1993

The Florida Seminole Land Claims Case, 1950-1990

Harry A. Kersey, Jr.

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by HARRY A. KERSEY, JR.

LONG before the Florida Seminoles received federal recognition as a tribe in 1957 under the Indian Reorganization Act, they had become engaged in the defense of inherent tribal rights. Two major legal cases– one involving compensation for Seminole lands taken prior to the Second Seminole War and the other having to do with Seminole water rights on the Florida reservations during this century– had their origins in the 1950s before tribal government was established and functioning.[1] In both instances congressional action finally resolved the issue in favor of the Seminoles. The much heralded Land Claims Case deserves special attention because it had a profound impact on the long-range well-being of the Florida Indians, not only in the sense of bringing a monetary award, which the people had expected for nearly four decades, but also through its broader reaffirmation of Seminole tribal sovereignty.

The Indian Claims Commission Act became law on August 13, 1946.[2] It was part of a controversial legislative package passed by a conservative Congress to end once and for all federal obligations to the tribes. Under its provisions any tribe, band, or other identifiable group of American Indians could file a petition with the commission setting forth any claim– of a na-

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1. 101 *Statutes at Large,* 1556; 104 *Statutes at Large,* 143. For an analysis of this case see Harry A. Kersey, Jr., "The East Big Cypress Case, 1948-1987: Environmental Politics, Law, and Florida Seminole Tribal Sovereignty," *Florida Historical Quarterly* 69 (April 1991), 457-77; Jim Shore and Jerry C. Straus, "The Seminole Water Rights Compact and the Seminole Indian Land Claims Settlement Act of 1987," *Journal of Land Use and Environmental Law* 6 (Winter 1990), 1-24.
2. 60 *Statutes at Large,* 1049.

ture delineated in the act– against the United States which had occurred before that date. The act provided a five-year window within which the tribes had to file. Tribal governments that the secretary of the interior recognized had the exclusive right to represent their tribes in any claims proceedings. If no such organization existed, or through fraud, collusion, or other means failed to act on behalf of its constituents, claims could be presented by any member of the tribe as the representative of all members of that tribe. Each tribe was allowed to select its own attorney, subject to approval of the secretary, to present its claims. Regulations required the commission to send a written explanation of the act to each identifiable group of American Indians living as a distinct entity and to the superintendents of the Indian agencies that were directed to assist the tribes in pursuing their claims. Regardless of whether the Indian Claims Commission Act grew from a desire to extend belated equity to Native Americans or from the urge to promote the ultimate assimilation of the tribes, clearly the government intended that all Indians have ample time and opportunity to file their claims.

By 1949 almost half of the five-year period for filing claims had passed, yet the Seminoles of Florida still had taken no concrete action, due primarily to a lack of central organization. Given the absence of a recognized Seminole tribal government, the three Seminole reservations operated with their own governing bodies, each tacitly approved by the Bureau of Indian Affairs (BIA). Brighton and Big Cypress each elected three persons as trustees, an outgrowth of their cattle programs begun in the 1930s. At the small Dania reservation three individuals acted as a business committee, although it is not clear just how they were chosen.[3] In addition, the federal government authorized the tribal trustees to give overall direction to tribal affairs; Brighton and Big Cypress selected two members, while the

3. Apparently there was some suspicion that this pyramiding structure was controlled by the superintendent of the Seminole Agency. One elderly Seminole has recalled: "Superintendent [Marmon] who was about to retire tried to help us, by dealing with people who really didn't have authority to speak for the whole tribe but [he] had to deal with someone. He formed the Business Committee on all three reservations by appointing them himself." *Seminole Tribe of Florida, Inc., Seminole Tribe of Florida, 20th Anniversary of Tribal Organization, 1957-1977, Saturday, August 20, 1977* (Hollywood, FL, 1977), 20.

agency superintendent appointed a third at-large member. At the urging of Superintendent Kenneth A. Marmon this entire group of twelve Indians, elected by residents of the federal reservations, contacted Jacksonville attorney Roger J. Waybright to explore the possibility of filing a claim.

Initially, Waybright was reluctant to undertake the Seminole case. He knew that it would require a great deal of work and the expenditure of large sums of money over a period of many years to achieve success. The Seminoles had no tribal funds available for legal expenses, and attorneys would receive no compensation unless they were successful. In any event, the amount of legal compensation would be fixed by the Indian Claims Commission and could not exceed 10 percent of the amount recovered. Thus it was not financially attractive to a competent attorney to handle such a case. Nevertheless, after an initial investigation Waybright "became convinced that the claims of the Seminoles of Florida were of considerable merit, and that 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."[4] Since the tribe had no regular attorney to pursue the work, and time was fleeting, Waybright agreed to undertake the claims presentation on behalf of the tribe. His two associates in the case were attorneys John O. Jackson of Jacksonville and Guy Martin of Washington, D.C.

The parties executed a contract on October 15, 1949, and the commissioner of Indian affairs approved it in January 1950.[5]

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4. Roger J. Waybright to Kenneth A. Marmon, January 20, 1955, file-163-1955-Seminole-050, Bureau of Indian Affairs Central File, record group 75, National Archives, Washington (hereinafter, BIACF, RG 75, NA).
5. Superintendent Marmon wrote to the commissioner of Indian Affairs urging approval of the contract and identified the Seminoles who signed it: "Brighton Reservation is represented by Frank Shore, lack Smith and John Henry Gopher, present Trustees. Big Cypress Reservation is represented by Morgan Smith, Junior Cypress and Jimmy Cypress, present Trustees. Dania Reservation is represented by Sam Tommie, Ben Tommie and Bill Osceola, who act as a Business Committee. Seminole Tribe Trustees who signed their names are Josie Billie, John Cypress and Little Charlie Micco." Marmon to commissioner of Indian Affairs, July 26, 1949, United States Congress, Senate, Select Committee on Indian Affairs, Ninety-fifth Congress, *Distribution of Seminole Judgment Funds: Hearing before the United States Senate Select Committee on Indian Affairs, March 2, 1978* (Washington, 1978), 206 (hereinafter, *Distribution of Seminole Judgment Funds).*

The Indians who signed the contract were, according to Waybright, "duly elected Trustees of the tribe, authorized to execute the contract. . . . It is interesting to note that the 12 Trustees came from each of the three reservations where the bulk of the tribe is concentrated, and were divided about equally between those of Miccosukai and those of Cow Creek descent."[6] His understanding was that an overwhelming majority of the Seminoles were in favor of pursuing the claim. It now appears that Waybright may have been either misinformed or misled at the outset concerning the number of Trail Indians and the extent of their opposition to any claim or other dealing with the federal government that might threaten their own demands for land and autonomy.

After seven months of investigation and research to locate evidence necessary to support the claim, the Seminole Tribe filed their petition before the Indian Claims Commission on August 14, 1950. Assigned Docket No. 73, the petition 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; (2) a claim for $5,040,975 plus interest for 4,032,940 acres of land taken under the Treaty of Payne's Landing in 1832; (3) a claim for $6,250,000 plus interest for 5,000,000 acres of land taken under the Macomb Treaty of 1839; and (4) a claim for $992,000 plus interest for 99,200 acres of land taken for the Everglades National Park in 1944. The total claim on all four causes of action totaled $47,782,975 plus interest. After many delays and legal maneuvering by government attorneys to have the Seminole claims dismissed through summary judgment, on January 22, 1953, the Indian Claims Commission entered an order denying the government's motion and ordered it to answer the Seminole petition.

Earlier, another complication had developed which the commission was forced to resolve before the case could go forward. In July 1951, about a year after the filing of the Florida Seminole petition and only a short time before the filing period expired, the Seminole Indians of Oklahoma– calling themselves

6. Waybright to Marmon, January 20, 1955. Apparently, there was another reorganization on the reservations shortly thereafter, for Waybright reported that Bill Osceola was now the head of a new "Board of Directors for all three reservations." Waybright to Marmon, February 28, 1955, file-164-1955-Seminole-050, BIACF, RG 75, NA.

"The Seminole Nation" and "the Seminole Nation of Indians, of the State of Oklahoma"– filed their own petition (Docket No. 151) before the Indian Claims Commission. The Oklahoma group advanced substantially the same claims found in the first two causes of action set forth by the Florida Seminoles; they also made additional claims based upon their experiences, after removal to Oklahoma. Unfortunately, the Oklahoma Indians also filed a motion to dismiss the Florida Seminole petition, asserting that they were the only group entitled to sue for the true value of Florida lands. Waybright challenged the Oklahoma motion, and the commission dismissed it on January 22, 1953.

At the same time the commission split the Florida Seminole claim into two cases. The first three causes of action for the value of lands taken in the treaties of 1823, 1832, and 1839 were left in Docket No. 73. These were consolidated for the purpose of trial with the causes of action set forth by the Oklahoma Seminoles in their petition, Docket No. 151. The Seminoles' fourth cause of action dealing with the value of land taken for Everglades National Park constituted a separate case under Docket No. 73-A. The attorneys for the Florida Seminoles considered this relatively small claim to be the weaker of the two cases.

Over the vigorous objection of Waybright, government attorneys secured from the commission a number of time extensions for replying to the petition in the main case. Even the intervention of the two Florida senators failed to hasten matters. The government did not file its answer to the Florida and Oklahoma petitions until December 17, 1954– some four-and-one-half years after the Florida Seminoles had originally filed for a trial date. Attorneys for the Florida and Oklahoma Seminoles agreed that they would be ready for trial by June 1955, but the government held out for January 1956.

Even while the government was delaying the case, Waybright faced opposition from attorneys purporting to represent substantial numbers of Seminoles who disavowed the claim. One of these lawyers, O. B. White of Miami, supposedly represented Indians from five south Florida counties who had never been informed about, or consented to, filing the claim. When a meeting was held with the Trail Indians so that attorneys could explain the claim, O. B. White attended and advised the elders to disassociate themselves from the action. Waybright believed that White wanted to be associated as an attorney in the case, and

when he was rebuffed in this attempt he continued to create discord.

More serious was the intervention of attorney Morton H. Silver, who represented the Miccosukee General Council and its spokesman, Buffalo Tiger.[7] This council spoke for some forty or fifty traditional families living along the Tamiami Trail, but it did not include two factions headed by William McKinley Osceola and Cory Osceola. In 1953 Silver initiated an exchange of correspondence with the Indian Claims Commission, Bureau of Indian Affairs, and the Seminole attorneys denouncing the petitions before the commission. He 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. The Seminole attorneys refused. Failing to attain the desired response, Silver attempted to enter the litigation. In September 1954 he 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."[8]

Naturally, the Seminole attorneys opposed this, and in April 1955 the commission denied the general council a hearing, finding that those who had filed the claim virtually represented all Indians living in Florida. The United States Court of Claims dismissed Silver's appeal of this decision on December 5, 1956.[9] Despite a letter from the American Civil Liberties Union, which raised the issue of whether the constitutional rights of the Miccosukees had been fully protected, the motion for rehearing also failed. In sum, 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.

The year 1957 was a significant turning point in the history of the Florida land claims case, primarily because Roger J.

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7. Morton H. Silver, born in 1926, graduated from the University of Florida Law School and was admitted to the Florida Bar in 1950. He currently practices law in Miami. *Florida Bar Journal Directory* 66 (September 1992), 229, 307.
8. *Distribution of Seminole Judgment Funds,* 243-47.
9. Waybright to Marmon, December 7, 1956, file-163-1955-Seminole-050, BIACF, RG 75, NA.

Waybright resigned as lead attorney. Two related political actions apparently triggered this move. First, the federal government granted official recognition to the Seminole Tribe of Florida by approving a constitution and corporate charter which the people adopted.[10] The fact that about one-third of the 448 adult Indians who were eligible to vote for a Seminole government had boycotted the balloting evidently came as a shock to Waybright. He had assumed that the twelve Seminoles with whom he contracted in 1949 spoke for the tribe and that there was virtual unanimity for pursuing the land claim. Second, the State of Florida extended recognition to the "Everglades Miccosukee General Council" in July 1957.[11] Up to that point he had remained convinced that Morton Silver and Buffalo Tiger spoke for only a small dissident minority of the tribe living along the Tamiami Trail.

In an interview granted twenty years after his resignation from the case, Waybright noted: "I regarded that election result as a rather queer demonstration that about one-third of the adult Seminoles in Florida were opposed to presenting the claims of the tribe to the Indian Claims Commission and thus in effect opposed to our representing the tribe in connection with those claims. I did not care to continue as an attorney attempting to present the claims of a group of people, one-third of whom did not want me to do it. That, in essence, is the reason I stated for wanting to withdraw."[12] Waybright also calculated that he had already put in $50,000-$100,000 in legal work plus unreimbursed expenses on the case which still faced long uncertain litigation; therefore he resigned on October 11, 1957. He

10. United States Department of the Interior, Bureau of Indian Affairs, *Constitution and Bylaws of the Seminole Tribe of Florida. Ratified August 21, 1957,* and *Corporate Charter of the Seminole Tribe of Florida, Ratified August 21, 1957* (Washington, 1958).
11. James W. Covington, "Trail Indians of Florida," *Florida Historical Quarterly* 58 (July 1979), 48-49.
12. Interview with Roger J. Waybright, September 25, 1978, SEM 177A, University of Florida Oral History Archives, Florida Museum of Natural History, Gainesville (hereinafter, UFOHA). In this and other interviews Waybright intimated that his distaste for the constant infighting with the Trail Indians and their attorney also prompted his resignation. Waybright went on to a distinguished career as circuit judge in Jacksonville. He died in 1986.

never received a cent in compensation for eight years of work on the Seminole claim.[13]

The case continued under attorneys John O. Jackson and Effie Knowles– the latter had been retained primarily as a researcher– but the matter remained stalled. In 1959 at the urging of Knowles, who wanted to make progress but knew the Seminoles would be happier with a male lawyer, the Seminole Tribal Council hired Roy L. Struble of Miami as attorney for the case with Charles Bragman of Washington as his associate.[14] Jackson died in 1963, but rifts between the remaining attorneys initiated a long and confusing struggle over allocation of fees that would eventuate in several suits long after the Seminole claim was settled.[15]

In 1962 the Miccosukee Tribe of Florida received federal recognition and six years later made its final attempt to intervene in the claims case. By this time Silver had split with Buffalo Tiger and no longer represented the Miccosukee General Council. A Washington attorney, Arthur Lazarus, was given BIA permission to file a motion to intervene in Dockets 73 and 73-A. For the first time the Miccosukees appeared to be making a request for monetary compensation; yet, this was never clarified because their motion failed. The commission once again held that Miccosukee interests were adequately represented in the

13. Ibid.
14. Interview with Effie Knowles, March 21, 1978, SEM 75A, Interview with Roy L. Struble, August 18, 1972, SEM 80A, UFOHA.
15. On November 19, 1976, the Indian Claims Commission entered an order allowing attorney's fees based upon the award of $16,000,000 to the Oklahoma and Florida Seminoles in Docket Nos. 73 and 151 consolidated. It recognized that Paul M. Niebell (Oklahoma), the estate of Roy St. Louis (Oklahoma), Charles Bragman, Effie Knowles, and Roy L. Struble were entitled to fees as contract attorneys. It "disbursed jointly to Paul M. Niebell, attorney of record in Docket 151, and Charles Bragman, attorney of record in Docket 73, on behalf of the contract attorneys, the amount of $1,600,000, which represents ten percent of the final award, for distribution by them to all contract attorneys and their representatives in accordance with the respective interests of each." At the same time it dismissed the application of Guy Martin for separate fees, holding that he had been under contract to the firm of Waybright & Waybright, not the Seminole tribe. See United States, Indian Claims Commission, *Decisions– Indian Claims Commission*, 43 vols. (Boulder, CO, 1948-1978), XXXIX, 167. Struble was no longer involved with the Seminole case following the 1976 award, and he retired from active practice in 1985. See *Broward Review*, May 23, 1988, 13.

proceedings. This removed the last legal roadblock to resolving the claims case.

On May 13, 1970, the Indian Claims Commission delivered its opinion. Of the four claims originally encompassed in the suits, only the first– for additional compensation for most of Florida excepting three enclaves and one reservation held in 1823– and the second– for additional compensation for the reservation taken in 1832– were considered in Docket Nos. 73 and 151 consolidated. The third claim, concerning the Macomb reservation, and the fourth claim, based on transactions creating the Everglades National Park, were consolidated in Docket No. 73-A. The commission found that in 1823 the Seminoles held aboriginal title to 23,892,626 acres with a fair market value of $12,500,000, which were ceded by the Camp Moultrie Treaty. At that time the Seminoles had received consideration in the amount of $152,500 for the ceded land. In 1832 the Seminole reservation north of Lake Okeechobee comprised 5,865,600 acres, having a value of $2,050,000. By provisions of the Treaty of Payne's Landing the Seminoles had been compensated in the amount of $2,094,809.39. Therefore 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. Equally clearly, 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 commission entered an award of $12,347,500 for the plaintiffs.[16] The government was allowed certain offsets that it claimed for funds already expended on the tribe; therefore, the commission made a revised award of $12,262,780.63 to the Seminoles on October 22, 1970.[17]

Both the Florida and Oklahoma tribes appealed, and the Court of Claims remanded the case for more specific findings as to the value of the land.[18] But in 1975, to avoid prolonging an appeal process that might drag on for years with no assurance of realizing a substantially larger award, both the Ok-

16. *Indian Claims Commission,* XXXIII, 108.
17. *Indian Claims Commission,* XXIV, 1.
18. *Seminole Indians v. United States,* 455 F. 2d 539; 197 Ct. Cl. 350 (1972).

lahoma and Florida tribes agreed to seek a compromise settlement of $16,000,000. The Seminole Tribal Council approved the settlement by resolution, but, to meet commission requirements for full discussion of the issue, a general meeting of the tribal membership and other affected Indians was held in January 1976. Roy Struble gave a comprehensive presentation on the proposed settlement, which was translated into both the Creek and Miccosukee languages.[19] Of the 376 Seminoles present only seven opposed the resolution accepting the compromise settlement. On April 27, 1976, the commission entered its final judgment and award "in full settlement of all claims in these consolidated documents" for the amount of $16,000,000.[20] In its findings on Docket 73-A, which involved the Florida Seminoles alone, the commission disallowed any claim for the Macomb reservation but upheld the claim for additional compensation in the Everglades National Park acquisition. An award of $50,000 was made on April 20, 1977.[21]

Not all Indian families living in the vicinity of the Tamiami Trail had become members of the Miccosukee Tribe, and a small group calling itself the Traditional Seminoles remained adamantly opposed to any settlement. In March 1976, just as the commission was about to enter its final award and judgment, a class-action suit was filed in the United States District Court in Washington by Guy Osceola– son of Cory Osceola, an early leader of the traditional Indians opposed to the claim. The suit sought to enjoin the commission from entering a judgment and sought a declaration that 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. The three-judge court denied a temporary restraining order on the

19. By this time there was a serious conflict between Knowles and Struble. Knowles claimed that she was excluded from all meetings with the tribe, and the people had been turned against her. Unhappy with the division of the attorneys' fees, she later sued in the United States Court of Claims for 20 percent of the $800,000 and reportedly received a settlement in excess of $155,000. Effre Knowles died in 1984. Interview with Effie Knowles.
20. *Indian Claims Commission*, XXXVIII, 62.
21. *Indian Claims Commission*, XL, 107, 125.

grounds that the commission's judgment would not affect Seminole rights. As the case progressed other Traditional Seminoles joined the suit, contending that the treaty guaranteed the right to live on their lands. The Department of Justice argued that the United States had the right to take Seminole land without due process or compensation. In short, Seminole property was not protected by the Constitution or any other law, and therefore the commission's actions could not be challenged. In its final decision on March 11, 1977, the district court adopted the Justice Department's argument that the United States was free to take Traditional Seminole property without due process and dismissed the complaint. The United States Supreme Court declined to hear the case on appeal on the grounds that the lower court decision was not based on the constitutional merits of the case.

The Indian Claims Commission's award of $16,000,000 in 1976 terminated the initial phase of the case and ushered in a political struggle over distribution of the funds that would last another fourteen years. The central problem was that the commission, following its usual practice in such awards, had given no direction as to how the monies were to be distributed among the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Florida, and the unaffiliated or independent Seminole Indians of Florida. The Bureau of Indian Affairs set out to devise a formula for an equitable distribution of funds between Florida and Oklahoma and to address a plan for allocating funds among the Florida groups. Everyone recognized that an acceptable distribution could not be based on 1976 enrollment figures in Oklahoma and Florida. The Seminole Nation of Oklahoma had no blood quantum restrictions for membership and thus had thousands of members with little Indian ancestry.[22] By comparison the federally recognized tribes in Florida had one-half and one-quarter blood quantum restrictions for membership, while the Traditional Seminoles were virtually all full blood. The bureau plan accepted the Oklahoma Seminole census figure of 2,146 from the 1906-1914

22. Blood quantum is the percentage of Indian blood that a tribe requires for membership. This is generally set forth in a tribal constitution and approved by the secretary of the interior.

period when all persons on the tribal roll had blood quantum designations. In Florida the first reliable census was that of 1914, but it had to be reconstructed to include persons omitted from the official roll. The final reconstructed roll for Florida contained the names of 700 individuals. Thus the BIA recommended that approximately 75 percent of the funds go to Oklahoma and 25 percent to Florida, to be divided among the Seminoles, Miccosukees, and Traditionals.

The Florida Seminole leadership could not agree, and legislative action became necessary. Both the Oklahoma and Florida tribes had legislation introduced in Congress to skew the distribution in their favor. These bills represented fundamentally different philosophies and approaches to the distribution process. Senators Dewey Bartlett and Henry Bellmon of Oklahoma authored bill S. 2000, which proposed a division based on the number of Oklahoma Seminoles by blood in 1914 as reflected on the Seminole roll of 1906 and 1914 and the number of Seminoles in Florida as they appeared on the Florida census of 1914. In short, it accepted the BIA plan as a just and equitable settlement.

Senators Lawton Chiles and Richard Stone of Florida introduced bill S. 2188, which directed the chief commissioner of the United States Court of Claims to determine a fair and equitable division based on all relevant factors, including any difference in the past benefits received by the Oklahoma and Florida Seminoles. This position rejected any type of per capita distribution and postulated that the Oklahoma Seminoles had already received economic and other benefits from the government over the years, while the Florida people were ignored; therefore, they were entitled to a differential settlement to rectify past neglect. Moreover, they demanded a disinterested third party to arbitrate the dispute.

On March 2, 1978, the Senate Select Committee on Indian Affairs held a hearing on both bills. Senator Bartlett chaired the session, at which a number of interested parties appeared as witnesses or submitted statements. These included the sponsoring senators, officials from the Bureau of Indian Affairs, and attorneys and leaders from the Indian tribes.[23] The Seminole

23. *Distribution of Seminole Judgment Funds,* 1-63.

Tribe of Florida was represented by its chairman, Howard Tommie, and Washington special counsel Marvin J. Sonosky. They emphatically stated that the Florida Seminoles believed a reconstructed 1914 census– even one that increased their head count from 526 to 700– was seriously flawed because the Indian people had little to do with the government early in this century. Furthermore, they charged that the BIA official who recommended a division based solely on comparative census roll figures, Stephen Feraca, was seriously biased against the Florida Indians. He had alienated many of the tribe while serving on the staff at the Seminole Agency in Florida from 1966-1968, and this animosity ultimately led to a scuffle in which he was injured by an Indian youth. In addition, they contended that the Oklahoma Seminoles had already received vast sums from the federal government for housing, health, and education services following their removal to Indian Territory in the 1830s. By contrast, the remnant Seminole group remaining in Florida had received virtually nothing from Washington until relatively recently.

The Oklahoma Seminole delegation was headed by Principal Chief Richmond J. Tiger, a council member who testified that the council had attempted to negotiate with the Florida tribe on two separate occasions at meetings in Nashville and Oklahoma City but with no results; therefore, they had turned to the BIA to draft a plan. As expected they believed that a just and equitable division of the award could be made only on a per capita basis. Guy Osceola and attorney Robert T. Coulter of the Institute for the Development of Indian Law spoke for the Traditional Seminoles. In essence Coulter reiterated his clients' position that they had not been a party to the claims, and he sought to halt any action on the bills authorizing distribution of funds.[24] Failing that, the attorneys requested that any legislation enacted include a proposed amendment that would not jeopardize or extinguish their rights to the Florida lands where they currently resided. An associate solicitor representing the BIA observed

24. As part of his presentation Coulter provided a comprehensive legal history of the Seminole claims case through 1978. See "Seminole Land Rights in Florida and the Award of the Indian Claims Commission," *Distribution of Seminole Judgment Funds*, 64-511.

that the Traditional Seminoles could not have it both ways. Since they were specifically designated as recipients of an Indian Claims Commission award that extinguished all future claims against the lands in question, they could not also expect to retain aboriginal title.

On April 4, 1978, the Department of the Interior submitted a distribution plan to Congress as required by the Indian Judgment Funds Act of 1973. If either House did not veto it within sixty working days, it automatically became law. The Florida Seminoles urged Congress to defeat the plan and return to the regular legislative process, but the bills introduced by the Oklahoma and Florida delegations were never acted upon. In the interim Florida Seminoles challenged the BIA plan in the United States District Court in Washington, which ruled that the secretary of the interior had not submitted the plan within the time limits prescribed by law, and it was therefore void.[25] Unexpectedly, however, the court apparently left the way open for the secretary to make an arbitrary division of the funds. The Seminoles appealed, and, with agreement of the Justice Department, the United States Court of Appeals entered a judgment that the secretary had no authority– absent legislation– to divide the Seminole judgment funds.[26]

Throughout the early 1980s there were various initiatives to bring the Oklahoma and Florida tribes to a settlement. The new Seminole chairman, James Billie, instituted a tribal legal office with an in-house attorney whose efforts were coordinated with the firm of Sonosky, Chambers & Sachse in Washington. Senators Lawton Chiles and Paula Hawkins, supported by various members in the House, also stood firmly behind the tribe's position and introduced a new settlement bill calling for a fifty-fifty division between the Florida and Oklahoma groups. The Department of the Interior also actively promoted its own package. Meanwhile, the monies held in escrow multiplied at a rapid rate. In 1980 Chairman Billie wrote to his Oklahoma counterpart recommending that they split the amount, which had grown to

25. *Seminole Tribe of Florida v. Andrus*, no. 78-0994-Civ. United States District Court, DC, July 9, 1979.
26. *Seminole Tribe of Florida v. Andrus*, no. 78-0994-Civ. United States Court of Appeals for the District of Columbia, July 9, 1980.

$20,000,000, with $8,000,000 for the Florida people and the remainder going to Oklahoma.

The BIA did not advise the Oklahoma group to accept or reject the proposal, as it did not know the basis for Billie's overture. Furthermore, the Seminole Nation of Oklahoma was under pressure from two bands of Seminole Freedmen which sought a share of 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.[27]

In 1981 James Billie approached the new chief of the Oklahoma group, this time offering a take the lesser of a sixty-forty split (although the legislative claim for a fifty-fifty division was not abandoned) of the ever-growing funds, estimated at about $22,000,000. It looked for a time as though the impasse would be resolved only to be short-circuited by a political schism among the Oklahoma Indians. For some months two separate groups claimed to represent the Oklahoma Seminoles.

By 1987, because of the accrual of interest, the judgment funds for Docket Nos. 73, 151 had reached $40,000,000, and the stage was set for a final push to settle. The popular James Billie had been reelected to his third term as tribal chairman. He moved aggressively on a number of economic fronts and wanted to bring closure to an issue that had been pending for almost four decades. Also, the Seminole Tribe of Florida now had as general counsel one of its own members, Jim Shore– the first Seminole to receive a law degree. Unlike his predecessor, Shore was inclined toward negotiation rather than confrontation. In addition, the Washington firm of Hobbs, Straus, Dean & Wilder, which was already involved in the Florida Seminole water-rights case, also began to advise them on the claims dispute.

The negotiating strategy they developed was based on a number of points. First, the Florida Seminoles continued to object to a split of the judgment based on population figures arbit-

27. Ultimately their claim was disallowed by the federal courts, but at that time the outcome was still unclear.

rarily developed by the Bureau of Indian Affairs. Second, because of the benefits received by the Oklahoma Seminoles– which were not shared by the Florida Seminoles– they argued that the judgment award received should be significantly reduced. They demonstrated that the Oklahoma Seminoles had received over $7,000,000 in treaty payments and 265,000 acres of land as well as substantial appropriations for health, education, social services, and the like. These lands were eventually allotted to individual Indians and subsequently sold, thereby providing significant additional compensation to the Oklahoma people. By contrast, the Seminoles who remained in Florida shared none of the benefits but suffered all of the detriments from events that occurred in the previous century. Due to the intensity of feeling in this matter it sometimes appeared that the Florida Seminoles would rather accept a settlement mandated by Congress than negotiate an agreement that gave the Oklahoma tribe most of the funds.

This reasoning soon received a test. On March 4, 1988, Senator Don Nickles of Oklahoma introduced bill S. 2150, which called for a distribution of 75.404 percent of the funds to the Seminole Nation of Oklahoma and 24.596 percent to the Seminole Tribe of Florida, Miccosukee Tribe of Indians of Florida, and the unaffiliated Seminoles of Florida. It also mandated distribution of the funds awarded under Docket 73-A (then about $110,000) among the Florida Indians. In his floor statement Nickles noted that all attempts at settling the dispute had failed, so the BIA had prepared the bill he was introducing. He also attempted to drum up sympathy for his constituents, stating: "While I have been reluctant to introduce legislation to settle this problem without an agreement between the two tribes, it is apparent to me that Congress is going to have to step in and dictate an appropriate division. The 75/25 percent division is very reasonable and is rather generous to the Florida Seminoles. I might add that while the Florida Seminoles have been doing rather well economically, the Oklahoma Seminoles have not been so fortunate."[28]

28. United States Congress, Senate, *Congressional Record*, 100th Cong., 2nd sess. (Washington, 1988), 2048.

In an interesting political twist the Nickles bill and a companion measure introduced in the House by Representative Wes Watkins specifically provided that funds awarded to Oklahoma be held in trust for the present-day Seminole Nation of Oklahoma to be invested or used for the "common needs, educational requirements, and other long-term economic and social interests of the Tribe," without regard to Indian blood quantum.[29] This meant that the Oklahoma Seminole Freedmen who could demonstrate no Indian blood quantum and who had earlier been excluded from the award by the Indian Claims Commission and federal courts would now become eligible to share in the funds. Previous bills had called for a "by blood" distribution to the Oklahoma Seminoles, and now that wording disappeared. This became a powerful argument among congressional civil rights advocates in favor of passing the Oklahoma measure.

At this point in the Washington proceedings the Florida Seminoles moved to protect their interests. Their first defensive move was to put forward a Florida Seminole position on the Nickles bill through a letter from Chairman Billie to Senator Daniel Inouye, chairman of the Senate Select Committee on Indian Affairs.[30] It set forth the Seminoles' rationale for demanding an equitable distribution and opposed the bill's overly broad definition of independent Seminoles– essentially anyone of Indian descent not affiliated with a recognized Florida tribe– which might lead to thousands of persons who claimed Indian ancestry applying for part of the funds. Other objectionable provisions of the bill precluded distribution of anything but interest to the tribal governments, and required secretarial approval before the money could be invested in any manner. The Florida Seminoles saw this as a radical departure from the treatment afforded other tribes in the past.

The second step was to have the Florida congressional delegation introduce its own bills offering the Seminoles' alternative plan for distribution. For over a decade Senator Lawton Chiles,

29. United States Congress, Senate, *A Bill to provide for the the and distribution of funds awarded the Seminole Indians in dockets 73, 151 and 73-A of the Indian Claims Commission*, 101st Cong., 1st sess., S. 1096 (Washington, 1989).
30. James Billie to Daniel Inouye, April 25, 1988, files of Hobbs, Straus, Dean & Wilder, Washington, DC (hereinafter, HSDW).

a powerful committee chairman and seasoned legislator, had lent strong backing to the Seminole cause, and his retirement was a critical loss. Some Capitol Hill observers believe that the Nickles bill would never have passed the Senate as written if Chiles had been present. Nevertheless, the Florida delegation remained supportive of the Seminoles. Senator Bob Graham authored the requested bill as S. 1336; a bipartisan companion measure, H. R. 2838, was introduced by Representatives Larry Smith (D) of Broward County and Tom Lewis (R) of Palm Beach County. In the first session of the 101st Congress Senator Nickles reintroduced his bill as S. 1096, and Representative Watkins submitted H. R. 2650. The stage was set for a confrontation. The House Committee on Interior and Insular Affairs held a hearing on the opposing measures, H. R. 2838 and H. R. 2650, on September 14, 1989.[31]

This was a final opportunity for the Florida Seminoles to make their case publicly for a reasonable division of the funds and other necessary revisions to the legislation. In a last-ditch effort to forestall what appeared a rush to judgment to pass the Oklahoma version and be done with the whole affair, Chairman Billie requested additional time to negotiate with the Oklahoma Seminoles. If at the end of thirty days negotiations had failed he agreed "the time has come for Congress to act."[32] The Traditional Seminoles still maintained that they wanted no part of the money under any conditions and continued to oppose any plan for distribution that did not contain an amendment to protect their claims to lands in Florida.

Principal Chief Jerry Haney of the Seminole Nation of Oklahoma and their longtime attorney, Paul M. Niebell, presented persuasive arguments for immediate congressional action on the bill favored by the Oklahoma delegation and the BIA. The thrust of their presentation was to show that the Florida Seminoles had not suffered from neglect; rather, they had secured a large amount of federal trust lands, and this was the

31. The record of these hearings has not been published. Typed transcripts of the testimony are located in the files of HSDW.
32. "Statement of Mr. James Billie, Chairman Tribal Council of the Seminole Tribe of Florida Before the House Committee on Interior and Insular Affairs on H. R. 2838 and H. R. 2650," Typed manuscript, HSDW.

basis of their current prosperity. Ross Swimmer, a former assistant secretary of the interior, who vowed that he had not been directly involved with the case during his tenure in Washington, appeared as co-counsel for the Oklahoma Seminoles.[33] Representative Wes Watkins of Oklahoma delivered a strong statement emphasizing that thirteen years of negotiations had brought no progress. Indulging in the politics of racial inclusion, he also emphasized that all Oklahoma Seminoles– including the Seminole Freedmen– would share in this distribution.

It is unlikely that these statements carried great weight in shaping what was essentially a politically predetermined outcome. The Senate passed the Nickles bill on November 21 without debate.[34] The House approved the measure on February 6, 1990, but amended it to give the Florida Seminoles 27 percent and the Oklahoma Seminoles 73 percent of the funds."[35] Although a conference committee report restored the original 75/25 division, the final language of the legislation was more palatable to Florida interests.[36] First, it included a highly specific definition of who could be accepted as an independent Seminole. These individuals had to be listed on, or be lineal descendants of, persons included in the annotated Seminole Agency Census of 1957 as independent Seminoles. Also, they could not be members of any federally recognized tribe. Second, the act designated exactly how the funds awarded to Florida would be divided among the three groups: 77.20 percent to the Seminole Tribe of Florida, 18.6 percent to the Miccosukee Tribe of Indians,

33. Ross Swimmer's assertion was bizarre in that he had reportedly presided over an earlier meeting in which attorneys for the Florida and Oklahoma groups attempted to reach an agreement. Also, his appearance had the potential psychological impact of lending further quasi-official credence to the Oklahoma position.
34. United States Congress, Senate, *Providing For The Use And Distribution Of Funds Awarded The Seminole Indians In Dockets 73, 151 And 73-A Of The Indian Claims Commission*, 101st Cong., 2nd sess., S. Rpt. 101-212 (Washington, 1990).
35. United States Congress, House, *Providing For The Use And Distribution Of Funds Awarded The Seminole Indians In Dockets 73, 151 And 73-A Of The Indian Claims Commission*, 101st Cong., 2nd sess., H. Rpt. 101-399 (Washington, 1990).
36. United States Congress, House, *Providing For Use and Distribution of Seminole Indian Award*, 101st Cong., 2nd sess., H. Rpt. 101-439 (Washington, 1990).

and 4.64 percent to the independent Seminole Indians of Florida. Third, the secretary was directed to pay its share of the funds held in escrow directly to the Seminole Tribe of Florida, "to be allocated or invested as the tribal governing body determines to be in the economic or social interests of the tribe."[37] The funds for the Miccosukees and independent Seminoles were to be held in trust by the federal government pending approval of specific plans for distribution. Also, a provision protected the independent Seminoles' rights and claims to lands and natural resources in Florida. The Senate version prevailed, and Public Law 101-277 passed on April 30, 1990.

After forty years the Florida Seminoles had finally received redress for those "clearly unconscionable" land payments made by the United States in the mid nineteenth century. The issue that had shaped economic expectations for two generations of Seminoles now came to an end– ironically, at a time when the Seminole tribe was already 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 under the circumstances. Congress was clearly conditioned to make awards based on comparative figures, and numbers were against them if the 1906-1914 tribal rolls were accepted. Furthermore, any consideration of a division based on contemporary tribal enrollments, such as Oklahoma originally requested, would have yielded even more lopsided results. The Florida Seminoles' contention that they had not received federal assistance commensurate to that afforded the Oklahoma group was rather 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. With the voluntary and seemingly magnanimous inclusion of the Seminole Freedmen in the award, the weight of congressional sympathies definitely swung to the Oklahoma position.

On the positive side, the astronomical increase in the amount of funds available was an unanticipated outcome of the fourteen-year delay between the Indian Claims Commission award and final distribution. Assuming that the Florida Indians collec-

37. 104 *Statutes at Large,* 143.

tively shared in 24.596 percent of approximately $50,000,000– close to $12,300,000– the Seminole Tribe of Florida received 77.20 percent of that amount, or about $9,500,000 free of taxes.[38] This infusion of capital provided a valuable boost to expanding tribal business interests in Florida and helped secure a sound, long-term financial base. Perhaps equally important in the long run, 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 award without secretarial approval, the Seminole Tribe of Florida retained sole control of its funds and directed their use for the benefit of the people. This would not be the last Seminole victory in their defense of tribal sovereignty.

38. This is an approximate amount for the final award. The exact figure 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 disbursed will exceed $51,000,000.