

SUPREME COURT OF THE LUMBEE TRIBE

Leon Jacobs
Tribal Administrator
Petitioner,

Vs.

Case No. 2005-0005
0012

Tribal Council
Respondent,

Argued: April 27, 2006

This matter is before the Court on a petition filed by Leon Jacobs, Tribal Administrator. This hearing was conducted on April 27, 2006 at Tribal Headquarters on Union Chapel Road in Pembroke, NC 28372. Present at the hearing were Tribal Council members: Speaker Lawrence Locklear, Welford Clark, Danita Locklear, Linda Hammonds, and Wendy Moore Graham. Council Members Garth Locklear and James Harold Locklear were present during parts of the hearing.

Tribal Administrator, Leon Jacobs and Mitchell "Bosco" Locklear represented the Tribe. Tammy Maynor was present also.

Mr. Jacobs asserts that tribal ordinance 2005-0005 violates Article III of the Tribal Constitution. Article III is entitled Distribution of Powers. Article III (3) specifies that the powers delegated to the legislative, executive, and judicial branches shall be separate and distinct and no branch shall exercise the powers delegated herein to another branch.

Article VII (1)(a) gives the Tribal Council the power to enact tribal budgets. Article VIII (1) specifies that all executive powers, including implementation of and compliance with annual budgets of the Lumbee Tribe, shall reside in a Tribal Chairperson, who shall cause the laws of the Tribe to be faithfully executed. The Tribal Administrator is the chief administrative office for the executive branch and is appointed by the Tribal Chairperson and subject to confirmation by the Tribal Council

The Court must take note of the unique arrangements that exist in the tribal governmental structures, particularly as it relates to source of funding.

In most governmental structures that have a Legislative Branch elected by its members, the legislative branch has the authority to raise and spend monies. The Lumbee Tribe is unique in that the funding source is a separate entity. The Tribal Council has no authority to levy tax. The funding source usually specifies the use for which the provided funds may be used.

The petitioner asserts that the Tribal Council does not have the responsibility to oversee or approve expenditures once the budget has been enacted by the Tribal Council.

The Tribal Council has the constitutional authority to enact the annual tribal budget. We believe that once the budget has been enacted the Council has the right to know whether the budget is being complied with. This is an ongoing process. The Tribal Council and the executive branch each has the responsibility to comply with limitations placed by the funding source. We believe that the Tribal Council should give its approval or disapproval to modifications made to the budget that was submitted by the Tribal Chairman and approval by the Tribal Council at the beginning of the physical year. Funds that come to the Tribe after the physical year begins present a unique problem. Funds which are earmarked for a specific purpose must be used for that purpose.

This ordinance gives the finance committee the right to meet and discuss requested changes and modifications to the overall budget. If the finance committee finds that the request is allowable it shall schedule the budget modifications requested for consideration by the FULL TRIBAL COUNCIL at a scheduled meeting. If the finance committee finds that a request is UNALLOWABLE, the request DIES IN COMMITTEE. The full Tribal Council will not get to consider the matter. We find this particular provision unconstitutional in that it deprives the Tribal Council the right to make a decision on the proposed changes and places the decision in the hands of the finance committee. The Tribal Council approved the budget in the first place. In our opinion, they are the only ones who can modify it. Even when the finance committee decides against a budget modification, the final decision belongs to the full Tribal Council.


This ordinance also attempts to prescribe penalties and punishment for Tribal Officials who spend funds in a manner unauthorized by the Tribal Council. This appears to be an infringement on the right of the Executive Branch to carry out its constitutional duties. The Legislative Branch has no authority to take punitive measures against any tribal employee who is acting within the scope of his or her employment.

For these reasons we hold that this ordinance as it is written is unconstitutional in that it violates Article III pertaining Separation of Powers and that it allows for a budgetary matter to be decided by less than the full Tribal Council.


In all branches of government: federal, local and state, there are usually discussions held between the legislative branch and the executive branch as it relates to budgetary matters. It seems to the Court that the Legislative Branch and the Executive Branch should be able to sit down, taking into account the unique funding arrangements that exist between the Tribe and its funding sources, and come up with a workable plan that would satisfy the concerns held by each side.

Justices Blanks and Freeman concur in this opinion.

This the 24th day of August, 2006


Chief Justice Henry Ward Oxendine


Justice Patricia Freeman


Justice Anthony Blanks

The Supreme Court of the Lumbee Tribe of North Carolina

Robeson County
North Carolina

Petition to the Supreme Court of the Lumbee

Petitioner,
Leon Jacobs
Tribal Administrator
P.O. Box 2709
Pembroke, NC 28372

Case No: 2005 - 012

v.

Respondent,
Tribal Council,
Lawrence Locklear
Speaker
P.O. Box 2632
Pembroke, NC 28372

Petition

Now Comes Leon Jacobs, Tribal Administrator, Petitioner and files this petition against the Tribal Council, Respondent.

The petitioner is a resident of Robeson County, North Carolina and is employed at 707 Union Chapel Road, Pembroke, NC 28372

The respondent is a resident of Robeson County, North Carolina and resides at P.O. Box 2632 Pembroke, NC 28372.

Explain What Section of the Lumbee Constitution or Tribal Ordinance That Has Been Violated.

- I. Under Article III: Distribution of powers; the Tribal Council has violated paragraph (3). The Lumbee Constitution is clear that the powers delegated to the legislative, executive, and judicial branches except as expressly provided

in the Constitution, shall be separate and distinct and no branch shall exercise the powers delegated herein to another branch, except for the office of Vice-Chairman.

Here in Ordinance No. 2005-0005 (Budget Approval and Monitoring Process) we have a clear violation of the Constitution. This ordinance states that the Council is responsible for overseeing, reviewing, and approving actual expenditures and budget variances throughout the fiscal year.

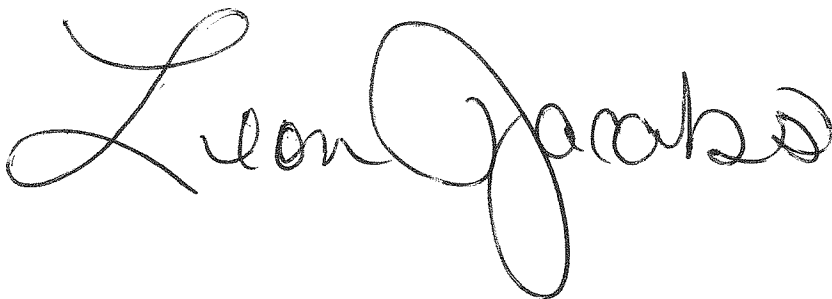
Article VII expressly states the duties of the Tribal Council, which are as follows:

1. The Tribal Council shall have the power to enact ordinances of the Lumbee Tribe of North Carolina. Such legislative power shall include:
 - a. The enactment of annual tribal budgets, provided that budgets shall be enacted into tribal law following the conduct of a tribal hearing(s) on budgets proposed by the Chairperson
 - b. The adoption of rules and regulations governing the Tribal Council's procedure and decorum, consistent with the provisions of this Constitution; and
 - c. The confirmation of either employment or dismissal of a Administrator.

It is not the responsibility of the Tribal Council to oversee or approve expenditures. Their job is to adopt the budget and they have done that. Now, it is the responsibility of the executive to implement the process and it is the Chairman's duty according to Article VIII of the Constitution to ensure implementation and strict compliance of the annual budget.

Statement of Relief Being Sought

1. The Executive Branch respectfully requests an injunction on this matter until it can be adjudicated before the Supreme Court.
2. The Executive Branch respectfully asks that all unconstitutional provisions of this ordinance be stricken from the Ordinance.

A handwritten signature in black ink, appearing to read "Leon Jacobs". The signature is written in a cursive, flowing style with large loops and a long tail on the final letter.

LUMBEE TRIBE OF NORTH CAROLINA

February 23, 2006

Mr. Lawrence Locklear
P.O. Box 2632
Pembroke, NC 28372


Dear Mr. Speaker:

The Supreme Court of the Lumbee Constitution has scheduled a hearing in the matter of ***Leon Jacobs v. Tribal Council*** for March 23, 2006 at 6:30 p.m. at the Lumbee Tribal Office.

We have continued this case several times and no further continuances will be granted in this case. In addition, if you have any supporting documentation that supports your case and you want the Court to consider it must be received by Ms. Tammy Maynor within ten days of receipt of this letter.

If you have any questions please feel free to contact Ms. Tammy Maynor at 910-733-5304 or 522-5182.

Chief Justice Tony Hunt



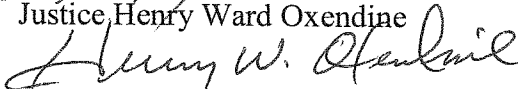
Justice Patricia Freeman



Justice Anthony Blanks



Justice Henry Ward Oxendine



LUMBEE TRIBE OF NORTH CAROLINA

February 23, 2006

Leon Jacobs
P.O. Box 2709
Pembroke, NC 28372

Dear Mr. Tribal Administrator:

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We have continued this case several times and no further continuances will be granted in this case. In addition, if you have any supporting documentation that supports your case and you want the Court to consider it must be received by Ms. Tammy Maynor within ten days of receipt of this letter.

If you have any questions please feel free to contact Ms. Tammy Maynor at 910-733-5304 or 522-5182.

Chief Justice Tony Hunt



Justice Patricia Freeman



Justice Anthony Blanks



Justice Henry Ward Oxendine



LUMBEE TRIBE OF NORTH CAROLINA

February 23, 2006

Ms. Frances Chavis
P.O. Box 535
Pembroke, NC 28372

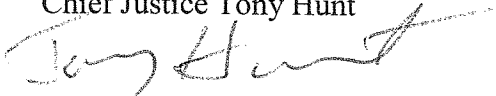
Dear Ms. Secretary:

The Supreme Court of the Lumbee Constitution has scheduled a hearing in the matter of *Leon Jacobs v. Tribal Council* for March 23, 2006 at 6:30 p.m. at the Lumbee Tribal Office.

We have continued this case several times and no further continuances will be granted in this case. In addition, if you have any supporting documentation that supports your case and you want the Court to consider it must be received by Ms. Tammy Maynor within ten days of receipt of this letter.

If you have any questions please feel free to contact Ms. Tammy Maynor at 910-733-5304 or 522-5182.

Chief Justice Tony Hunt



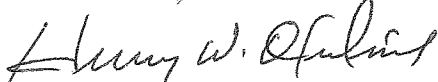
Justice Patricia Freeman



Justice Anthony Blanks



Justice Henry Ward Oxendine



February 19, 2006

Mr. Lawrence Locklear
P.O. Box 2632
Pembroke, NC 28372

Dear Mr. Speaker:

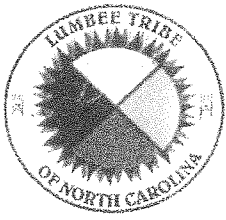
The Supreme Court of the Lumbee Constitution has scheduled a hearing in the matter of ***Leon Jacobs v. Tribal Council*** on February 23, 2006 at 6:30 p.m. at the Lumbee Tribal Office.

If you have any questions please feel free to contact me at 910-733-5304.

Sincerely,

A handwritten signature in black ink that reads "Tammy Maynor". The signature is written in a cursive style with a large, looping initial "T" and "M".

Tammy Maynor



SUPREME COURT OF THE LUMBEE TRIBE

Leon Jacobs
Tribal Administrator
Petitioner,

V

NOTICE OF HEARING
Case No. 2005-012

Lawrence Locklear
Lumbee Tribal Council
Respondent

Please take notice that the Supreme Court of the Lumbee Constitution has received a petition from the Executive Branch of the Lumbee Tribe referencing Ordinance #2005-0005.

The court will conduct a hearing on Thursday, December 8, 2005, at 6:00 p.m. at the Lumbee Tribal Office on Union Chapel Road.

Both the Petitioner and the Respondent will have the right to be represented by council. Motions for dismissal will be allowed at the beginning of the hearing.

Tony Hunt
Chief Justice

A handwritten signature in black ink that reads "Tony Hunt". The signature is written in a cursive, slightly stylized font.

Date Nov. 18, 2005

1 LUMBEE TRIBE OF NORTH CAROLINA

2 SUPREME COURT HEARING

3 THURSDAY, APRIL 27, 2006

4 -6:37 p.m. -

5
6 CHIEF JUSTICE HENRY OXENDINE: It's 6:37. I'm gonna
7 call the meeting the order, this session of court to order, and Ms.
8 Freeman is here and Mr. Blanks is here. It's my information that Mr.
9 Tony Hunt has resigned. I have not seen anything to that effect but
10 that's what I've told, so operating on that assumption, there's only
11 three of us, and it's my opinion that we can operate as a court with
12 three people because that's still a majority. But I'm hoping that
13 some movement will be made in the next few months on getting a
14 replacement for him. That's something that needs to be done. But,
15 anyway, calling the meeting to order. Is there any old matters that
16 we to take care of that anybody knows about. Ms. Freeman, do you
17 have anything you know of that's a carryover? (Justice Freeman nods
18 her head.) Okay. Going to any other matters before we get into the
19 order of business of the evening, I received a letter from Jimmy
20 Goins, the Tribal Chairman, it's my information that he filed a
21 petition on February the 16th, "Since filing my petition on February
22 16th, the Tribal Council and I have worked together to resolve this
23 issue". And he's asking that we - he's withdrawing his petition in
24 case number 2006-014. So, Ms. Tammy, if you will just type up a
25 short order to that effect sometime within the next day or two, I'll

1 sign that and we'll just put in a file and that matter will be
2 closed.

3 Okay, going to the matter that is before us here
4 today, that is the matter of a petition filed by, -- I may need to
5 get a copy of -- is this the whole thing, yeah. The matter that's
6 before us here today is a petition filed by Mr. Leon Jacobs and it's
7 case number 2005-012, petition filed by Mr. Jacobs, alleging that he
8 is the Tribal Administrator and he's filing this against the Tribal
9 Council, -- we ask that they - explain what section of the Lumbee
10 constitution or tribal ordinance that has been violated and he has
11 indicated here under Title III, Distribution of Powers, a Tribal
12 Council has violated paragraph three, and I assume everybody has a
13 copy of the constitution or you have access to one, and there should
14 be one, -- Article III, Distribution of Powers, in Article III,
15 paragraph three, where it says, "The powers delegated to the
16 legislative, executive, and judicial branches, except as expressly
17 provided in this Constitution shall be separate and distinct and no
18 branch shall exercise the power delegated herein to another branch,
19 except for the office of vice-chairman", and I'm not exactly sure
20 that means.

21 I think that's not relevant to this case anyway. So,
22 that's what he's saying. He's saying that this ordinance is a
23 violation of the constitution in that it does not recognize the
24 separation of powers and it goes on to say, okay, "The Lumbee
25 Constitution is clear that the powers delegated to the legislative,

1 executive and judicial branches except as expressively provided in
2 the Constitution, shall be separate and distinct and no branch shall
3 exercise the powers", well that's what I just got done reading. In
4 Ordinance 2005-005, also, -- Tammy on the front of this, it's case
5 number 2005-012 but, okay, I understand, the ordinance number. All
6 right, "Here in Ordinance 2005-005, we have a clear violation of the
7 Constitution. This ordinance states that the Council is responsible
8 for overseeing, reviewing and approving actual expenditures and
9 budget variances throughout the fiscal year". I assume everybody's
10 got a copy of this petition. Mr. Locklear, you got a copy? (Mr.
11 Locklear nods his head.) Okay. "Article VII expressively states
12 that the duties of the Tribal Council which are as follows: The
13 Tribal Council shall have the power to enact ordinances of the Lumbee
14 Tribe of North Carolina. Such legislative power shall include the
15 enactment of tribal annual budgets, provided that the budgets shall
16 be enacted into tribal law following the conduct of tribal hearing on
17 budgets proposed by the Chairman. The adoption of rules and
18 regulation governing the Tribal Council procedures and decorum
19 consistent with the provisions of this Constitution; and the
20 confirmation of either employment or dismissal of the administrator.
21 It is not the responsibility of the Tribal Council to oversee or
22 approve expenditures. Their job is to adopt that budget and they
23 have done that. Now, it is the responsibility of the executive to
24 implement the process and it is the chairman's duty, according to
25 Article VIII of the Constitution, to ensure implementation of strict

1 compliance of the annual budget." And statement of relief being
2 sought, the Executive Branch respectfully request an injunction on
3 this matter until it can be adjudicated before the Supreme Court.

4 The Executive Branch respectfully ask that all unconstitutional
5 provisions of this ordinance be stricken from the ordinance." Signed
6 by Mr. Jacobs.

7 So, that's were we are. Now, what I propose to do,
8 Mr. Jacobs, you're the petitioner.

9 MR. LEON JACOBS: Yes.

10 CHIEF JUSTICE HENRY OXENDINE: And as the petitioner,
11 of course, it's - you're asking us for relief and as such, then it
12 would be your duty to convince us as to what you're asking us to do -
13 to do what you're asking us to do. You understand?

14 MR. LEON JACOBS: Yes.

15 CHIEF JUSTICE HENRY OXENDINE: And what it going to
16 happen, we would ask you to make whatever presentation you have in
17 this regard.

18 Now, Mr. Locklear, you're the Speaker of the Tribal,
19 and I notice you have other tribal members, but you know we sort of
20 do this informally. Sort of like we're sitting around a big potbelly
21 stove, you know, drinking Pepsis and eating nabs, and, -- but as the
22 chairman, I would put on you the duty to respond, but you can do that
23 by, -- if there's others that you want to call on to respond to any
24 particular part of what we, -- questions we might have.

25 MR. LAWRENCE LOCKLEAR: Okay.

1 CHIEF JUSTICE HENRY OXENDINE: In other words, you're
2 the person that I'll be going to designate anybody else that you want
3 to respond.

4 MR. LAWRENCE LOCKLEAR: Okay.

5 CHIEF JUSTICE HENRY OXENDINE: So, is there any
6 question about that for the court. Do you need a note pad, Ms.
7 Freeman, Judge Freeman?

8 JUSTICE PAT FREEMAN: I got one.

9 CHIEF JUSTICE HENRY OXENDINE: Okay. If there's no
10 objection to that from any of the justices, we'll go ahead and hear
11 from Mr. Jacobs at this point and, -- what I was gonna say further,
12 you will be subject to questioning, within reason, regulated by me
13 from Mr. Locklear.

14 Now, when it comes his time to make his presentation,
15 in defense of this if we get to that point, then you'll be allowed to
16 ask him questions within reason. As long as it's relevant to the
17 issue. We don't want to get into a shouting match of any kind; you
18 understand what I'm saying? (Mr. Leon Jacobs nods his head.) So,
19 we'll go ahead and hear you at this point.

20 MR. LEON JACOBS: Thank you very much, --

21 CHIEF JUSTICE HENRY OXENDINE: Do you have anything
22 that you want us to look at, at this point?

23 MR. LEON JACOBS: I think the petition was pretty
24 clear and most of our points are covered in that document. What I
25 would like to do, if I may, Your Honor, I had a meeting prior to the
Supreme Court Hearing 4-27-06

1 hearing here tonight with the speaker and I discussed with him those
2 areas of ordinance that we had problems with and he was going to let
3 me know whether or not he was able to work this out with the
4 constitution committee and if they have agreed to go ahead and
5 address the areas that we, -- we would be happy to keep this somewhat
6 short. If that's in agreeable with the court.

7 CHIEF JUSTICE HENRY OXENDINE: Well, I certainly, from
8 my point of view, it would be great to me if you all could come
9 together and say, we're on one accord as to what, -- as to this
10 ordinance and any changes that, -- if there needs to be changes that
11 we're all agreeable to this, --

12 MR. LEON JACOBS: Yeah.

13 CHIEF JUSTICE HENRY OXENDINE: -- and draft an
14 ordinance that everybody would agree on. That would be ideal.

15 MR. LEON JACOBS: I think that the government, --
16 certainly the executive branch is willing to work with the
17 legislative branch. We feel very strong, I personally feel that a
18 good body of law is important to every tribe, and certainly not only
19 our government here and our Tribe, but at the same time, I think it's
20 very important that these laws that are enacted by the legislative
21 branch, where's it's necessary that we have input, you know, from the
22 executive branch.

23 In this particular situation, when I arrived here in
24 2004, I asked the, -- if I could spend just a minute on this, when I
25 arrived here, I asked the finance manager here, the tribe, to produce

1 the budget and he came into my office with a budget that had been
2 approved by the Tribal Council and when I reviewed this, I asked him
3 if this was complete and he said, yes, that's what the Tribal Council
4 had approved. This document that was called the budget that year was
5 a one-page document that had only expenditures, ten million, three
6 hundred and forty-one thousand or close to those numbers. And I
7 asked him, well, how are you gonna pay these bills, you know, the
8 tribe has these expenditures, where's the money coming from? And his
9 response back to me was that the Tribal Council and the previous
10 administrators had never asked him to produce the income that you
11 were gonna get to pay these expenditures.

12 So, of course, that's when I got involved to make sure
13 that as the administrator, we should produce a budget that is
14 complete. One that was presented to the membership and certainly one
15 that was presented to the Tribal Council, and they give us their
16 input, from the membership to the Council and we go about business.
17 After that process, then we were informed that the Tribal Council was
18 going to produce an ordinance on the budget process. And I had no
19 problem with that at all as long as it would compliment the
20 Constitution and it would certainly include the executive branch who
21 has to implement and administer, but in reading through what they
22 produced, I did have concerns and that's why I filed the petition to,
23 hopefully, make this correct and let it conform with the Constitution
24 and we go about business within the tribe.

1 And, I guess at this point, I would like to know
2 whether or not the speaker and the constitution committee would be
3 willing to address our concerns and see that we could include those
4 into a -

5 CHIEF JUSTICE HENRY OXENDINE: Let me say this to
6 Justice Freeman and Judge Blanks, at any time, break in. I'm known
7 to hog the, -- break in at any time, any time. Let me say this, let
8 me ask a question. Do you feel, you say you talked tonight?

9 MR. LEON JACOBS: Yes.

10 CHIEF JUSTICE HENRY OXENDINE: Had you talked previous
11 to tonight?

12 MR. LEON JACOBS: No, not really, --

13 CHIEF JUSTICE HENRY OXENDINE: Well, not specifically
14 about a resolution, but this?

15 MR. LEON JACOBS: Right.

16 CHIEF JUSTICE HENRY OXENDINE: Do you feel that
17 additional time, and by that I'm talking days and weeks ahead, might
18 result in you all coming to some consensus on the way things ought to
19 be handled. Do you feel that that's a possibility?

20 MR. LEON JACOBS: I'm always optimistic that we can
21 certainly be united and work in harmony for the betterment of the
22 membership, and I would say that we could, from the administration
23 standpoint, within ten days, we could have our points sufficiently
24 covered and hopefully we could get something through the Tribal
25 Council in that timeframe.

1 CHIEF JUSTICE HENRY OXENDINE: I have asked Ms. Maynor
2 to see if she could get Patrick here because it's my understanding
3 he's the budget officer?

4 MR. LEON JACOBS: Right.

5 CHIEF JUSTICE HENRY OXENDINE: And I realize you're
6 the tribal administrator, but there's a lot of reference to him and
7 I'm just wondering if the possibility exist that you and him or
8 whoever, whoever you designate could sit down with Mr. Locklear,
9 whoever he designates, whoever he wants to table and go through this
10 point by point and hammer it out and maybe in the end, you might come
11 up with an ordinance that you all could live with and that could live
12 with. If you think that's a possibility, where I'm coming from and
13 what I'm suggesting, if you think that's a strong possibility, then
14 we could continue this until a future date.

15 MR. LEON JACOBS: As far as the chairman and I are
16 concerned, yes, we can certainly communicate and perhaps resolve
17 this.

18 MR. LAWRENCE LOCKLEAR: Can we take a five-minute
19 recess with the Council members that are here just to discuss this?

20 CHIEF JUSTICE HENRY OXENDINE: I think that would be
21 appropriate. Yeah, let's then recess for five minutes or whenever
22 you get through.

23 - BRIEF RECESS -

24 CHIEF JUSTICE HENRY OXENDINE: Mr. Locklear, do you
25 have any word for us:

1 MR. LAWRENCE LOCKLEAR: Yeah, Mr. Welford Clark will
2 address that.

3 MR. WELFORD CLARK: Mr. Chief Justice. It is the
4 contention of the Council that the injunction, that the court in fact
5 erred in even hearing the injunction. So, we're gonna seek a
6 dismissal of the injunction based upon these two factors. Number
7 one, the Constitution in Article IX as it relates to the judiciary,
8 in Article IX and paragraph one, says this, and I'll just it down.
9 "The judicial power of the Lumbee Tribe of North Carolina shall
10 reside in the Supreme Court of the Lumbee Constitution and such
11 inferior courts as the Tribal Council may establish. The Supreme
12 Court of the Lumbee Constitution shall have original jurisdiction
13 over all cases and controversies arising under the Constitution and
14 all ordinances of the Lumbee Tribe of North Carolina." In my limited
15 mind I see this. There are two words in there, one is "cases" and
16 one is "controversies".

17 So, it's my understanding that if someone petitions
18 the court and the Constitution says, that the court, okay, what is
19 the case? What is the controversy? There is no case that has arisen
20 out of this ordinance. The imposition and the enactment of this
21 ordinance by the Tribal Council has not caused any harm to the tribal
22 administrator or the executive branch of the government. There has
23 been no action as a result of this ordinance that has created a
24 controversy.

1 So, in essence, in the issuing of the injunction, what
2 the petitioner is asking the court to do is to make a decision about
3 may or may not happen in the future in regards to what authority that
4 the Council may try to impose the issue of the budget. And it's our
5 contention until such time as that come, and until we in fact produce
6 harm, no case arises.

7 And I tried to use a real fancy legal word to, to, to
8 impress you with and I thought about corpus delicti. You know.
9 Where's the body? And, and, and my question is where is the case?
10 And where is the controversy? It doesn't say that, so that's the one
11 position that the Council takes in determining that the injunction
12 should not have been filled.

13 The other reason we think that the court erred in
14 issuing the junction rests in Article VI of the Constitution, which
15 is on page four in mine, it may not be in yours, but it rests in the
16 Referendum process. Now we what we are in essence is this. The
17 tribal administrator is not the executive branch. He is an employee
18 and we're saying by allowing him to file this injunction, we're
19 saying to him as an employee of the tribal government, you are not
20 required to seek redress or grievances against ordinances as other
21 tribal members do by going through the cumbersome process of the
22 referendum process. Article VI says, "The power to conduct a
23 referendum on any tribal ordinance adopted by the Tribal Council is
24 specifically reserved for the general membership of Lumbee Tribe of
25 North Carolina.

1 So, I'm saying this. Mr. Jacobs, though he's an
2 employee and the top employee in the tribal government, but I'm
3 saying that his right to escape and take the detour around Article VI
4 in the Constitution simply because he is the tribal administrator,
5 that he doesn't have that privilege that other tribal members do not,
6 and if we allow this to happen and set this precedent here by
7 allowing people simply because they see that an ordinance is creating
8 a problem, if we allow the court, then, to become the writer of, of,
9 of, -- in these issues of ordinance, then the referendum process of
10 the Constitution will have not be of any value at all. No one will
11 go through the referendum process.

12 I'm saying that we cannot allow a tribal member,
13 simply on the basis that that tribal member is an employee to seek
14 redress against an ordinance that is duly enacted by the Tribal
15 Council, we cannot give that individual more leeway than we can any
16 tribal member of the other 56,000. If so, every ordinance in place
17 right now, if anyone wants to change it, or if they don't like it and
18 they want to strike it from the books rather than going through the
19 referendum process and let the people vote on it, they simply just
20 petition the court, unless you settle it even before a case or a
21 controversy arise. At this point, there has been no case and no
22 controversy.

23 And that has been the position of the Council the
24 whole time, even recognizing the fact that we haven't written a
25 perfect ordinance, but there's process by which the ordinance can be

1 changed. But to declare the ordinance unconstitutional before a case
2 or controversy arises, I think the court, I think the court in all
3 due respect to the court, I think that the court erred in issuing the
4 injunction in the beginning.

5 CHIEF JUSTICE HENRY OXENDINE: Did Mr. Goins sign this
6 ordinance?

7 MR. WELFORD CLARK: This ordinance was passed by the
8 Tribal Council, it was vetoed by the Tribal Chairman, --

9 CHIEF JUSTICE HENRY OXENDINE: This one here?

10 MR. WELFORD CLARK: Then the veto was overridden by
11 the Council.

12 CHIEF JUSTICE HENRY OXENDINE: So, it has been
13 enacted?

14 MR. WELFORD CLARK: It has been enacted.

15 CHIEF JUSTICE HENRY OXENDINE: And Mr. Jacobs is
16 challenging it - Mr. Jacobs, are you a member of the tribe?

17 MR. LEON JACOBS: Yes.

18 CHIEF JUSTICE HENRY OXENDINE: As well as the tribal
19 administrator?

20 MR. LEON JACOBS: Right.

21 CHIEF JUSTICE HENRY OXENDINE: Okay, well, Mr. Jacobs,
22 do any of the other justices have any questions they want to ask?

23 JUSTICE ANTHONY BLANKS: In other words, the very
24 question on the floor was there a chance that this could be worked

1 out. Mr. Clark did not address that at all. He went into this other
2 thing, so I assume by his presentation that it's not going away.

3 MS. LINDA HAMMONDS: May I address that?

4 CHIEF JUSTICE HENRY OXENDINE: Well, let me say this.
5 Mr. Locklear, here again, I, -- in order to maintain some decorum,
6 Ms. Hammonds wishes, -- do you wish for her, --

7 MR. LAWRENCE LOCKLEAR: Yes.

8 CHIEF JUSTICE HENRY OXENDINE: You understand where
9 I'm coming from?

10 MS. LINDA HAMMONDS: Yes, sir.

11 CHIEF JUSTICE HENRY OXENDINE: Okay, yeah.

12 MR. LAWRENCE LOCKLEAR: Ms. Linda would like to
13 address the judges.

14 MS. LINDA HAMMONDS: Here we are beginning what, May
15 the 1st of 2006, or right near that. This ordinance has been out
16 there waving in the wind since May 2005. Mr. Jacobs alluded to the
17 fact that they have not been a part of writing this ordinance. Well,
18 let me say, this ordinance has been gutted, has been changed, has
19 been brought down to consist of these 3 or 4 pages. Originally, this
20 ordinance not only had this particular component to it, but it also
21 had some components that would be used as a timeline for the
22 executive side to work towards so that we would get the budget in a
23 time where we and the tribal membership could go through it. So, to
24 sit here and say that they have not had input, that they've not been
25 involved in it is erroneous in the least.

1 CHIEF JUSTICE HENRY OXENDINE: Ms. Hammonds, let me do
2 this.

3 MS. LINDA HAMMONDS: Yes, sir.

4 CHIEF JUSTICE HENRY OXENDINE: I'm trying to keep
5 things on track and what I'd like to do is deal with issues, -- now
6 later on in the presentation, we'll hear from you, but I feel like
7 you're getting to the heart of the issue that we're here to resolve.

8 MS. LINDA HAMMONDS: Okay.

9 CHIEF JUSTICE HENRY OXENDINE: And so the issue we are
10 gonna resolve now, I take it, Mr. Locklear, -- we'll get back to you.

11 MS. LINDA HAMMONDS: Okay.

12 CHIEF JUSTICE HENRY OXENDINE: Mr. Locklear, here's
13 the - you've seen the program "Deal or No Deal"? I take it that
14 you're of the opinion that nothing would be gained by continuing this
15 with the expectation that you and whoever you wish to have at the
16 table could set down with Mr. Jacobs and whoever he wishes to have at
17 the table and come up with a ordinance that you feel, both of you
18 could sign off on. I take it; you don't think that can happen?

19 MR. LAWRENCE LOCKLEAR: Right, right. The concern,
20 after discussing and meeting with the Council, our primary concern,
21 our first focus is dismissal of the ordinance.

22 CHIEF JUSTICE HENRY OXENDINE: Well, all right. Mr.
23 Jacobs, let me ask you to respond only to the issue of the dismissal.
24 Once we resolve that issue, then we'll go forward, depending on what
25 happens. Just respond only to the - his motion to dismiss.

1 MR. LEON JACOBS: Right. On the proposal to dismiss,
2 we would argue that I'm a tribal member of the tribe and I happen to
3 be an employee of the tribe, and I do feel that my duties include
4 making sure that support as well as carrying out any laws enacted by
5 the Council or also to make sure that we have the responsibilities to
6 administer the federal programs and all of the regulations that they
7 involve. In the case of the signing of the petition, the chairman
8 was not available and because of some time limits, he had asked that
9 I go ahead and, to, sign this petition. So, he is in full
10 concurrence as the leader of the leader tribal administration and the
11 executive branch.

12 CHIEF JUSTICE HENRY OXENDINE: I think was we need to
13 do, well, let me respond to that. Well, basically, the first thing
14 we have to do as a court, is deal with your motion, Mr. Clark. Do
15 you all want to let's go into executive session to deal with that? I
16 think we need to do that. I'm sorry for the inconvenience, but
17 that's what we need to do.

18 - EXECUTIVE SESSION -

19 CHIEF JUSTICE HENRY OXENDINE: Okay, we've met. When
20 the Constitution under the section dealing with the judiciary, when
21 it says, "The Supreme Court of the Lumbee Constitution shall has
22 original jurisdiction over all cases and controversies". That's a
23 term and I'm assuming that the drafters of the Constitution got that
24 from other sources, that's typical language. You could very easily
25 substitute both of words, the word "issues", and that's really what

1 we got here is an issue. Any issue that, -- all other issues
2 arising, -- if you substituted the word issue, it would read,
3 "arising under the constitution".

4 So, it was our opinion that there is an issue here,
5 and that Mr. Jacobs is a proper person to bring this issue before the
6 court. So, we're going to deny a motion to dismiss it at this point.
7 So, that leads us back to where we were.

8 Mr. Jacobs, if you don't having a seat right up there.
9 Now, as indicated, Mr. Locklear, you'll be allowed to ask Mr. Jacobs
10 questions pertinent to the issue before us. So, you can go ahead at
11 this point. And let me say this, if you ask him something that I and
12 the other judges, you all come in when you feel like you need to. I
13 will either sustain it if I feel it's an inappropriate question.

14 MR. LAWRENCE LOCKLEAR: Okay, Ms. Linda Hammonds.

15 MS. LINDA HAMMONDS: Mr. Jacobs, last year, for
16 example, I think your contention in your statement here is that the
17 Council does not have authority to have oversight and to review and
18 approve actual expenditures and budget variances throughout the year.
19 Is that correct?

20 MR. LEON JACOBS: Some of those items.

21 MS. LINDA HAMMONDS: Okay, but you've quoted all of
22 those items as being a part of your contention with this. Now, may I
23 ask if there is a change, for example, in our program funding, and
24 I'll use the one that we are more familiar and that's the NAHASDA
25

1 funding. If there is a change in the line item for that, who
2 approves that change in a line item?

3 MR. LEON JACOBS: A budget line item?

4 MS. LINDA HAMMONDS: Yes, sir.

5 MR. LEON JACOBS: Are you talking about an increase in
6 NAHASADA funds?

7 MS. LINDA HAMMONDS: Any change in the line item. For
8 example, if we had a million dollars allocated for Mr. Bosco's rehab
9 and we want to change that line item, who approves the changing of
10 that line item.

11 MR. LEON JACOBS: We've always, since I've been here,
12 we've shared this with the Tribal Council.

13 MS. LINDA HAMMONDS: And the Tribal Council approves
14 that line item, and that's -

15 MR. LEON JACOBS: Yes, yes, it could or it could be an
16 administrative matter. It depends on the ordinance or the tribal
17 policy that set by the Tribal Council.

18 MS. LINDA HAMMONDS: Okay, we're dealing with the
19 ordinance right now that deals with the changing of line items. If
20 we submit, for example, the Indian Housing Plan and we submit with a
21 particular line item, and a year down the road, we decide that we
22 need to make a change in that particular one-year housing plan, who
23 has the authorization to make that change? Who has to approve that
24 change, sir?

1 MR. LEON JACOBS: I think it could be negotiated with
2 the chairman or it could be brought to the Tribal Council. That's
3 not fully decided at this point.

4 MS. LINDA HAMMONDS: Mr. Jacobs, you're fully aware by
5 the resolutions that we have before us in this particular book and
6 time and time again where we've been asked to change a particular
7 line item and we have been authorized to do so. We give you
8 authorization. I believe HUD would be the first one to tell you
9 that, you can't submit any changes to them without approval of the
10 governing body -

11 MR. LEON JACOBS: Right.

12 MS. LINDA HAMMONDS: -- of this tribe. The second
13 thing I'd like to bring up to you is that we do have resolutions, as
14 I stated earlier -

15 MR. LEON JACOBS: Right.

16 MS. LINDA HAMMONDS: -- in which every line item in
17 the budget that - that will become evident, we were asked to approve
18 it. But I also have in front of me here, some of the audit reports
19 that we have received as a Tribal Council. Some of these you may
20 have had a chance to go back through them and look at them, but I'll
21 give you an example that I had asterisked throughout some of these
22 budgets, -- this is -

23 CHIEF JUSTICE HENRY OXENDINE: Ms. Hammonds?

24 MS. LINDA HAMMONDS: Yes, sir.
25

1 CHIEF JUSTICE HENRY OXENDINE: Let me interject this
2 now. I've sat in many a trial and one of the things that judges
3 always say, I assume there's gonna be a question.

4 MS. LINDA HAMMONDS: Yes, I'm gonna ask, --

5 CHIEF JUSTICE HENRY OXENDINE: That's the thing right
6 here, --

7 MS. LINDA HAMMONDS: When it comes to our accounting
8 procedures, the accountant individuals that we get, who do they
9 recognize that should have oversight here and who is responsible for
10 reviewing the accounting records and transactions.

11 MR. LEON JACOBS: I think they have both the Tribal
12 Council and the executive branch as the chairman.

13 MS. LINDA HAMMONDS: So, when you read this document
14 that reads, for example, "It's in the tribe's best interest to
15 continue have the Tribal Council actively involved in reviewing
16 accounting records and transactions?"

17 MR. LEON JACOBS: Exactly.

18 MS. LINDA HAMMONDS: Which is part of our particular
19 ordinance here, and this -

20 MR. LEON JACOBS: But it didn't say "approve" though;
21 does it?

22 MS. LINDA HAMMONDS: We approve the budget and I
23 believe and it does say here, we can go back through here and find
24 out where it does tell us, sir, that changes in the budget needs to
25

1 be approved and, in fact, that we need to be get better records and
2 so forth.

3 An example, you're familiar with the lawsuit, I'm sure
4 with the 19 what 37 stock; correct?

5 MR. LEON JACOBS: Uh-huh.

6 MS. LINDA HAMMONDS: Okay. Who was responsible, who
7 was the entity, what part of this tribal government could only sign
8 off on that particular lawsuit stating that we would obligate to the
9 North Carolina Indian Housing Authority a certain percentage of
10 funding for x number of years? Who signed that lawsuit through the
11 state of North Carolina?

12 MR. LEON JACOBS: Quite frankly, I don't recall who
13 all signed it, but I'm sure that someone from the Tribal Council as
14 well as, I would think that the tribal chairman would be involved in
15 the process.

16 MS. LINDA HAMMONDS: No, sir. The only person -

17 MR. LEON JACOBS: It may have only been one.

18 MS. LINDA HAMMONDS: The only person that was enabled
19 to sign off on the lawsuit was either the speaker of the tribe at
20 that time, who was sick, or the vice-chairman, which happened to be
21 Ms. Pearlean Revels. In other words, the state did not recognize
22 anyone else as being responsible for the funding, the overview and
23 the changes except the Tribal Council.

24 As I stated earlier, you, yourself have brought
25 changes, brought resolutions to the Tribal Council for us to change.

1 You stated, -- that, that in your complaint, you've stated that, --
2 you've given the example or here that expressly states the duties of
3 the Tribal Council which shall be as follows, and which those are
4 enumerated in the Constitution. Are you saying to this body that
5 that is the only ordinance, those are the only ordinances that this
6 Tribal Council can bring forth?

7 MR. LEON JACOBS: Definitely not. I think that you
8 have a responsibility to create a body of law that represents all
9 aspects of life within the tribe and it's jurisdiction.

10 MS. LINDA HAMMONDS: And the body of law is to cover
11 what part of the tribal government, sir?

12 MR. LEON JACOBS: The body of law should be inclusive
13 of all laws. Unfortunately we don't have criminal and so forth, but
14 we do have some civil jurisdiction and when we are federally
15 recognized, things will change and certainly and become more
16 inclusive.

17 MS. LINDA HAMMONDS: Let me more minute with this
18 question. The laws that we write, they are applicable to whom, sir?

19 MR. LEON JACOBS: Tribal members.

20 MS. LINDA HAMMONDS: Tribal members. They're
21 applicable to you as a tribal member.

22 MR. LEON JACOBS: Uh-huh.

23 MS. LINDA HAMMONDS: Are they not applicable to you as
24 a tribal administrator.

25 MR. LEON JACOBS: They certainly should be.

1 MS. LINDA HAMMONDS: Okay.

2 MR. LEON JACOBS: They should be.

3 MS. LINDA HAMMONDS: So, then if I write a law then,
4 it's only gonna be effective if I have your approval of that law
5 first; is that correct?

6 MR. LEON JACOBS: No, that's not correct. No, that's
7 not correct. You've got a Constitution that you helped to develop
8 and I hope that you would follow that Constitution. And that's the
9 concern I have in this only particular case. There's been several
10 ordinances that I support and have encouraged in some cases. But I
11 think there should be a clear definition by this legislative body as
12 to what constitutes a policy and what constitutes an ordinance.

13 MS. LINDA HAMMONDS: Okay, policies are derived from
14 what?

15 MR. LEON JACOBS: I'm not sure you derive them from.

16 MS. LINDA HAMMONDS: Are you saying that you can
17 decide as a body, as an executive side, you can decide whatever
18 policy you want to. Your policies have to be derived from what?

19 MR. LEON JACOBS: They should be from the Constitution
20 and regulations or what have you.

21 MS. LINDA HAMMONDS: From law. And who is responsible
22 for law?

23 MR. LEON JACOBS: The Tribal Council.

24 MS. LINDA HAMMONDS: The Tribal Council is responsible
25 for law. So, any policies that you put into place are derived from

1 law. The ordinance is what. The ordinance that we have written is
2 simply a law that directs the what? The policies that you're gonna
3 be putting in place; is that not correct?

4 MR. LEON JACOBS: And it also violates the
5 Constitution of the tribe in my opinion and that's why I felt that
6 the court needed to look at it and see and that's a duty that I
7 understand that they have based on the Constitution.

8 MS. LINDA HAMMONDS: But, you've got in your, -- and
9 for now, Mr. Justice, this will be my last statement. You're saying
10 that it violates the Constitution. I'm looking at your particular
11 injunction here or your statement of relief. Where does it violate
12 the Constitution. You've given me that it states, Article III.
13 You're saying that there is not a separation of power, but you're
14 already stated that as a legislative body, we write the law the
15 governs the policies. Okay. You've already stated in Article VII, I
16 believe it is, that these are not the only ordinances that we need,
17 that we're concerned with, that we write other laws as well.

18 MR. LEON JACOBS: One area I think is under your
19 "whereas", number four, where it says that the Council is responsible
20 for overseeing, reviewing and approving actual expenditures and I've
21 had several Council members offer their suggestion on this, that
22 first it would be impossible as administrator to manage that, and,
23 secondly, according to the Constitution, the tribal chairman is
24 responsible for the implementation of the budget once it's approved
25 by the Tribal Council and to monitor. So, that's clearly to me, a

1 violation of the Constitution when you're saying that you want a
2 computer but you got to approve that. You know, and that's what this
3 is saying.

4 MS. LINDA HAMMONDS: Mr. Jacobs. When the Council
5 approves a budget, are we not in effect, approving the expenditures?
6 This is dealing with the budget. The budget approval and monitoring
7 process. Do we not approve the budget?

8 MR. LEON JACOBS: Uh-huh, --

9 MS. LINDA HAMMONDS: Mr. Speaker, that's it for now.

10 MR. LEON JACOBS: -- yes.

11 CHIEF JUSTICE HENRY OXENDINE: Well, I have some
12 questions and I don't know if any of the other judges do or not, but
13 you know, we judges, we sort of sitting on edge, --

14 MR. LAWRENCE LOCKLEAR: Excuse me, we had one more
15 question, Mr. Welford.

16 CHIEF JUSTICE HENRY OXENDINE: Well, go ahead.

17 MR. WELFORD CLARK: Mr. Leon, I don't expect you to
18 be, but I'm gonna reference to you three resolutions passed by the
19 County. Resolution 2004-02, whereby the Tribal Council increased the
20 housing assistance, the amount of housing assistance from \$5000 to
21 \$10,000. Where you here when that took place?

22 MR. LEON JACOBS: Uh-huh.

23 MR. WELFORD CLARK: That was in 4-05-04. And then on
24 4-20-04, there was a resolution by the Tribal Council that increased
25 the emergency assistance from \$5000 to 10,000. And then again in May

1 '04, by a resolution of the Tribal Council to increase the threshold
2 for procurement from housing rehab from \$15,000 to \$25,000 and on new
3 acquisitions, increased the amount because of the federal guidelines
4 changed it from \$20,000 to \$100,000.

5 MR. LEON JACOBS: Uh-huh.

6 MR. WELFORD CLARK: Now, that was an act of the Tribal
7 Council, let me ask you this question now.

8 MR. LEON JACOBS: I brought it forward.

9 MR. WELFORD CLARK: Okay, you brought that, -- let let
10 me ask you this. Would we have been able to do that without an
11 action of the Tribal Council?

12 MR. LEON JACOBS: Would we have -

13 MR. WELFORD CLARK: Would HUD have recognized and
14 allowed us to change that procurement policy if you would have sent
15 them a letter - -

16 MR. LEON JACOBS: They should, -- I would think they
17 would if you had put a proposal in and said, yes, this is a policy
18 change, you know, I don't -

19 MR. WELFORD CLARK: Let me ask you this. My question
20 is this, now this is my question. And you have carefully avoided
21 answering the question.

22 MR. LEON JACOBS: Okay.

23 MR. WELFORD CLARK: Because you would not say
24 definitively and for certainty for the record, yes, that you could
25 change it. You said they should or they may. So, my question is

1 simply this. Would they have done it if simply, if no action of the
2 government had been taken to change these procurement policies and
3 stuff, would you have been allowed to do that outside the authority
4 of the legislative branch of the government.

5 MR. LEON JACOBS: When I ran the Chicago office, I did
6 not indulge ourselves into every policy change that was given to the
7 housing authority or to the housing or the tribe. In this particular
8 case, HUD will monitor whatever policy you have and also look at the
9 policy changes or what have you. Now, to sit here and tell the court
10 that HUD could have or would have given favorable to this or even had
11 a involvement in the reviewing of this, I don't know. I think that
12 policies, -- HUD's policy is making sure that we have a policy in
13 place that addresses the regulations that governs this particular
14 situation.

15 MR. WELFORD CLARK: Recently, Mr. Kevin Fitzgives,
16 whom you know very well was down here, and spoke with us. Do you
17 recall him saying to us that we should follow the Constitution when
18 doing these?

19 MR. LEON JACOBS: Exactly.

20 MR. WELFORD CLARK: So, you still, --

21 MR. LEON JACOBS: That's why we brought this petition.

22 MR. WELFORD CLARK: Do you have a copy, --

23 MS. LINDA HAMMONDS: I have a copy of Mr. Jacobs'
24 contract, yes, sir.

1 MR. WELFORD CLARK: Earlier when you addressed the
2 court, you made this statement, you said that your duties included
3 oversight of tribal law. Do you remember making that statement to
4 the board?

5 MR. LEON JACOBS: I think so.

6 MR. WELFORD CLARK: I have a copy of your contract,
7 Mr. Jacobs, and for the sake of, -- I hate to take the time of the
8 court to read the entirety of the contract.

9 MR. LEON JACOBS: That's fine.

10 MR. WELFORD CLARK: Do you know in what portion of
11 your contract for employment as the tribal administrator, you've been
12 given legislative oversight?

13 MR. LEON JACOBS: Where I've given oversight?

14 MR. WELFORD CLARK: You said it was part of your
15 responsibilities as the tribal administrator.

16 MR. LEON JACOBS: Uh-huh.

17 MR. WELFORD CLARK: To look after the government and
18 I, -- while I don't remember your exact words, but in the short
19 address you made to the court, you said that you felt like it was
20 your, -- you said it was your duties, --

21 MR. LEON JACOBS: Right.

22 MR. WELFORD CLARK: -- to oversee and look after the
23 government and look after legislation and policy and those things.
24 You said that was your -

25 MR. LEON JACOBS: Be involved and -

1 MR. WELFORD CLARK: -- yeah, being involved, and you
2 said that that was your responsibilities. That was the word you
3 used; correct?

4 MR. LEON JACOBS: Well, I think it is my
5 responsibilities to make sure that whatever you enact here, is
6 implemented and that we carry it out as the best we possibly can. I
7 think every administrator works for a tribal government must have
8 some responsibility to make sure that your laws are implemented and
9 carried forward.

10 MR. WELFORD CLARK: Let me read you one bullet point
11 here on your contract. "At all times during the term of this
12 agreement, employee shall use his best efforts and apply his skill
13 and experience to the proper performance of her duty wherein under,
14 and to achieve the goals set forth therein. And employee shall be
15 directly accountable to and work under the authority and direction of
16 the Lumbee Tribal Chairman and Tribal Council. The tribal
17 administrator shall perform such executive and managerial
18 administrative duties and serves as our customary for tribal
19 administrator and further executive duties as maybe specified from
20 time to time by the Tribal Chairman and Council". It says this, --
21 Mr. Jacobs in all due respect to you, one of the most admired people
22 I know, the scope of your employment does not include legislative
23 oversight. And, --

24 JUSTICE ANTHONY BLANKS: Mr. Clark, I got a question
25 for you? Who wrote that contract?

1 MR. WELFORD CLARK: Who actually penned the contract?

2 JUSTICE ANTHONY BLANKS: Yes.

3 MR. WELFORD CLARK: I don't exactly who generated the
4 language of it but it was signed by the Chairman Jimmy Goins and by
5 the Tribal Administrator Mr. Leon Jacobs and nowhere in this contract
6 for employment does Mr. Jacobs and his duties as the Tribal
7 Administrator have any legislative oversight. He made two statements
8 earlier, --

9 JUSTICE ANTHONY BLANKS: Well, my question is, my
10 question is, you just read a portion concerning that he follow
11 directions of the Tribal Council and Administrator, -- who does he
12 work for?

13 MR. WELFORD CLARK: He's an employee of the Tribal
14 Chairman.

15 JUSTICE ANTHONY BLANKS: Well, how did the only
16 language get in the contract?

17 MR. WELFORD CLARK: Oh, I, --

18 JUSTICE ANTHONY BLANKS: This is one thing that
19 bothers me, --

20 MR. WELFORD CLARK: Matter of fact, the whole contract
21 bothers a lot of people.

22 JUSTICE ANTHONY BLANKS: -- well, it seems that the
23 Constitution, -- that the Constitution, -- the tribe means very
24 little, because that language is bad, she brought up another point
25 with a deal made with the state where she said the state forced, if

1 I'm correct, forced the tribe to break its own Constitution by having
2 the Chairman of the Tribal Council sign an agreement which is
3 directly against the Constitution. I just can't understand how these
4 things come about and people just go through them and throw them
5 aside as though our Constitution is nothing.

6 MR. WELFORD CLARK: I completely agree with you. I
7 just wanted to, -- and I just have one more question. Mr. Jacobs,
8 you said that, you said in your statement as well that you brought
9 this injunction because the Tribal Chairman didn't have time to come
10 and sign off on it; is that correct?

11 MR. LEON JACOBS: Yes.

12 MR. WELFORD CLARK: So, then my question to you is
13 this now. Either you filed this injunction because you thought it
14 was your responsibility to do it, or you filed this injunction
15 because the Tribal Chairman told you to do it. And I would really
16 like to know which one is the correct answer? Did you file it
17 because the Tribal Chairman couldn't come and do it or did you file
18 it because you felt it was your responsibility?

19 MR. LEON JACOBS: Mr. Councilman, I filed this because
20 I believe there is a violation in the Constitution and at the same
21 time, the Chairman, I think, agrees there is a violation and since he
22 was not able to come here within the timeframe, I did sign this
23 petition.

24 And in response to your earlier comment, if I made the
25 erroneous statement that I have oversight over the legislative body,

1 I correct that to say that I feel I have a duty as the Tribal
2 Administrator to see that your laws that are approved by this body,
3 the Tribal Council, must be implemented and they are adhered to, and
4 by the staff or programs or what have you. So, I just want to make
5 that point.

6 MR. WELFORD CLARK: From what authority to you derive
7 or come to the conclusion that you have that responsibility? How do
8 you come, -- because clearly your contract -

9 MR. LEON JACOBS: Because -

10 MR. WELFORD CLARK: -- employment, it doesn't state
11 that, you were not hired to look after this stuff, but you keep
12 continually saying that it's your responsibility and I don't find
13 anything in your employment contract either directly -

14 MR. LEON JACOBS: What would you like my contract to
15 address?

16 CHIEF JUSTICE HENRY OXENDINE: Let me stop here, Mr.
17 Clark. If you look at Article VIII, "All executive powers including
18 implementation of and compliance with annual budgets of the Lumbee
19 Tribe of North Carolina shall under the Tribal Chairperson". Now
20 they could have just as easily put or his designee. In other words,
21 obviously the Tribal Chairperson can't run the Tribe, that's why they
22 hired Mr. Jacobs. So, if you'll insert the word "his designee" which
23 that's implied there, it said, "he shall cause all laws of the Tribe
24 to be faithfully executed". That's the way that -

1 MR. WELFORD CLARK: That answered your question, Mr.
2 Blanks. That's how things get signed because of implications.

3 CHIEF JUSTICE HENRY OXENDINE: In other words, that's,
4 -- okay, let me, -- do any of the other justices have any questions
5 for Mr. Jacobs, anybody?

6 JUSTICE ANTHONY BLANKS: Mr. Jacobs, do you feel
7 that, -- you hinted to it, I think, earlier that it's of your
8 opinion that not only that this is, -- the ordinance contains law but
9 also it tries to contain policy or contains policy rather than law.
10 And that's one of your objections.

11 MR. LEON JACOBS: That is a concern of mine because I
12 think that policy should be clearly defined and so should the
13 definition of an ordinance be clearly defined and certainly look at
14 the differences. I don't have a problem with the Tribal Council
15 having an ordinance where it's needed and so forth, and that it's
16 needed for the law. There's also the opportunity to implement
17 certain things through resolution which we helped since I've been
18 here to start a process of resolutions and so forth, most of the
19 tribes that I've worked with in my career is that budgets are
20 approved through resolution. And we can have an ordinance but I do
21 feel that if has to be constitution, -- the basis should be on the, -
22 - in the Constitution to make sure that it's in compliance.

23 JUSTICE ANTHONY BLANKS: Do you feel in section one
24 of this ordinance where it talks to administrator and gives
25 administrator direction, also in section two where it talks about the

1 finance officer, do you feel that's giving direction to people that
2 are employees, --

3 MR. LEON JACOBS: Right.

4 JUSTICE ANTHONY BLANKS: -- or you feel these two
5 sections is more policy and should be part of policy more than law?

6 MR. LEON JACOBS: I do, and I do feel that the
7 administrator and the finance officer or whatever he's called is part
8 of the administration and therefore any sanctions or things
9 pertaining to his or her employment should come under the
10 administration of the Tribal Chairman.

11 JUSTICE ANTHONY BLANKS: Okay, going back, there's
12 one other thing that you alluded to, as far as amending the annual
13 budget, what is your perception of amendment? In other words, should
14 it be, -- is it something that you would present to the, -- should
15 the Administration Chairman present amendments to the Council or
16 should it go vice versa or go both ways?

17 MR. LEON JACOBS: I feel like that amendments to the
18 budget should be an increase or a decrease of the budget bottom line,
19 -- because an amendment to me means that there has been an increase
20 or there's been, -- now line items, I feel that there should be
21 authority given to the program manager as well as the Tribal
22 Administrator to look at line items and make adjustments within a
23 reasonable time period and also with limits, so that you can carry on
24 the work of the tribe.

1 For instance, we may have used all the emergency
2 funding and somebody comes in and they have a house fire and they
3 need an emergency and we have no money left. Rather than saying we
4 can't help that family, we should be able to address their needs
5 based on the program and we make that adjustment at the next
6 quarterly meeting or as the year end and so forth, but if we go and
7 increase or overspend the appropriated amount of the Tribal Council
8 that had approved, then to me that's a serious action.

9 But the line items within the budget, I feel like
10 there should be room and reasonableness to adjust those and I will
11 say this that there is a finance committee that meets once a month,
12 and we can hopefully, -- we can present these matters to this
13 committee and hopefully they could get it onto the Tribal Council and
14 so forth. And I feel like that there has been improvement with this
15 arena as far as this action which is important, but my main concern
16 about this is that the things that I feel very strong is a violation
17 of the Constitution.

18 CHIEF JUSTICE HENRY OXENDINE: Did you have any more
19 questions? Well I had wrote down a lot of things and part of it is
20 so that I'll understand that whole process. As I say, as judges
21 we're sort of sitting on the outside, but one of the things, -- I'm
22 assuming that, I believe it was said that the budget starts October
23 the 1st, fiscal year starts October the 1st; is that right? So, I'm
24 assuming you all are probably in the process right now of preparing
25

1 your budget for the next fiscal year and at some point and time,
2 you'll submit it to the Tribal Council.

3 MR. LEON JACOBS: The Chairman does.

4 CHIEF JUSTICE HENRY OXENDINE: The Chairman, okay.
5 And as I read the Constitution, the Tribal Council will conduct
6 public hearings and after doing that, then they act on the budget.

7 MR. LEON JACOBS: Well, that's not fully clear in the
8 Constitution. It says that the Tribal Chairman will submit the
9 budget to the membership and it also -

10 CHIEF JUSTICE HENRY OXENDINE: Where are you reading
11 that? Okay, okay, "deliver to the general membership an annual state
12 of the tribe", okay. Okay. But, I believe, hadn't in the past
13 they've been delivering this at a meeting called by the Tribal
14 Council? In other words, how does he get this out to the tribal
15 membership?

16 MR. LEON JACOBS: Okay, there has been meetings held
17 in which we invite the membership to come in and present a copy of
18 the budget, and so forth. Those first meetings in 2004 when I got
19 here, none of that process had been completely followed and we've
20 tried very hard to make sure that we would follow that process and
21 the Chairman and I went to the Council and asked the Council to
22 approve the membership meetings and set the dates and so forth, and
23 there was a good working relationship in that process.

24 CHIEF JUSTICE HENRY OXENDINE: Well, of course if you
25 go back to section seven, where it says, "Tribal Council, the

1 legislative powers to enact ordinances", and so forth, and it says,
2 "such legislative powers shall include the enactment of annual tribal
3 budgets, provided that budget shall be enacted into tribal law
4 following the conduct of tribal hearings". Now, to me that means
5 that the Tribal Council will conduct hearings to allow interested
6 individuals to speak out on the budget and then after that happens,
7 they approve the budget and I'm assuming that's what happened last
8 year. Well, let's hold that, -- now. Mr. Jacobs, is it your
9 opinion, once the budget has been approved by the Tribal Council,
10 what part after that should the Tribal Council play.

11 MR. LEON JACOBS: I think the Tribal Council could
12 certainly have some review authority to get reports which we produce
13 on a monthly basis that comes from my office and the finance officer.
14 I think that the Tribal Council could have the oversight and some
15 review, but I don't feel that they should be approving actual
16 expenditures.

17 CHIEF JUSTICE HENRY OXENDINE: Okay, but what if after
18 the budget's enacted starting October 1st.

19 MR. LEON JACOBS: Uh-huh.

20 CHIEF JUSTICE HENRY OXENDINE: Let's say in January
21 or, -- I assuming that, do you know when you submit the budget to the
22 Tribal Council, the monies that you are going to be receiving or do
23 you act on faith that you're gonna get it or, --

24 MR. LEON JACOBS: It depends whether the Congress have
25 enacted the HUD budget and we usually know if we don't have the

1 letter from HUD, we do have some indication what they anticipate the
2 budget will be. Unfortunately, with the Constitution asking a budget
3 to be presented as early as July is very difficult because it's hard
4 to predict what you're carryover is going to be that early in the
5 fiscal year. But, we've been able to do as best we could to predict
6 what would be the carryover.

7 CHIEF JUSTICE HENRY OXENDINE: Okay, another question,
8 if you feel as Tribal Administrator, maybe saying in February or
9 whatever that you don't need as much money in a budget as you may
10 have thought you needed, but you need some money in another budget.
11 Do you feel an obligation to go to the Tribal Council and say, I want
12 to move \$50,000 from this fund to this fund? Do you do that?

13 MR. LEON JACOBS: Yes, usually. I think it's good
14 communications. I don't feel, --

15 CHIEF JUSTICE HENRY OXENDINE: Do you feel a legal
16 obligation to do that?

17 MR. LEON JACOBS: At this time, I don't feel a legal
18 obligation, but I do feel if this ordinance is implemented, we'll
19 have responsibility to do.

20 CHIEF JUSTICE HENRY OXENDINE: And how would that tie
21 your hands, -- I'm assuming, part of what your saying here, this
22 ordinance would tie my hands in a lot of situations to some extent?

23 MR. LEON JACOBS: To some extent, yes.

24 CHIEF JUSTICE HENRY OXENDINE: And how would that do
25 that?

1 MR. LEON JACOBS: Well, I think, time, you know, if
2 it involves, -- emergency situations, it could certainly slow the
3 process and so forth, and that's important.

4 CHIEF JUSTICE HENRY OXENDINE: You know, I sense that
5 the Tribal Council is of the impression that you all down here are
6 sort of ignoring what they want done, but at the same time I
7 understand the situation that you're in and I've thought about this a
8 lot. This is not a situation where the Tribal Council has the
9 ability to tax anybody, to raise the money, and I understand that you
10 get your money from above.

11 MR. LEON JACOBS: Uh-huh.

12 CHIEF JUSTICE HENRY OXENDINE: And you're sort of
13 caught between the devil and the deep blue sea. And, so, I guess,
14 what do you find unworkable the ordinance from your perspective?

15 MR. LEON JACOBS: Well, if we were to implement this,
16 I think that the actual approving expenditures, you know, who wants
17 a, -- if they want to come in and manage whether we're buying a piece
18 of equipment or what have you, we have policies in place for
19 procurement and those are some of the things that we should be
20 monitoring and I think that the legislative body should be reviewing
21 rather than getting involved in the administration and the executive
22 branch of how the money is expend. We have line items, we know how
23 much we have for salaries, we know what we have for whether it's the
24 telephone or what have you, you know, I think that the Tribal
25 Council, the legislative body here should have better things and more

1 important things to come in each day and see if an expenditure has
2 been purchased or not.

3 CHIEF JUSTICE HENRY OXENDINE: Do you feel that any
4 member of the Tribal Council has a right to know where every dollar
5 does?

6 MR. LEON JACOBS: Yes.

7 CHIEF JUSTICE HENRY OXENDINE: Okay, and you said
8 something about you provide them with a statement every month as to
9 what was spent and where.

10 MR. LEON JACOBS: Right.

11 CHIEF JUSTICE HENRY OXENDINE: And if the Tribal
12 Chairman, I realize from your point of view, it might be worth it to
13 have to try to deal with 20 tribal members, but if the tribal speaker
14 were to say, we want to know more about this check, this check, -- we
15 want to know what it was all about, would you have a problem with
16 giving him that information so that he could give it to the tribal
17 members if he wanted to?

18 MR. LEON JACOBS: If he came in and said there was
19 something that was a concern and wanted to talk about how this
20 expenditure was and what it was about and so forth, then I would be
21 happy to sit down and talk. I would certainly, -- I would rather that
22 we have facts out there than all the rumors that go around out there.

23 CHIEF JUSTICE HENRY OXENDINE: Since this budget,
24 you're almost in the middle of it right now, from October to the end
25 of September.

1 MR. LEON JACOBS: Right.

2 CHIEF JUSTICE HENRY OXENDINE: A little bit past half
3 way. Has there been any instances where you've had to make changes,
4 shift money from one budget item to another?

5 MR. LEON JACOBS: Yes, there's been some and Tribal
6 Council approved one or two during the process.

7 CHIEF JUSTICE HENRY OXENDINE: Has there been any
8 others that you just did it on your own, especially involving what I
9 would call substantial expenditures?

10 MR. LEON JACOBS: They were not substantial, you know,
11 -- a few line items that are over and so forth and there was a need
12 to do so.

13 CHIEF JUSTICE HENRY OXENDINE: Okay. Do you have the
14 copy of the ordinance in front of you?

15 MR. LEON JACOBS: Yes.

16 CHIEF JUSTICE HENRY OXENDINE: Taking it section by
17 section, is there anything in section one that you find, from your
18 point of view, as being unworkable?

19 MR. LEON JACOBS: On section one with the
20 administrator, I don't have any.

21 CHIEF JUSTICE HENRY OXENDINE: Okay. What about
22 section two that starts on page one and goes over to page two, is
23 there anything about that that you, I assume you made some notes on
24 some of this, but is there anything about that specifically?

25 MR. LEON JACOBS: No, we do not have.

1 CHIEF JUSTICE HENRY OXENDINE: Looking at the very top
2 of page two, very top, back to the very first line. "The office of
3 finance, and I'm assuming that's your office, --

4 MR. LEON JACOBS: Right.

5 CHIEF JUSTICE HENRY OXENDINE: -- is authorized to pay
6 only those obligations as outlined in the approved budget or
7 documented modifications approved by the Tribal Council".

8 MR. LEON JACOBS: I think that certainly could lead to
9 some problems about getting things paid in a timely fashion and it
10 may cost the budget if it's delayed, you may not get - if you pay it
11 in 30 days, you may get a 1% discount, but in this situation I could
12 see you could have some problems with this.

13 CHIEF JUSTICE HENRY OXENDINE: I have another one,
14 what about section three, you see anything in there that you find
15 from your perspective as being unworkable? Section three, or had you
16 even thought about it from that perspective?

17 MR. LEON JACOBS: No, we reviewed this and I don't
18 have any major concerns about section three. Most of our problems
19 are under section four.

20 CHIEF JUSTICE HENRY OXENDINE: Okay, going to section
21 four, --

22 MR. LAWRENCE LOCKLEAR: Judge Oxendine, if you don't
23 mind if I interrupt, but are we gonna address the entire ordinance or
24 you're just addressing -
25

1 CHIEF JUSTICE HENRY OXENDINE: I'm asking him from his
2 perspective, and then when it gets time for you, I'll ask you from
3 your perspective.

4 MR. LAWRENCE LOCKLEAR: Okay.

5 CHIEF JUSTICE HENRY OXENDINE: That's the way that I
6 propose to do it. Yeah, you're gonna get an opportunity to respond
7 just like he's responding.

8 MR. LAWRENCE LOCKLEAR: Okay.

9 CHIEF JUSTICE HENRY OXENDINE: Look at section four,
10 number one A, --

11 MR. LEON JACOBS: Right.

12 CHIEF JUSTICE HENRY OXENDINE: Under "Assessment of
13 Program Needs, Fiscal Year Preliminary Budget Planning. It is the
14 responsibility of the Tribal Chairman, the finance committee and I'm
15 assuming that's the finance committee that's a part of the Tribal
16 Council and the Tribal Administrator to review and to keep informed
17 regarding programs, grants, and revenues relative to the Lumbee Tribe
18 in preparation for the budget process".

19 Now, Mr. Jacobs, from your perspective, what does that
20 require you do it?

21 MR. LEON JACOBS: It takes a lot of communication, it
22 requires us to make sure that we stay on top of what the funding
23 requirements are and that the information is shared so that we can
24 hopefully stay in good graces with all of our federal agencies.

1 CHIEF JUSTICE HENRY OXENDINE: Okay, let me ask you to
2 look again and I hate to take up so much time, but I've gone over
3 this and I'm trying to get to where I can understand exactly what
4 you're asking us to do and then understand it from the Tribal
5 Council's point of view. Looking at on page three, under number
6 four, Budget Modifications and Amendments, it says, "Budget
7 modifications and amendments may be made throughout the fiscal year
8 to approved budget. Modifications may include but are not limited to
9 the identification of increased or decreased funding, finalization of
10 the indirect cost rate, carryover funds, administration and/or
11 unanticipated program expenditures. All line item budget
12 modifications, additions and movements of funds will be considered
13 formal budget amendments and must be approved by the Tribal Council.
14 And then it goes on to say, the process and the procedures shall be
15 as follows."

16 Does this mean that the, from your perspective that
17 the Tribal Council could reduce somebody salary if they wanted to?

18 MR. LEON JACOBS: It's overkill on just about
19 everything here, you know. It's gonna make impossible to an
20 administrator, especially when we have a host of federal programs
21 coming in and so forth. This month, we just got ½ million dollars
22 that we didn't anticipate to come in here that is under the energy
23 department. But we have to have that money obligated in about 90
24 days and, you know, to go through this process can certainly create
25 major problems in this situation.

1 CHIEF JUSTICE HENRY OXENDINE: Okay, going on down,
2 number four C. "The finance committee, and I still assume we're
3 talking about the finance committee that's part of the Tribal Council
4 and the Treasurer will meet to discuss requested changes and
5 modifications to the overall budget. If the finance committee finds
6 that the request is allowable, it shall schedule the budget
7 modification request for consideration by the Tribal Council at a
8 scheduled Council meeting."

9 MR. LEON JACOBS: Uh-huh.

10 CHIEF JUSTICE HENRY OXENDINE: "The Tribal Council
11 shall be provided with detailed information regarding the request.
12 If the finance committee finds that a request is unallowable, the
13 request dies in committee. The request cannot be brought to the full
14 Tribal Council for a vote."

15 Explain to me from your perspective, what this would
16 require -- if this is enacted, what this would require you to do and
17 how it would play out.

18 MR. LEON JACOBS: I think that what I read into this
19 is that the Chairman nor myself as the administrator have access to
20 the full Council in a situation of this nature. It says here, it
21 goes to committee and if the committee doesn't like it, then it dies.
22 And how are we going to address situations that is important to the
23 well being of the entire tribe.

24 CHIEF JUSTICE HENRY OXENDINE: Do you ever get
25 notification or whatever from HUD saying what you're proposing here

1 ain't gonna fly, you need to change it some kind of way? And I'm
2 just wondering, in my mind, if that happened if you went to the
3 Tribal Council and said we need to change a certain item here and
4 they say, well, we don't think so. Where does that put you?

5 MR. LEON JACOBS: It could do two things. It could be
6 a finding in how we are administering a program or else it may be
7 severe enough that we would have our funds frozen like they were when
8 I came here. We have a recent situation where the Tribal Council had
9 passed a resolution, I don't think it was an ordinance, a resolution
10 to pay themselves \$150 to go on travel and we explained to the Tribal
11 Council that there are per diem limits that must be followed in the
12 federal law, but they still said they want the \$150.

13 Then we said, well we have to give you a 1099 at the
14 end of the year and was difficult because some of them was very
15 unhappy about that, but at the same time, HUD reviewed our files and,
16 yes, it is a finding and our solution was that we had to give the
17 1099's at the end of the year.

18 CHIEF JUSTICE HENRY OXENDINE: Okay, I'm on page four
19 now. The second full paragraph, starting with the word, "monthly".
20 "Monthly, the finance committee, the Tribal Administrator and the
21 Chief Officer of the Office of Finance, I'm assuming that's Mr.
22 Bullard.

23 MR. LEON JACOBS: Right.

24 CHIEF JUSTICE HENRY OXENDINE: Will review current
25 year-to-date expenditures and discuss any under expenditures,

1 unbudgeted expenditures and other deviations from the originally
2 approved budget and program summary. If necessary, recommendations
3 for budget modifications will be made to the Tribal Council. And
4 there's one more down there, going onto where it starts with the A,
5 B, and C, part B, you see what I'm talking about. "Intentional or
6 flagrant expenditures in excess of a budget amount may constitute an
7 unlawful offense by the authorizing official against the tribe.
8 Punishment for violation of this section may result in the dismissal
9 of the official and reimbursement of the excessive amount spent to
10 the office of finance". Give me your view on these two things that I
11 just, --

12 MR. LEON JACOBS: We have a problem with that. First
13 off the Tribal Chairman is responsible for the executive branch and
14 that includes personnel and matters of that nature. If they wanted
15 to amend this to say that a recommendation would be made to the
16 Chairman to take the necessary actions and so forth, I think that
17 that would be a more reasonable approach to this. But, the second
18 thing is it's also requiring a staff who works for the executive
19 branch to report to the Tribal Council and I think that's a violation
20 as well.

21 CHIEF JUSTICE HENRY OXENDINE: In conjunction with
22 that, do you feel that the Tribal Council should have the right, if
23 you try to draw correlation between this and the Congress, I know,
24 there's not a lot of similarity but, there's some. The Congress of
25 the United States can issue subpoenas to the Secretary of the

1 Treasurer, the Secretary of Defense, to appear before them to answer
2 inquires, they would have about - things that he's done. You agree
3 with that?

4 MR. LEON JACOBS: Uh-huh.

5 CHIEF JUSTICE HENRY OXENDINE: Do you feel that the
6 Tribal Council should have the right to ask the finance officer to
7 appear before them periodically either him or yourself so that they
8 can ask questions about budget matters? Do you have a problem with
9 that?

10 MR. LEON JACOBS: No, I don't have a problem but I
11 think the request should come through the Tribal Administrator and I
12 certainly my staff to come and participate previously in Tribal
13 Council meetings, but now we've not been, -- well I don't want to say
14 allowed or just, -- we can't participate in the Tribal Council
15 meetings unless called on, --

16 CHIEF JUSTICE HENRY OXENDINE: By them.

17 MR. LEON JACOBS: We done give a report any more.

18 CHIEF JUSTICE HENRY OXENDINE: Called on by them? If
19 they ask you to come?

20 MR. LEON JACOBS: Yes.

21 CHIEF JUSTICE HENRY OXENDINE: You indicated a while
22 ago that you just got a grant from, -- in fact I believe I read about
23 it in the newspaper, reference to heating or something like that?

24 MR. LEON JACOBS: Yeah, energy, yes.
25

1 CHIEF JUSTICE HENRY OXENDINE: And I'm assuming that
2 that money comes with - it's earmarked?

3 MR. LEON JACOBS: Right.

4 CHIEF JUSTICE HENRY OXENDINE: Do you feel it's
5 appropriate to take that money, -- or make the Tribal Council, --
6 here's what we've got here, --

7 MR. LEON JACOBS: Oh, yes, I think we should make them
8 aware that we've gotten this. It's a good thing, it's a benefit to
9 the tribal membership.

10 CHIEF JUSTICE HENRY OXENDINE: You don't, you don't
11 feel like, -- in other words, you're saying it comes to you in such a
12 condition with such restrictions that you can't go to them and say,
13 what do you want me to do with this money, because HUD's already told
14 you what you're gonna do with it, --

15 MR. LEON JACOBS: It's already told, earmarked, yes.

16 CHIEF JUSTICE HENRY OXENDINE: Yes.

17 MR. LEON JACOBS: So, we ask them to put it in a line
18 item.

19 CHIEF JUSTICE HENRY OXENDINE: Do any of the other
20 judges have any questions based on what I've said? Mr. Locklear, I'm
21 going to give you the right, as the Speaker, based on the questions
22 that I've asked Mr. Jacobs, not, -- we don't want to go back to
23 everything, but based on the questions that I've asked him, are there
24 any questions that you would like to ask him, based on what I've
25

1 asked him and his responses to me? Keeping in mind, you're gonna get
2 a chance in a little while, --

3 MR. LAWRENCE LOCKLEAR: Okay, Ms. Danita.

4 CHIEF JUSTICE HENRY OXENDINE: Well, let me say this,
5 well, I had hoped you'd do it, but I don't want to rehash what's -
6 I'm just talking about, based on the questions that I asked and his
7 responses to the questions I asked only.

8 MR. LAWRENCE LOCKLEAR: Well, I do have a couple. If
9 you'll look on page 2, section, -- on the ordinance, on page 2
10 section 4, 1 A, -- Mr. Leon mentioned I think it was, -- in no other
11 terms, I guess, a burden on him and his staff to keep informed
12 regarding programs, grants and revenues relative to the tribe, is
13 that not part of your job description, Mr. Leon?

14 MR. LEON JACOBS: Well, sure.

15 MR. LAWRENCE LOCKLEAR: So, it's not an undue burden?
16 What I'm getting at is that is something that's not, -- this
17 ordinance is not constituting or creating that burden for you, right?
18 You're saying that's part of your job description; correct? Or part
19 of your job requirements, I should say.

20 MR. LEON JACOBS: Requirements, yes, when you get the
21 funds, you have to make sure you get them earmarked and as far as
22 keeping the Tribal Council abreast of what is coming in, I think it
23 is my responsibility, the timeline of what you're gonna do with some
24 of the terminology and the actions that you are placing on myself and
25 my staff, I think are unreasonable.

1 MR. LAWRENCE LOCKLEAR: But, you're saying that is
2 part of your job, to keep informed?

3 MR. LEON JACOBS: Of course.

4 MR. LAWRENCE LOCKLEAR: If you look on page 3, under
5 number 4, Budget Modifications, the question was raised about the
6 tribe reducing salaries, -- the Tribal Council reducing salaries for
7 individuals when the budget has been approved. Has the Tribal
8 Council ever reduced a salary once a budget has been approved?

9 MR. LEON JACOBS: Have they what?

10 MR. LAWRENCE LOCKLEAR: Have we reduced a salary for a
11 position once the budget has been approved?

12 MR. LEON JACOBS: By the Tribal Council?

13 MR. LAWRENCE LOCKLEAR: Yeah, has the Council ever
14 done that?

15 MR. LEON JACOBS: I don't recall anybody that, --
16 there's been recommendations to terminate some employees by the
17 Tribal Council.

18 MR. LAWRENCE LOCKLEAR: I guess what I'm getting at,
19 while the budget is being developed, I guess salaries are part of the
20 discussion process. The Council has never reduced a salary once a
21 budget has been approved. Does the Council have the right or the
22 authority to review the budget to set a salary? Does the Council
23 have that right?

24 MR. LEON JACOBS: I would have to think about that. I
25 don't feel that the Council should come in and take that type of role

1 in the administration. That's a responsibility of the Chairman
2 handling HR matters and things of that nature.

3 MR. LAWRENCE LOCKLEAR: Generally during the budget
4 process, the Council asked that a list of salaries to be attached to
5 the budget, so generally we don't decide what the salaries are going
6 to be. Okay, Ms. Danita.

7 CHIEF JUSTICE HENRY OXENDINE: Well, I'll allow it
8 with restrictions.

9 MS. DANITA LOCKLEAR: And these are all related to
10 the questions that you had asked, and if they are not, please stop me
11 at any time. Mr. Jacobs, I think the Chief Justice asked you, do you
12 act on faith or guaranteed monies and the one that I would like to
13 bring up is the Boys and Girls Club for the \$150,000, that it was an
14 anticipated grant, is that correct?

15 MR. LEON JACOBS: Can you repeat that?

16 MS. DANITA LOCKLEAR: The Boys and Girls Club for
17 the \$150,000 grant; was that anticipated or did we receive that
18 grant?

19 MR. LEON JACOBS: We had a grant application in for
20 youth services and that was not funded.

21 MS. DANITA LOCKLEAR: But that was part of our budget;
22 correct?

23 MR. LEON JACOBS: Pardon me?

24 MS. DANITA LOCKLEAR: That was a part of our
25 operating budget; correct?

1 MR. LEON JACOBS: Anticipated, it didn't come.

2 MS. DANITA LOCKLEAR: For this previous pow-wow, did
3 we ever get the amount of the expenditures for the previous pow-wow?

4 MR. LEON JACOBS: I'm not sure if you did.

5 MS. DANITA LOCKLEAR: And we did not as a Council,
6 also as the finance chair.

7 CHIEF JUSTICE HENRY OXENDINE: Is your question, did
8 you all ever - were you ever asked to approve monies for a pow-wow;
9 is that part of your question?

10 MS. DANITA LOCKLEAR: Yes, and we asked on numerous
11 occasions as well, to receive the amount of the expenditures?

12 CHIEF JUSTICE HENRY OXENDINE: How much was spent on
13 it?

14 MS. DANITA LOCKLEAR: Yes, but we never did receive
15 that and this goes back in line to the questions that you have asked.

16 CHIEF JUSTICE HENRY OXENDINE: I think, Mr. Jacobs,
17 she's asking, was that something that was ever brought before, -- is
18 that something that you all have brought before them for their
19 approval to spend money for a pow-wow?

20 MR. LEON JACOBS: That was last year's pow-wow and
21 there was a resolution as I recall.

22 CHIEF JUSTICE HENRY OXENDINE: By the Tribal Council -
23 -

24 MR. LEON JACOBS: -- the Council, --
25

1 CHIEF JUSTICE HENRY OXENDINE: -- authorizing a pow-
2 wow?

3 MR. LEON JACOBS: I'm not sure if it had an
4 appropriations amount to the resolution, but I can find out very
5 easily.

6 MS. DANITA LOCKLEAR: Mr. Jacobs, I as the finance
7 chair did receive the check register on a couple of occasions and
8 asked that, from you as the Tribal Administrator and also went
9 through finance which was Mr. Patrick Bullard, and asked that certain
10 checks be pulled to see what those specific checks were written for,
11 but was denied for the committee's sake, but was denied for whatever
12 reasons, is that correct?

13 MR. LEON JACOBS: You're saying that you talked
14 directly to Patrick?

15 MS. DANITA LOCKLEAR: I talked with you as well.

16 MR. LEON JACOBS: Okay.

17 MS. DANITA LOCKLEAR: And you denied that and
18 Patrick had no - his hands was tied, but you denied access to that as
19 well.

20 CHIEF JUSTICE HENRY OXENDINE: Let me make sure I
21 understand, you're saying there was a time when you requested the
22 particulars, --

23 MS. DANITA LOCKLEAR: Because nobody -

24 CHIEF JUSTICE HENRY OXENDINE: Did you see the check
25 or you wanted to see it?

1 MS. DANITA LOCKLEAR: The check register. We saw
2 the check register.

3 CHIEF JUSTICE HENRY OXENDINE: Did you see the check
4 and who it was written to?

5 MS. DANITA LOCKLEAR: We didn't actually see the
6 check per se, we only seen the register.

7 CHIEF JUSTICE HENRY OXENDINE: Okay, and what was the
8 information that you wanted from that?

9 MS. DANITA LOCKLEAR: We wanted to see who the check
10 actually went to and for what?

11 CHIEF JUSTICE HENRY OXENDINE: The register didn't
12 show who it went to?

13 MS. DANITA LOCKLEAR: It just said a name. We just
14 wanted to see for what purpose and they would not actually state for
15 what purpose or anything?'

16 MR. ANTHONY BLANKS? Why did you ask the
17 Administrator?

18 MS. DANITA LOCKLEAR: Why did we ask the
19 Administrator?

20 JUSTICE ANTHONY BLANKS: Yes.

21 MS. DANITA LOCKLEAR: If you'll go back and listen to
22 the Administrator's comments that we could have access to any of
23 that, --

24 JUSTICE ANTHONY BLANKS: No, no, no. My questions is
25 why did you ask the Administrator?

1 MS. DANITA LOCKLEAR: As the finance chairman, we
2 can go back and if there is any of this information that we have a
3 reason to look and see if something is being spent or we have a
4 concern about something and we want to know, we do have a reason to
5 look to see or just question it. It's not much whether something was
6 done wrong or anything of that sake, it was just a matter of there
7 was numerous checks, --

8 JUSTICE ANTHONY BLANKS: I understand your purpose, -

9 -

10 MS. DANITA LOCKLEAR: -- that has been written, --

11 JUSTICE ANTHONY BLANKS: -- but my question is, --

12 MS. DANITA LOCKLEAR: -- for the Chairman, --

13 JUSTICE ANTHONY BLANKS: -- why would you go to the
14 Administrator?

15 CHIEF JUSTICE HENRY OXENDINE: You're talking about as
16 comparing to somebody else?

17 JUSTICE ANTHONY BLANKS: Why did you go to the
18 Administrator?

19 MS. DANITA LOCKLEAR: Because Patrick said that we
20 would have to go to the Administrator?

21 JUSTICE ANTHONY BLANKS: In other words, you had
22 already asked Patrick?

23 MS. DANITA LOCKLEAR: Yes.

24 JUSTICE ANTHONY BLANKS: Now, why did you go to
25 Patrick?

1 MS. DANITA LOCKLEAR: Because the Administrator
2 sometimes does not come to the meetings.

3 MS. LINDA HAMMONDS: The letter was sent to the
4 Chairman, Danita, and that's what the Chairman, --

5 JUSTICE ANTHONY BLANKS: In other words, that's what
6 I'm trying to get at. Why are you going to the people that you're
7 going to?

8 MS. DANITA LOCKLEAR: Well, sometimes you have to.
9 Sometimes certain ones do not come to the meetings and that's part of
10 what I'm fixin' to tell you as I'm going down the chain here. I've
11 that written up as well, because even though you asked certain ones
12 to come to the meetings, they will not come.

13 JUSTICE ANTHONY BLANKS: Did you make this request to
14 the Chairman?

15 MS. LINDA HAMMONDS: In writing.

16 MS. DANITA LOCKLEAR: I'm not sure, I can't remember
17 back to be honest with you.

18 JUSTICE ANTHONY BLANKS: Now, since the Chairman is
19 the Administrator's boss, that's the reason I'm asking the question,
20 seems like people are jumping the chain of command somewhere, and
21 that's the reason why I'm asking. I just want to know why?

22 MS. LINDA HAMMONDS: May I clarify that, Mr. Blanks?

23 JUSTICE ANTHONY BLANKS: Yes.
24
25

1 MS. LINDA HAMMONDS: There was, in fact on two
2 occasions a letter had been addressed to the Chairman requesting that
3 information, that is absolutely correct, detailed by the Speaker.

4 MR. LAWRENCE LOCKLEAR: And we've been told many
5 times, Mr. Leon has said at any time you have questions or concerns
6 to go to him.

7 CHIEF JUSTICE HENRY OXENDINE: So, do the Tribal
8 Council then feel that if you have a question about the operation of
9 the tribe, Mr. Jacobs is the person you go to.

10 MS. DANITA LOCKLEAR: Well, he tells us -

11 CHIEF JUSTICE HENRY OXENDINE: Is that understood, I
12 mean, --

13 MS. DANITA LOCKLEAR: -- that's what he tells us to
14 come to me, and he'll tell you the same thing, to come to him, so, --

15 CHIEF JUSTICE HENRY OXENDINE: Okay, all right. Did
16 you answer your question?

17 JUSTICE ANTHONY BLANKS: Uh-huh.

18 CHIEF JUSTICE HENRY OXENDINE: Go ahead, Ms. Locklear.

19 MS. DANITA LOCKLEAR: Okay, on numerous occasions,
20 the finance committee had asked that certain requirements be met, --

21 CHIEF JUSTICE HENRY OXENDINE: This is, now, is this
22 going to be a question?

23 MS. DANITA LOCKLEAR: Yes, yes it is.

24 CHIEF JUSTICE HENRY OXENDINE: Okay.
25

1 MS. DANITA LOCKLEAR: That certain requirements be
2 met in order for monies be moved from one line item to another, but
3 the program manager has not shown up to address that these issues be
4 finalized. An example of that would be an obligations for Section, -
5 - will be 184 monies. And that's the obligations that the 184
6 monies, they went to the back and said that they had been obligated
7 monies, you know, for the down payment assistance or whatever, and I
8 had made my information in writing to the program manager, we talked
9 about program managers you know, this, that and the other. I had put
10 it in the writing to the program manager to come to the finance
11 meeting. The program manager didn't come to the finance meeting to
12 address these issues and, so, that has to be done in order to get
13 information in order to move that line item as far as the money and
14 carry it to the full Council. And I know you made reference that you
15 were not asked to come to these meetings and so on, but the staff has
16 been asked to come to the meetings but sometimes they are being told
17 not to come to the meetings. So, this is a grave concern.

18 CHIEF JUSTICE HENRY OXENDINE: What is the question?

19 MS. DANITA LOCKLEAR: But the question is, why are
20 you not allowing the staff to come to the meetings and why are you
21 telling them that they no longer can come to the meetings?

22 MR. LEON JACOBS: Well, there's a couple of reasons.
23 It depends on what the committee is or whatever has happened with the
24 communications between the Chairman and my office and those
25 committees. My staff are not obligated to come to these committee

1 meetings. I am as the Tribal Administrator, but I welcome the staff
2 to come, but I don't think that you as a Council could, -- unless you
3 are subpoenaed you can't require the tribal staff to come to a
4 committee meeting. What we have done, however, is to, -- because
5 there's so many committee meetings going on, there's no way that I
6 can go to all of them or as the deputy or Tammy or I, we are trying
7 to designate, for instance in your particular case, we have Patrick
8 Bullard as the person to attend those meetings. And if there is a
9 reason for other staff to come in and talk with me about it, you
10 know, I would approve them to come. But, as far as your question
11 about the line item, we have not discussed the problem with the down
12 payment assistance with the housing committee. I've talked with the
13 chairman of that committee to say that there is some problems with
14 the policy on the down payment assistance program and we haven't met
15 to, I understand, there's a meeting next week in housing or the
16 following week, and hopefully we'll be able to address those before
17 we appropriate more money that we may not need.

18 CHIEF JUSTICE HENRY OXENDINE: Let me say this, Mr.
19 Locklear, we really need to be moving on because, it's almost, --
20 your side, I'm going to give you an opportunity to make what
21 presentation you want to.

22 MS. WENDY MOORE-GRAHAM: I just have one question.

23 CHIEF JUSTICE HENRY OXENDINE: I'll go ahead and allow
24 it because you haven't had any tonight.
25

1 MS. WENDY MOORE-GRAHAM: Well, thank you. On section
2 4, Budget Process, --

3 CHIEF JUSTICE HENRY OXENDINE: This ordinance?

4 MS. WENDY MOORE-GRAHAM: Yes, sir. That's the only
5 thing that we're talking with regard to. On item number four,
6 section C, Mr. Jacobs, you alluded to the fact of there being a time
7 concern based on a need coming up or a need arising and you have not
8 having access to the Council for approval. Now, in your tenure here
9 as Tribal Administrator, has there been a time when you have
10 requested a meeting with the Council to alleviate any type of
11 emergency that has arisen and we have not given you privy to that
12 special meeting?

13 MR. LEON JACOBS: First off, we can't, the Chairman
14 and I, don't, -- we're not on the agenda anymore. We work strictly
15 through committees.

16 MS. WENDY MOORE-GRAHAM: That's not my question. I
17 said, a special called meeting does not require an agenda, all it
18 takes is contact from the executive hierarchy to the Speaker to
19 request a special meeting with regards to the urgency of this
20 instant. The executive body of the Council will meet with the
21 executive body of the executive branch or administration and can
22 resolve issues if there is a request made because in our ordinance of
23 decorum, special meetings are allowed and emergencies are given
24 priority.

1 So, has there ever been an instance when an emergency
2 arose that you were not given the luxury or the opportunity to meet
3 with the Council and as a result, someone did not receive services
4 because of our neglect?

5 CHIEF JUSTICE HENRY OXENDINE: Okay. You understand
6 what she's asking?

7 MR. LEON JACOBS: No.

8 CHIEF JUSTICE HENRY OXENDINE: Well, do you have the
9 right, let me see if I can rephrase this a little bit, to send Mr.
10 Locklear a letter saying Mr. Locklear, I have a matter that needs
11 some attention from the Tribal Council, will you please schedule a
12 meeting at the earliest possible time? Do you feel that you have
13 that right?

14 MS. WENDY MOORE-GRAHAM: It doesn't take a letter.

15 CHIEF JUSTICE HENRY OXENDINE: Wait a minute.

16 MR. LEON JACOBS: I have that right. Yes. Yeah, I
17 think that I can.

18 CHIEF JUSTICE HENRY OXENDINE: Well, I think you do.
19 You ought to. But, and has there been a time when he said, well,
20 we'll get around to it sooner or later? Or have you ever done that?
21 That's what she's asking.

22 MR. LEON JACOBS: No, in fact I don't recall ever
23 making a request like this, and so, I don't know he would respond to
24 it. I would think favorable.
25

1 CHIEF JUSTICE HENRY OXENDINE: Okay, all right. Well,
2 what we're gonna do now, Mr. Locklear, you've heard Mr. Jacobs'
3 concerns and so forth, now I'd like for you, ever how you want to do
4 it, but I would like you to be aware of the time. Ever how you want
5 to respond to this. In other words, you're basically, you're
6 defending the ordinance now.

7 MS. LINDA HAMMONDS: Mr. Speaker, if I may I'll start
8 with this. The couple of things in regard to this particular
9 ordinance, once again, we believe that we are fulfilling the
10 constitutional law, in that we are putting together laws that will,
11 by use of policies later or can be used to generate policies, to
12 govern this tribe. In other words, we are protecting the assets and
13 the resources of this tribe. There's been mention here today or
14 tonight rather about overkill. When it comes to the monies that are
15 been allocated to this tribe, there can never be too much overkill,
16 there can never be too much an attempt to assure that the money is
17 being spent according to the program allowances. I believe our past
18 audits will indicate that time and time again. An example of the
19 energy assistance that came in and it was stated that there was 90
20 days to allocate that. Well, between now and 90 days there's gonna
21 be at least two Council meetings. There's been a statement here that
22 this ordinance puts a wall between the Chairman and the full Council
23 by the fact that the committee will make a decision here on
24 allowances. All committees of this tribal government do the very
25 same. I'll give you an example of economic development where

1 situations we can get involved in this and bringing about monies to
2 the tribal government. This committee looks at it, determines, no
3 this is not the direction that we need to go at this time. And by
4 consensus, it is not brought to the Tribal Council. So, there's no
5 committee, or this committee, the finance committee is not the only
6 one who makes a decision about how much will be on the table for each
7 Council person.

8 It was alluded to resolutions and other items being
9 passed by this Council in which the Council is in violation and
10 therefore puts the administration in a situation where we get audit
11 findings. Nowhere, nowhere in any minutes will one find where this
12 Council voted by resolution to give itself \$150. That was a
13 determination by the administration to do that. Nowhere will there
14 be any minutes and so forth that will indicate that.

15 This ordinance does not make the Council responsible
16 for employees, but in essence what it does, it gives law to the
17 actions of employees, of tribal members as well as Tribal Council.

18 I think that's basically all I had to say.

19 MR. WELFORD CLARK: Just a couple of things to respond
20 to. The one issue that Mr. Jacobs raised, spoke of the danger or how
21 something may die in committee, and therefore depriving him of the
22 right or the opportunity to present something before the full
23 Council. In the ordinance spell out the decorum of Tribal Council
24 meetings, it is within the prevue of any Tribal Council member to
25 introduce any ordinance or resolution independent of the fact whether

1 it has ever went, -- it doesn't have to do to a committee. If
2 something is voted out of committee and voted down in committee, that
3 does not prevent anyone from still offering resolutions or
4 ordinances, so all he has to do is sell one person and they can bring
5 before.

6 And the other issue is this and I'm going to allude to
7 something that Mr. Jacobs said as well as something that you said
8 earlier in your presentation, Mr. Chief Justice, when you talked
9 about the lack of authority of the Council in compelling
10 administrative staff to appear before the Council for questioning.
11 Mr. Jacobs spoke about in the absence of a subpoena, they didn't
12 come, well we don't have any subpoena power. We don't have any
13 legislative subpoena, -

14 MS. WENDY MOORE-GRAHAM: Not at this time.

15 MR. WELFORD CLARK: -- but in adherent in the right of
16 the legislative body of the State of North Carolina, as well as the
17 Congress of the United States, they don't have any legislative
18 subpoena power either. They do in fact have the right to call any of
19 the executive employees before them at any time for any reason. The
20 only time that they exercise any subpoena power if someone refuses to
21 come. And that's what put the handicap and the burden upon us. If
22 we ask them to come and they chose not to come, we can't compel them
23 to come as it presently stands. We're not afforded that same
24 privilege.

1 The administration has full access to the Council for
2 any kind of redress to make any kind of presentation to it. Though
3 the administration doesn't occupy a permanent place on the agenda for
4 every meeting, if the Tribal Administrator or the Tribal Chairman or
5 if the rehab manager or if anyone from the Boys and Girls Club would
6 like to address the Council at any meeting, it's just a matter of
7 just notifying the Speaker and doing it in the proper order and
8 they'll be placed on the agenda.

9 So, many issues that the Tribal Administrator raised
10 regarding his lack of access to the Council is just - we may have a -
11 Mr. Jacobs may --

12 CHIEF JUSTICE HENRY OXENDINE: Not valid, --

13 MR. WELFORD CLARK: -- not valid.

14 MS. WENDY MOORE-GRAHAM: And also with regard to
15 access to the Tribal Council, at no time does anybody with regard to
16 their status as an elected or an appointed official have the right to
17 deny anyone without regard to the employment with this tribe, they
18 cannot deny them the right to attend a Council meeting. That is a
19 violation of their civil rights as a tribal member and whether or not
20 you agree or disagree, Mr. Jacobs, I contend that in any instance
21 when you tell an employee or if Mr. Goins do it or whomever does it,
22 that they are not allowed to go to Council meetings, then you have
23 violated their civil rights as a tribal member of this tribe because
24 it is their right to know what is going on in tribal business.

1 And the rationale behind the exclusion of verbal
2 reports versus written reports was we felt that these reports needed
3 to be addressed in committee rather than in the public setting. It
4 was not to exclude the Chairman, it was not to exclude the
5 Administrator, but it was a matter of expediency with regard to
6 Tribal Council meetings and getting to the matter at hand that is
7 before the Council.

8 So, I wanted to make that point very clear that these
9 were not actions taken in any personal endeavor to exclude anybody
10 but rather to get to the business of doing our job as the legislative
11 body of the Lumbee Tribe. Thank you.

12 CHIEF JUSTICE HENRY OXENDINE: Mr. Locklear, do you
13 personally any, --

14 MR. LAWRENCE LOCKLEAR: One issue, two issues, I guess
15 related that come to my mind when I think about this ordinance. One
16 is fiduciary responsibility and the other is oversight. Fiduciary
17 responsibility, I guess, a brief definition of it, we're holding
18 tribe money for the tribal people. Someone has to watch over those
19 funds. Tribal Council has never intended or has never tried to tell
20 the executive branch how to administer a program. That's not what
21 this ordinance is about. It's not about administering. It's about
22 oversight. If you want to use the cliché, if we let the executive
23 branch administer and the oversight, it's kind of like letting the
24 fox guard the henhouse. And that's what we're trying to prevent with
25 this ordinance. We let them spend it, we let them administer the

1 program, we let them be responsible for the program, but someone has
2 to be responsible for oversight to ensure that the money is being
3 spent properly. And I think that's the whole purpose of this
4 ordinance and ordinances aren't perfect. That's why they can be
5 amended and we have a process for that, but that's the whole purpose
6 for writing this is fiduciary responsibility and oversight.

7 CHIEF JUSTICE HENRY OXENDINE: Any questions that any
8 of the justices have, any other questions?

9 JUSTICE ANTHONY BLANKS: I have several. One, the
10 budget that is presented by the Chairman, is that the budget that is
11 presented in the hearings or is that budget amended or, --

12 MS. LINDA HAMMONDS: May I answer that. No, sir, at
13 this last presentation that the budget that was presented to the
14 membership was not the budget that we, ourselves, got nor was that
15 part of the later, you know, the budget hearing. What they presented
16 to the tribal membership was more or less a breakdown that was
17 published in a book that they held during Lumbee Homecoming. That
18 was not an appropriate budget, no, sir.

19 MR. LAWRENCE LOCKLEAR: The budget that the tribe
20 received, I think it was one sheet and it had maybe 8 or 10 line
21 items listed, and that was it. The budget that we received was
22 numerous pages. I went through each program, I think, it had various
23 line items for each program, so it was very different.

24 MR. LEON JACOBS: Who presented that budget?
25

1 MR. LAWRENCE LOCKLEAR: The first budget, the
2 Chairman, that was what the Chairman presented at Lumbee Homecoming.

3 JUSTICE ANTHONY BLANKS: Well, now, I mean if you
4 were to take that two different things and if you - the detailed
5 budget that you got, --

6 MR. LAWRENCE LOCKLEAR: Right.

7 JUSTICE ANTHONY BLANKS: -- was that sort of lumped
8 under those headings that he presented?

9 MR. LAWRENCE LOCKLEAR: Yeah, I guess, yeah.

10 JUSTICE ANTHONY BLANKS: Okay. Now the budget that
11 was presented finally, the working budget that was presented, once
12 you get that budget, is that the budget that was approved or do you
13 change the budget?

14 MS. LINDA HAMMONDS: That's when we make the changes
15 and so forth. And then we have a public hearing on it.

16 MR. LAWRENCE LOCKLEAR: Yeah, we talked about the
17 chain of command and the way things work with the executive branch by
18 contacting the Chairman and he delegates authority to the Tribal
19 Administrator. The way it works with the Council, the general
20 approach to writing legislation is that someone presents the idea of
21 a legislative in committee. It's hashed out in committee and then
22 it's presented to Council. That's the way the budget is.

23 JUSTICE ANTHONY BLANKS: Now, my next question is, by
24 reason do you change the budget? What's the reason for a change?
25 What is your authority to change?

1 MR. LAWRENCE LOCKLEAR: Well, the budget policy is
2 what - and the Council writes the laws, and you know that policies
3 derive from those laws.

4 JUSTICE ANTHONY BLANKS: I mean, why do you change
5 the budget? I mean, where do you get the, the, the, -- I'm trying to
6 figure out why you change it.

7 CHIEF JUSTICE HENRY OXENDINE: Mr. Blanks, are you
8 talking about, they indicated they made changes in it and then they
9 adopt it. But your question is after they adopt it, why do they make
10 changes?

11 JUSTICE ANTHONY BLANKS: No, my question is, -- I'm
12 getting to the final budget. In other words, my question is do they
13 change the budget before they present it to the people? Number one.

14 CHIEF JUSTICE HENRY OXENDINE: Okay.

15 JUSTICE ANTHONY BLANKS: In other words, you only
16 change the budget after it's presented in hearings.

17 MS. LINDA HAMMONDS: That was correct. When we got
18 the first budget, when we got our budget last time and then we had
19 the public hearings and got the input from the people on the kind of
20 changes and things that they wanted to have. And then we scheduled
21 the budget workshops and so forth.

22 MR. LEON JACOBS: And those public hearings was
23 coordinated with the Chairman and the Tribal Council, they were
24 working together and to me it was a good process. Year before last,
25 we started this process and we had a good rapport and I thought

1 everything was on the right track and next thing I know, you know, we
2 got an ordinance here that usurps the authority of the Chairman and
3 that creates a problem. Could I respond to, --

4 CHIEF JUSTICE HENRY OXENDINE: Well, I'm going to say,
5 everybody has asked questions, but since you have - they asked you
6 questions, you have a right to direct them to Mr. Locklear. Now, if
7 there is somebody that he wants to answer, yeah, you can ask
8 questions.

9 MR. LEON JACOBS: One question, Mr. Speaker, that I
10 have a problem with and a concern, Ms. Graham mentioned that it is
11 not due - it's the rights of employees that are tribal members to be
12 denied from attending Tribal Council meetings. And I'm asking if you
13 are aware of any member of the tribe who works for this
14 administration being denied to attend Tribal Council meetings?

15 MS. WENDY MOORE-GRAHAM: Are you asking me?

16 MR. LAWRENCE LOCKLEAR: I'll answer it. By name, I
17 would never give an employees name but the way generally things work
18 here with the tribe, is that we usually Tribal Council members hear
19 about things as rumors and then those rumors come to pass. That's
20 the way it is with not attending Tribal Council meetings. We hear
21 that they don't attend them and then we have a Tribal Council meeting
22 and no one's there, when before we used to have 10 to 15 tribal staff
23 there also, now we have meetings and no one is there. So, that's the
24 way generally the way it works.
25

1 MS. WENDY MOORE-GRAHAM: I have had responses from
2 employees that they were given strict instruction that they were to
3 keep out of any Council business or any dealing with Council. Now, I
4 will not divulge that name because of reprisal and we know reprisal
5 does happen without regard to who does what to whom.

6 MR. LEON JACOBS: Ms. Graham, I will assure that I
7 don't have that in my vocabulary. I don't do this, you know, let me
8 just - let me cover - the directions that I have given to tribal
9 employees after we got the notice from you that we were no longer as
10 participants in the Tribal Council meeting, I have said to the tribal
11 employees they can go to Council meetings if they want to as tribal
12 members, but they cannot speak about the administration. They have
13 no right to be there speaking on the behalf of the Chairman or
14 myself. We had a situation at a recent Tribal Council meeting where
15 a staff was called out of the audience and asked him questions about
16 program matters that he has no authority to take a position or to act
17 on. Am I correct? So, that's the directions that I've given to the
18 staff. Any tribal member who works for this tribe, they can go to
19 Tribal Council meetings, but they cannot go and speak about programs
20 and activities of this tribe that the Chairman and I are involved
21 with.

22 CHIEF JUSTICE HENRY OXENDINE: Do you have any other
23 questions, Mr. Jacobs, since you're entitled to ask some questions.
24
25

1 MR. LEON JACOBS: I had one question about the
2 oversight that you spoke about. Are you aware about the audit
3 process that the tribe has to produce a audit every year?

4 MR. LAWRENCE LOCKLEAR: Yes.

5 MR. LEON JACOBS: And are you aware of how that audit
6 is presented to the Tribal Council?

7 MR. LAWRENCE LOCKLEAR: Yes.

8 MR. LEON JACOBS: Right, and you all have access to
9 this which is an oversight about the expenditures and programs of the
10 government. Right?

11 MR. LAWRENCE LOCKLEAR: Right.

12 MR. LEON JACOBS: The second thing, are you aware of
13 the oversight monitoring by HUD that comes in once a year to see what
14 is going on with the program, administration and so forth?

15 MR. LAWRENCE LOCKLEAR: Yes.

16 MR. LEON JACOBS: Yes. Okay, I don't have any more
17 questions.

18 MS. LINDA HAMMONDS: May I respond to that, my last
19 statement, sir? Mr. Jacobs brought in the accounting procedures and
20 exactly, that's what we're going by. The accounting procedures have
21 made it clear that this Tribal Council needs to have more of an
22 oversight and responsibility, also as the recipient under the NAHASDA
23 monies, again, it is our job as the governing body to have the
24 oversight. So, irregardless of what another agency does, it comes
25

1 back, again, the Tribal Council, the governing bodies, judiciary
2 responsibility.

3 MR. LEON JACOBS: And if I could make a last
4 statement, --

5 CHIEF JUSTICE HENRY OXENDINE: In response to her?

6 MR. LEON JACOBS: Yes. My feelings are that the
7 Tribal Council certainly has some oversight, but I don't think you
8 have to violate your own constitution to carry out the
9 responsibilities of that oversight.

10 CHIEF JUSTICE HENRY OXENDINE: Okay. Do you all want
11 us to let's continue or take a 5-minute break, get some water. Are
12 you ready to continue? What I propose we do next, I want to give
13 each side, Mr. Jacobs and Mr. Locklear, maybe up to 5 minutes if they
14 need it to make closing comments. You want to take a break?

15 JUSTICE ANTHONY BLANKS: Do you feel and any of you
16 can answer this question, do you feel that during the budget process
17 that the preparation of the budget should be the Chairman's
18 responsibility or should it be a co-effort between the two?

19 MR. LAWRENCE LOCKLEAR: Well, if you read your
20 constitution it says, you know, the Chairman prepares the budget and
21 presents it to the membership. You could read the membership as
22 being the Tribal Council, as the Tribal Council presents the
23 membership. At that time Council has the authority to modify or
24 approve it as is.

25 JUSTICE ANTHONY BLANKS: Where do you find that?

1 MR. LAWRENCE LOCKLEAR: Well, we approve ordinances
2 and resolution, all of tribal law, and the budget is the law.

3 MS. LINDA HAMMONDS: Article VII.

4 JUSTICE ANTHONY BLANKS: It says you can amend it or
5 whatever?

6 MR. LAWRENCE LOCKLEAR: It says "shall enact tribal
7 budgets". It says, "such legislative powers shall include, I mean
8 with legislative power you can modify". It's like, and if you want
9 to use example Congress, you know, since our government has branches
10 similar, just like the federal government. The President prepares an
11 annual budget. He has it printed up in this nice big booklet and
12 presents it to Congress and then Congress basically for the next x
13 number of weeks, modifies, changes it, whichever party has control of
14 Congress, that party implements their policy, what they want to do.
15 I mean, and that's kind of similar to the way Tribal Council is.

16 MR. WELFORD CLARK: To answer your question, if I may,
17 Mr. Blanks, it is kind of a collaborative effort. The mechanics of
18 the typing in the numbers of the line items and all of that for each
19 program, listing the income, all right. Then listing the
20 expenditures where they are requesting budget amount for each program
21 all the way down and from what funding the agency comes from, the
22 Tribal Chairman, Tribal Administrator, they prepare that piece of
23 paper. That paper then comes before the Tribal Council. And we look
24 at it and we'll say, well we got 2 million dollars in here for
25 acquisitions, we think that's too much, we're change that to one

1 million, five hundred thousand dollars. And we change that. Okay.
2 And that process goes back and forth, over - and normally we come to
3 a resolution with the tribal, -- it's not a contentious thing, it
4 hasn't been that I'm aware of with the Tribal Administrator. Once we
5 get that done and these meetings are open. People, the tribal
6 membership, they come in and they observe this process, make comments
7 if they chose, and it goes through that whole process, so normally
8 when we get to the end of it, the changes that the Tribal Council has
9 made to the budget are received by the Tribal Administrator and
10 somewhat reluctantly maybe, but nevertheless, the Tribal Council has
11 the authority under the Constitution to really have the final say so
12 because we are the one who enact the budget. We write the budget
13 into law. So, in essence the completed document is a document of the
14 Tribal Council itself. And that's how it comes to be. The
15 simplicity of the process. There is some collaboration involved in
16 it.

17 MS. WENDY MOORE-GRAHAM: I need to make a statement to
18 Mr. Blanks.

19 CHIEF JUSTICE HENRY OXENDINE: Okay, go ahead.

20 MS. WENDY MOORE-GRAHAM: Under Article VII of the
21 Tribal Council's responsibilities, --

22 CHIEF JUSTICE HENRY OXENDINE: You're talking about
23 the Constitution?

24 MS. WENDY MOORE-GRAHAM: In the constitution on page
25 6, section 8, it says "the enactment of the tribal budget provided

1 that the budget shall be enacted into tribal law following the
2 conduct of tribal hearings on budgets proposed by the Tribal
3 Chairman". Okay, the enactment process is the Council's
4 responsibility. Number two, let me get to the Tribal Chairperson.
5 On page 8, Article VIII, the Tribal Chairperson, now it says that his
6 executive powers do not include enactment, but rather implementation
7 of and compliance with". There is a distinct difference between the
8 enactment of a budget versus the implementation. Okay.

9 JUSTICE ANTHONY BLANKS: I understand that.

10 MS. WENDY MOORE-GRAHAM: And that's were the power
11 difference comes into play. The Council has the right to enact.
12 Now, just because it's a proposed budget does not mean we have to
13 approve it. We can come back to the table and we can come together
14 and see where our differences lie if we are reasonable, rational,
15 mature people. At some point and time, those two entities do not
16 exist in both branches of government.

17 CHIEF JUSTICE HENRY OXENDINE: There in lies the
18 problem.

19 MS. DANITA LOCKLEAR: I think that though a lot of
20 that goes back to the Indian Housing Plan, what type of services that
21 we're looking, and the 5-year plan, though it be the 5-year plan
22 versus the 1-year plan. I think a lot of it's based on that. And if
23 we agree about the services that we're gonna provide, then a lot of
24 the dollars amounts are based, -- or derived from that, and I think
25 as long as we can conclude from the program and services that we're

1 gonna give the public or give them for the 5-year plan or 1-year
2 plan, then it's working out the dollar amount from that As long as
3 the objectives are right there and the plan for the planned years, ,
4 then it goes from there. It's the dollar amount, --

5 CHIEF JUSTICE HENRY OXENDINE: I'm going to give you
6 an opportunity to close. And here's what I want to do now. Mr.
7 Locklear, since Mr. Jacobs is the moving party, in other words, he's
8 got to convince us. I'm going to give him the last argument. You
9 can take up to 5 minutes. If we were in a trial in a court room,
10 this would be your closing argument trying to convince us why we
11 should deny his petition. And he's going to be trying to convince us
12 why we should grant his, --

13 MR. LAWRENCE LOCKLEAR: You put me on the spot.

14 CHIEF JUSTICE HENRY OXENDINE: You don't have to take
15 5 minutes. If you want to do it in a -

16 MR. LAWRENCE LOCKLEAR: Oh, it won't take long at all.
17 As the Tribal Council, the Tribal Council, as tribal members of the
18 Tribal Council, our main purpose in serving this government is to
19 write the laws for the government, and we all know that from the laws
20 are derived policies. We also know that the budget is a law and that
21 budget is basically what the government and that's what policy is.
22 Policy is what government does. As a Tribal Council, through
23 legislation, we feel that it's necessary to enact the process by
24 which the budget is adopted and this is the budget ordinance that we
25 have in front of us. The Tribal Council has never intended to direct
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1 or tell the administration how to administer or implement a program.
2 But, we as the Tribal Council feel that we do have oversight
3 authority of those funds, a fiduciary responsibility.

4 Those are 3 words that you need to keep in mind, are
5 administering and implementation and then oversight and think about
6 the differences between oversight itself and administering and
7 implementation, and then oversight. And think about the differences
8 and oversight itself and administering and implementation. And as
9 Tribal Council, we feel through legislation, we can, I guess set a
10 process so that oversight takes place.

11 This ordinance, we don't feel that it is
12 unconstitutional. We feel it follows the constitution. To close, we
13 as a Council feel that this ordinance is constitutional, it sets a
14 process for the budget and its implementation and oversight.

15 CHIEF JUSTICE HENRY OXENDINE: Mr. Jacobs, you have
16 the last work.

17 MR. LEON JACOBS: Is it possible that one of my staff
18 can have 2 minutes of our time?

19 CHIEF JUSTICE HENRY OXENDINE: I'll let you handle
20 that ever how you want to.

21 MR. LAWRENCE LOCKLEAR: Can we object to that because
22 the staff member was not mentioned in the petition addressed to this
23 Council.

24 CHIEF JUSTICE HENRY OXENDINE: Let me say this, Mr.
25 Locklear. You know, if a lawyer was to come in here and sit in here
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1 and watch the way we do business, they'd probably want to throw us
2 all out of the door.

3 MR. LAWRENCE LOCKLEAR: Right, right.

4 CHIEF JUSTICE HENRY OXENDINE: It's my feeling that we
5 ought to conduct these hearings in such a way that those that have
6 something to say that's relevant can do it. I probably should have
7 told you as a part of your 5 minutes, if there was anybody else that
8 you wanted to speak, but I feel like you covered it very well, but if
9 he's got somebody that's here maybe, -- as long as they stay within
10 the parameters of what we're looking for. I understand your feeling,
11 but we just want to get it all out there and then we'll take it from
12 there.

13 So, if he's got somebody as part of his 5 minutes, you
14 can go ahead.

15 MR. LEON JACOBS: Your Honor, I would start out by
16 saying that since becoming the administrator here with the Lumbee
17 Tribe, I feel like that we have put together a very good budget
18 process including the legislative body as well as the administration.
19 I'm very happy and proud for what we have done as far as putting this
20 budget. Given the fact that I told you earlier that when I got here,
21 the only budget that was approved by the Tribal Council and enacted
22 by the administration was a one-sheet with no revenues and so forth
23 and I knew that something had to give and we tired very effectively
24 to follow the Constitution as its written. Yes, the Constitution
25 does say the enactment of an annual budget is the responsibility of

1 the Council, and it goes onto say that after it's proposed by the
2 Tribal Chairman. Going onto Article VIII, number one, it also says
3 that all executive powers including implementation and compliance
4 with annual budgets, compliance with. I wonder how you differ or
5 define compliance from oversight and so forth, but at the same time,
6 I feel like it's my duty as administrator, working for the tribe,
7 including the Chairman, I have to make sure of compliance. And I
8 take that very serious.

9 So through the very open process 2004, we came before
10 the Council with line items that detailed quite well the different
11 expenditures and so forth. There's still improvement. Our theme
12 here with the staff is continuous improvements. We went to the
13 Tribal Council with this budget, the Tribal Council enacted a
14 resolution to approve the budget and we thought that we was on a good
15 roll, a lot of good communications and so forth. And I happen to
16 say that we have made tremendous improvement.

17 But I do feel any law that is enacted by the Tribal
18 Council that does have some violations of the Constitution, or
19 section, it needs to be modified. And that's what we wanted to do
20 prior to this hearing. I feel like that there is room and need for
21 continuous improvement with the things that we're doing right now and
22 certainly continuous communications with the Tribal Council on the
23 budget and the administration of programs and services. I would like
24 to keep that door open.

1 At this time, I'd like my staff, Bosco Locklear, to
2 make some comments.

3 CHIEF JUSTICE HENRY OXENDINE: Well, he's got about a
4 minute.

5 MR. BOSCO LOCKLEAR: I can do it, Mister Chief
6 Justice. One thing I agree with that implementation is the executive
7 branch's job, enactment is certainly the legislative branch's job,
8 but we run expenditures, we may have an average of maybe a thousand a
9 month here. And certainly when you go as a legislative branch when
10 you go to approving actual expenditures, then you are administering
11 programs. You can't administer programs without the expenditures
12 being involved.

13 The other thing is, I agree that the budget is a law
14 and when you go and you amend a law, you've created a new law. And
15 according to the Constitution, you got to follow the process, you got
16 to post the law 30 days and go through the whole process, which is
17 something the Council has not been doing. But following the
18 Constitution, that's what you got to do.

19 CHIEF JUSTICE HENRY OXENDINE: Okay, well, I know we
20 could sit here and chit chat all night, but we got to bring this to
21 an end, so unless I don't see the need for anybody to say anything,
22 so what I'm going to do at this point and time is just declare that
23 all the evidence is in and we are going to go back into session and
24 we're going to either, well, whatever, we may take this under
25 advisement but we'll let you know that shortly.

1 - BREAK -

2 CHIEF JUSTICE HENRY OXENDINE: We have met and we've
3 discussed this and we're dealing with the petition and so we have to
4 decide the issue that presented and the petition. Mr. Jacobs has
5 indicated in his petition that he feels that this ordinance, this
6 ordinance here, 2005-005, has infringed on the executive branch's
7 authority of government. That's his allegation and his statement of
8 relief being sought. Of course he asked for an injunction and it's
9 my understanding that was granted. So, the next thing, the
10 executive branch respectfully ask that all unconstitutional
11 provisions of this ordinance be stricken from the ordinance.

12 We are not in a position as a court, we didn't get
13 into which provisions that we considered to be unconstitutional, but
14 we do agree that this ordinance as it is now written does go into the
15 executive branch of the government and it infringes on their rights
16 to administer the laws of the tribe as they have been set out and
17 made by the Tribal Council. And let me go beyond that and say this
18 and some of the other court members may have some comments. So,
19 we're granting your motion.

20 Now, what I think ought to happen and here again this
21 is unorthodox, but I'm concerned as all of us ought to be. I
22 remember when Ms. Arlinda Locklear was done here a while back, she
23 made a presentation, I didn't go but I read it in the paper, where,
24 you know, when there's public disputes between the Tribal Council and
25 the tribal executive branch, you know that don't even know us,

1 they'll take that and use it against us. You know, in other words,
2 any they see something going on down here, and so I think all of us
3 really want the same thing to tell you the truth. I think we all
4 want the same thing. And here again, we can't order this. But we
5 would suggest and I think all the judges agree with this.

6 We feel like what you've said to us, you know, you
7 make the laws. The administration has duties. I got the impression
8 from listening to some things that there's some areas where the
9 administration is not doing it's full duty towards keeping you
10 informed. They need to keep you informed about things more so than
11 they do in my opinion, but we would suggest that Mr. Jacobs and maybe
12 a couple, or one person that he designates or another, maybe two, and
13 somebody that, Mr. Locklear, that you and yourself or whoever you
14 designate as the Speaker, would sit down and I think you could agree,
15 most of this we agree with. But there's parts of it that we feel
16 infringes on their rights. And that's why we're granting his motion.
17 But, I think that you could sit down and come up with an ordinance
18 that both sides could sign off on and buy into. And I hope that
19 you'll do that.

20 But, that's our ruling. We will be getting a written
21 opinion, it may take a while, but you know what it's going to be. Is
22 Ms. Linda still here?

23 MR. LAWRENCE LOCKLEAR: No, she left.

24 CHIEF JUSTICE HENRY OXENDINE: Okay, she had, in
25 another matter, she had and I don't mind, she and I had a

1 conversation the other day and she told about, she was, -- the Tribal
2 Council was considering coming up with an ordinance dealing with an
3 ethical code for the judiciary and I told her that we had an active
4 one, but, -- and what I suggested to her in that meeting was that if
5 the - if she came up with something, maybe she could let us look at
6 and see if it would something that we could agree on and if it did,
7 then that would be no problem with that.

8 But, anyway, we'll see her later. I assume she hadn't
9 discussed that with you.

10 MR. LAWRENCE LOCKLEAR: Yeah, she mentioned it.

11 CHIEF JUSTICE HENRY OXENDINE: You don't have anything
12 to show us?

13 MR. LAWRENCE LOCKLEAR: Not yet, we've started working
14 on it.

15 CHIEF JUSTICE HENRY OXENDINE: Well, if there is
16 nothing else, -- as far as I'm concerned, that's the end of the
17 meeting.

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19 - HEARING END AT 10:00 P.M. -
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