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## SPECIAL FEATURES

### THE LOST INDIANS OF THE LOST COLONY: A CRITICAL LEGAL STUDY OF THE LUMBEE INDIANS OF NORTH CAROLINA

Cindy D. Padger\*

#### *I. Introduction*

*In the decades past I have yearned for your acceptance, neither red nor white willing to give. Yet, I know within my being of my significance to this land. Abandoned, I must cling to my self-recognition as my salvation.*

— Wendy Moore Ledwell, a Lumbee Indian<sup>1</sup>

The Lumbee of North Carolina are Indians who are federally recognized in form but not in substance. The 40,000-member tribe traces their roots to the Lost Colony of Sir Walter Raleigh and to Indian tribes, such as the Hatteras, Cherokee and Cheraw. Thus, they are Indian, but look white. The Lumbee have suffered outward discrimination because of their looks; no one is really convinced they are "Indian." Moreover, because the concept of "Indian" has shifted in the last century from the cultural, spiritual, and communal values a group shares, to a legal term of art which determines who gets government benefits, and who does not, the Lumbee have been denied federal recognition.

The Lumbee have been seeking federal recognition for over one hundred years but have been denied for a variety of arbitrary reasons. First, the Lumbee's roots are speculative, and many do not buy the "Lost Colony" theory. Second, the Lumbee don't necessarily look, or act, like "Indians;" many have white features, and the group has traditionally owned their own land, thus lacking the traditional "reservation" life. Third, in 1956, Congress recognized the tribe, but did not "acknowledge" them. The Lumbee were called Indians, but they were not "Indian-enough" to form a government-to-government relationship with the United States. Fourth, the standards used to determine this were, and are, inherently arbitrary. Fifth, the Bureau of Indian Affairs (BIA) and Congress are caught in a never-ending circle about who can recognize the tribe. And finally, because

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1. James Eli Shiffer, *Pride & Prejudice*, NEWS & OBSERVER (Raleigh, N.C.), Oct. 3, 1993, at E1.

the Lumbee are the largest tribe east of the Mississippi River, Congress and other Indian groups fear the tribe's recognition will simply cost them too much money. The tribe faces scrutiny both internally and externally.

The Lumbee, however, have faced the internal and external obstacles head-on. For one hundred years, they have sought acknowledgment and have not once given up. They believe acknowledgment is due for several reasons. First, they are descendants of the Cheraw Indians, other tribes and the settlers of the lost colony. Thus, they have aboriginal status. Second, they have maintained a community of Lumbee, where over 90% of the tribe is concentrated. Third, the 1956 Act, as well as the acknowledgment criteria in general, is based on arbitrary standards, such as requiring high subjective social science evidence of existence from colonial times, making recognition for bona fide tribes impossible. Finally, the Lumbee are not interested in money, gaming or having a reservation of their own. All they want is the dignity federal acknowledgment bestows so they may look the white and red man in the face, and feel equal.

## II. What Is a Lumbee?

### A. Competing Histographies of the Lumbee Indians

The Lumbee's origin and history is the most controversial and most important aspect of attaining federal acknowledgment.<sup>2</sup> It is controversial because the tribe's origins are poorly documented and speculative at best.<sup>3</sup> The Lumbee's history is important because it is an imperative factor in determining whether a tribe "exists" according to the Bureau of Indian Affairs (BIA), which allocates benefits to Indian groups on the basis of aboriginal status.<sup>4</sup> Over the years, many competing theories have been posited, some passed down orally through the Lumbee generations, while others may be politically motivated.

Perhaps the most learned and passionate scholar on the subject of Lumbee origin was a Lumbee too, Adolph L. Dial, a professor at Pembroke State University in Robeson County, South Carolina. Professor Dial founded and chaired the Department of American Indian studies.<sup>5</sup> Dial published numerous articles on the Lumbee, as well as two books, *The Only Land I Know: A History of the Lumbee Indians* (1975), and *Indians of North America, The Lumbee* (1993).<sup>6</sup>

Dial endorses the "Lost Colony" theory as the most logical and probable account of Lumbee origins, just as most other Lumbee do. The "Lost

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2. KAREN I. BLU, *THE LUMBEE PROBLEM* 36 (Clifford Geertz ed., 1980).

3. *Id.*

4. *Id.*

5. ADOLPH L. DIAL, *THE LUMBEE* 112 (Frank W. Porter III ed., 1993).

6. *Id.* at 112.

Colony" theory is somewhat documented, and has also been passed down via Lumbee oral tradition. The theory tells of Sir Walter Raleigh's expeditions to North Carolina to settle the New World. During the second expedition, Raleigh sent an explorer, Governor John White, who left a small group of settlers on Roanoke Island while he returned to England for supplies. Upon his return three years later, the colony had vanished. The theory speculates that the white settlers moved south, and intermixed with the Hatteras and other Indians to become the Lumbee.<sup>7</sup>

The "Lost Colony" theory is central to the Lumbee gaining federal recognition. Their struggle for acknowledgment revolves around this theory to prove to the government that they have aboriginal status, which is a prerequisite to federal recognition.<sup>8</sup> But, the Lumbee's theory is both externally and internally denounced. Critics of the theory include government entities, such as the BIA, as well as North Carolina's own congressional representatives, and other Indian tribes. They doubt that the Lumbee are Indian at all.<sup>9</sup> However, on the other hand, others espouse the theory that the Lumbee are really Cherokee.<sup>10</sup>

Most critics discount the "Lost Colony" theory for political reasons. The Lumbee have at least 40,000 members,<sup>11</sup> and critics fear Lumbee recognition would cost too much in terms of monetary benefits afforded Indians upon gaining acknowledgment. The government and other tribes fear that allocation of new funds to the Lumbee would drain funding other Indians.<sup>12</sup> Regardless of the criticism, the Lumbee wholeheartedly stand behind the "Lost Colony" theory and endeavor to gain the recognition that they believe is deserving.

The "Lost Colony" theory tells of how Sir Walter Raleigh, in pursuit of fortune and fame, sent 117 people across the Atlantic to establish a colony upon the coast of North Carolina, then called Virginia, in the land of great riches.<sup>13</sup> Queen Elizabeth I gave Raleigh a charter allowing him to claim the land in Her Royal Highness's name.<sup>14</sup> Raleigh sent Governor John White on the second expedition. When White and the new settlers arrived in 1587, winter was closing in. The colonists had no time to plant crops, nor had they brought enough livestock and supplies to get them through the winter. White, a veteran pioneer, returned to England to request more supplies from Raleigh.<sup>15</sup>

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7. *Id.* at 14, 16-19.

8. BLU, *supra* note 2, at 36.

9. *Id.*

10. *Id.*

11. *Id.* at 21.

12. *Id.*

13. DIAL, *supra* note 5, at 14-16.

14. *Id.* at 16.

15. *Id.*

Upon White's arrival, war with Spain over "restoring Catholicism to England" began, aborting a few attempts to get supplies back to Roanoke Island and the new settlers.<sup>16</sup> In August, 1590, White returned to the colony to find nothing. His people had vanished, the cabins were deserted and the fields were overgrown. The only sign of the Englishmen were the letters "C R O" carved on a tree trunk, and the word "CROATOAN" etched in a fence post.<sup>17</sup> Thus, in history, the vanished settlement became known as "The Lost Colony."<sup>18</sup>

Surprisingly, White did not panic or fear the worst. Upon his departure, he and the colonists agreed "that Roanoke Island was not an ideal site for a settlement," and so if they were "faced with 'great distress' they would so designate by carving a Maltese cross on some visible object."<sup>19</sup> White only found the letters "C R O" and "CROATOAN," but no cross.<sup>20</sup> The only personal effects remaining at the colony were those belonging to White, or those too "burdensome on a long journey."<sup>21</sup> White took this to mean the settlers had gone with an Indian friend of the settlers, Manteo, a Hatteras Indian, to Croatoan, an island south of Roanoke.<sup>22</sup> It seems as though White was confident that the settlers survived, for he wrote, "I greatly joyed that I had safely found a certain token of their being at Croatoan, which is the place where Manteo was born, and the savages of the island our friend."<sup>23</sup>

### *B. Potential Tribal Origins*

In determining Lumbee origin, ties to "historically documented Indian groups, such as the Cherokee and Cheraw" must be discussed as an alternative, as well as a complement, to the "Lost Colony" theory.<sup>24</sup> One historical account reflecting Indian roots tells of how a white surveyor in 1748 found a "a mixt [mixed] crew, a lawless breed."<sup>25</sup> Professor Dial claims that this refers to Lumbee and their uncertain, mixed racial roots, which includes both white and Indian blood.<sup>26</sup>

16. *Id.* at 17.

17. *Id.* at 18.

18. ADOLPH L. DIAL & DAVID K. ELIADES, *THE ONLY LAND I KNOW: A HISTORY OF THE LUMBEE INDIANS* 3 (1975).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at 4.

24. BLU, *supra* note 2, at 36.

25. Dana Milbank, *What's in a Name? For the Lumbees, Pride and Money*, WALL ST. J., Nov. 13, 1995, at A1.

26. DIAL, *supra* note 5, at 30.

One account of Lumbee Indian ancestry explains that after the Tuscarora War in 1711, many Cherokee migrated to Robeson county where they greatly influenced Lumbee genealogy.<sup>27</sup> Dial says this influence is greatly exaggerated. Other possibilities include an intermingling of Lumbee with the Cheraw, an eastern band of the Siouan Indians.<sup>28</sup> This theory is more palatable to Dial and is logical in light of the close geographical proximity of the Lumbee and Cheraw in southeastern North Carolina.<sup>29</sup> Yet another tribe, the Tuscarora, is linked to Lumbee, except in a much less favorable light. The Tuscarora faction of the Lumbee claim they are universally Tuscarora, with no other Indian ancestry. This faction claims the "Lost Colony" theory is a fabrication and base the Tuscarora on the tribes' migration to Robeson county after the Tuscarora War.<sup>30</sup> Dial uncovers several flaws and inconsistencies in the faction's theory. After an objective look at these theories, the "Lost Colony" theory proves to be the most logical and acceptable account of Lumbee origins.<sup>31</sup>

Not only is there evidence of the Lumbee intermixing and reproducing with white settlers of the lost colony, but there is evidence of intermixing with other Indian tribes such as the Cherokee, Siouan and Cheraw.<sup>32</sup> The bloodiest Indian war in North Carolina to date was the Tuscarora War of 1711-1713.<sup>33</sup> The Tuscarora Indians were upset because their lands were taken by the whites, and they were forced into slavery.<sup>34</sup> South Carolina sent aid to North Carolina in the form of Colonel John ("Tuscarora Jack") Barnwell.<sup>35</sup> Barnwell did get the Tuscarora to sign a treaty, to the dissatisfaction of North Carolina, who in return rewarded him no land or money for his efforts.<sup>36</sup> Enroute back to South Carolina, Barnwell traveled through Robeson County, on the edge of the Carolinas' border. There, some Cherokee warriors stayed behind and joined the Lumbee.<sup>37</sup>

Dial does not completely accept this account of history. He cites a report dated 1712 in which Barnwell makes no mention of Cherokee warriors, but names several others, such as those from the Catawbas tribe.<sup>38</sup> Moreover, Dial finds it difficult to accept that the Cherokee would fight side by side with the Catawbas in the war against the Tuscaroras when the two were

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27. DIAL & ELIADES, *supra* note 18, at 15-16.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.* at 16.

33. *Id.* at 14.

34. *Id.*

35. *Id.*

36. *Id.*

37. DIAL, *supra* note 5, at 63.

38. DIAL & ELIADES, *supra* note 18, at 15.

such renowned archenemies.<sup>39</sup> Dial concedes that probably a few Cherokees remained in Robeson County, but not to the extent legend has it. He observes that "not all aspects of Cherokee culture would have disappeared by the 1730s when the Scots arrived," who found nothing but a distinct English-Elizabethan culture.<sup>40</sup>

Dial recognizes that the Cherokee tradition is very strong and supportable, but not substantial. He notes that a Cherokee chief, George Lowrie, is probably related to some of the Robeson County Lowries.<sup>41</sup> Most likely, Dial speculates, some Cherokee blood was introduced during the seventeenth century, and thereafter, as the two tribes had many contacts with each other and intermixed.<sup>42</sup> This tradition is so strong that in 1913, the Lumbee became officially known as the Cherokee Indians of Robeson County, one of their many "official" names throughout the tribe's history.<sup>43</sup> Today, the Cherokee denounce the Lumbee as "Indians" because of fear that the Lumbee would absorb Cherokee federal funding if federally recognized.

One distinct possibility is that the Lumbee intermingled with the Cheraws, part of the Eastern Siouan tribes, especially in light of the Siouan domination of Southeastern North Carolina.<sup>44</sup> Dial cites Special Indian Agent O.M. McPherson who said, "It is not improbable that there was some degree of amalgamation between the Indians residing on the Lumbee River and the Cheraws, who were their nearest neighbors."<sup>45</sup> Dial also quotes Stanley South, author of *Indians of North Carolina*, "Since this group of Indians [the Lumbees] is located in the area where the Cheraw were living when last heard of, it would not be unreasonable to suggest that they [the Lumbee] were probably descendants of this Siouan tribe."<sup>46</sup> A critic of the "Lost Colony" theory, John R. Swanton, also recognizes the Lumbee link to the Cheraw in his book *The Indian Tribes of North America*.<sup>47</sup> He describes how the Keyauwee tribe of North Carolina joined with the Cheraw and other lesser tribes saying:

Their town (Keyaquwee) appears close to the boundary line between the two Carolinas. They [the Keyauwee] do not reappear in any of the historical records but probably united ultimately in part with the Catawba, while some of their

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39. *Id.* at 15.

40. *Id.*

41. *Id.* at 16.

42. *Id.* (discussing how the Cherokee wanted to learn how the Lumbee assimilated).

43. DIAL, *supra* note 5, at 23.

44. DIAL & ELIADES, *supra* note 18, at 16.

45. *Id.* at 17.

46. *Id.*

47. *Id.*

descendants are represented among the Robeson County Indians [the Lumbee], often miscalled Croatian.<sup>48</sup>

In fact, Dial hangs a family tree in his home, showing his family's link to "Robert Locklear, king of the Cheraws in about 1738," showing he accepts the Cheraw influence as truth.<sup>49</sup>

The Lumbee also face the Tuscarora account of Lumbee ancestry, which has been a significant obstacle in recent years to Lumbee unification among Indians in Robeson County. The faction claims that the Lumbee are actually of the Tuscarora tribe. Nick Locklear, who proclaims to be of the Tuscarora tribe, was quoted as saying, "There ain't no such thing as a Lumbee. They [the Lumbee] made this thing up."<sup>50</sup>

The Lumbee faction claiming Tuscarora roots do so for two reasons. First, they could harvest the benefits of a fully federally recognized tribe and receive more federal aid. Second, they would end speculation about whom and what they are: they would be considered Tuscarora Indians.<sup>51</sup> This group bases their theory on the belief that "Tuscaroras moved into Robeson county during the Tuscarora War to escape enslavement."<sup>52</sup> The faction's principal evidence of Tuscarora roots relies on a Department of Interior study that classified persons as "Indians" according to physical traits.<sup>53</sup> The Department study of the Lumbee concluded that only twenty-two of the 209 tested were in fact "Indian" qualifying for status.<sup>54</sup> The faction members seeking Tuscarora status descend from the 22 "legitimate" Indians. Being "Indians," the faction could qualify as part of a recognized tribe and receive federal benefits to the exclusion of other Lumbee Indians in Robeson County.<sup>55</sup>

Dial rebuts this faction's assertion of Tuscarora ancestry by pointing out several factual inconsistencies. First, he claims, "few, if any, Tuscarora Indians [resided] in the Robeson County area prior to the war of 1711-1713."<sup>56</sup> He points to the white man finding a group "fully assimilated to the white man's lifestyle."<sup>57</sup> How then can these Tuscaroras, being few and having little impact on the society be fully assimilated?<sup>58</sup> Dial points out that kinship with the Eastern Sioux to prove descent from

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48. *Id.*

49. Milbank, *supra* note 25, at A1.

50. *Id.*

51. DIAL & ELIADES, *supra* note 18, at 21.

52. *Id.*

53. *Id.* at 22.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*



the Tuscaroras is a fabrication.<sup>59</sup> His retort is based on the Tuscaroras and the Eastern Sioux historic rivalry, which rules out Tuscarora influence in Robeson County because its location is in the midst of Siouan lands.<sup>60</sup>

Additionally, Dial regards the Department of Interior study of physical attributes as a highly arbitrary method of proving tribal status.<sup>61</sup> The government recognized the twenty-two legitimate Indians on the standard of whether they "looked like an Indian."<sup>62</sup> Dial emphasizes the absurdity of this criteria by asking, "Can you describe a Greek, Jew or Russian, by his appearance?"<sup>63</sup> Dial claims the government study perpetuated the stereotype that all Indians must look alike.<sup>64</sup> This stereotype still holds true today, as evidenced by Cherokee Vice Chief Gerard Parker's comment about the Lumbee as recently as 1994, "They don't even look like Indians."<sup>65</sup>

While the Lumbee have no doubt that several Indian genes are in their blood, the Tuscarora faction's account of history fails to consider that several Indian groups, rather than one, influenced the Lumbee. Several tribes either moved through or into Robeson county and stayed, intermixing with the Lumbee. This accounts for the Lumbee's diverse Indian roots, including a wide mix of Hatteras, Cherokee, Cheraw and possibly Tuscarora, mixed with the lost colonists line. Dial's careful analysis of the movement of Indians in early America shows the Lumbee are indeed Indians, but not of any recognized tribe. The Lumbee evolved with a rare blend of Indian and white roots, making them universally Lumbee, thus fulfilling the requirement of the government that the tribe be unique, and thus, not capable of inclusion in a historically recognized tribe.

### *C. Other Theories of the Lumbee's Roots*

Not all scholars subscribe to the theory of the lost colonists. For example, North Carolina scholar Samuel A'Court Ashe wrote:

When the colonists receded from White's view, as he left the shores of Virginia, they passed from the domain of history and all we know is that misfortune and distress overtook them; and that they miserably perished, their sad fate being one of those deplorable sacrifices that have always attended to the accomplishment of great human purposes.<sup>66</sup>

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59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 20.

64. *Id.*

65. *Lumbees Face Uphill Battle Proving Identity*, GREENSBORO NEWS & REC. (Greensboro, N.C.), June 10, 1994, at A2.

66. DIAL & ELIADES, *supra* note 18, at 3.

This theory claims that the colonists, in their pioneering efforts to settle the new world, fell to the hardships of the new and died out from starvation, disease or Indian hostilities. Dial rebuts this with evidence that Governor White was unequivocally unconcerned when he came upon the vanished settlement.<sup>67</sup> Just because "the colonists were not seen again does not prove they perished."<sup>68</sup> Dial points out that the colonists carved letters on a tree indicating they were safe with their Indian friend, Manteo, in Croatoan.<sup>69</sup>

Other theories prevail as well. In 1613, a secretary of the Virginia Colony, William Starchey, wrote in *A Historie of Travel into Virginia Britannia*, that the colonists did indeed move inland and live with the Indians, but upon the founding Jamestown settlement, were slaughtered.<sup>70</sup> Starchey reports that invasion of the English "angered the 'priests' who were advisors of the great chief Powhatan" and they convinced him to order the slaughter.<sup>71</sup> Dial rebuts Starchey's theory with evidence that the area where Powhatan ruled is highly unlikely to be the area where the surviving colonists relocated.<sup>72</sup> Dial also rejects Starchey's proposition that a few whites, "intermixed with Indians," would have been so hated by the Indians to be massacred. He points to the cultural observation that Indian societies were very "tolerant toward" those who joined them, as the colonists did.<sup>73</sup> In other words, how could the colonists, eager to join Indian society to survive the new world, perpetuate such hatred by the Indians, when evidence shows Indians welcomed this sort of camaraderie.

#### *D. Concentration in Lumbee River Area: Moving to Robeson County*

Yet another important thread weaving through Lumbee history is documentary evidence that links Lumbee ancestors to their present home in Robeson county. Considering the previous theories of mixed Indian ancestry, it proves reasonable that the Lumbee ancestors shared many different "tribal" affiliations, and originally spoke many different Indian languages. More importantly, the Indians influencing the Lumbee roots shared a common goal, to find refuge from the onslaught of disease, wars and influence the new settlers in the 18th century brought with them to the Carolinas.<sup>74</sup>

While there are no written records of exactly when the Lumbee first moved to Robeson County, the Lumbee, through oral tradition, maintain

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67. *Id.*

68. *Id.* at 4.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 4.

73. BLU, *supra* note 2, at 36.

74. *Id.* at 43.

they moved around 1650.<sup>75</sup> Speculation for the move from Sampson County in south-central North Carolina where Croatoan was located, to Robeson County reveals many theories. One theory is that because of the Lumbee's English ways they learned from the colonists, they grew uncomfortable around other Indians and moved.<sup>76</sup> Also, at the time of the move, white settlers by the masses were bringing new diseases and new racial tensions, both of which were new to the Indians.<sup>77</sup>

The Lumbee, seeking refuge from the newcomers, as well as isolation from other Indian tribes, settled in a "haven" today known as Robeson County.<sup>78</sup> The swampy area around the Lumber river,<sup>79</sup> rich with forests and fertile soil, game and fish, was ideal for these refugees because it was not easily navigable, keeping the outside world at arm's length.<sup>80</sup> However, the influx of new settlers soon found its way into Robeson County.

The first small influence of outsiders were the French Protestants, who were fleeing religious persecution, and also some Cherokee tribe members of the North Carolina militia marching through Robeson County during the Tuscarora War.<sup>81</sup> The largest invasion, however, came from Scottish Highlanders, who are said to have found "a tribe of English-speaking Indians already firmly established" according to historian Hamilton McMillon.<sup>82</sup> The Lumbee failed to escape the onslaught of European "immigrants" and cultures, but in many ways were "better suited than many of their Indian neighbors."<sup>83</sup>

For example, the Lumbee descent from the "Lost Colony" gave them an inborn immunity to smallpox, a new "European" disease which wiped out over half of the Catawba tribe, Indian neighbors of the Lumbee.<sup>84</sup> Moreover, the Lumbee easily accepted "the English concept of private property."<sup>85</sup> In fact, the Lumbee lifestyle was so similar to the new Europeans, that they treated the Lumbee essentially as equals, leading to land grant deeds and patents of land ownership.<sup>86</sup> The similarities created harmony and as a result, the Lumbee encountered little bloodshed, unlike many of their Indian neighbors.<sup>87</sup>

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75. DIAL, *supra* note 5, at 25.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 26.

80. *Id.*

81. *Id.* at 27.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 29.

86. *Id.*

87. *Id.*

### *E. Elizabethan Characteristics of the Lumbee*

The "Lost Colony" theory is also strengthened by evidence of surnames, dialect, physical characteristics, and lifestyles of the Lumbee, which are very similar to the early English settlers. These traits of the Lumbee mirror the settlers, rather than traits of other Indians. Therefore it seems likely that the influence on these characteristics comes from an intermixing of the new settlers and other Indian tribes.

#### *1. Surnames*

Perhaps the most astounding evidence to prove the "Lost Colony" theory is the overlap of present-day Lumbee surnames and those of the lost colonists. The 117 settlers remaining on Roanoke Island when Governor John White sailed back to England held ninety-five surnames among them.<sup>88</sup> Today, forty-one of those surnames can be found among Lumbee, who live more than two hundred miles away from Roanoke Island where the colonists were last seen.<sup>89</sup> These names include Oxendine, Chavis, Lowry, Dial, Cummings, More, Brooks, Locklear, Drinkwater, Bullard and Sampson, among others.<sup>90</sup> Though some of these surnames are common, most Lumbee having these names claim ancestry to Roanoke Island, and no other theory adequately explains why these Indians have English names instead of Indian names.<sup>91</sup>

Although birth records and other documentation are lost forever, circumstantial evidence proves the theory of the "Lost Colony." Dial states that considering "the survival of the [John White] colonists' names, the uniqueness of the Lumbee dialect in the past, the oral traditions, the demography of sixteenth century North Carolina, the mobility of the Indian people, human adaptability and the isolation of Robeson County, all prove the 'Lost Colony' theory."<sup>92</sup>

#### *2. Dialect*

The Lumbee dialect also supports the theory of the "Lost Colony." Historian Stephen Weeks claims in his 1891 work, *Papers of the American Historical Association*, that Lumbee dialect is similar to that spoken in Elizabethan England in terms of pronunciation, usage and idiom.<sup>93</sup> Evidence concludes that when the influx of white settlers reached Robeson County in the 1700s, the dialect was already in place, as the settlers found

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88. *Id.* at 29-30.

89. DIAL & ELIADES, *supra* note 18, at 11; *see also id.* at 181 (appendix A listing of the lost colonists documented in the John White log).

90. Shiffer, *supra* note 1, at E1.

91. DIAL & ELIADES, *supra* note 18, at 11.

92. *Id.* at 13.

93. DIAL, *supra* note 5, at 20.

"English-speaking Indians."<sup>94</sup> Moreover, the vast majority of these settlers were Scots who spoke Gaelic.<sup>95</sup>

In fact, before the influx of whites into the Lumbee "haven" of Robeson County in the mid-twentieth century and the influences of the mass media, the Lumbee spoke "a pure Old English."<sup>96</sup> Weeks observed that "They [the Lumbee] have preserved many forms in good use three hundred years ago, but which are now obsolete in the written language and are only found in colloquial and dialectical English."<sup>97</sup> He gives specific examples such as retention of "the parasitic (glide) y . . . pronouncing cow as cy-ow, cart as cy-art . . . the dialectical Jeams is found in place of James; they regularly use mon for man; mention for measurement; ask for ask; hosen for hose; housen for houses; crone is to push down and wit means knowledge."<sup>98</sup>

Though some claim the Lumbee "have no language of their own,"<sup>99</sup> evidence of a distinct Elizabethan dialect points to the contrary. Wolfram, a linguistics professor, is currently researching "the dialect spoken by the Lumbee Indians."<sup>100</sup> Perhaps a formal research will silence critics such as Cherokee Vice Chief Gerard Parker who said, "If the Lumbees are Indians, where is their culture, the language?"<sup>101</sup> Regardless, Lumbees believe being Indian is in what you believe and your roots. As Heather Locklear, a Lumbee said, "What makes you Indian is not the language, and not how you weave baskets. . . . [I]t's a heritage."<sup>102</sup>

### 3. Preferences and Lifestyles

The Lumbee were essentially like the new settlers. Though their skin color was distinctly darker than the colonists, the Lumbee farmed, lived, dressed and spoke as the English did.<sup>103</sup> Dial explains that an "Indian" was defined by the colonists according to behavior, "a person with an Indian way of life."<sup>104</sup> Though the Lumbee did not meet this definition, they retained a drive to remain distinct from the whites.<sup>105</sup> The Lumbee disagreed that communal lands remained open for white settlement, that status as land-owners mandated participation in the colonial militia, and they

94. *Id.*

95. *Id.* at 21.

96. DIAL & ELIADES, *supra* note 18, at 11.

97. *Id.*

98. *Id.* at 11-12.

99. Milbank, *supra* note 25, at A1.

100. *How Tar Heels Talk: Treasure the Heritage Y'all Fixin' Go?*, GREENSBORO NEWS & REC. (Greensboro, N.C.), Aug. 13, 1994, at B10.

101. *Lumbees Face Uphill Battle Proving Identity*, *supra* note 65, at A2.

102. Shiffer, *supra* note 1, at E1.

103. DIAL, *supra* note 5, at 29.

104. *Id.*

105. *Id.* at 30.

disagreed that it was necessary to pay "money to secure ownership of lands they had long resided."<sup>106</sup>

Despite the rejection of these "white ideas," some Lumbee eventually served in the Revolution, allowing them to reap benefits of their service in the form of "land grants, government pensions, land grants, or other property — including black slaves."<sup>107</sup> Again, in the War of 1812, the Lumbee sided with the colonists, while most other Indians fought against them.<sup>108</sup> Dial asserts that Lumbee status as landholders and free citizens afforded them this position.<sup>109</sup> Later in 1830, their status as landowners protected the Lumbee from the Indian Removal Act, which spawned the Cherokee Trail of Tears exodus to Oklahoma.<sup>110</sup>

Eventually, the Lumbee's luck ran out with the increased racism toward blacks and all non-whites, and the deprivation of their voting status and privilege of possessing firearms or weapons without a license.<sup>111</sup> Most Lumbee had their slaves "sold from them" and the number of Lumbee owning land decreased along with their economic status.<sup>112</sup> The white man's turnabout in treatment forever changed the relationship between the Lumbee and the white establishment from one of peace into one of estrangement, kindling a battle for power, recognition and equitable redress that is ongoing today.<sup>113</sup>

#### 4. *Physical Traits*

One could argue that most of the Lumbee's struggle with other Indian tribes and the federal government in gaining tribal status is rooted in the Lumbee's appearance. As vice Chief Gerard Parker states, "They don't even look like Indians."<sup>114</sup> Also, the Department of the Interior's studies denied Lumbees "Indian" because they did not look "like Indians."<sup>115</sup>

In John Lawson's 1709 work entitled *History of Carolina*, Lawson writes of the lost colony:

A farther Confirmation of this we have from the Hatteras Indians, who either then lived on Roanoke-Island, or much frequented it. These tell us, that several of their ancestors were white People, and could talk in a Book, [read] as we do; the

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106. *Id.*

107. *Id.* at 31.

108. *Id.* at 32.

109. *Id.* at 32-33.

110. *Id.* at 34.

111. *Id.* at 37.

112. *Id.* at 39.

113. *Id.*

114. DIAL & ELIADES, *supra* note 18, at 22.

115. *Lumbees Face Uphill Battle Proving Identity*, *supra* note 65, at A2.

Truth of which confirm'd by gray Eyes, being found frequently amongst these Indians, and no others.<sup>116</sup>

The Lumbee's varied physical characteristics can be accounted for in that "Indian scholars say they're a mix of early Hatteras and Cheraw tribes, plus blacks and whites, including some blue-eyed descendants of Sir Walter Raleigh's 'lost colony.'"<sup>117</sup> Moreover, John Lederer, a fellow traveler with Lawson, wrote of hearing about a "powerful nation of bearded men," which was strange because Indians have a "universal custom among them to prevent their growth by plucking the young hair out by the roots."<sup>118</sup>

Even the Lumbee themselves recognize the "problem" of having white features. Debra Hunt, a Lumbee summarized it best in a letter to the editor of the *Greensboro News and Record*:

My father is Lumbee. [He] raised himself and his children including me, as white. Our birth certificates were documented as white, even though the Indian features were there. The Lumbee count would be greater if people stopped assuming they can automatically tell what race a person is. We need to stand for we are and be counted and be proud to be Lumbee Indians.<sup>119</sup>

### *III. An Indian Must Prove Himself Not Before God, but Before an Agency*

#### *A. Tribal Identity: Not a Spiritual, But a Legal Concept*

The difference between being federally acknowledged, thus "Indian," is in the benefits, social acceptance and internal pride. The concept of "Indian," especially tribal identity, has evolved in American history from one of self-identity, including cultural, community and political communalities, to a "legal definition, determining whether a tribe gets rights to land, service, or exemptions guaranteed by treaty or legislation."<sup>120</sup>

The spiritual and cultural concept of Indian identity changed with the coming of the white settlers into Indian territories, when the Indians began to view themselves in terms of race.<sup>121</sup> Before the Europeans came to settle the new world, American Indians had no concept of a "tribe." Instead

116. DIAL & ELIADES, *supra* note 18, at 7.

117. *Lumbees Face Uphill Battle Proving Identity*, *supra* note 65, at A2.

118. DIAL, *supra* note 5, at 18-20; *see also* DIAL & ELIADES, *supra* note 18, at 6.

119. Debra Hunt, *Editorial: Lumbee Indians Need to Stand Up and Be Counted*, GREENSBORO NEWS & REC. (Greensboro, N.C.), July 11, 1994, at A4.

120. Mark Neath, *American Indian Gaming Enterprises and Tribal Membership: Race, Exclusivity, and Perilous Future*, 2 U. CHI. L. REV. 689, 704 (1995).

121. *Id.* at 703.

Indians defined themselves according to a "shared culture, including language, residence in the community and familiarity with group tradition" and a "shared lineage."<sup>122</sup> Shared lineage was important, but not to the extent today as many tribes base membership on "blood quantum" systems.

The legal definition of "tribe" became cemented in Indian heritage as the white settlers introduced European conceptions of hierarchies and racial identities to the Indians.<sup>123</sup> The Indians began to define themselves, not in relation to other Indians, but in relation to "non-Indians."<sup>124</sup> Consequently, Indian "tribes" became a "political and legal means of differentiation."<sup>125</sup> The tribal concept evolved into a legal term into which a group must fit before receiving land, benefits, services or other governmental assistance programs.<sup>126</sup>

This phenomena of self-identity was fully researched in *Lumbee Indian Histories* by Gerald M. Sider,<sup>127</sup> who concluded that the formation of Indian identity happens through an "unavoidable and irresolvable" antagonism between Indians and the dominant society.<sup>128</sup> Thus, the Indians began to define themselves as members of tribes as a means to distinguish themselves as unique from non-Indians.<sup>129</sup> Today, the concept manifests itself legally in the federal scheme of tribal recognition. Before the government bestows services, land and other exemptions to Indians, the group must meet the requirements that determine what constitutes a "tribe."<sup>130</sup> Stated more bluntly, "to obtain federal recognition and protection, Indians, unlike other American ethnic groups, must constantly prove their identity both individually and collectively."<sup>131</sup> Consequently, to convince themselves, the government or other Indians tribes of their "Indianness," the Lumbees must adhere to any and all Indian histories and identities they can, to fulfill the burden of persuasion.<sup>132</sup> Thus the Lumbee must adhere to the "Lost Colony" or any other theory of Indian ancestry, regardless of their cultural or community concepts of their "Indianness," to be fully recognized as Indians.

These concepts of legal and racial identity have been codified in the federal government's requirements to gain federal recognition. Though the

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122. *Id.* at 703-04.

123. *Id.* at 704.

124. *Id.* at 704.

125. *Id.*

126. *Id.*

127. *Id.*; see GERALD M. SIDER, *LUMBEE INDIAN HISTORIES: RACE, ETHNICITY, AND INDIAN IDENTITY IN THE SOUTHERN UNITED STATES* 214 (1993).

128. Neath, *supra* note 120, at 704.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*



Lumbee have no doubts about their inherent "Indianness," they have been unsuccessful in convincing the federal government that they meet the requirements to become a federally acknowledged tribe. Thus, they have been denied the restitution given to other Indians in the form of health care, and other benefits, the acceptance of other Indians, and the peace in knowing the government recognizes that the Lumbee deserve redress for past discrimination.

Before 1978, federal acknowledgment meant tribes could be "tribes" for limited purposes, such as bringing "takings claims" but not for others such as provision of services and benefits like health care.<sup>133</sup> After 1978, however, with the enactment of 25 C.F.R. § 83, tribes who became acknowledged became "acknowledged for all purposes."<sup>134</sup> This means that post-1978 acknowledgment gave Indian tribes an opportunity to receive all services and benefits provided other federally recognized Indian tribes.<sup>135</sup> The government, through the enactment of 25 C.F.R. § 83, has made "Indianness" not a self-actualizing concept of tradition and history, but rather a rigid legal term of art, which depends on how the BIA interprets the facts a tribe presents. The Lumbee spirit and culture is now a legal identity which must be proved before the government will redress past discrimination.<sup>136</sup>

For an unacknowledged tribe to become acknowledged under the statute, a tribe must fulfill seven requirements set out in 25 C.F.R. § 83.7(a)-(g):

(a) establish substantially continuous identification throughout history as "American Indian" or "aboriginal;"

(b) establish that a substantial portion of the group inhabits a specific area or a community viewed as American Indian and distinct from other populations in the area, and that its members are descendants of an Indian tribe which historically inhabited a specific area;

(c) furnish a statement of facts establishing that the group has maintained tribal political influence or other authority over its members as an autonomous entity throughout history;

(d) furnish a copy of the group's present governing document or a statement fully describing the membership criteria and procedures through which the group currently governs its affairs and its members;

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133. William W. Quinn, Jr., *Federal Acknowledgment of American Indian Tribes: Authority, Judicial, Interposition, and 25 C.F.R. § 83*, 17 AM. INDIAN L. REV. 37, 42 (1992).

134. *Id.* at 41; see 25 C.F.R. § 83 (1982) (originally promulgated as 25 C.F.R. § 54 (1978)).

135. *Id.* at 44.

136. 25 C.F.R. § 83 (1982) (originally promulgated as 25 C.F.R. § 54 (1978)). For an excellent history of 25 C.F.R. § 83, see *supra* note 133 (examining the current bifurcated power between the executive and legislative branches to recognize tribes).

(e) furnish a list of all known members based on the group's own defined membership criteria, and show that the membership consists of individuals who have established descendency from a tribe that existed historically or from historical tribes that combined and functioned as a single autonomous entity;

(f) establish that the membership of the group is composed principally of persons who are not members of any other North American Indian tribe; and

(g) establish that neither the group nor its members are the subject of congressional legislation expressly terminating or forbidding the federal relationship.<sup>137</sup>

Procedurally, the burden of proof is on the petitioning tribe, which presents evidence to rebut a presumption against a tribe being Indian.<sup>138</sup> This burden and presumption causes the moving tribe, as well as tribes opposing the acknowledgment, to introduce masses of historical data which must be analyzed in grueling detail.<sup>139</sup> After this process, the Secretary decides upon the basis of recommendation, not by any judicial standard of proof, whether to acknowledge the group.<sup>140</sup> Basically, the fate of the Lumbee rests in a committee that decides whether Lumbee roots dating back to the mid-sixteenth century make the group "Indian" enough to get federal aid, an arbitrary system at best. The impact of the statute on the Lumbee has proved fatal.

### *B. Positive Recognition*

Important dates in Lumbee history came in the late 1800s and early 1900s.<sup>141</sup> In 1885, the tribe was recognized by the State of North Carolina. Later, in 1887, the first Lumbee school began in Pembroke, North Carolina.<sup>142</sup> Subsequently, in 1924, the Lumbee were granted United States citizenship.<sup>143</sup> These events showed that North Carolina has long recognized the Lumbee as a unique group of people worthy of special status.

The Lumbee's struggle for educational institutions of their own became a source of pride for the Lumbee, as well as a means of making the people an identifiable race.<sup>144</sup> After an investigation of the Lumbee, Lumbee's

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137. 25 C.F.R. § 83 (1982) (paraphrased).

138. Quinn, *supra* note 133, at 54.

139. *Id.*

140. *Id.*

141. Lorraine Ahearn, *Lumbees Strive for Recognition as Minorities: Gaining Political Power*, GREENSBORO NEWS & REC. (Greensboro, N.C.), June 19, 1994, at A1.

142. *Id.*

143. *Id.*

144. DIAL & ELIADES, *supra* note 18, at 90.

North Carolina General Assembly representative, Hamilton McMillon, concluded that they were descendants of the Lost Colony.<sup>145</sup> This information prompted him to introduce legislation to the Assembly, which passed, "giving the Indians of Robeson County, [the Lumbee], a legal designation" and direction over their own schools.<sup>146</sup> This legislation gave the Lumbee status as Indians and control over their children's education.<sup>147</sup> In 1887, the Croatoan Normal School opened its doors to fifteen students. It was the first state-supported school of any type for the Lumbee,<sup>148</sup> now called Pembroke State University.<sup>149</sup>

However, since the Lumbee's economic and social status turned largely on education, segregation imposed in the South after the Civil War embittered the Lumbee against the white man. During the Reconstruction, North Carolina instigated segregate public schools.<sup>150</sup> No schools were established during this time for Indians, because they fell under the classification of schools for "persons of color." The Lumbee resented the "white imposed definition" and saw the omission of Indian schools as a "tactical denial of their spiritual identity and heritage" as well as blatant discrimination.<sup>151</sup>

However, through the late 19th and 20th centuries, the Lumbee managed to keep the school, then called the Croatoan Normal School, operating.<sup>152</sup> Local whites nicknamed the school "Cro," inspired by the "Jim Crow" segregation laws.<sup>153</sup> The name later changed to Indian Normal School of Robeson County, and then to Cherokee Indian Normal School.<sup>154</sup> The school survived, making the Lumbee "the best educated people in the country."<sup>155</sup> The Lumbee's educational endeavors allowed the Lumbee to maintain their school, survive the Great Depression as well as discrimination, and be the proud founders of Pembroke State University.<sup>156</sup>

The Lumbee's pride of their schools grew. Eventually, the Lumbee began to seek federal recognition. This seemed like an attainable goal, as the Lumbee's origins as descendants of the Lost Colony and Hatteras Indians had established in the General Assembly legislation.<sup>157</sup> Additionally,

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145. *Id.*

146. *Id.*

147. *Id.* at 182.

148. *Id.* at 91.

149. *Id.* at 91.

150. *Id.*

151. *DIAL*, *supra* note 5, at 57.

152. *Id.*

153. *Id.* at 61.

154. *Id.* at 62.

155. *Id.* at 63.

156. *Id.*

157. *DIAL & ELIADES*, *supra* note 18, at 90.

events in Lumbee history such as state recognition and a separate school, defined the Lumbee as unique.<sup>158</sup> However, a blow came in 1956 from which the Lumbee have yet to recover. It seems logical that the federal entity responsible for acknowledging a tribe, the BIA, would accept the conclusions of North Carolina as a true representation of Lumbee origins. But as the Lumbee attempted to gain federal acknowledgment, the BIA, and Congress, in the Lumbee Indians Act of North Carolina Act of 1956, managed to block it.

### *C. Meaningless Recognition: Lumbee Indians of North Carolina Act of 1956*

#### *1. The Act*

The Lumbee Indians of North Carolina Act of 1956<sup>159</sup> was called "a glaring example of a meaningless congressionally bestowed federal acknowledgment."<sup>160</sup> "The Act gave the Lumbee federal acknowledgement, but for no purpose,"<sup>161</sup> meaning no benefits. The Act concedes that the Lumbee are "Indians" who are "descendants of the earliest white settlements" in Robeson county; lived by European ways; have a "distinctive appearance and manner of speech;" have English surnames consistent with those of the John White log; and can trace their origin to an "admixture of colonial blood with certain coastal tribes of Indians;" and "desire status and preservation of history."<sup>162</sup> The Act further designated these "Indians" as the Lumbee Indians, "enjoying the rights, privileges, and immunities enjoyed by them as citizens of North Carolina and the United States."<sup>163</sup>

To a Lumbee, reading the Act for the first time, this must have been music to her ears, that is, until the Act concluded: "Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians."<sup>164</sup> The Act recognized the Lumbee as Indians, but not quite Indian-enough to receive any benefits from the government bestowed on other Indians for redressing past wrongs.

#### *2. Hearings on the Act*

In 1961, Sen. Sam Ervin (D.-N.C.) began hearings for what the Indian Civil Rights Act legislative history called, "the most neglected minority

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158. *Id.*

159. Act of June 7, 1956, ch. 375, 70 Stat. 254.

160. Quinn, *supra* note 133, at 44-45.

161. *Id.* at 44.

162. See DIAL & ELIADES, *supra* note 18, at 186 app. B (Lumbee Act printed in full).

163. *Id.* at 187.

164. *Id.*

group in the history of the Nations."<sup>165</sup> Ervin's comments referred to the Lumbee. Senator Ervin endeavored for federal recognition for the Lumbee for all purposes, but the effort failed.

### 3. Ramifications of the Act

#### a) Legal Ramifications

A significant distinction exists between being federally recognized or "known" by the government. Recognition means the government realizes that an Indian tribe exists.<sup>166</sup> On the other hand, acknowledgment establishes a tribe's existence as a "domestic dependent nation," and creates a government-to-government relationship between the tribe and the government.<sup>167</sup> As such, the Lumbee's failure to gain federal acknowledgment beyond "a nod of recognition" has had significant legal, social and even positive ramifications for the tribe.

The legal ramifications of the Lumbee Act of 1956 cut deep into the spirit of the Lumbee today. In a 1990 South Dakota case, *State v. Daly*,<sup>168</sup> the status of Daly as a Lumbee Indian became important, though never paramount, in adjudicating Daly's burglary charge. Under the Major Crimes Act, a state court lacks jurisdiction if the accused is classified as an Indian under the Act.<sup>169</sup> Instead, tribal courts retain jurisdiction over their members. In the trial court, before Daly was sentenced, Daly was granted a motion to dismiss a burglary charge against him due to his status as an "Indian" under the Major Crimes Act.<sup>170</sup> Before the state's appeal was perfected, Daly pleaded guilty in federal district court to one count of burglary. The state appealed and argued that the Lumbee Indian Act of 1956 nullified statutes that affect Indians because of their status as Indians and do not apply to the Lumbee Indians.<sup>171</sup> The South Dakota Supreme Court noted that issue, but ultimately declined to rule on Daly's status as an Indian because "a plea of guilty to the elements of the crime of burglary does not confer federal jurisdiction, since the issue of whether Daly is an Indian is not material to the offense of burglary."<sup>172</sup> Had the Major Crimes Act been applicable to Daly, his case would have been adjudicated in federal, not the state court.

165. S. REP. NO. 90-721 (1967), reprinted in 1968 U.S.C.C.A.N. 1837-39, 1862-67 (as quoted in the legislative history).

166. Quinn, *supra* note 133, at 39.

167. *Id.*

168. 454 N.W.2d 342 (S.D. 1990).

169. Joseph R. Lux, *When Is an Indian Not an "Indian?" -- State v. Daly*, 36 S.D. L. REV. 419, 419 (1991).

170. *Id.* at 421; see 18 U.S.C. § 1153 (1994).

171. Lux, *supra* note 169, at 423-24; see Act of June 7, 1956, ch. 375, 70 Stat. 254 (Lumbee Indian Act).

172. Ahearn, *supra* note 141, at A1.

*b) Sociological Ramifications of the Act*

Beyond criminal issues, the Act has had a significant impact on the Lumbee's ability to gain specific services such as health care, education and other social services.<sup>173</sup> Federal benefits flow directly to members of a "tribe," meaning federally recognized tribes.<sup>174</sup> Because of the Act, the Lumbee can neither receive federal benefits through the Bureau of Indian Affairs nor does its members receive federal hiring preferences because they are not a "true Indian tribe."<sup>175</sup> The Lumbee have been excluded "from good jobs, from decent housing, from education and medical care."<sup>176</sup> Considering 90% of Robeson County are Lumbee in the rural areas, "infant mortality is high; education is below par; jobs are scarce outside of tobacco or turkey farms" and the "elderly Lumbee are the poorest of the poor, living in tumble-down shacks without running water," places referred to as "scuffletowns."<sup>177</sup> The Lumbee recognize that federal recognition would aid them from "tuition to economic development and medical care through the Indian Health Services,"<sup>178</sup> desperate needs in Robeson County. Moreover, the Lumbee long for "autonomy in school and child custody issues that only federal recognition could bring."<sup>179</sup>

Federal recognition creates a trust relationship in which the federal government has a fiduciary duty to manage Indian land and natural resources.<sup>180</sup> The responsibility involves a plethora of decisions ranging from "what a reasonable rate of return on the investment of tribal trust funds" to "whether the trustee may sell tribal property," and to what extent the tribe offers input into these decisions.<sup>181</sup> Essentially the federal government restricts any alienation of land or resources, requiring approval for any transaction involving selling or leasing the use of land.<sup>182</sup>

Government management of Lumbee property could help resolve the problem of scuffletowns in Robeson County. University Chancellor, Lumbee member Joe Oxedine, notes that the Lumbee have always been landowners. Thus, forming a reservation upon which gaming such as bingo can be instigated is not why Lumbees seek recognition.<sup>183</sup> The trust relationship instead could be used to improve the quality of life in the

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173. *Id.*

174. *Lumbees Face Uphill Battle Proving Identity*, *supra* note 65, at A2.

175. Ahearn, *supra* note 141, at A1.

176. *Id.*

177. Shiffer, *supra* note 1, at E1.

178. *Id.*

179. Ahearn, *supra* note 141, at A1.

180. Frank R. Pommersheim, *Tribal-State Relations: Hope for the Future?*, 36 S.D. L. REV. 239 (1991).

181. *Id.*

182. *Id.*

183. *Lumbees Face Uphill Battle Proving Identity*, *supra* note 65, at A2.

county, and provide assistance in building appropriate housing for the destitute.

The poverty-stricken nature is reflected in a recent news article: "Interstate 95 arcs through Robeson county, attracting holdup artists and big-time drug dealers as a midway spot between Miami and New York. This is an area where crushing poverty and an abundance of drugs have ruined many families."<sup>184</sup> The article was describing the place where Michael Jordan's father, James, was fatally shot while sleeping in his Lexus on the side of the highway in which Daniel Green was convicted of the murder on February 29, 1996. His partner, Larry Demery, a Lumbee, pleaded guilty and testified against Green in exchange for a life sentence. Both were high-school dropouts.<sup>185</sup>

Considering the benefits federal aid would bring, \$70 million in health care and benefits, as opposed to the \$3 million they now receive,<sup>186</sup> the Lumbee simply long for validation as Indians, and "downplay their desire for federal aid."<sup>187</sup> "They've never been on a reservation, and we don't need to create one in 1994," says Mia Strickland, a Lumbee.<sup>188</sup> "The number one thing [the Lumbee] want from the federal government is to finally give them that dignity, that they are Indian people. That doesn't cost anything."<sup>189</sup> The Lumbee long for the respect of the Navajo, Choctaw and Apache tribes, making them equals with these tribes by the hand of the federal government.<sup>190</sup>

However sincere the Lumbee are in their conviction for federal recognition, opposition comes both internally and externally, as both the government and other Indians have moved to block the Lumbee's acknowledgment. The Eastern Band of Cherokee, "the only federally recognized Indians" in North Carolina, have been instrumental in blocking the Lumbee movement.<sup>191</sup> Not only do they doubt the Lumbee heritage,<sup>192</sup> but they fear the possible Lumbee power.

Today, the Cherokees are the largest United States tribe at 308,000 members, including those in Oklahoma.<sup>193</sup> If the Lumbee are recognized, they would become the largest Indian tribe east of the Mississippi River.<sup>194</sup>

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184. *Man Found Guilty of Murder in Slaying of Jordan's Father*, SAN ANTONIO EXPRESS-NEWS, Mar. 1, 1996.

185. *Id.*

186. Milbank, *supra* note 25, at A1.

187. Shiffer, *supra* note 1, at E1.

188. Ahearn, *supra* note 141, at A1.

189. Shiffer, *supra* note 1, at E1.

190. *Lumbees Face Uphill Battle Proving Identity*, *supra* note 65, at A2.

191. Shiffer, *supra* note 1, at E1.

192. *Lumbees Face Uphill Battle Proving Identity*, *supra* note 65, at A2.

193. *Id.*

194. *Id.*

The Cherokee and other opponents charge that "adding 43,000 Lumbee to the federal system would be too expensive" and redirect the funds they receive now to the Lumbee.<sup>195</sup> Arlinda Locklear, a Lumbee lobbyist, said of the Cherokee's fear that the Lumbee will absorb \$120 million in funds from the BIA, "It's a shame there is such bitterness between two oppressed peoples."<sup>196</sup> She also said, "In Indian country, if you lack the federal recognition, you are plainly treated like a second class Indian, and Indians aren't high in socioeconomic status of this country anyway."<sup>197</sup>

c) *Positive Ramifications of the Act*

Despite the Lumbee struggle to gain recognition since 1888,<sup>198</sup> the Lumbee are able to see their glass half full and affirm some positive aspects their lack of federal acknowledgment bestows. For instance, Lumbees have preserved their identity through the hardships of a triracial system of segregation "with white-only, black-only and Indian-only schools."<sup>199</sup> Moreover, Pembroke University Chancellor Joe Oxedine points out that integration was good for the Lumbee because it taught the Lumbee that "Indians, blacks and whites [can] interact comfortably, the key to success in American society."<sup>200</sup>

Moreover, the Lumbee, being landowners, have seen other reservations inflicted with perils such as "high suicide rates, a high alcoholism rate and profound sense of hopelessness."<sup>201</sup> These psychological perils may stem from the opening of reservations to non-Indians under the Allotment Act, which substantially reduced the tribal land base of Indians nationwide and, in turn, any sense of tribal identity.<sup>202</sup> The Act significantly affected the tribes' ability to sustain true Indian communities, and one historian said,

No longer did many tribal Indians feel pride in the tribal possession of hundreds of square miles of territory which they could use as a member tribe. Now they were forced to limit their life and their vision to an incomprehensible individual plot of 160 acres or so in a checkerboard of neighbors, hostile and friendly, rich and poor, white and red.<sup>203</sup>

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195. Ahearn, *supra* note 141, at A1.

196. *Id.*

197. *Lumbees Face Uphill Battle Proving Identity*, *supra* note 65, at A2.

198. Ahearn, *supra* note 141, at A1.

199. *Id.*

200. *Lumbees Face Uphill Battler Proving Identity*, *supra* note 65, at A2.

201. Ahearn, *supra* note 141, at A1.

202. Kevin J. Worthen, *Two Sides of the Same Coin: The Potential Normative Power of American Cities and Indian Tribes*, 44 VAND. L. REV. 1273, 1289 (1991).

203. *Id.* at 1289-90.



The Indians' loss of control over land development and the psychological impact on their ability to create value systems within the community, may contribute to suicide and alcoholism. Most Indians perceived the Act with a sense of powerlessness and hopelessness.<sup>204</sup> While the Lumbee are grateful they are not dependent on and limited by a reservation system, they believe "they have been shortchanged by a government that refuses to recognize them or make amends for generations of mistreatment."<sup>205</sup>

#### 4. *The Department Concludes The Lumbee Are Not Indians*

The hard efforts of the Lumbee to gain acknowledgment from the Department of the Interior seemed to have come to a dead end in 1985 with the BIA's *Final Determination that the Lumbee Nation of North Carolina and America Inc. Does Not Exist as an Indian Tribe*.<sup>206</sup> In that document, the Assistant Secretary determined that the Lumbee did not satisfy five of the seven mandatory criteria<sup>207</sup> and further that because of the group's "mixed and uncertain ancestry, the geographical dispersion of its continuity, and the group's lack of inherent social and political cohesion and continuity," the determination was final.<sup>208</sup>

Reviewing the Department's findings, it is clear that first, their reasoning is flawed. Considering that 90% of Robeson County is Lumbee and that most Lumbee live in that county, it seems arbitrary the BIA would find a "geographical dispersion" of people.<sup>209</sup> The statistics of the Robeson county community of Pembroke, where "the Prospect school of 715 students has 695 Lumbee" also proves a geographical concentration in one community.<sup>210</sup> How can the Lumbee fail the "geographically dispersion" requirement when they all live in the same community? Moreover, the extensive research of Dial and other scholars proves at least "more likely than not" and certainly "by a preponderance of the evidence" and probably "beyond a reasonable doubt" to the Lumbee, that the "Lost Colony" theory linking the Lumbee to the Cheraw of the Siouan tribes is correct. The Department seems to gloss over the evidence without noticing that the tribe foundation of Indian ancestry is substantial. The Department fails to give credence to the unification and concentration of the Lumbee, in terms of geography and self-identification. As the locals say, "if you want to buy some land, don't come to Prospect [a town in Robeson County;] Lumbees

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204. *Id.* at 1290.

205. Ahearn, *supra* note 141, at A1.

206. Bureau of Indian Affairs, U.S. Dep't of the Interior, Notice: Final Determination that the Lumbee Nation of North Carolina and America Inc. Does Not Exist as an Indian Tribe, 50 Fed. Reg. 18,746 (1985).

207. *Id.*

208. *Id.*

209. Shiffer, *supra* note 1, at E1.

210. *Id.*

love to stay together [and the land] is basically held within the families."<sup>211</sup> The clear weight of the evidence shows adhesiveness and continuity of community the BIA was "looking" for. It seems peculiar that the BIA interpreted the Lumbee's convincing evidence in the manner they did.

Despite the Department's determination, the criteria used by the government to determine eligibility for federal recognition is flawed. The proceedings and debate used to evaluate petitions for recognition is closed to the Indians whose status is at stake.<sup>212</sup> As such, the process is not available for public scrutiny, leaving the moving Indian group with only a written report to justify the decision.<sup>213</sup>

Second, the process has no deadlines, allowing the review period to last years.<sup>214</sup> Third, the current system is "burdensome, highly subjective, and uses intrusive criteria."<sup>215</sup> The seven criteria in 25 C.F.R. § 83 require extensive social science evidence which are in of themselves, subjective.<sup>216</sup> The criteria most tribes fail is the level of interaction among tribal members and the quality of relationships between tribal leaders and members.<sup>217</sup> In fact, this is one criteria the Lumbee failed. On these inquiries, the opinion of the Department is often directly at odds with independent experts on the matter, underlining the subjective and arbitrary quality of the requirements.<sup>218</sup> Third, the present criteria require that all of the factors must be intact "from the time of sustained white contact."<sup>219</sup> This instigates an "extreme documentary burden that is not related to the tribes' existence," as most tribes "purposely avoided record keepers from the dominant society for their own protection."<sup>220</sup> From the time of the white settlers, most Indians were trying to keep their uniqueness intact and assimilation was thwarted in this attempt. Therefore, it is arbitrary to require concrete documentary evidence to prove the tribe existed from the time of white contact.<sup>221</sup> Fourth, in the current system, the BIA determines federal status, and also allocates funding for recognized tribes, which

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211. *Id.*

212. *Hearing and Markup Burt Lake Band Before the House Subcomm. on Native American and Insular Affairs, Comm. on Resources, 104th Cong. (1995) (testimony of Arlinda F. Locklear, Esquire on behalf of the Nation of Indiana, Inc. and the Lumbee Tribe of Cheraw Indians, North Carolina).*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

creates a conflict of interests.<sup>222</sup> To acknowledge one tribe is to potentially redirect funds away from another.

A more feasible method of determining legitimate tribal status should be instigated, and is currently being proposed in a bill titled "Indian Federal Recognition Administrative Procedures Act of 1995."<sup>223</sup> Delegate Faleomavaega proposed the bill, which the Lumbee and other Indian groups who lack federal acknowledgment, such as the Nation of Indiana, Inc., support.<sup>224</sup> The bill creates an independent commission to process petitions within a time certain.<sup>225</sup> Moreover, the moving Indian group actually presents its case to the commission. After this hearing, the group must be recognized or another hearing will be held, at which time, staff members who made the recommendation, as well as tribe members, will testify.<sup>226</sup> This changes the process from one of secrecy to open, participatory proceedings, in which the deciding body must explain why they decided against recognition. Thus, scrutiny and accountability are added to the process. The bill also contains "tight deadlines" allowing the process to be completed in "months not years."<sup>227</sup>

The proposed bill also changes the substantive nature of the requirements. The bill also requires exercise of political authority since 1934, allowing many types of circumstantial and characteristic evidence to prove it.<sup>228</sup> This eliminates the subjective nature of such an inquiry.<sup>229</sup> For example, to prove political authority, a group may show its political process, a geographic concentration of at least 50% of the tribe, or at least 50% intergroup marriage by the tribe, or any other evidence the group feels will demonstrate this criteria.<sup>230</sup> The group must also submit its membership rolls and criteria to prove the group's self-identity is indeed unique. The bill also requires that the group exist as a community, allowing direct and secondary evidence, illustratively listing factors such as "presence of distinct social boundaries, existence of communal rights, preservation of a tribal language, longstanding state recognition or other markers of an Indian community."<sup>231</sup>

Also, the proposed bill only requires that a petitioning group prove "identification as Indian since at least 1934."<sup>232</sup> Therefore, the arbitrary

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222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

requirement under the present system that the group show roots from the time white settlers came is eliminated. As discussed earlier, most Indians rejected record keeping at this time, so this requirement proved to be impossible to meet.<sup>233</sup> Instead, this bill asks whether an Indian group exists as a self-governing people, which depends on "the will of members to maintain themselves as a distinct people."<sup>234</sup>

Furthermore, the proposed bill allows the widest possible range of evidence to prove tribal identity, while ensuring that only bona fide groups will gain recognition. The potential for fraud is cut by the community and political unity requirements. Additionally, the political and community criteria have been combined to eliminate the overlap and duplication presently in place.<sup>235</sup> Currently, the community will be accepting of proof of political society, and vice versa, but not in all cases, again showing an arbitrary quality.

The current system requires extensive field work to show the quality of interaction within the group, which is "time-consuming, expensive, judgmental and unnecessary."<sup>236</sup> The new bill substitutes objective facts without looking at the extent of relationships, so evidence can be gathered without the help of social scientists and field workers, by the Indian group themselves.<sup>237</sup>

Finally, the vast improvements in the bill are modeled after the "Cohen Criteria" which has been historically used.<sup>238</sup> These criteria allow wide alternatives in proving the tribe exists while maintaining the integrity of the process. Moreover, Delegate Faleomavaega invited several non-recognized tribes to participate in discussions to formulate the bill.<sup>239</sup> As such, it incorporates requirements which make acknowledgment attainable and reasonable.

### *5. A Renewal of Interest*

#### *a) Bill Clinton Supports The Lumbee Bill After An Inquiry Of A 14-Year-Old Lumbee Indian*

One Saturday in February 1993, Adrian Andrade participated with a group of other teenagers who quizzed President Clinton about issues that were important to them. Andrade stumped the President when she asked, "why Lumbee Indians, the largest Native American tribe east of the

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233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. Robin Adams, *Clinton Answer Could Recognize Lumbee Indians as Native Americans*, GREENSBORO NEWS & REC. (Greensboro, N.C.), Feb. 23, 1993, at B1.

Mississippi River, don't have federal recognition?"<sup>240</sup> Clinton responded that he did not know that there were unrecognized Native American tribes.<sup>241</sup>

Andrade's mother is Lumbee and her father is of the recognized Luiseno tribe. Both parents are American Indian activists. Her father met with President Clinton in his capacity as a Native American leader during Clinton's campaign in 1992, and her mother volunteers for the National Congress of American Indians.<sup>242</sup> Activism runs in the family. As Andrade said, "This is my tribe. I felt I needed to get involved, and I wanted to do something to help."<sup>243</sup>

The Lumbee are thankful for Adrian Andrade's concerns and hope that raising Clinton's awareness of the Lumbee and other nonrecognized tribes will get the recognition they seek. Clinton promised Adrian that he would have a staff member "investigate her concerns that same week."<sup>244</sup> Adrian's inquiry made headlines, raising awareness of the problem by putting Lumbee federal recognition on the nation's agenda.

*b) Federal Recognition Bill Fails by Two Votes Due To Efforts of the Lumbee's Own North Carolina Senator, Jesse Helms*

In the 1990s, largely as a result of lobbyist and Lumbee trial attorney Arlinda Locklear, the Lumbee Recognition Bill often gets to the House or Senate floor. In 1992, the bill died on the Senate floor, a measly two votes short, which Locklear blames on Sen. Jesse A. Helms (R.-N.C.), who has repeatedly blocked the Lumbee's efforts.<sup>245</sup> But Sen. Terry Sanford (D.-N.C.), who sponsored the Bill along with Rep. Charles G. Rose III (D.-N.C.) was "confident the measure would eventually get to the floor."<sup>246</sup> Interestingly, President Bush vowed to veto the bill even if it had passed the Senate.<sup>247</sup>

The Bill did indeed make it back to the floor in 1993 after the United States House of Representatives voted "to formally recognize the Lumbee Tribe of Cheraw Indians of North Carolina."<sup>248</sup> The House's measure enabled the Lumbee to enact a Constitution, including membership criteria.<sup>249</sup> Moreover, with the Clinton Administration "not" opposing the

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240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. Elana Varon, *Lumbee Bill Dies, But May Rise Again*, NEWS & OBSERVER, Raleigh, N.C., Feb. 28, 1992, at B1.

245. Ahearn, *supra* note 141, at A1.

246. *Id.*

247. *House Vote Recognizes State's Lumbee Tribe*, GREENSBORO NEWS & REC. (Greensboro, N.C.), Oct. 29, 1993, at A1.

248. *Id.*

249. *Lumbee Indians Feeling Optimistic: N.C.-Based Native American Group Keeping*

Lumbee Bill, and the staunch support of Sen. Lauch Faircloth (R.-N.C.), many Lumbee felt like Locklear: that 1994 would "be the year of the Lumbee Indian."<sup>250</sup> The Lumbee grew stronger in 1994, voting on a constitution to formalize tribal council elections and an Indian government, and electing the first Lumbee county clerk and the first Lumbee sheriff, Glen Maynor.<sup>251</sup> The events seemed to reflect the Lumbee power to gain all they wanted in 1994.<sup>252</sup> In fact, the success of a Lumbee sheriff was called "the Big Enchilada" as the most prestigious office in Robeson county according to Connie Brayboy, editor of the *Carolina Indian Voice*.<sup>253</sup>

However, in the back of the Lumbee's heads a voice whispered, "Jesse Helms." Senator Helms's "tactical maneuvers," which defeated past efforts of the Lumbee, once again proved fatal.<sup>254</sup> Helms, who fears that recognition would cost "\$100 million per year,"<sup>255</sup> was blamed again by Locklear who notes Helm's reputation as a "master" of the filibuster,<sup>256</sup> while simultaneously using procedural tactics such as "threatening to hold up Senate business with a series of amendments."<sup>257</sup> The senator's uniform rejection of minority bills becomes increasingly suspect in light of Helms's 1993 support of the Daughters of the American Revolution's endeavor to "renew their patented Confederate flag insignia."<sup>258</sup>

*c) A Dichotomy: Congress Can't Act Before the BIA Does and the BIA Won't Recognize the Lumbee Until Congress Does*

In addition to questioning Lumbee heritage and concern about federal increases stemming from Lumbee recognition, Senator Helms consistently argues that the Lumbee "should go through the recognition process established by the Bureau of Indian Affairs, rather than have their status determined by Congress."<sup>259</sup> What Senator Helms fails to recognize is that under the Lumbee Indians Act of 1956, the tribe is precluded from petitioning the BIA for recognition.<sup>260</sup> Even the BIA acknowledges that "it

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*Efforts For Federal Recognition on the Front Burner*, CHARLOTTE OBSERVER, June 20, 1994, at 3C.

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. John Monk, *For Carolinas, Session of Congress a Mixed Bag: Banks Won, Lumbees Lost, Tobacco Got Reprieve*, CHARLOTTE OBSERVER, Oct. 9, 1994, at 8B.

255. Lorraine Ahearn, *Squashed Two Projects: Minorities Question Helms' Recent Votes*, GREENSBORO NEWS & REC. (Greensboro, N.C.), Oct. 11, 1994, at A1.

256. *Id.*

257. *Id.*

258. *Id.*

259. Varon, *supra* note 244, at B1.

260. *Id.*

can't do anything before Congress acts."<sup>261</sup> Though an admission of concern, the BIA lack of empathy is more realistically demonstrated in what one BIA official reported to Congress, "the Lumbees have not documented their descent from a historic tribe," and calling the Cheraw link "misinterpreted."<sup>262</sup>

The Lumbee frustration with this tautology is demonstrated by Locklear who says the Lumbee "are stuck in a never-never land."<sup>263</sup> Despite their getting the run-around, Lumbee determination remains strong, a trait they have had many opportunities to perfect throughout history. As Ruth Locklear said before the vote failed in 1994, "It's a little humbling, knowing our ancestors worked for the same things and now all of them are dead."<sup>264</sup> Lumbee leaders also acknowledged before the fateful vote "that no matter what happens in Washington this year, the activism of 1994 is already an important chapter in the tribe's generational support."<sup>265</sup> The Lumbee will continue to fight for recognition for their children, "Maybe their [the Lumbee] struggle will come to fruition in our lives. But whether we fail or succeed, we'll be back again. We're not going anywhere. We've got children coming behind us."<sup>266</sup>

#### *IV. A Lumbee Civil War: Who Speaks for These Indians Without Voices?*

##### *A. Tribe Members Vote on a Lumbee Constitution*

The power of a unified constitution, the Lumbee Tribe of Cheraw Indians believe, would help the Lumbee gain federal recognition.<sup>267</sup> In early July 1994, the Lumbee passed their first constitution, as the BIA monitored the ratification process. The vote was an overwhelming 8040-223 in favor of the constitution.<sup>268</sup> The constitution made provisions for: a tribal council, a legislative, executive and judicial branch of government; a 30% referendum to vote on gaming and taxation; and reserving member's rights to enact tribal laws separate from the tribal council.<sup>269</sup> The enactment of a constitution would help the Lumbee get a more formal government in place,<sup>270</sup> fulfilling one of the seven requirements of 25 C.F.R. § 83.<sup>271</sup>

261. Milbank, *supra* note 25, at A1.

262. *Id.*

263. *Id.*

264. *Id.*

265. Ahearn, *supra* note 141, at A1.

266. *Id.*

267. *Id.*

268. *Lumbee Indians Hold Election: Constitution Ok'd, Seen as Progress Toward Federal Recognition*, CHARLOTTE OBSERVER, July 4, 1994, at 1C.

269. *Id.*

270. *Id.*

271. *See supra* note 137; 25 C.F.R. § 83(d) (1982).

*B. A Split Between the Lumbee Tribal Council and the Lumbee Regional Development Association*

In addition to the hardship of getting federal recognition, the triumph of the Lumbee constitution proved frustrating as it spawned a sort of Civil War among the Lumbee over "how to govern themselves and who should speak for them."<sup>272</sup> With the election of the Lumbee Tribal Council (by provision of the new constitution) in September 1994, came "confusion in the community" as the Lumbee now had two elected tribal governments.<sup>273</sup>

The council was voted into power by the Lumbee Constitutional authority in 1994 by an overwhelming ratio of 8000 to 200.<sup>274</sup> The Lumbee Regional Development Association had been the service agency for the Lumbee since 1984, having an elected board of directors and power to administer more than \$3 million per year in grant money and programs.<sup>275</sup> State Rep. Ronnie Sutton, a Democrat from Robeson County, and the one American Indian in the legislature, stated then that the relationship between the two "must be defined."<sup>276</sup> Sutton also professed that the problem would "give way to unprecedented Lumbee unity" and "cause people to look favorably on the Lumbees when they discover they are now organized, they have leadership in place, they have a governing council."<sup>277</sup>

Though many were optimistic about the Lumbee's ability to display their new-found organization and leadership, it now appears that consensus on the issue will be ultimately determined in a courtroom. In August 1995, the Lumbee Tribal Council filed suit against the Lumbee Regional Development Association to stop the association from representing the Lumbee tribe and declare the council the tribe's governing body.<sup>278</sup> The suit claims the association makes blatant misrepresentations to the public, and the federal and state governments, when it acts in the Lumbee name.<sup>279</sup>

The Tribal Council seeks \$10,000 in damages, a declaratory judgment that it is the tribe's governing body, and an injunction against the association barring representation of the Lumbee people.<sup>280</sup> The council also wants the tribal roll, federal grants and everything it "holds in the name of the Lumbees."<sup>281</sup>

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272. Milbank, *supra* note 25, at A1.

273. *Lumbee Leadership at Issue*, CHARLOTTE OBSERVER, Sept. 7, 1994, at 5C.

274. Milbank, *supra* note 25, at A1.

275. *See Lumbee Leadership at Issue*, *supra* note 273, at 5C.

276. *Id.*

277. *Id.*

278. *Lumbee Council Sues Leadership Rival*, CHARLOTTE OBSERVER, Aug. 30, 1995, at 2C.

279. *Id.*

280. *Id.*

281. *Id.*



Realizing the lengthy process of adjudication, the Lumbee may have to wait longer than expected to have their government in order by the time the next "fair-weathered" Congress comes along. The 1994 Congress was expected to be "Lumbee-friendly" but the vote failed, though the Lumbee "who vote heavily Democratic had plenty of support in the Senate." However, Republicans retained control of the Senate,<sup>282</sup> making federal support of the Lumbee more difficult.

Nevertheless, the Lumbee remain optimistic. In 1994, the association's Executive Director, James Hardin, who believes the Lumbee should have waited to enact the constitution after federal recognition, commented that the internal conflict among the Lumbee is inherent in any democratic process.<sup>283</sup> To those who view the Lumbee as disassociated, Hardin responds, "The white race is not united. The Indian people have a right to debate their differences. This is the democratic process at work."<sup>284</sup>

#### *V. A Losing Battle, A War To Be Won: Steps for Successful Federal Recognition*

##### *A. A Lumbee Constitution as a Means to an End and Convincing the BIA*

The Lumbee constitution shows unity, pride, cohesion and organization among the tribe, traits the federal government considers when determining federal recognition. However, Congress may be reluctant to grant federal recognition upon a tribe who must adjudicate their own laws in the courts of "the white man."

Perhaps the Lumbee would be better situated if they were to hire some sort of Indian arbitration firm and resolve their differences in a "purely Indian" environment. This would show Congress and the BIA, as well as other Indian tribes, that the Lumbee people are capable of handling their own affairs. This would also display their ability to operate as a sovereign, which federal recognition would bestow upon the tribe, instigating a government-to-government relationship. The Lumbee must show Uncle Sam that they are developed and united enough so that they can handle their own affairs. If the Lumbee adjudicate their internal struggles in court, they may ruin their chances for recognition, by inadvertently affirming the government's previous finding that the Lumbee inherently have a lack of cohesion, a requirement of the BIA acknowledgment procedure.

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282. Monk, *supra* note 254, at 8B.

283. *Lumbee Voting on Proposed Constitution: Supporters, Opponents Share Goals, but Some Question Timing of Move*, CHARLOTTE OBSERVER, June 30, 1994, at 2C.

284. *Id.*

*B. Passing the Lumbee Recognition Bill*

In Congress, as late as February 6, 1996, Senator Faircloth, a conservative Republican from North Carolina, has publicly supported the Lumbee bid for federal recognition.<sup>285</sup> Moreover, Senator Helms still is denouncing support of the Lumbee.<sup>286</sup> Along with Faircloth's support, however, comes a stipulation that he does not support "appropriating the Lumbee any federal money."<sup>287</sup> Indeed, if the Lumbee truly only want federal recognition for their pride, then this will suffice. However, considering the scuffletowns of Robeson county, the Lumbee will want more.

To get the bill passed, the Lumbee must encourage Faircloth to recruit support, a task he is not doing himself, according to a cosponsor of the bill, Rep. Charles Rose (D.-N.C.).<sup>288</sup> Moreover, the Lumbee must show that while their recognition will sap some of the federal funds from other Indian tribes, no new moneys need be allocated. The Lumbee must show that other tribes can afford the cutback because restitution has been allowed to them for many years, while the Lumbee have received nothing. The Lumbee must show the discrimination inflicted upon them by the whites and the government, the facts surrounding their heritage of people and the inconsistencies of past decisions such as the 1985 Notice of the Department of the Interior.

Perhaps most importantly, the Lumbee must convince Senator Helms that his reasoning concerning how the Lumbee should be recognized is flawed. They must show that Congress is the first step and the BIA comes next because of the Lumbee Act of 1956. The Act bars the Lumbee from petitioning the BIA for funds, which Helms insists the Lumbee must do before they can be recognized by Congress.

Because Senator Helms' tactics are ruthless, the Lumbee must persuade not only their own North Carolina representatives, but concentrate on educating senators from other states as well, especially concerning Helms' poor reasoning. Only with support, or at least indifference, from Senator Helms, can the Lumbee persuade the Senate to enact the Bill. Moreover, the Lumbee must act quickly as President Clinton and his Lumbee-friendly administration complete their last term of office. The chance of another sympathetic executive branch is simply too speculative to rely on in the future.

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285. John Monk, *Pit Bull Politics: Halfway Through His Freshman Term, North Carolina's Sen. Lauch Faircloth Has Earned His Reputation as a Conservative Who's Not Afraid to Bite*, CHARLOTTE OBSERVER, Feb. 4, 1996, at 1C.

286. *Id.*

287. *Id.*

288. *Id.*

*C. The Persistence of the Lumbee Indian*

The Lumbee are a patient people. With every defeat, they have promised to come back and come back they have. This may be their best strategy for gaining federal recognition, yet one that has thus far proved unsuccessful. Through all the red tape of the BIA and congressional politics, the Lumbee know in their heart what they truly are. They are Indians.

*V. Conclusion*

*My father and mother are Indians, my father's father and mother's mother were Indians and their parents and grandparents were Indians. What else could I be?*

— Lumbee Response to Cultural Skeptics, Adolph L. Dial<sup>289</sup>

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289. DIAL, *supra* note 5, at 105.