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# THE CAROLINA INDIAN VOICE

"Building Communicative Bridges  
In A Tri-Racial Setting"

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ROBESON COUNTY

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## GOVERNOR MARTIN REAFFIRMS COMMITMENT TO APPOINT INDIAN ATTORNEY TO NEW SUPERIOR COURT JUDGESHIP

### LAWSUIT AFFECTS JOE FREEMAN BRITT'S SEAT & NOT NEW ONE

According to knowledgeable sources, John Hunter, an attorney with the Governor's Office, has called local Indian attorneys to learn their views on the appointment to the new Robeson Superior Court judgeship. Mr. Hunter re-affirmed Gov. Jim Martin's commitment to appoint an Indian attorney to the new seat. Indian members of the local bar expressed their unanimous support of private attorney Dexter Brooks over Assistant District Attorney Henry Ward Oxendine. Brooks also has the virtual unanimous endorsement of Indians throughout the state.

According to these same sources, the lawsuit filed by Governor Martin in the Wake County Superior Court does not affect the new judgeship. The pleadings filed in the action attack only the judgeships specified in Chapter 509 of the 1987 Session Laws of North Carolina, including the

seat for which District Attorney Joe Freeman Britt is a candidate. In the legislation several special superior court judgeships, appointed by the Governor, were changed to resident judgeships, which are elected, in areas with large minority populations, including Robeson County. The Governor is seeking to enjoin elections for those seats and prevent the candidates, including Britt, from taking office.

The new judgeship was created by Chapter 1056 of the 1987 Session Laws of North Carolina, effective July 6, 1988, while the lawsuit was filed several months before on December 23, 1987. If the lawsuit is successful, then the Indian attorney appointed to the new judgeship will be Robeson's only superior court judge. Britt will be prevented from becoming a judge.

## THE OPTIMISTIC CYNICS BY KAREN CORONADO & WM. RICHARD MATHIS

### THE INDICTMENT OF ROBESON COUNTY: JIMMY EARL CUMMINGS

When the harvest moon darts amidst dark clouds on the first drizzly nights of fall, the spirit of the north brings a certain chill to the soul, a deep longing for warmth and security against the fear of one's inevitable mortality. It is a time for reflection of what might have been and a time to seek reassurance of the basic goodness and fairness in the cycle of death and rebirth which is the flow of life.

It is also a time to fear there is an evil force afoot, the dark side of life which wantonly destroys and kills. On Halloween, innocent children go out into the long night to face witches and goblins, and instead of terror, they find the basic goodness and generosity of life. The following day is All Saints' Day when the saints are honored for their battle against evil and for showing the basic goodness and fairness of life.

Two years ago on the night of All Saints' Day around 11:20, Jimmy Earl Cummings, a Lumbee Indian and his girlfriend, Darlene Hunt, drove away from his house in a 1980 Pinto. Up the road, parked at a country store with his lights off, Deputy Sheriff Kevin Stone, the sheriff's son, radioed to the sheriff's dispatcher that he intended to "stop a subject that left the house over here."

Narcotics agent Stone, a white man, had twice passed Cummings' house and on the second pass claimed to have seen activity in the yard. Stone knew Cummings was suspected of dealing drugs and had participated in a 1984 arrest of Cummings when he had run from law officers and resisted arrest.

But Stone probably also knew Cummings when, as a child, he had gone with his father to the Cummings' homestead to get milk and butter. The two families grew-up within miles of each other.

Now, on roads within miles of where he grew-up, Kevin Stone followed the Pinto on curving roads for a couple of miles, down to the first right past Fairgrove School, and then to the next left onto the road going to Green Grove School, five or six miles away.

Stone said he waited for the car to weave over the center line before he stopped to question the driver, Cummings. Detective Mike Stogner of the Sheriff's Department later testified at a coroner's inquest that Stone gave him the following statement of what happened next:

"...Upon approaching the vehicle he didn't recognize the driver at first. When...the subject produced the driver's license...and then he recognized him (Cummings) after seeing his name on the driver's license.

"...He got Cummings out of the car and...it was apparent to him that he had been drinking...He thought about arresting him for driving under the influence at that time...He got Ms. Hunt out of the vehicle. He asked Mr. Cummings if he had anything illegal on him that he wasn't supposed to have and Mr. Cummings produced a coke straw (used for snorting cocaine)...

He then asked Ms. Hunt if she had anything on her that was illegal and subsequently she produced the items which I just showed (a film canister containing butts of marijuana cigarettes, a small packet with residue of cocaine, a pack of cigarette papers, and a small bag of marijuana).

"He asked permission to look in the vehicle and...in the truck which Ms. Hunt had the keys and she opened the trunk.

"...While she was opening the trunk...he...told Jimmy to step in the light where he could keep an eye on him and Jimmy kept coming back to where he was at and he had to keep telling him to go back and stand in the light where he could watch him.

"...Just as the trunk was opening by Ms. Hunt...he observed a white-large white bucket with a red or orange top on it...Jimmy Cummings came running by and picked up the large bucket and proceeded running in the opposite direction of the cars...

"Detective Stone had told me that he was afraid to get in a fight with Jimmy. He knew his reputation and that he proceeded to run after him and he pulled out his revolver, his pistol out and fired a warning shot into the air and told Jimmy to stop. He told me he did this because he was scared of Cummings and he felt like that Cummings would stop.

"He proceeded to travel-Cummings did, running and Detective Stone gave pursuit down the dark road. He told me that he had his flashlight in one hand and his gun in the other hand. That he ran behind him and Cummings ran down this ditch that he was in and up the other side.

"...As Cummings got almost to the top of the other side that he lost his footing...and fell. And, that as Detective Stone was going in the ditch, Cummings got up out of the ditch and had the bucket in his hand and began advancing

towards Detective Stone swinging the large buckets at Detective Stone's head, swinging it back and forth and trying to hit him with it.

"He was afraid of Cummings and he began backing up to give way to Cummings so that he didn't want Cummings to get his pistol or his gun and use it against him.

"And, as he was backing up he was going up the incline and he slipped and fell and as he was falling the gun went off, and Cummings hit the ground, but he said he couldn't see him because it was so dark where Cummings was at, but he felt like he had been shot. He got directions to where he was at and then come back and saw that he had been shot and waited there until we arrived."

But that is not the only account given by Kevin Stone of his shooting of Jimmy Earl Cummings with his .380 caliber semi-automatic pistol, a weapon for which he had not taken a required qualification test. Stone had previously told SBI Agent Kevin McGinnis that "He (Stone) knew out there it was either him or Jimmy Earl Cummings."

McGinnis also said that Stone had told special agent Morris "...that he was acting in self-defense. He said he didn't think that he had accidentally shot him either. Kevin said that he was trying to get away from the guy and was scared that Cummings might take the pistol away from him and use it against him."

Thus, Stone gave two versions to other law officers regarding the shooting: 1) It was accidental and occurred during a scuffle when he fell backwards and his pistol went off, and 2.) it occurred during a scuffle when he feared for his life if he didn't shoot Cummings.

Darlene Hunt, the passenger, disputed the accounts given by Stone to law officers. Stone claimed he did not have his gun on him when he approached and searched the car. He said that he had to get it from his car before pursuing Cummings. She said he had it in his holster when he first approached the car.

Stone said he did not recognize Cummings until he saw his driver's license. Hunt said Stone called Cummings by his first name as he approached the car.

Stone said he fired a warning shot into the air. Hunt said he fired the shot from about waist level and it was neither aimed at the ground nor the air. "To me it was not a warning shot," she stated. "He said, 'Jimmy, don't run. I don't want to kill you.'" Stone said there was a scuffle. She heard nothing else but the sound of the shot which killed Cummings.

Civic leaders to newspaper editors responded by questioning the circumstances of the killing. Why did Stone never identify the suspect or his license number during his radio transmission? Why didn't he radio-in that he had stopped a suspect? Why didn't he call for back-up as soon as he realized that the suspect was Cummings? Why didn't he go ahead and arrest Cummings for driving intoxicated or for possession of the small amounts of marijuana and cocaine before attempting to search the trunk with a potentially dangerous suspect nearby while he allegedly had left his gun in his car? Why did he go on a one-on-one foot chase when normal law enforcement procedures would dictate being content with seizing the auto and evidence and going after the suspect later, especially since he knew where Cummings lived?

Cummings' family also questioned the circumstances of the killing. They told reporters that at least two weeks before the killing he had told them he feared for his life because he was dealing cocaine which had been stolen from an evidence locker in the Sheriff's Department: a locker which had shown no signs of being broken into and to which Kevin Stone had one of the two sets of keys.

Cummings told his family that he bought cocaine twice from the courthouse. He was afraid someone was coming after him and he stayed up late, setting steel traps in case someone should kick in the door. The family wanted to know if there was truth to his concerns, and wanted to know if he had died for being involved with drugs stolen from the courthouse.

But the Cummings family did not get their questions answered during the coroner's inquest held on November 13, 1986. Nor did Darlene Hunt get to tell her story at the coroner's inquest. Not even Kevin Stone told his story at the inquest. Instead, a SBI agent and two deputies gave the accounts he had given them.

The family had only four hours notice of the coroner's inquest. A deputy sheriff drove to a family member's house, honked his horn, and when someone came out, informed them that there was an inquest four hours later.

At the beginning of the inquest, the coroner, Chalmers Biggs, a member of one of the richest white families in Robeson County, asked Junior Cummings, the brother of Jimmy Earl, if he had an attorney to represent him.

Junior Cummings replied that the family didn't have one because they hadn't known about the inquest in time.

Then Biggs asks District Attorney Joe Freeman Britt, also from one of the richest white families in Robeson County, would he consider delaying the inquest until the family could have an attorney. Britt replied, "Well, that's in your judgment, your Honor, but I wouldn't." But Biggs apparently felt it wasn't in his judgment. As he told a reporter afterwards, "If Mr. Britt had said it was o.k., we would have said o.k. In these things (Britt) pretty much says what's done."

Britt argued that "a great deal of effort" was used to assemble six jurors, three witnesses, and evidence from narcotics. He also argued that the six "ordinary" jurors could ask questions of witnesses which "should protect any rights the family may have..." Britt then said the question is whether Cummings died as a result of "accident misadventure or self defense or a combination of the two or died from some other reason." He added that it was "a pretty simple matter and the truth should be apparent by the time we finish here."

Consequently, the Cummings' family had no lawyer present and Darlene Hunt and Kevin Stone did not testify. At the end of testimony, the six jurors took six minutes to rule that the shooting had been an accident or in self-defense. The jurors apparently agreed with Britt's premise of an accidental misadventure or self-defense or a combination of the two.

However, outside the inquest there was a storm of protest about the ruling and the manner in which the inquest was held. Editor Bob Horne of the Robesonian wrote that "the appearance of a white wash has been made." The Raleigh News and Observer editorialized that the case should have been reopened to answer the questions which had been left.

The medical examiner for the case, Dr. Van E. Helms, stated he had not been informed of the inquest. "It was very unusual, and I was very shocked to hear it had happened," he said. He found out about the inquest in the following morning's paper.

Dr. R. Page Hudson Jr., the state's former chief medical examiner described the short notice given the family and Britt's role in the hearing as highly unusual. He stated that in his 18 years as chief medical examiner he had never heard of a prosecutor questioning witnesses at a coroner's inquest.

In Robeson County, local leaders and members of the Cummings family formed a new group-Concerned Citizens for Better Government (CCBG). The late John Godwin spearheaded the local protest against the Cummings death and became the first chairman of CCBG. Rallies drew hundreds of local residents who were angry about the shooting and wanting action to be taken against Kevin Stone and the Sheriff's Department.

But nobody wanted to see justice done more than the surviving members of Jimmy Earl Cummings' family. Within a period of one year, Jimmy Earl's mother had lost 2 brothers, 1 sister-in-law, 1 son-in-law, and 1 son, Jimmy Earl. The death of Jimmy Earl was the one hardest to take for all the family as it seemed so senseless and unjust.

For the last two years, the Cummings family has sought help from the Governor, the N.C. Attorney General, SBI, the FBI, and the Community Relations Services (CRS) of the Justice Department.

In January 1987, Bob Ensley of the CRS regional office in Atlanta arrived to evaluate the controversy surrounding the shooting and inquest. "We're coming up to make an on-site assessment to see if there is a role for our agency," he said.

Ensley said the role of the CRS is to reduce the tension within a community. However, he spent two days with the family, local leaders, and law enforcement officials gathering information which would be reviewed and forwarded to appropriate divisions of the Justice Department for possible intervention.

Yet two years later, members of the Cummings family say nothing has come out of the talks with the CRS, SBI, or FBI. Junior Cummings says "The thing which really scares me is that with all the people we've talked to, who are supposed to be rulers of the state, they just haven't done anything." He says Ensley of the CRS promised to do a lot and the family was expecting a lot but that from the start, the Justice Department hasn't done a lot. Junior also thinks the CRS came on the scene just "trying

to quiet us down."

Now, after two years of waiting and enduring harrassing phone calls and unsympathetic bureaucrats, the Cummings family is hoping that a law suit filed on October 31, 1988 will bring justice to the case of Jimmy Earl Cummings.

Attorney James R. Nance, Jr. of Fayetteville has filed a complaint for Attorney Paul T. Canady, the Administrator of the Estate of Jimmy Earl Cummings who is acting on the behalf of Cummings' children. As Cummings had no will and was divorced, the state appoints an administrator for the estate.

The suit seeks retribution and punitive damages for wrongful death and violations of civil rights. The suit lists Kevin Stone, Hubert Stone and Robeson County as defendants.

The plaintiff (Canady & estate) alleges "that without just cause or excuse, the Defendant, Kevin Stone, withdrew and fired his pistol; that he continued to pursue the unarmed decedent to a ditch where he confronted the decedent and without legal justification, cause or excuse did willfully, maliciously, and intentionally, physically point the pistol which had a "quick trigger" at the unarmed decedent, did intentionally and/or recklessly pull the trigger of the pistol while the same was pointed directly at the decedent causing said pistol to fire and causing the bullet to strike the unarmed Plaintiff in the front head in the vicinity of his eye, thereby killing Plaintiff's intestate (having made no will)."

The suit argues that the Sheriff had heard repeated allegations of abusive and assaultive behavior towards minorities by the Sheriff's Department and had failed to do anything about it. The Plaintiff also alleges the Sheriff covered up abusive and assaultive incidents and that he threatened, harassed and intimidated deputies and officials who reported acts of abuse of authority.

The suit also alleges that Cummings was deprived of his constitutional rights to be secure against unreasonable seizure, and unlawful detention, and the right to be treated properly when detained by a law enforcement officer. The suit says "That the shooting of Jimmy Earl Cummings...was carried out in such negligent fashion as to demonstrate lack of cautious regard for his rights to be free from unnecessary and unlawful body harm or the threat thereof, and without the due care and diligence which a prudent and reasonable individual would have displayed in detaining a citizen or in making an arrest."

It also alleges the shooting "was carried out willfully, wantonly, maliciously, and with such reckless disregard of the consequences as to reveal a conscious indifference to the clear risk of death or serious bodily injury to the deceased."

So two years after the killing of Jimmy Earl Cummings, the nights are turning again cold and drizzly and family members discuss with us what could have been. They tell us of the Jimmy Earl Cummings who has not been described in the press. While most people might think of him as a suspected drug dealer who was killed, they know him as a loving and generous man who got along well with people.

They recall he was a first string basketball player in high school who was well-dressed and popular. They talk of his love of flowers and his hobbies and his hopes. But now, all the hopes of Jimmy Earl have fallen by the wayside.

But the hopes of the Cummings family have not dropped by the wayside. Sometimes Junior says he has felt like quitting the fight, something will come along to give them hope. He says that it takes love and hope to stay in Robeson County and work for justice. But he thinks it is necessary for him to stay here and work because "people like me in the past would sit back and watch and not do anything (about injustices)."

Jimmy's sister, Quessie Strickland says she believes that the corruption in Robeson County will eventually be cleaned up but that "It ain't going to happen tomorrow."

Nor does Lawyer Nance who says the trial, if it happens without an out-of-court settlement, will probably not take place for a year. So, a year from now, when the spirit of the north starts to blow, the wheel of life might bring justice around for the case of Jimmy Earl Cummings. Until it does, the Cummings family wants to thank everybody for what they have done. As for us, we want to ask you to do even more.

### Oxendine Wins Drawing At Glen's Sandwich Shop



Jessica Renne Chavis drew the winning ticket at Glen's Sandwich Shop on Halloween night.

Michael Oxendine of Pembroke was the lucky winner when his name was drawn from a box at Glen's Sandwich Shop at 101 Railroad Street, Pembroke.

The business which opened in September is located in Glen's Kuik Shop. According to owner Glen Locklear, the \$50 cash prize was part of a series of promotions of the "eatery" which offers a varied menu of sandwiches and plate dinners during daily hours of 6 a.m. - 6 p.m.

The new business is operated by Elsie Faye Locklear and Tina Sue Chavis, who invite customers to eat in, or telephone in orders for take out. Those placing orders by telephone may call 521-2312.

Jessica Renne Chavis, daughter of Bessie and Alice Faye Chavis of Pembroke, drew the winning name on Monday night.

### LOWRY TO APPEAR ON "CATCH THE SPIRIT"



The Rev. Tryon D. Lowry, pastor of Collins Chapel and New Philadelphia United Methodist Church, appears the week of November 6 and 13 on "Catch the Spirit" the national television series of The United Methodist Church. He will present brief meditations on Moment of Faith, a regular "Catch the Spirit" feature.

A graduate and former staff member of PSU, the Rev. Tryon D. Lowry will appear on the weeks of November 6 and 13 on "Catch the Spirit," the national television series of The United Methodist Church. "Catch the Spirit," a 30-minute

program that tells how United Methodists live out their Christian faith, airs weekly on seven cable and broadcast networks.

Mr. Lowry, currently pastor of Collins Chapel and New Philadelphia United Methodist Church, near Pembroke, will present brief meditations on Moment of Faith, a regular feature of "Catch the Spirit." His topics are "The Gift of God's Grace" (November 6) and "Doing Good to All" (November 13).

Prior to entering the full-time ministry a year ago, Mr. Lowry was purchasing officer at PSU. He served as a part-time local pastor for four years while still at the university, and he is also the former owner and operator of a food store and restaurant.

Mr. Lowry is secretary of the Board of Religion and Race for the North Carolina Annual Conference (region) of the United Methodist Church. A 1973 graduate of PSU with a B.S. degree in business administration, he has completed the first year Course of Study at Duke University, Durham, NC.

Tryon Lowry, a Lumbee Indian, was born in Lumberton, NC and is married to Brenda H. Lowry. They are the parents of three children.