

Summary of

CHAPTER 6 – The Seminole Land Claims Case in

An Assumption of Sovereignty: Social and Political Transformation Among the Florida Seminoles 1953 – 1979

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CHAPTER 6 – The Seminole Land Claims Case

Intro – the Florida Seminoles were engaged in defending their rights in two legal cases before their federal recognition in 1957

1. Compensation for Seminole lands taken prior to the Second Seminole War
2. Securing Seminole water rights

Both took congressional action to settle

Both were resolved in favor of the Seminoles

The Land Claims Case, the focus of this summary, took 4 decades to settle

It had two major benefits for the tribe

1. It brought needed monetary reward
2. It was a “broader affirmation of Seminole tribal sovereignty.”

THE INDIAN CLAIMS COMMISSION ACT

Passed on 13 August 1946

It was part of a package aimed at ending, once and for all, federal obligations to the tribes.

Broadly, all American Indian groups had a five year window (until 13 August 1951) to bring forward any claims against the government.

Before the Florida Seminole tribal formation in 1957, each reservation (Dania, Big Cypress and Brighton, operated with its own governing bodies, “each tacitly approved the Bureau of Indian Affairs.” Brighton and Big Cypress each elected three tribal persons as trustees while Dania (now Hollywood) had a three person business committee. In addition there were

“three tribal trustees to give overall directions to tribal affairs.” This group of twelve elected Seminoles contacted an attorney from Jacksonville at the urging of Superintendent, Kenneth Marmon to “explore a claim.”

The attorney contacted, Roger Waybright, had many reasons not to take the case.

- He had no background in Indian law
- Would require years of work
- The amount of compensation was capped at 10%

Since the tribe had no regular attorney and time was running out

Waybright agreed to take “claim presentation on behalf of the tribe”.

“Waybright “became convinced that the claims of the Seminoles of Florida were of considerable merit, and they had been oppressed and defrauded by the United States to an extent unusual even in the sordid annals of the treatment of American Indians generally.”

The contract was executed on 15 October 1949 the commissioner of Indian affairs approving it in January of 1950

Brighton was represented by:

- Frank Shore
- Jack Smith
- John Henry Gopher

Big Cypress was represented by:

- Morgan Smith
- Junior Cypress
- Jimmy Cypress

Dania was represented by:

- Sam Tommie
- Ben Tommie
- Bill Osceola

Seminole Tribe Trustees were:

- Josie Billie
- John Cypress
- Little Charlie Micco

It appears that Waybright did not appreciate the "...number of Trail Indians and the extent of their opposition to any claim that might threaten their own demands for land and autonomy."

The Seminole petition was filed before the Indian Claims Commission on 14 August 1950.

It set forth four causes for action:

1. A claim for \$37,500,000 plus interest - the value of 30,000,000 acres of land taken under the Treaty of Camp Moultrie in 1823 [Also called the Treaty of Moultrie Creek]
 2. A claim for \$5,0409,975 plus interest - for 4,032,940 acres of land taken under the Treaty of Payne's landing in 1832
 3. A claim for \$6,250,00 plus interest - for the value of 5,000,000 acres of land taken under the Macomb Treaty of 1839 [never ratified]
 4. A claim for \$992,000 plus interest - for 99,200 acres of land taken for Everglades National Park in 1944
- TOTAL \$47,782,975 plus interest

Government attorneys maneuvered to have the claims dismissed through "summary judgment" on 22 July 1953

However the Indian Claims Commission entered an order denying the governments motion and ordered it to answer the Seminole Petition.

ENTER THE OKLAHOMA SEMINOLES

The Oklahoma Seminoles entered their own claim July 1951

There first two claims were similar to the first two claims of the Florida Seminoles, plus a claim centering on their removal experience.

They also moved to dismiss the Florida Seminole Claim, The Commission dismissed that request on 22 Jan 1953.

THE FLORIDA CLAIM SPLIT

The first three claims were left in docket 73 being consolidated with the similar Oklahoma claims (docket 151)

The Everglades National Park Claim was assigned as docket 73A and believed to be the weaker of the two cases.

Extensions were obtained by government attorneys, the government not answering the petitions until 17 December 1954, four and a half years after the Florida Seminoles had filed for a trial date. The trial was scheduled for January 1956.

In the interim, attorneys came forward claiming to represent the Indians from five south Florida counties who disavowed the claims. A meeting was held with the "Trail" Indians [those living along the US Hwy 27, the "Tamiami Trail"]. Miami attorney O.B. White, long associated with Mike Osceola, "advised tribal elders to disassociate themselves from the action."

Also attorney, Morton Silver, "who represented the Miccosukee General Council and its spokesman, Buffalo Tiger also disavowed the claims. At that time the Miccosukee General Council spoke for forty or fifty traditional families living along the Tamiami Trail but did not include two factions headed by William McKinley Osceola and Cory Osceola. Attorney Silver "announced that his clients would never accept money from the United States of America – fearing it might jeopardize their future rights to Florida lands – and demanded that they be specifically excluded from the claim." In September 1954 Silver "filed a document for 'Special Appearance and motion to Quash' on behalf of Ingraham Billie, Jimmie Billie, and thirteen other individuals acting as the 'General Council of the Miccosukee Seminole Nation.' "

"The Indian Claims Commission and the courts had thwarted all attempts by the Trail Indians to intervene in the claims process, asserting that their interests were adequately protected."

In 1957 Waybright resigned as lead attorney. Apparently there were two main reasons for this:

1. The federal government had granted official recognition to the Seminole Tribe.
2. He came to the realization that a third of the Florida tribal people (those now composing the Miccosukees) had boycotted the elections and opposed submitting a claim to the Indian Claims Commission. (Waybright never received any compensation for his eight years of work.)

Waybright was replaced by John Jackson and Effie Knowles and later by Roy Struble of Miami, with Charles Bragman in Washington.

MICCOSUKEE TRIBE FORMED

In 1962 the "Miccosukee Tribe of Indians of Florida" received federal recognition and six years later made its final attempt to intervene in the claims case. It appeared that the Miccosukees might be making a request for monetary compensation. This was never clarified. None the less, the commission once again held that the Miccosukee interests were protected.

OPINION DELIVERED

13 May 1970 the Indian Claims commission delivered its opinion
Commission found:

1. In 1823 the Seminoles held aboriginal title to 23,892,626 acres with a fair market value of \$12,500,000.00. These lands were ceded by the Camp Moultrie Treaty (the Treaty of Moultrie Creek). For which the tribe had received \$152,500.00.
2. In 1832 the Seminole Reservation comprised 5,865,600 acres with a fair market value of \$2,050,000.00 For which the tribe had received \$2,050,000.00

For 1 (above) the commission found: "The payment of \$152,500.00 for land having a fair market value in excess of \$12 million was clearly unconscionable and on this count the plaintiffs will recover the

difference , \$12, 347,500.00.” The Government adjusted the award downward to allow for funds already expended on the tribe and revised the award amount downward to \$12, 262,780.00 making the award on 12 October 1970.

For 2 (above) the payment of \$2,094, 809.39 for lands having a fair market value of \$2,050,000.00 “was not unconscionable, and on this count the plaintiffs will recover nothing.”

The Florida and the Oklahoma Seminoles appealed and a final compromise amount was settled at \$16,000,000.00 on 27 April 1976.

For the claims made only by the Florida Groups concerning the Macomb Treaty of 1839 was disallowed but an award of \$ 50,000 was made for land within the boundary of Everglades National Park .

Not all the tribal people living in the vicinity of the Tamiami Trail had become Miccosukees. They brought a class action suit opposed to any settlement. They claimed “the Indian Claims Commission Act was unconstitutional on its face and as applied to the plaintiff because among other reasons, it deprived the Traditional Seminoles of their rights and property without due process.in March of 1977 the district court dismissed the complaint.

The distribution of the funds was to be made between:

- The Seminole Nation of Oklahoma
- The Seminole Tribe of Florida
- The Miccosukee Tribe
- The independent or Traditional Seminole Indians of Florida

This was haggled over for an additional fourteen years, as to how much should each of groups receive?

This was complicated by the fact that the Oklahoma group “had no blood quantum restrictions for membership and thus had enrolled thousands of members with little Indian ancestry.”

The BIA (Bureau of Indian Affairs) recommended 75% go to Oklahoma and the remaining 25% be divided among the Florida Seminoles, Miccosukees and "Traditionals".

The Florida Seminole leaders refused to accept the plan and the US Senate became involved in deciding what a fair distribution would be. Suffice it to say no agreement could be reached by either the lawmakers or the tribes involved.

In the meantime the monies held in escrow earned dividends and grew substantially.

SEMINOLE FREEDMEN ENTER THE CLAIM

"Furthermore, the Seminole Nation of Oklahoma was under pressure from two bands of Seminole Freedmen which sought a share in the settlement. These were descendants of black slaves who had come west with the Seminoles during removal and became citizens of the Seminole Nation in 1866. Excluded from the Indian Claims Commission award, they filed suit to be included as Oklahoma Seminoles. Eventually their claim was disallowed by the federal courts, but at that time the outcome was still unclear." [They would ultimately be included in the final settlement]

SETTLEMENT

After much wrangling by Federal lawmakers and tribal leaders the settlement finalized. In late 1989 the US Senate passed a bill stated how much should be paid to each entity. On 6 February 1990 the house passed a slightly different version, but it was finalized with the Oklahoma Seminoles getting 75% of the funds and the Florida Seminoles getting 25%. The final bill, the senate version became public law 101-277 was passed on 30 April 1990.

The final bill had stipulated the following things which made it more palatable to the Florida Seminoles.

1. It provided a specific definition as to who could be accepted as an “independent Seminole”
 - they had to be listed on the tribe’s 1957 agency census as an “independent Seminole.”
 - They could not be a member of any other federally recognized tribe.
2. The act designated exactly how the funds were to be distributed to Florida Indians:
 - Seminole Tribe of Florida - 77.2% of the funds going to Florida groups
 - Miccosukee Tribe of Indians – 18.6%
 - Independent Seminole Indians of Florida – 4.64%
3. The funds for the Seminole Tribe of Florida were to be paid directly to the tribe, “to be allocated or invested as the tribal governing body determines to be in the economic or social interests of the tribe”. This was not to be the case for the Oklahoma Seminoles.

The following three paragraphs are a transcription of Kersey’s closing summary of the chapter.

“After forty years of litigation and negotiations the Florida Seminoles had finally received redress for those “clearly unconscionable” land payments made by the United States government in the midnineteenth century. The issue which had shaped economic expectations for two generations of Seminoles had come to an end - ironically, at a time when the Seminole tribe was enjoying unprecedented prosperity. Although the final percentage distribution was still not considered equitable from the Florida Seminole perspective, it was probably the best they could have hoped for. Congress was clearly conditioned to make awards on comparative figures, and numbers were against them if the 1906-14 tribal rolls were accepted. Moreover, consideration of a division based on contemporary tribal enrollments such as the Oklahoma Seminoles originally requested would have yielded even more lopsided results. The Florida Seminoles’ contention that they had not received federal assistance

commensurate with that afforded the Oklahoma group was effectively rebutted, especially for the period since the 1930s. Also the relative affluence of the Florida reservations and thriving tribal ventures into bingo and tax-exempt cigarette sales were well known - in a sense, Florida Seminoles were victims of their own success. With the voluntary and seemingly magnanimous inclusion of the Seminole Freedmen in the award, the weight of congressional sympathies definitely swung to the Oklahoma tribe's position.

On the positive side, the astronomical increase in funds available to all groups was an unanticipated outcome of the fourteen-year delay between the Indian Claims commission award and the final distribution. Assuming that the Florida Indians collectively shared in the 24.596 percent of approximately \$50 million - close to \$12.3 million - the Seminole Tribe of Florida received 77.2 percent of that amount, or about \$9.5 million. The exact figure of the final distribution is difficult to determine because the funds were held in multiple accounts administered by the Bureau of Indian Affairs. One of the attorneys representing the Florida Seminoles believes that the final amount ultimately dispersed to both groups will exceed \$51 million. This infusion of capital provided a valuable boost to expanding tribal business interests in Florida and helped them secure a sound long-term financial base.

Perhaps equally important, the tribe had won a significant concession on the issue of autonomy. Although stringent controls were imposed on the Seminole Nation of Oklahoma's ability to invest or distribute its ward without secretarial approval, the Seminole Tribe of Florida retained control of its funds and the council could direct their use. Funds designated for the Miccosukee tribe and the independent Seminoles were placed in federal trust accounts where they still remain [as of 1996]. Therefore the outcome of the land claims case can be hailed as a signal victory for the Seminoles in defense of tribal sovereignty. "