

THE CAROLINA INDIAN VOICE

POST OFFICE BOX 1075

INR

"Building Communicative Bridges
In A Tri-Racial Setting"



PEMBROKE N.C. 28372

THURSDAY, AUGUST 16, 1980

VOLUME 9 NUMBER 33

25¢ PER COPY

WHO WILL RETURN \$19,774.68 TO PEMBROKE'S COFFERS?

The Cost for Legal Fees in the Cook Case to date

A NEWS ANALYSIS

BY BRUCE BARTON

[Editor's note: This article may contain opinions and conjectures of the writer.]

PEMBROKE--The so-called Cook case has become one of the most celebrated cases in the annals of Robeson County courtroom lore. It has now been going on for more than 2 years and has, to date, cost the Town of Pembroke \$19,774.68 in legal fees and the end is not in sight. No figures have been announced on the other side.

HERE'S THE CAST!

Alfred Cook, now a Pembroke property owner, is suing the Town of Pembroke. Originally he sued the Town for half a million dollars. Through one of his attorneys, W. Osborne Lee, Jr., Cook filed the suit in Robeson County Superior Court on Friday, July 20, 1979.

That's interesting. The supposed incident which prompted Mr. Cook to file his complaint occurred more than a year earlier on May 20, 1978. Cook claimed in his suit that he was assaulted and falsely arrested after Pembroke officials had trespassed upon his land. He claimed malicious prosecution, too.

Cook is suing the Town of Pembroke, Town Manager McHaffie Cummings; Chief of Police Vernon Oxendine; and Harvey Bullard, a policeman at the time and now retired from the Pembroke Police Force.

Cook claimed that he was plowing up land on his property (two lots located across from Cliff's Package Store and approximately behind Woodell's Park and Stop Store) in downtown Pembroke.

Christopher Hunt ordained at Island Grove Baptist Church

Christopher Lynn Hunt was ordained into the Gospel Ministry on Sunday, August 3, 1980 at Island Grove Baptist Church.

Rev. Hunt was ordained by special request by the Bethlehem Baptist Church in Louisville, Kentucky where he is a student at the Southeastern Baptist Seminary. Both he and his wife are members of Bethlehem Baptist and both sing in the church choir. Rev. Hunt serves as a Sunday school teacher there.

He is married to the former Teresa Cummings, daughter of Rev. and Mrs. C.M. Cummings. He is the son of Mr. and Mrs. James Leon Hunt, Sr. and the grandson of Mr. Troy Roberts, all of Pembroke.

The ordination service was held during the regular worship hour at Island Grove. Rev. Tony Brewington, director of the Bear Swamp Baptist Association, delivered the message. Mr. Delton Locklear, Deacon of Harper's Ferry Baptist delivered the charge to the church with certain responsibilities they have for the young minister. Rev. C.M.



Shows above, left to right, are Rev. C.M. Cummings, pastor of Island Grove Baptist Church; newly ordained minister, Rev. Christopher Hunt, and Mrs. Hunt. (Photo by Jim Hunt)

Cook says the Pembroke officials approached him and asked him to stop plowing up the land in question. He refused and demanded that the officials get off his land. They in turn forcibly removed Mr. Cook from his tractor, took him to the Police Station and charged him with damage to town property and resisting arrest. The charges against Cook were later administratively dismissed by District Court Judge Craig Ellis when no one showed up to prosecute Cook on the assigned court date. The tractor rolled and struck the police car while Cook was being forcibly removed.

The Pembroke officials contend that Cook was plowing up land that had been used "for long as I can remember," according to Pembroke residents, as an alley way and public thoroughfare.

The lots in question were originally owned by Cook's wife who has since died.

Cook charged in his suit that Cummings "desired to establish a right of way across (Cook's) land for the Town of Pembroke and rather than proceed through the proper civil procedures to establish the right of way, the defendants caused criminal process to be issued against (Cook)..."

The Town proper is being defended by Dexter Brooks, whose law firm (Locklear, Brooks and Jacobs) serves as town attorney. The individual Pembroke officials (Cummings, Oxendine and Bullard) are being defended by Dickson McLean, Jr., a Lumberton attorney.

Until April 28 Cook's co-counsel was W. Earl Britt who is now the federal

judge in the United States District Court for the Eastern District of North Carolina in Fayetteville.

Dates play an interesting part in this celebrated case too. Questions arise.

On March 31, 1980 resident Superior Court Judge Henry A. McKinnon, Jr. threw out the charges of assault and battery and the false imprisonment claim because the statutes of limitations had run out in the case. The statute of limitations ran out on May 20, 1979. Cook's lawsuit was filed 14 months after the alleged incident occurred.

The Town of Pembroke, in a counter suit, has sued Alfred Cook for \$100,000 for causing so-called libelous statements to be printed in the Robesonian, the county daily newspaper. Cook's attorney, W.O. Lee, Jr. is the attorney of record for the Robesonian, explaining to many how Cook's original complaint appeared in the Robesonian on the same day it was filed in court.

Some observers also assert that Lee seems to have a vendetta of sorts against the Town of Pembroke for incidents relating to the naming of former chief District Court Judge Sam Britt as a special superior court judge. Lee was reportedly considered for the judgeship too.

Local Pembroke attorneys, including Dexter Brooks, the attorney of record for the Town of Pembroke, reportedly backed Britt in the jockeying for the superior court seat.

Lee was also by-passed recently when W. Earl Britt, his official law associate in the Cook case, was nominated as a federal district court judge.

Cummings goes under Court order...

On October 24, 1979 a headline in the Robesonian blared: "Cummings goes under court order." In a hearing before Judge Robert Farmer, Cummings had been demanded to answer certain questions surrounding a meeting that occurred in the office of Locklear, Brooks and Jacobs, attorneys for the Town.

Farmer demanded that Cummings answer questions concerning a meeting between Police Chief Vernon Oxendine and Arnold Locklear, a member of the town's law firm of Locklear, Brooks and Jacobs.

The meeting supposedly took place on the same day the incident involving Cook occurred; namely, May 28, 1978.

According to Farmer, Cummings was ordered to answer the question posed by Cook's attorneys because he was not in Locklear's office in his official capacity of Town Manager when Oxendine came in for legal advice concerning his arrest of Alfred Cook for refusing to cease plowing up the parcel of land in question.

A number of courtroom buffs say that Lee erred greatly when he asked Judge Farmer to demand that Cummings answer his questions as to what occurred between Oxendine and Locklear.

Since Judge Farmer ruled that Cummings must answer the questions the ruling in itself would tend to rule out Cummings as a plaintiff in the matter because Farmer said he was not acting in his official capacity while in Locklear's office.

That might explain why Cummings was not asked the question Judge Farmer ruled he must answer some five months or more after Farmer's ruling.

Interesting enough, as this reporter sees it, Judge McKinnon demanded finally that Lee ask the question of Cummings when some 5 months had transpired since Farmer's ruling. Lee had not asked Cummings for his deposition although Judge Farmer ruled that he had the right. Interesting.

Follow W. Earl Britt as he walks

through this case. Until April 28 W. Earl Britt served as a vigorous co-counsel in Alfred Cook's behalf. On April 28 W. Earl Britt asked Judge McKinnon to allow him to remove himself from the case. Judge McKinnon signed the order allowing Britt to drop from the case on the same day.

On May 20 Britt was confirmed as a federal district judge in the Eastern District of Federal Court in a unanimous vote by the United States Senate on the federal judiciary committee.

Britt was the recipient of a grand and glorious swearing in ceremony at the Robeson County Courthouse on May 30, 1980.

On April 28, 1980 Judge Henry A. McKinnon, Jr. heard motions for dismissal from Brooks and McLean, the attorneys for Pembroke and her officials. W. Earl Britt participated in that hearing, asking Judge McKinnon to release him following completion of the oral arguments.

Brooks and McLean asked McKinnon to throw out all the remaining charges of malicious prosecution and trespass charges, all that remained from Cook's original complaint. Judge McKinnon promised an answer before the term of civil court in session at the time concluded. Judge McKinnon did not announce his findings until May 23, more than 2 weeks after civil court ended.

Questions arise. Did Judge McKinnon conveniently wait until Judge Britt was confirmed on May 20 before announcing his findings on May 23, 1980? Remember. He promised an answer before civil court ended on May 8, 1980.

On May 23, 1980 Judge McKinnon announced his findings. He threw out Cook's malicious prosecution claim but left dangling the trespass charges.

As noted earlier, dates are interesting if one is to follow this legal scenario. Remember? W. Earl Britt was confirmed by the federal judiciary committee of the United States Senate on May 20, 1980. That's an interesting date, for a couple of reasons.

On May 19, W. Osborne Lee, Jr. took Cook's complaint against the town to (guess where) the Eastern District Court where (guess who is seated?). W. Earl Britt was confirmed to sit on May 20, a day later.

And, of course, Judge Henry A. McKinnon, Jr. did not announce his findings until May 23, three days after Britt was confirmed as a federal judge.

On May 19, as noted earlier, Lee took his complaint to federal court where his former co-counsel now sits. He did not tell anyone, as we have been able to unravel this case, including Judge McKinnon and the town's attorneys, Brooks and McLean. They met in Judge McKinnon's court to review his findings. Lee evidently said nothing to anyone, including Judge McKinnon, even though he had filed his lawsuit in federal court 4 days earlier. Interesting.

As a matter of fact, Lee caught everyone with their legal britches down because his action seems to have caught the town's attorneys by complete

surprise. They read about it like everyone else on June 3, 1980 in the Robesonian where, incidentally, Lee is the attorney of record.

After the story appeared in the Robesonian, U.S. attorneys served warrants on parties involved the next day. Interesting.

In the federal action, Lee in behalf of his client, Alfred Cook, asks for \$1.56 million claiming that his client's civil rights have been abridged; not under the '64 civil rights act but the 1871 civil rights act. Interesting.

Cook claims his rights were abridged under the 4th, 5th and 14th amendment to the constitution. Cook claims the action of the town officials deprive him of his right to resist unreasonable searches and seizure and his right of freedom from arrest except for probable cause as guaranteed under the 4th and 14th amendment and his right not to be deprived of life, liberty or property without due process of law under the 5th and 14th amendment.

The town and officials deny all allegations contending that they operated in good faith as officials and agents for the Town of Pembroke. The town claims in general governmental immunity.

The town's attorney, in turn, have counter sued for \$110,000. The town says there is now a claim still pending in state court, namely the charges of trespass that is left from Cook's original suit.

The complex case leaves one mostly with unanswered questions. Strong personalities are involved, including Osborne Lee, Jr., Dexter Brooks and the other particulars in the case.

Some of the unresolved questions are:

Is the court action frivolous on O. Osborne Lee, Jr.'s part?

Did Judge McKinnon hold up his ruling until May 23 until Britt was confirmed as a federal judge on May 20?

Is it ethical for Osborne Lee, Jr. to file a suit in the federal district where his former co-counsel will sit? Lee filed his federal suit on May 19; Britt was confirmed on May 20; Judge McKinnon issued his findings in the case on May 23? Are the dates coincidental? Or is there legal rhyme and reason to it?

Who should pay the citizens of Pembroke the \$19,774.68 that has been spent defending itself against Cook's case?

The case is hard to pin down because the last hearing before Judge McKinnon was not recorded although the one before Judge Farmer was. Why?

The citizens of Pembroke might wind up being the real losers. It has cost them \$19,774.68 to plead "not guilty" so far.

GOSPEL SINGING

DAV Post of Pembroke will sponsor a gospel sing at the VA Hospital in Fayetteville. Singers will be the Scott Sisters and a Choir from the Hestertown Church of God.

PEOPLE AND PLACES AND THINGS

SADDLETREE JAYCETTES
WEATHERIZATION AND
ENERGY WORKSHOP

The Saddletree Jayettes will conduct a Weatherization and Energy Workshop on August 21, at 7:30 at the Saddletree Jaycee Community Clubhouse. The workshop will be assisted by John S. O'Brian, Director of Member Services of Lumbee River Electric Membership

Corporation. He and another member of L.R.E.M.C. will be showing film scripts and answering questions on conserving energy. This is one of the on-going projects the Saddletree Jayettes are conducting to assist the community.

GOSPELS SINGING PLANNED

A gospel singing will be held at Prospect United Methodist Church, Route 3, Maxton, on August 17 at 8 p.m. Harold Jacobs, music director, and the congregation invite the public to attend and participate.

Election to choose new Board Member

The General Community Programming Project of Lumbee Regional Development Association will be conducting a community meeting. The purpose of this meeting will be to receive nominations to serve on the LRDA Board of Directors for (1) year. The LRDA Board is the policy decision unit of LRDA. Once the nominations have been completed, the community persons present will then elect, by voting, their representative to serve on this Board; pending review and approval of the existing board.

The meeting will be held August 18, 1980 at 8 p.m. at the LRDA Annex to elect a representative for District VI composed of Pembroke, Smiths and Union Townships. Curt Locklear is currently serving in that position.

In order for you as community persons to participate in this important meeting, you must live in that particular designated area, be 18 years or older, and be Indian before you can vote.

Non Vote On One School System

Only three spectators turned out for the Robeson County Board of Education meeting on Tuesday. Among the standard items on the agenda was a request by Ronald Hammonds, Saddletree Board member, relative to the board's position on merging the five school systems in the county.

Prior to Hammonds' item on the agenda, the board went into executive session for personnel matters. Upon returning, Supt. Purnell Swett stated that Mr. Hammonds had requested to place the item of merger on the agenda. He further stated that he felt that the board had stated their position on two different occasions. One when they denied Parkton High's move into the St. Pauls System. And again, he said, "When I was directed by this board to write letters to the other systems and offer to meet with them about merging with us." Swett said he felt that the board's position had been stated sufficiently.

Following Swett's comments, Hammonds offered the following motion: "I move that the Robeson County Board of Education ask the four city school districts to meet for the purpose of

discussing merger in order to have a unitary school system in Robeson County, with the understanding that we are not asking the city system to join us, but, all five systems join together."

In copies of his motion he passed to board members, he went a step further and footnoted what unitary meant.

The motion died immediately for lack of a second.

J.R. Musslewhite commented briefly on the rural farm areas in the county. He stated that the tobacco crops were late and residents would not be finished with their crop by school opening. He then moved that the board delay the opening of school until after Labor Day. The motion was seconded by E.B. Morton. After some discussion, the motion was defeated.

In other matters the board approved 32 contracts; approved a policy for free and reduced lunches and milk for the 1980-81 school year; set general fees of \$3 for elementary students and \$4 for high school students; and accepted the recommendation of the committee relative to the re-assignment of students.

INDIAN HERITAGE WEEK IN NORTH CAROLINA
NORTH CAROLINA COMMISSION OF INDIAN AFFAIRS
P.O. Box 2728 Raleigh, NC 27611 (919) 733-8998

Indian Heritage Week in North Carolina has been proclaimed for Sept. 20-26, 1980, by Gov. James B. Hunt, Jr. The week was set aside to proclaim and reverence the more than 10,000-year history of North Carolina Indians, who today comprise the largest Native American population of any state east of the Mississippi. The N.C. Commission of Indian Affairs, the only state government agency whose specific responsibility is to meet the needs of the state's Indians, is coordinating the varied activities of Indian Heritage Week in North Carolina.

Indian Heritage Week in North Carolina
Sept. 20-26, 1980