

Testimony of Frederick E. Hoxie Before U.S. House of Representatives Natural Resources Committee Sub-Committee on Indigenous Peoples of the United States on H.R. 1964, the Lumbee Recognition Act of 2019.

December 4, 2019

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Thank you for the opportunity to testify in support of H.R. 1964, a bill to extend full federal recognition to the Lumbee Tribe of North Carolina. I do not appear before you today as an expert in Lumbee history, but as a veteran historian who has taught and written about federal Indian law and policy for more than four decades and who, through that activity, has had the opportunity to work with and consult for a number of tribal nations, government agencies and cultural institutions. Among these are the Cheyenne River Sioux Tribe, the Justice Department, the U.S. Senate Committee on Indian Affairs and the Smithsonian Institution. I retired in 2016 from the University of Illinois, Urbana-Champaign, where I was Swanlund Professor of History, Law and American Indian Studies. That wordy academic title underscores the breadth of my background and experience. Over the past forty years I have taught hundreds of undergraduates, law students and graduate students in history, anthropology, and Native Studies, while publishing a dozen books on Native History, and serving as a consultant to several government agencies as well as tribes engaged in litigation over issues of jurisdiction and treaty interpretation. In 1990 the Secretary of the Smithsonian Institution appointed me a founding trustee of the National Museum of the American Indian—an institution that existed only on paper when I first came aboard. In 2013 I was elected to the American Academy of Arts and Sciences.

I come here this afternoon to ask you to consider three important aspects of the decision before you with regard to this legislation. First, I want to explain the importance and

significance of extending federal recognition to the Lumbee Tribe. When Congress approves the Lumbee Recognition Act of 2019 it will finally place relations between this tribe and the United States on a firm and fair footing. That is admirable and important—and long overdue—but that is only part of the story. By approving H.R. 1964 Congress will also be fulfilling once again its unique responsibility as the architect of the modern legal edifice that reconciles Native tribes and American democracy. Second, I want to underscore the significance of the written case the Lumbees have developed in their campaign to secure federal recognition, a case that conforms to the scholarly literature on the tribe and which is beyond dispute in the academic community. And third, I want to place the decision to recognize the Lumbee Tribe in the broader context of recent federal Indian policy—a policy, I might add, that represents an island of bipartisanship in a contentious political world.

First it is important to understand why the passage of H.R. 1964 is significant in the long history of federal Indian policy. The basic foundation of this policy was framed 1789 during the first session of the first U.S. Congress. In that year—the first year of George Washington’s presidency—it was not clear what the official basis for relations between indigenous people and the United States would be. The recently-ratified federal constitution had provided that Congress would “regulate commerce with foreign nations, and among the several states, and with the Indian tribes;” but it had not indicated the form that regulation would take. Similarly, the new charter had granted the President the right to “make treaties” but had not specified if the colonial tradition of Indian treaty making would continue or, if that tradition would be a federal responsibility or somehow shared with the states. The constitution was also silent on the issue of whether or not future Indian treaties would have the same status as agreements with powers outside the nation’s borders.

Washington and Congress immediately addressed these issues by proposing that a series of agreements recently reached with a group of hostile Ohio tribes be ratified as international treaties. For President Washington it was essential that the central government sanction and guarantee these agreements. Washington understood that the delicate situation in Ohio (British troops still occupied Detroit) required the formation of a stable alliance between western Indians and the Americans. At the same time, the President knew that local politicians and real estate developers were eager to destabilize the situation in Ohio by making private deals with compliant chiefs and then encouraging settlers to invade tribal lands. A weak federal presence would encourage instability on our borders and allow local disputes to proliferate and increase the chances of violence.

Washington and his Secretary of War, Henry Knox urged Congress to assert federal supremacy over Indian treaty-making and to insist that action by the federal congress alone would determine U.S. Indian policy. The President insisted that such an approach would ensure that “our national proceedings ... [would] become uniform and directed by fixed and stable principles.”<sup>1</sup> It seemed to Washington that our government, would be well served by a “fixed and stable” policy overseen by Congress. Washington was a practical man, so “Fixed principles” appealed to his sense of order. But Washington was also the hero of the Revolution, the leader of the world’s first, most ambitious constitutional democracy. So he urged Congress to act according “fixed principles” to make clear that our democratic republic would be a place where justice trumped opportunism and the rule of law took precedence over the arbitrary exercise of brute power. “The time has arrived,” Henry Knox wrote, “when it is highly expedient that a

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<sup>1</sup> Linda Grant Depauw, Editor, Senate Executive Journal and Related Documents. (Baltimore: John Hopkins Press, 1974), I, p.41.

liberal system of justice should be adopted for the various Indian tribes within the limits of the United States.”<sup>2</sup> These arguments galvanized Congress. Within a year, it had enacted Washington and Knox’s program, ratifying treaties with tribes, initiating new agreements, and passing the first Trade and Intercourse Acts which established ground rules for Indian-white relation across the nation.

Today it is a commonplace that many treaties have been violated and many federal actions have been misguided or fallen short of their goals. No one argues that U.S. policy has been perfect. But as we reflect on our failings, we should not forget the significance of the actions Congress took 230 years ago. Through its legislation, Congress made clear that despite the fact that Indian people were for the most part not citizens and had not been part of “We the People,” who established the United States Constitution, they would be included within the new nation’s emerging legal structure. Our legal structures would not banish or ignore them. Congress’s decision to include Indian peoples in our national governmental structure through federal legislation was made to insure that they would be served, like all Americans, by a “liberal system of justice.” This fundamental commitment underlies the entire history of our Indian policy. It is the principle that has caused Congress and the courts to hear complaints arising from treaty violations and, indeed, to authorize special tribunals to hear disputes over unfair land seizures or to investigate a vast array of contentious issues arising from relations between indigenous communities and their American neighbors. It is also the basis on which Congress has acted to repair the harm inflicted on Native groups by U.S. expansion and to support tribal communities. You will recall that even the extension of national citizenship to American Indians in 1924 provided that their new status would not deprive Native Americans from any rights they

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<sup>2</sup> American State Papers: Indian Affairs,13-14.

had to “tribal or other property.”<sup>3</sup> “Fixed principles,” and a “liberal system of justice” have therefore been watchwords of federal policy from the days of our founding.

Formal treaty making with Indian tribes ended in 1871, but the Congress has not retreated from its central role in insuring that a “liberal system of justice” informs relations between tribes and the United States. The issue of recognition offers an instance in which you as legislators must act—as Washington urged your predecessors to act—to link the Lumbee tribe permanently to the United States through a legal relationship based on mutual respect and federal action. This recognition legislation is completely congruent with the hundreds of other decisions Congress has made over the past two centuries to connect the United States to indigenous peoples by incorporating them into the our governmental structure.

Historically, recognition has been an idiosyncratic process. Tribes such as those confronting American expansion in Ohio in 1789 were instantly recognized by treaty or statute. Others, particularly smaller groups living in isolated communities in the East, were frequently bypassed and ignored. Many of those tribes later sought recognition because that legal status would be a sign of their humanity and an act of respect. Recognition was also welcome because it signaled that federal power would be used to protect them from hostile outsiders and insure that they, like their neighbors, could enjoy life in America under a “liberal system of justice.” By approving H.R. 1964, the Congress will not only respond to more than a century of formal petitions from the Lumbee tribe, but it will demonstrate once again that the United States is fulfilling Washington’s charge that the nation act according to “fixed and stable principles” in its dealings with indigenous people.

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<sup>3</sup> 43 U.S. Statutes, 253.

Second I would like to point out that the Lumbee's written petitions filed over many years, as well as the able summary of those petitions offered to this committee by Dr. Jack Campisi in his statement that I have attached to my testimony here, demonstrate that the tribe deserves this congressional action that will formally connect it to the United States and incorporate the tribe within the legal structure of federal Indian policy. Dr. Campisi's findings make clear that Indian people were present in what became Robeson County three centuries ago. Moreover, despite the fact that the tribe's indigenous ancestors have been described by different names, there can be no doubt that an Indian community has occupied this part of eastern North Carolina continuously since John Herbert produced his map of the area in 1725. The group has been *undeniably* present.

It has also been *continuously* present. Lumbee families can trace their histories back to the Indians who lived along Drowning Creek at the time of the American Revolution. The Lumbee tribe has insisted on its Native identity in the face of hostility and indifference, petitioning when possible, rising up in armed resistance when necessary, and always speaking with a Native voice and as members of an ongoing Native entity.

The tribe's recognition petitions and Dr. Campisi's testimony also underscore that the Lumbees have been a *self-governing* community. Obviously, because of the nature of their history they were never called upon, like other tribes, to confront an advancing American military column or treaty delegation. They were not commanded to produce "leaders" as other groups were. Located in an isolated part of one of the original thirteen colonies, the Lumbees faced myriad local adversaries who encroached on their lands and resources but who could be kept at bay by diplomacy, adaptation and, when necessary, tactical retreat. Over the past two

centuries, the community came to organize its own extensive religious institutions, operate its own school system (capped by the first Native American university in the United States), and routinely represent itself before state and federal legislatures.

Dr. Campisi's research on behalf of Lumbee recognition in the 1980s and his findings presented here have not been challenged. A large group of Indians are permanent residents of Robeson County. They have been a cohesive community for centuries and they have developed a series of unique tribal institutions that have served their membership brilliantly despite the constraints imposed by their unusual historical experience. That history, as well as the petitions they have brought the Congress today, present legislators with the task of reconciling this indigenous community with our modern, democratic nation state. For if the historical record Dr. Campisi outlines is both clear and beyond dispute, Congress has no honorable alternative but to act in response. The Lumbees' petitions might be ignored—no one is forcing you to act—but even if you fail to act positively on this legislation, the Lumbee history will not be rewritten and the Lumbee tribe will not surrender its identity.

Third, it is useful to consider H.R. 1964 in the context of the history of tribal recognition. In the past the recognition of individual tribes was a product of happenstance—tribes with diplomatic or military dealings with the U.S. (usually in moments of conflict) got “recognized,” while others who did not become the objects of territorial expansion—such as those who were geographically isolated (as in Alaska) or who inhabited isolated enclaves in “settled” areas—did not. Over time, these unrecognized groups, particularly large ones like the Lumbees, became increasingly vocal, demanding access to federal assistance in the areas of education, economic development and health care, as well as federal protection from hostile outsiders. As Dr. Campisi documents, the Lumbees gained state recognition in 1885 and began petitioning the

federal government for assistance three years later. These petitions continued into the 1950s when first the state, and then the federal government acknowledged the Lumbees as a tribe even though the Department of Interior opposed extending services to it.

As Dr. Campisi notes, nothing has changed in the historical record of the tribe over the past thirty years. The current legislation is not prompted by the release of new documents or the discovery of new historical information. H.R. 1964 is instead the product of Lumbee persistence—now a central feature of their history—and shifting attitudes among the public and federal policymakers. As recently as the 1960s, tribes were viewed as artifacts of the past, relics of a traditional way of life that would soon disappear. For many in the Interior Department, tribes were anachronistic institutions whose principal function was to receive wasteful federal appropriations. In the 1950s, many politicians and prominent officials in the Bureau of Indian Affairs came to embrace this unfortunate idea and called for the adoption of a new policy goal: the termination of the federal government’s relationship with tribes. Led by Commissioner of Indian Affairs Dillon S. Meyer and politicians such as Utah Senator Arthur Watkins, the terminationists succeeded in the 1950s and 1960s in winning passage of a congressional resolution endorsing their goal. They also managed to secure legislation that severed the federal government’s relationship with several tribes, most prominently the Menominees of Wisconsin and the Klamath tribe in Oregon.

Opposition to termination arose quickly. Tribal leaders called to arms by the leaders of the National Congress of American Indians (NCAI) were particularly outspoken. They argued that the new policy goal represented a betrayal of the United States’ commitment to the “settled principles” that had been the stated basis for federal policy since 1789. The most effective protests occurred at unprecedented intertribal gatherings in Washington, D.C. in 1954 and in



Chicago in 1961. Never before had so many tribal leaders gathered to express themselves with one voice. As these protests proliferated, they inspired the leaders of major tribes and the representatives of unrecognized groups, to speak out. Among the latter were Lacey Maynor of the Lumbees, and his daughter, Helen Schierbeck, both of whom became leading opponents of termination.

While tribal protests blunted the momentum of termination during the 1950s and 1960s, that policy goal was not entirely abandoned until 1970 when Richard Nixon issued a “Special Message on Indian Affairs” that called on Congress to “break decisively with the past” by adopting a policy of “self-determination” rooted in what the President described as the “solemn obligations which have been entered into by the United States ... [and] which carry immense moral and legal force.” Nixon’s statement reflected a bipartisan commitment to this new approach. His “Special Message” stated flatly that termination was wrong and could not succeed. By focusing on “self-determination,” Nixon declared, the United States would now turn “from the question of *whether* the Federal government has a responsibility to Indians to the question of *how* that responsibility can best be fulfilled.”<sup>4</sup>

Historians are often the first to point out that major “turning points” are often little more than midpoints between other “turning points,” but Nixon’s 1970 declaration—which itself drew wide, bipartisan support—marked the start of a period in which there was a broad consensus that fulfilling the “solemn obligations” of the United States to Native peoples should be carried out through policies that were respectful of tribal traditions, supportive of tribal governments, and sensitive to the vast diversity among Native tribes. After 1970, tribes would no longer be viewed

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<sup>4</sup> Public Papers of the Presidents of the United States: Richard Nixon, 1970, 564-7; 575-6.

as inconvenient anachronisms, but would become active partners in the administration of federal policy. Remarkably, despite political differences that have continued over funding levels, the extent to which federal officials should impose themselves in local conflicts, and how far the powers of tribal governments might reach, there has been little dissent from the idea that tribal governments should be central partners in the administration of federal policy, or from the expectation that tribes will be permanent features of the governmental landscape. Tribes are essential institutions in Indian education, health care, economic development, social welfare and resource management. As Nixon predicted, federal agencies no longer debate *whether* to work in partnership with tribes, but *how* to do so.

Lumbee recognition should be understood in the context of this history of recent policy. The Lumbee tribe seeks to link itself to the United States through the “settled principles” of law and mutual respect. The historical record provides a justification for this linkage that is both persuasive and widely-accepted within the scholarly community. And despite the deep political divisions of our time, effective tribal governments are universally recognized as key to the implementation of federal policy and the future of indigenous peoples within the United States. This context makes a compelling case for positive action on H.R. 1964.

**TESTIMONY OF DR. JACK CAMPISI**

**Before**

**U. S. HOUSE OF REPRESENTATIVES NATURAL RESOURCES COMMITTEE**

**SUB-COMMITTEE OF INDIGENOUS PEOPLES OF THE UNITED STATES**

**on H.R. 1964, the LUMBEE RECOGNITION ACT OF 2019**

**December 4, 2019**

Thank you for the opportunity to submit this statement in support of H.R. 1964, a bill to extend full federal recognition to the Lumbee Tribe of North Carolina. Recent surgery prevents my presence at the hearing but I welcome the opportunity to explain my reasons for support of the bill.

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 1 week to 3 weeks. In all, I spent more than 20 weeks in Robeson County, North Carolina, carrying out a variety of research projects on the Lumbee Tribe's history and community. I had the honor of writing a petition for federal acknowledgment under federal regulations, 25 CFR Part 83, that was submitted to the Office of Federal Acknowledgment, Bureau of Indian Affairs, on December 17, 1987. In preparation for this hearing, I have reviewed this research and updated it in light of the revisions to the acknowledgment regulations promulgated in 2015. This statement is based upon this long-standing professional association with the Lumbee Tribe and the revised acknowledged regulations.

Over the past 35 years, I have worked on more than 25 petitions for federal acknowledgment under 25 CFR Part 83. No petition has exceeded the Lumbee petition in documentation and no group has exhibited more evidence of community cohesion and political continuity than the Lumbee Tribe. Indeed, the evidence is such that the Tribe meets what the revised regulations refer to as “high evidence” of continuous tribal existence since 1900. It is my professional opinion that the Lumbee Tribe exists as an Indian and has done so over history, meeting even the exacting standards of the revised acknowledgment regulations.

### **The administrative definition of Indian tribe**

In 1978, the Department of the Interior for the first time adopted a regulatory definition of Indian tribe. Those regulations, at 25 CFR Part 83, have been since been substantively revised twice, most recently in 2015. The regulatory standard is fairly rigorous, requiring proof of three key criteria. First, the regulations require proof of an historical antecedent for the petitioning group traced back to some point before 1900. 25 CFR §83.11(e). Second, the regulations require proof of a continuously existing community since at least 1900, with community defined as exhibiting “consistent interactions and significant social relationships within it membership...” 25 CFR §83.11(b). Third, the regulations require proof of continuous political influence or authority over its members since at least 1900. 25 CFR §83.11c. The second and third key criteria are notoriously difficult for petitioning Indian tribes to prove, depending largely upon subjective analysis of intra-group relationships. However, the regulations further provide that a tribe can definitively prove both community and political authority from certain forms of high evidence. Two of those means of proof are pertinent here - more than 50 percent of the members of the entity reside in a geographical area exclusively or almost exclusively composed of tribal members and at least 50 percent of the members are married to other members. 25 CFR

§83.11(b)(xi). The Lumbee Tribe conclusively establishes these two key criteria based upon both these forms of high evidence.

### **Aboriginal origins of the Lumbee Tribe**

At the time of sustained white contact, there existed a Cheraw Indian community precisely where the Lumbee reside today. A 1725 map made by John Herbert showed the Cheraw Tribe in what would become Robeson County, North Carolina. The 1725 map placed the Cheraw nearing Drowning Creek, as located on other historic maps. In 1737, John Thompson purchased land in the same general area from the Cheraw, and in 1754, Governor Arthur Dobbs of North Carolina identified on “drowning Creek on the head of Little Pedee 50 families a mix Crew [or Breed] a lawless people filled the lands without patent or paying quit rents shot a surveyor 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. 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 above and the community of Indians described in the 19<sup>th</sup> century documents were the same, and were the antecedents of today’s Lumbee Tribe.

In 1809, the State of North Carolina changed the name of Drowning Creek to the Lumber River, from which the Lumbee Tribe draws its name today. Federal census records demonstrate that the heads of households that resided in that area of Robeson County around Drowning Creek are ancestors of those Lumbee heads of household currently in residence around the Lumber

River. Dr. John Swanton, a staff member at the Bureau of American Ethnology, and one of the Nation's foremost anthropologists and experts on American Indian tribes, also concluded in the 1930's that the Lumbees are descended predominantly from Cheraw Indians. Other eminent scholars in the field have confirmed this view, including Dr. William C. Sturtevant, the general editor of the Smithsonian Institution's classic treatise Handbook of North American Indians.

Together, these documents meet the regulatory standard for proof of aboriginal origins of a tribe. It should be noted that records of anthropologists and historians are sufficient under the regulations to identify the historic origins of a group. 25 CFR §83.11(e)(2). Further, a tribe must establish a genealogical connection to this historic group since at least 1900. 25 CFR §83.1. In the case of the Lumbee Tribe, historic documents identify a Cheraw Indian community precisely where the Lumbees have always resided bearing the same surnames traditionally found among the Lumbees and there is an indisputable genealogical connection between that historic Indian community and the Lumbees since at least 1790. Dr. Swanton was surely correct when he concluded that the Lumbees descend predominantly from the historic Cheraw Indian community.

### **The historic Lumbee community**

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 and the so-called old field of the Cheraw documented in land records between 1737 and 1739. Because of the relatively large size of the community and geographic isolation in swamps that were generally undesirable by non-Indians, the Lumbees largely interacted only among themselves - they lived, married, and attended churches almost exclusively with other Lumbees. This historic community pattern is evident in federal census records.

The most convenient start date to demonstrate continuous community for the Lumbee Tribe under the regulations, that is, since at least 1900, is 1885. In this year, the State of North Carolina formally recognized the Tribe as the Croatan Indians. This state legislation established a school system for the children of tribal members only. Tribal leaders were authorized to exercise 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 19<sup>th</sup> century, school enrollment records provide an accurate basis for determine present day membership. The existence and vitality of the Lumbee community is reflected in its continuous operation of this school system (up until the 1970's) and its continuous effort to obtain federal assistance for its schools.

In 1887, tribal leaders formally petitioned the state to provide a normal school to train Indian teachers for the Tribe's schools. The state authorized the normal school but provided little funding. As a result, tribal members raised funds and the normal school began operation to train Lumbee teachers for the expanding Lumbee school system. That normal school has been in operation continually since, evolving eventually into 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 Indians Affairs to the Commissioner of Indian Affairs, but no action was taken for nearly 2 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 render any assistance to the Croatans 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 tribe he referred to as “civilized.” Thus began the theme of what would become consistent opposition of the Bureau of Indian Affairs to provision of any services to the Lumbee Tribe.

The Lumbees made frequent attempts over the course of the next 50 years to receive assistance from the United States. In 1899, Congressman John D. Bellamy introduced legislation to provide educational assistance to 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, NC.” To secure information on the Tribe, the Indian office sent Charles F. Pierce, supervisory 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 an Indian community, but 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.

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 most recently adopted by the State of North Carolina – 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.

During the 1930's, the Tribe renewed its efforts to achieve federal recognition. In 1932, The Bureau of Indian Affairs asked the eminent anthropologist Dr. Swanton for his professional opinion on the Lumbees. Swanton was emphatic on their ancestry, specifying Cheraw and other eastern Siouan-speaking tribes as their ancestry. Yet another federal report by Indian agent Fred Baker [1935], who visited the Lumbee community, documented the strong Lumbee community and the community's desire for federal assistance. However, the Bureau of Indian Affairs did not support recognition of the Tribe, despite the 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.

Also in 1932, the Tribe sought federal recognition through federal legislation. Senator Josiah W. Bailey submitted a bill designating the Indians of Robeson and adjoining counties as “Cherokee Indians,” just as the most recent state legislation had done. The following year another bill was proposed, this time designating the Tribe as the “Cheraw Indians,” as suggested by 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 2 years, the two projects of establishing recognition under the act and receiving land through the Bureau of Indian Affairs proceeded, when suddenly, in 1936, the land acquisition proposal was shifted from the Bureau of Indian Affairs to the Rural Resettlement Administration, and the land that was to be purchased solely for Lumbee use was opened to non-Indians. At the same time, the Bureau of Indian Affairs dispatched anthropologist Dr. Carl C. Seltzer, to visit the Lumbee community and conduct physical examination of tribal members to determine blood quantum. Out of 209 Indians examined, Seltzer certified 22 individuals as one-half or more Indian blood. The scientific invalidity of Seltzer’s work is clear – in several cases he identified full siblings in different ways, one meeting the blood quantum requirement and the other not. Ultimately, the Tribe’s efforts under the Indian Reorganization Act failed as well.

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 and under the auspices of the state and at state expense, the Lumbee leadership conducted a referendum on the name. 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. A bill identical to that passed by the state was introduced. The bill was amended, though, at the behest of the Department of the Interior, which once again opposed providing services to the Lumbees, to include language that precluded the delivery of services or the application of Indian statutes to the Lumbees. As thus amended, the Congress passed the 1956 Lumbee Act.

The Tribe has been known as the Lumbee Tribe since the state legislation in 1953 and the federal legislation in 1956. There is no question that it is the same Indian community based upon the extensive school records and federal censuses, despite the various names adopted in state legislation. It should also be noted that the acknowledgment regulations provide that a tribe can be recognized “notwithstanding any absence of or changes in name.” 25 CFR §83.11(b)(1)(viii).

Historically and to this day, Lumbee schools have been a major community institution among the Lumbees that ties the community together and separates it from non-Indians. As noted above, those schools were exclusively Lumbee by state law until the 1970's, when the State of North Carolina was required to dismantle its racially segregated school systems (including the Lumbee school system, since the Tribe was not federally recognized). Even after desegregation, many local schools in the community remain overwhelmingly Lumbee because of

the geographic concentration of tribal members. For example, Prospect Elementary School, located in the traditionally Indian settlement discussed above, is today 95 percent Indian. Today, there is also a high school in Pembroke township that is 85 percent Indian.

Kinship ties among tribal members also serve to define and tie the community together. There is continual and widespread visiting among adults, particularly in the homes of parents and grandparents. Often, adult 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 very tight kinship pattern among Lumbees is well illustrated by the mapping of all Lumbee heads of household based upon the 1850 census that I prepared for the Tribe's 1987 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 extended Locklear family on the old Cheraw field in 1790. The 1850 households were also clustered in what remains the core area of the Lumbee Tribe today; in some cases, such as the Prospect community, the area was 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 is reflected in the list of tribal members who appeared on the 1887 petition to the state and the 1888 petition to the Congress for support of the Lumbee schools. When these individuals' relationships, both marital and kin, are mapped, it again reveals a remarkably tight community. A similar mapping of the current day members of the Lumbee Tribal Council, 21 tribal members representing 14 districts within the Lumbee community, reveals the same phenomenon – a closely related, tight-knit community.

A third major force that binds the Lumbee community is the Indian church. 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. There are approximately 150 Lumbee Indian churches, which generally have Lumbee ministers and overwhelming Lumbee members. In fact, there are so many Indian churches in the community that there are denomination conferences for them. The oldest is the Burnt Swamp Baptist Association, which has approximately 60 Lumbee churches, most with Lumbee ministers and overwhelmingly Lumbee congregations. There is also an association of Lumbee Methodist churches and another of Holiness churches. Church membership crosses family lines and settlement areas, thus drawing together different segments of the Tribe.

These tribal institutions – schools, churches, and overlapping kinship – reflect the intense relations among the Lumbee tribal membership, relations that reflect a prototypical Indian community that has been continuously recognized by the State of North Carolina since 1885.

### **Historic Lumbee political authority**

The Lumbee Tribe has a long history of highly effective leadership that has been able to influence the behavior of members as required by the acknowledgment regulations, particularly in defense of the Tribe's ability to control its own destiny and representing the Tribe's relations with outsiders in matters of consequence. 25 CFR §83.11c. The most famous example of this ability is known locally as the Lowrie War, conducted by tribal member Henry Berry Lowrie during and after the Civil War. Tribal members were not allowed to serve in the Confederate Army but were instead conscripted into labor gangs by the Home Guard. Lumbees resisted, generally hiding in the swamps to avoid conscription, eventually leading to armed resistance by

the Tribe. When the Home Guard captured the head of the extended Lowrie family, Henry Berry Lowrie organized a band to lead the resistance, resulting in a virtual reign of terror in Robeson County. With the support and protection of the Indian community, Lowrie led tribal resistance for ten years, disappearing in 1872. Lowrie was never seen again and is now a folk hero among the Lumbee and the star of a local outdoor drama called “Strike at the Wind.”

This same pattern of effective leadership continued, from 1900 and to modern times as required by the acknowledgment regulations. As summarized above, tribal leadership effectively represented the Tribe to the outside world from 1899 through 1956 with the introduction of multiple bills in the Congress to recognize the Tribe and the passage of such legislation by the State of North Carolina. In addition, tribal leaders mobilized the community to organize, support, and manage numerous tribal schools from 1885 to the 1970's, including the continuously operating Indian Normal School, now the University of North Carolina at Pembroke. Other examples of clear political leadership since 1900 abound.

In 1913, North Carolina 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 requirement. This was unacceptable to the Tribe. Tribal leaders sought and obtained special legislation from the state in 1921 that reaffirmed the Tribe's authority to determine eligibility to attend Lumbee schools.

In 1945, tribal leaders led an effort to change a state law regarding leadership of the Town of Pembroke, located in the heart of the Lumbee community and overwhelmingly Lumbee. When the Town of Pembroke was incorporated in 1895, North Carolina law required that town leadership be appointed by the Governor, rather than elected as in every other

incorporated town. Tribal leadership sought and obtained a change in the state law to allow for direct election of town officials by residents. Ever since, the mayor and town council of the Town of Pembroke have all been Lumbee Indians.

In 1958, the Ku Klux Klan announced that it would hold a rally in the heart of the Lumbee community to intimidate tribal members. The Tribe's reaction to this threat was a spontaneous gathering that drove the klansmen from the field and broke up the rally, a confrontation that focused national attention for a time on the Lumbee community.

In the 1960's, the Tribe organized voter registration drives to bring their influence to bear on local politics. Up to that point, county and other local office holders were all non-Indian. As a result of this effort, Lumbees now routinely hold county-wide and local offices, including the Robeson County Commissioners, Robeson County Board of Education, and county judges.

In 1972, the Board of Trustees for Pembroke State University (the former Indian Normal School, now the University of North Carolina at Pembroke) decided to demolish the main building of the campus and replace it with another structure. Very quickly, a tribal 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 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.

After the promulgation of the acknowledgment regulations in 1978, the Tribe organized an effort to prepare a petition for recognition, including the huge task of compiling for the first time a formal roll of its 50,000 plus members. In a 1984 tribal referendum on the issue, the Tribe designated a not-for-profit service organization as the lead on preparation of the petition,

including the petition. The Tribe now has a formal enrollment process and established rules for eligibility that reflect traditional Lumbee norms – descent from a Lumbee ancestor (a compilation of documents dating from around 1900 include Lumbee school enrollment records, church records, federal censuses, and other documents) and the maintenance of tribal relations. Today, there are approximately 62,000 enrolled members.

In 1994, the Lumbee Tribe voted to adopt a tribal constitution for the first time in its history, a process that reflected the role that Lumbee churches play in the political life of the Tribe. Delegates to a constitution assembly were selected by Indian churches and represented every segment of the Tribe. The original constitution was adopted in a tribal vote with more than 30% of the eligible voters participating. In 2001, the constitution was revised and again adopted by the membership. That constitution is the Tribe's governing document today and selects the Tribe's three commissioners who sit on the North Carolina Commission on Indian Affairs.

#### **High evidence of community and political authority**

As noted above, the regulations presume the existence of a tribal community and political authority from certain evidence – that 50% of the tribal members reside in areas that are predominantly or exclusively Indian and that 50% of married tribal members are married to other tribal members. The Lumbee Tribe exhibits both these traits and, hence, can conclusively establish tribal existence.

In 2006, I testified in support of S.660, a bill to recognize the Lumbee Tribe. At that time, the Tribe prepared a random sampling of tribal members. This is a methodology approved by the Bureau of Indian Affairs in its acknowledgment regulations. 25 CFR §83.11(b). A 1% systematic sample was drawn from the Lumbee membership files as of December 2002. Of the 543 files drawn, 29 were found to contain the name of deceased individuals, or were missing



from the files, leaving a balance of 514 files. The data for the 511 individuals for whom residency information was available showed that 64.6% resided in core areas that were exclusively or nearly exclusively Lumbee areas; 19.9% lived elsewhere in North Carolina; and the remaining 15.4% lived elsewhere, almost all of them in the United States. Using this same sample, I calculated that 70% of those members with known marriage partners were married to other members of the Tribe. Thus, the Lumbee Tribe far exceeded the concentration and in-marriage rates necessary to establish community and political authority conclusively.

In preparation for this hearing, the Tribe and I corroborated that the Tribe continues to exhibit this same data. Another random sample was drawn, representing 1% of the tribal membership. This sample showed that 53% of the membership resides within the tribal territory and that 60% of the membership that is married is married to another tribal membership.

The 1850 federal census data I examined for the Tribe's petition also showed the same traits. Based on the residence and identified household members, it can be established that more than 50% of the Lumbees at the time lived in predominantly Lumbee areas and were married to other Lumbees. Similar conclusions can be drawn from the federal census data since 1850 (that being the first year that the federal census recorded the name of every individual resident in a household). These data prove that the Lumbee Tribe can establish high evidence of tribal existence continuously since 1850 and, thereby, conclusively prove tribal existence as defined by the acknowledgment regulations.

### **Conclusion**

In my view (and that of other eminent scholars in the field), the Lumbee Tribe unquestionably exists as an Indian tribe, even meeting the high evidence standards of the acknowledgment regulations. The Lumbee Tribe is rightly skeptical, however, of the likelihood

of a fair and unbiased assessment of its history from the Office of Federal Acknowledgment, Bureau of Indian Affairs, which processes petitions for federal recognition under 25 CFR Part 83. The Bureau of Indian Affairs has historically opposed recognition of the Lumbee Tribe and the provision of services to tribal members, not on the ground that the Tribe is not Indian or does not function as an Indian tribe, but on the ground of its size and the resulting cost of services. The Congress itself should act with full confidence that the Lumbee Tribe does, indeed, constitute an Indian tribe.