indian tribes. 25 C.F.R. Part 83. The Department has determined that the Lumbee Tribe is not eligible for this administrative process because of the 1956 Lumbee Act. However, the history and data establish that the Tribe nonetheless meets the seven mandatory criteria used in the Department's regulations to define an Indian tribe. Those seven mandatory criteria are:

- (a) identification as an American Indian entity on a substantially continuous basis since 1900;
- (b) a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present;
- (c) the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present;
- (d) a copy of the group's present governing document including its membership criteria;
- (e) the petitioner's membership consists of individuals who descend from a historical Indian tribe or tribes which combined and functioned as a single autonomous political entity;
- (f) the membership of the petitioning group is composed principally of persons who are not members of any acknowledged North American Indian tribe;
- (g) neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship.

Criterion (a) Identification as an Indian entity

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

demonstrated this criterion.

Criterion (b) Community

This criterion provides a number of ways to demonstrate community, foremost among these are rates of in-marriage and residency patterns. The regulations provide that an Indian group has conclusively demonstrated this criterion by proof that 50 percent or more of its members reside in a geographical area composed exclusively or almost exclusively of tribal members, or that at least 50 percent of its members are married to other tribal members. These are the so-called high evidence standards. As established above, the Lumbee Tribe meets both these high evidence standards, both historically and in modern times. This means that the Lumbee Tribe has conclusively demonstrated community as defined by the regulations, typically the most difficult part of the administrative process for petitioning tribes. It should also be noted that this criterion specifically provides that changes in name of the group, such as those experienced by the Lumbee under state law, are irrelevant.

Criterion (c) Political authority

The regulations provide that if community is proven by high evidence as exhibited by the Lumbee community, this is considered conclusive proof of political authority as well. In other words, the same high evidence of community exhibited by the Lumbee also conclusively demonstrates political authority for the Lumbee Tribe, both historically and in modern times. In addition, the actual evidence of political authority summarized above - from the substantial and active political relationship maintained with the State of North Carolina since 1885, repeated efforts organized by tribal leaders to obtain federal recognition, and persistent resistance to challenges to tribal independence - show vibrant and effective political leadership within the Tribe, both historically and in modern times.

Criterion (d) Governance

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

Criterion (e) Descent from a historical tribe or tribes

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

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

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

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

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

Summary

Typically, Indian tribes petitioning for acknowledgment under the administrative process have most difficulty with criteria (b) and (c), community and political authority respectively. Every tribe that has been denied acknowledgment through the process to date has failed because of the inability to prove these criteria, and perhaps others. As demonstrated above, the Lumbee Tribe's case on these criteria is so strong as to be conclusive. In light of the heavily documented history of the Tribe since 1900, neither can there be any doubt about the Tribe's ability to demonstrate the other criteria.

In the past few years, the Bureau of Indian Affairs has expressed doubt as to the Tribe's evidence on criterion (e), that there is too little data on criterion e to prove descent from the Cheraw Tribe, specifically that a genealogical link between the Cheraw Tribe on Drowning Creek and all present-day members of the Lumbee Tribe on the renamed Lumber River cannot be made, despite the occurrence of shared and uncommon surnames and the clear descent of significant numbers of members from the Locklear family known to reside in the Drowning Creek area. Of course, the failure of the dominant society to record the births and deaths of Lumbees before 1790 is no fault of the Tribe; nor does this absence suggest that the Lumbee Tribe is not descended from the Cheraw Tribe. In fact, the Department testified in 1934 that the Tribe was descended from the Cheraw Tribe, based upon the work of the eminent Dr. Swanton. The Department's earlier opinion is also corroborated by the professional opinions of Drs. Sturtevant and Merrill. Thus, the Department's more recent view should be taken as more intellectual curiosity than serious doubt about the origins of the Tribe. And this new found curiosity should be judged in the context of the Department's long-standing determination to oppose recognition of the Tribe, even in the face of its past judgment that the Lumbees truly are an Indian tribe.

The extensive record of the Tribe's history in the eighteenth, nineteenth, and twentieth centuries establish that the Lumbee Indians constitute an Indian tribe as that term is defined in the Department of the Interior's acknowledgment regulations. The Tribe fails only on the last criterion, that is, Congress has prohibited the Department from acting on the Tribe's petition in the 1956 Lumbee Act. Thus, the Congress can act on H.R.65 with full confidence that the Lumbees are, in fact, an Indian tribe.