

Looking Back While Walking Forward

MAYNOR VS. MORTON

This month is the anniversary of a most significant and controversial legal action for the Lumbee Indians. It is the 25th anniversary of the case, Vestia Locklear and Lawrence Maynor vs. Rogers C. B. Morton, a case that went all the way to US Court of Appeals. This month "Looking Back While Walking Forward" will take an in depth look at the case. We will review the incidents that lead up to Maynor vs. Morton, as well as its significance to the tribe. The actual litigation in this case began in the 1970s, however, we find that the issues involved began some forty years earlier. This first article will take us back to the very beginnings of the landmark, Maynor vs. Morton.

In the 1930s several bills were introduced to recognize the Lumbee Indian tribe. The tribe focused on being recognized as the Cherokee Indians of Robeson County in 1932. A federal bill recognizing the tribe as Cherokee would have gone hand-in-hand with the state bill passed in 1913 which recognized the tribe as the Cherokee Indians of Robeson County. Tribal members formed a group calling themselves "the Southeastern Cherokee Indians of North Carolina." This group would lead the fight to have the tribe recognized as Cherokee. In addition to requesting legislation to recognize the tribe, the group requested an investigation be conducted to update the 1914 investigation conducted by Special Indian agent, O.M. McPherson. The new investigation would be conducted by then-renowned anthropologist from the Smithsonian Institution, John Reed Swanton. Swanton would publish his report in 1934. The report, which concluded that the tribe was descendants of the aboriginal Cheraw, would have a major impact on the tribe's recognition efforts.

The bill to recognize the tribe as Cherokee died in the US Senate in July of 1932. In January of 1933, tribal leaders met to discuss strategies to have the legislation reintroduced. A letter writing campaign to US Senator Josiah W. Bailey was mounted, with an excess of one hundred letters being received by the Senator. The efforts of tribal members such as N.S. Locklear, Britton Locklear, D.J. Brooks and Joseph Brooks were not in vain. On May 1, 1933 a bill was introduced in the US House of Representatives by Congressman Jerome Bayard Clark to recognize the tribe. A companion bill was introduced in the US Senate by Senator Josiah W. Bailey. However, there was a significant difference in these bills from the one reviewed by the tribe. The difference being the bill reviewed by tribe would have recognized the tribe as Cherokee, whereas the actual legislation introduced would recognize the tribe as Cheraw Indians. This change was based solely on the results of the report by anthropologist, John R. Swanton. According to Swanton, "The evidence available thus seems to indicate that the Indians of Robeson County ... are descended mainly from certain Siouan tribes of which the most prominent were the Cheraw..." The tribe did not seem to be happy and divided into two opposing groups on the issue of a tribal name. However, we will not go into detail regarding that matter. It may possibly be the subject of a future article.

Joseph Brooks began researching the Cheraw Indians. He supported the Cheraw bill introduced in 1933. The following year, 1934, the Senate Committee on Indian Affairs held hearings, and Brooks along with B.G. Graham, who was identified as Chief of the Siouan Lodge, appeared with Senator Bailey in support of the legislation. Harold L. Ickes, then Secretary of the Interior, recommended that the legislation be amended to provide for recognition of the "Siouan Indians of Lumber River." The Committee accepted the change and recommended passage of the legislation. We will not go into the details of the tribe's efforts regarding this recognition effort, except to say this: on May 23, 1934, the House Committee on Indian Affairs reported favorably on the bill, but the action was meaningless; Senator Bailey had withdrawn his support, due to internal tribal conflict, and the bill died in the Senate.

This defeat would not stop Joseph Brooks in his efforts to gain federal recognition for the tribe. Congress passed the Indian Reorganization Act (IRA), also known as the Wheeler-Howard Act, on June 18, 1934. The IRA permitted tribes to reorganize under a federally granted charter. Brooks immediately contacted Commissioner John Collier to see if the Lumbee were eligible under the Act. Collier would contact Assistant Solicitor - Indian Affairs, Felix Cohen, requesting an opinion on the eligibility of the Lumbee. Cohen's opinion would not only say the tribe was eligible, it would outline a plan for the tribe to follow. We find the following in a memo from Cohen:

"Clearly this group (the Lumbee) is not a recognized Indian tribe now under federal jurisdiction," within the language of Section 19 of the Wheeler-Howard Act (IRA). Neither are the members of this group residents of an Indian

reservation (as of June 1, 1934). These Indians, therefore, like many other Eastern groups, can participate in the benefits of the Wheeler-Howard Act (IRA) only in so far as individual members may be of one-half or more Indian blood.

Joseph Brooks immediately drafted a proposal that reflected the recommendations of Cohen. Part of Brooks' proposal included a land resettlement project that would eventually lead to the establishment of Pembroke Farms and Red Banks Mutual Association. Definitely a great subject for another article.

In attempting to have the tribe federally recognized under the IRA, a list of the members of the Siouan group who were one-half or more degree Indian blood had to be compiled. A list of eighteen tribal districts (communities), along with the number of households for each district and a Councilman for each district, was submitted. The roll listed 767 families with approximately 6,000 members. This number was out of a total Indian population, according to the US Federal Census, of 12,404. It is important to note that possibly the reason for such a low number of tribal members reported is the fact there was continued controversy over the issue of a tribal name among tribal members. Not everyone supported the efforts of Joseph Brooks and others who were attempting to have the tribe organized under the IRA. Nevertheless, the government felt that a large number of the reported households would be identified as one-half or more Indian blood. A considerable amount of time was spent contemplating what type of method would be used to determine the quantity of Indian blood for such a large tribe in the absence of a solid base of tribal records. In that day and time each community knew its tribal members. The tribe had never had the need to keep a list of tribal members, when we had never received any federal monies, and attendance at the Indian schools was left up to the local school committees comprised of tribal elders. These elders did not need a list with the strong tribal cohesion practiced by the tribe. The final plan to determine "blood quantum" combined tribal and family tradition with documentary research. An additional requirement was included in the final plan. This would be the use of "anthropometry." Webster's New World Dictionary defines this word as the science dealing with measurement of the human body to determine differences in groups, individuals, etc.

In June of 1936, Dr. Carl C. Seltzer, an anthropologist, visited Robeson County and began collecting physical evidence from tribal members. There were 108 applicants who applied for recognition as one-half or more Indian blood. Dr. Seltzer would collect data concerning skin pigmentation, hair, ear, eyes, nose, lips, teeth, and head, as well blood type and general body measurement. There was a "racial diagnoses" for each applicant. They would consist of the following categories: one-half or more Indian blood; borderline; probably more than one-half Indian blood; probably less than one-half Indian blood; less than one-half and doubtful. Dr. Seltzer would identify three (3) persons with one-half or more degree of Indian blood. These would be Jesse Brooks, Lawrence Maynor and Vestia Locklear. Others were listed as follows:

Borderline	2
Probably < 1/2	4
Probably > 1/2	1
Less Than 1/2	97
1/2 or More	3
Doubtful	1

Dr. Seltzer would return in June of 1937 to collect more data. This time there were 101 applicants with only nineteen (19) being identified as having one-half or more degree of Indian blood. These persons would include the following: Jim Baker Brooks, Annie Mae Brooks Locklear, Henry Brooks, Odell Brooks, Ella Lee Brooks, Lake Faddy Brooks, Anna Brooks (all brothers and sisters; Jesse Brooks from the first book was also their brother); Joe B. Locklear and Winnie Bell Locklear (brother and sister); Ralph Brooks, Jr., Paul Brooks and Lovedy Brooks Locklear (brothers and sisters) and Lawson Brooks, Ralph Brooks, Fannie Brooks Jacobs, Rosetty Brooks Hunt, Lily Jane Brooks Locklear, Mary Lee Brooks Hammond (all brothers and sisters) and Dalcedia Locklear Brooks (the mother of the latter set of brothers and sisters).

In Dr. Seltzer's report, we find a total number of 209 applicants who applied to be recognized as one-half or more degree of Indian blood. Out of that number there were twenty-two (22) individuals certified by the Secretary of Interior as being "one-half or more Indian blood." The entire process turned out to be absurd. If twenty-two (22) met the criteria, surely so would their siblings, and for that matter, most of the rest of their families. Yet there were instances where one sibling appeared on the accepted list while another was rejected. Tribal members felt the test was a mockery, and a large number of those identified on

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the roll of the Siouan Lodge, did not apply. The split over the name change was also responsible for the lack of tribal participation.

This concludes the historical perspective on Maynor vs. Morton. The persons who were certified as being one-half or more Indian blood would become known as the "Original Twenty-Two." Next week we look at how the surviving members of the "Twenty-Two," along with the assistance of the Eastern Carolina Indian Organization, fought for their rights under the Indian Reorganization Act of 1934.

Information used to write this column came from The Lumbee Petition for Federal Acknowledgment prepared by the Indian Law Unit at Lumbee River Legal Services (LRLS) and submitted to the Bureau of Indian Affairs on behalf of the Lumbee Tribe. It was written and submitted in accordance to the regulations governing the federal acknowledgment process (25 CFR Part 83), the administrative route for a tribe seeking federal recognition. Co-authors for the petition include the late Julian T. Pierce, Cynthia L. Hunt, Wesley D. Taulchiray and Dr. Jack Campisi. This article was prepared by Cynthia L. Hunt, Paralegal of the Indian Law Unit at LRLS.

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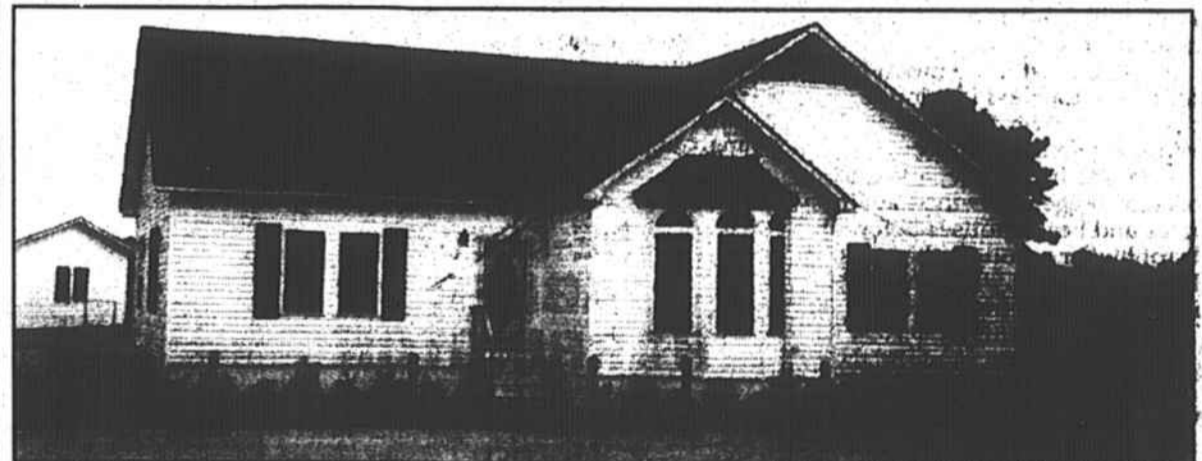
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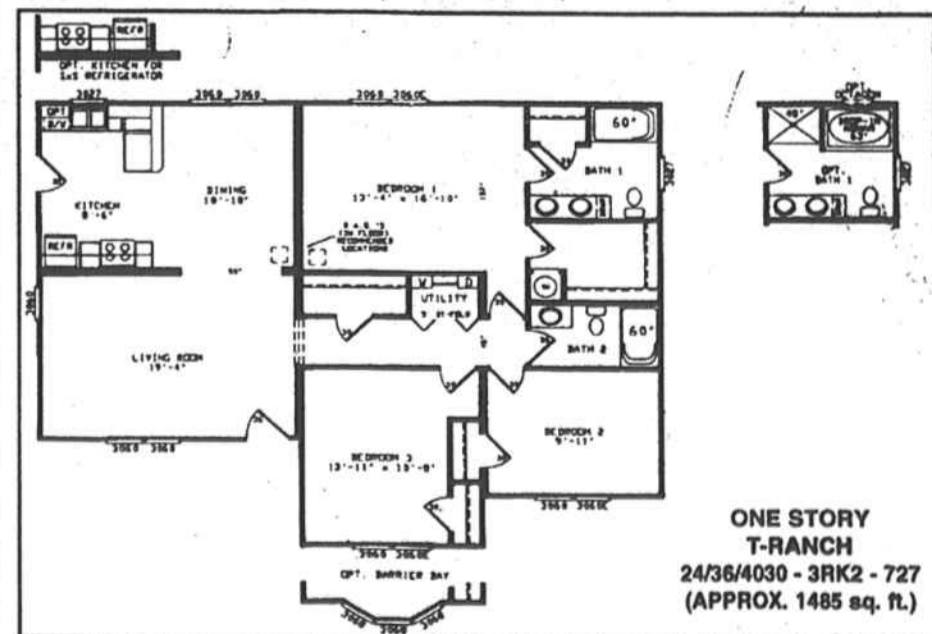
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