THE SEMINOLE WAY:
The Path to the 2011 Reestablishment of the Seminole Nation of Oklahoma Tribal Court System

John Haney

---

1a Associate, Holland & Knight LLP, J.D., University of California-Los Angeles. The author would like to thank his mother, L. Susan Work (attorney at Hobbs, Straus, Dean, & Walker LLP and former Seminole Nation Attorney General), and his father, Enoch Kelly Haney (former Principal Chief of the Seminole Nation), for their invaluable support and assistance when preparing this article. The author would also like to acknowledge and thank Professor Carole Goldberg, Professor Angela Riley, Justice William Wantland, Justice Roger Wiley, current Principal Chief Leonard Harjo, former Principal Chief Jerry Haney, Jeffery Harjo, Doug Dry, Tresa Gouge, and Dustin Gray.
# TABLE OF CONTENTS

I. INTRODUCTION .................................................................................. 3

II. EXAMINING THE ROAD TO THE 2011 REESTABLISHMENT OF THE SEMINOLE NATION OF OKLAHOMA TRIBAL COURT SYSTEM ............................................................... 4
   a. Seminole Origins ................................................................. 4
   b. Removal “Aftershock” and Identity Struggle .......... 4
   c. American Civil War to Oklahoma Statehood .......... 6
   d. The 1907 Judiciary Disassembly upon Oklahoma Statehood ............................................. 8
   e. The 1969 Seminole Nation Constitution ............... 9
   f. Re-ignited Desire for a Seminole Nation Tribal Court System ............................................. 10
   g. The 1992 Establishment of Seminole Nation CFR Court ......................................................... 12
   h. The Passage of the 2008 Amendment Creating a Judicial Branch ............................................. 15
   i. The 2011 Reestablishment of the Seminole Nation Tribal Court System ......................................... 16
   j. Reasons for the Reestablishment Delay .......... 17
   k. The Seminole Nation CFR Court: Only a “stepping stone” ................................................. 19

III. TRADITION AND CUSTOM IN THE SEMINOLE NATION TRIBAL COURT SYSTEM ................................................................................................. 21
   a. Custom and Tradition in Contemporary Tribal Court Systems: Problems of Authenticity and Legitimacy ................................................. 21
   b. The Pursuit of An “Authentic” Seminole Nation Tribal Court System ......................................... 24

IV. THE CHALLENGES AHEAD .................................................................. 26

V. CONCLUSION ....................................................................................... 29
I. INTRODUCTION

In 1900, then Principal Chief of the Seminole Nation of Oklahoma, John F. Brown, reportedly said that with the establishment of the United States court system on Seminole land, his people would necessarily become more familiar with its workings, learn to respect and appreciate its “protecting” influences, and that it would ultimately supersede and take the place of the Seminole tribal courts.\(^1\) Despite this prediction, over one century later, on August 8, 2011, the Seminole Nation of Oklahoma held a special ceremony appointing three Supreme Court Justices and one District Court Judge, which formally marked the reestablishment of the Seminole Nation tribal court system.\(^2\) The mission of the tribal court system is to exercise the sovereignty and jurisdiction of the Seminole Nation by providing a forum for the enforcement of tribal law and the administration of justice in disputes affecting the interests of the Seminole Nation and its members. This article will describe and examine the Seminole Nation’s long, hard-fought journey from its judiciary disassembly upon the creation of the state of Oklahoma in 1907 to the reestablishment of the Seminole Nation tribal court system in 2011.

To understand the journey to reestablishment, there are several questions to consider in examining the past, present, and future of the Seminole Nation tribal court system. First, why did it take the Seminole Nation so long to reestablish a tribal court when so many other tribes had long before exercised judicial authority following the passage of the Indian Reorganization Act of 1934? Second, why did the Seminole Nation feel the need to propose a 2008 constitutional amendment that created a judicial branch when the Seminole Nation was already using a federally-operated Court of Indian Offenses (“CFR Court”) since 1992? Third, what internal hesitations existed in proposing and voting on such an amendment? Fourth, how has Seminole tradition and custom been identified and integrated into the court structure and code of laws? Fifth, what are the future challenges that the Seminole Nation faces in preserving and furthering the newly established court system?

This article will answer these questions in three parts. First, this article will tell the story of the Seminole Nation’s journey to reestablishing its tribal court system. Second, the article will describe

---

the Seminole Nation’s approach to implementing tribal tradition and custom into the code of laws and tribal court system. Third, this article will describe the Seminole Nation’s current and future challenges to preserving and furthering the tribal court system. As will be shown, the Seminole Nation’s persisting determination to reestablish its judicial authority stems from the desire to maximize sovereign authority by having a government that not only makes and enforces laws, but that makes and enforces laws the Seminole way. Ultimately, this article may serve as a resource for other tribes who wish to establish their own tribal court system.

II. EXAMINING THE ROAD TO THE 2011 REESTABLISHMENT OF THE SEMINOLE NATION OF OKLAHOMA TRIBAL COURT SYSTEM

a. Seminole Origins

The Seminole people originated from the Southeastern United States in what now makes up Alabama, Georgia, and Florida. It is believed that the Seminole people are descendants of the Mississippian peoples, who flourished from 700 A.D. until European contact in 1528. Although it is unknown what the Seminole people originally called themselves, the word “Seminole” has several suggested origins. The Spanish supposedly called the people Cimarrones, or “free people.” Alternatively, Simanoli means “runaway” in the Mvskoke language, a language used by the Seminole people and neighboring Creek tribes. Although these two tribes are related, the Seminoles eventually broke apart from the Creeks and settled as a distinct people.

b. “Removal Aftershock” and Identity Struggle

Upon the Congress’ enactment of the 1830 Indian Removal Act, numerous tribes located east of the Mississippi River were forced to relocate from their original land base to Indian Territory, in what

---

4 Id.
6 “Mvskoke” is pronounced mə-skō-gə; see also BLUE CLARK, INDIAN TRIBES OF OKLAHOMA: A GUIDE 323 (2009).
now makes up part of Oklahoma. The Seminoles were targeted for removal to Indian Territory after Seminole and United States relations deteriorated. There were several treaties that quickly deprived the Seminoles of their homeland. Under the Treaty of Moultrie in 1823, the Seminoles ceded 30 million acres in Florida to the United States. Under the Treaty of 1832, the Seminoles were to remove to Indian Territory within three years after the signing of the Treaty. Under the Treaty of 1833, the Seminoles were placed on Creek assigned lands in Indian Territory and were to be under Creek control. A group of Seminoles resisted the removal, which led to the Seminole War of 1835-1842. This war is said to have been one of the most expensive wars in United States history costing an estimated forty million dollars, as valued in the 1830s. While many Seminoles were eventually removed to Indian Territory, there was a group of Seminoles who remained in Florida. This group later became a federally recognized tribe, called the Seminole Tribe of Florida. The Seminoles that moved to Indian Territory also eventually became a federally recognized tribe, called the Seminole Nation of Oklahoma.

Accounts of Seminole activities in Indian Territory between 1836 and 1866 are “few and widely scattered.” However, what is known is that the Seminoles desired to function as an entity separate from the Creeks in order to preserve their cultural identity. This desire led to the Treaty of 1845, which allowed the Seminoles to settle separately, although they would remain under Creek rule. The Federal Government hoped that greater Seminole autonomy from the Creeks would entice more Seminoles to move from Florida to Indian Territory.

Despite the Seminoles’ newfound territorial independence from the Creeks after the Treaty of 1845, the Seminoles still struggled to prevent their cultural identity from being subsumed and destroyed by

9 Treaty with the Seminole, May 9, 1832, 7 Stat. 368.
10 Treaty with the Seminole, Mar. 28, 1833, 7 Stat. 423.
11 Clark, supra note 6, at 328.
12 Lancaster, supra note 7, at xvi.
the much larger Creek Nation.\textsuperscript{15} The arrangement did not suit the Creeks either,\textsuperscript{16} and by the mid 1850s, even the Federal Government saw the need to permanently separate the Seminoles and the Creeks.\textsuperscript{17} Finally, under the Treaty of 1856, “the Seminoles received 2.17 million acres of land in a strip between the Canadian River and the North Fork of the Canadian River in exchange for one million dollars paid to the Creeks.”\textsuperscript{18} The Treaty of 1856 provided an important source of Seminole sovereignty in the future, including for judicial authority. The Seminoles, along with the Creeks, Cherokees, Chickasaws, and Choctaws, later became known as the “Five Civilized Tribes” (“Five Tribes”), and over the course of history, Congress would largely deal with the Five Tribes as a single entity.\textsuperscript{19}

c. American Civil War to Oklahoma Statehood

During the American Civil War, many Seminoles sided with the Confederacy,\textsuperscript{20} although it is unclear whether there was a formal agreement made between the Seminoles and the Confederacy.\textsuperscript{21} After the American Civil War concluded, the United States, under the Treaty of 1866, forced the Seminoles to sell over two million acres of their land while being permitted to buy only 200,000 acres back from the United States.\textsuperscript{22} The lost land accounted for over 90 percent of the land granted to the Seminoles in 1856.\textsuperscript{23} The Treaty of 1866 was likely a form of punishment based on the United States’ perception of the Seminole’s support of the Confederacy.

\begin{itemize}
\item\textsuperscript{15} LANCASTER, supra note 7, at xiii.
\item\textsuperscript{16} INNES ET AL., supra note 3, at 29.
\item\textsuperscript{17} LANCASTER, supra note 7, at 31.
\item\textsuperscript{18} CLARK, supra note 6, at 329; Treaty with the Creeks, etc., U.S.-Creek Nation of Okla.-Seminole Nation of Okla., Aug. 7, 1856, 11 Stats. 699.
\item\textsuperscript{19} DANIEL E. WILKINS, AMERICAN INDIAN SOVEREIGNTY AND THE U.S. SUPREME COURT 13 (1997); L. SUSAN WORK, supra note 14, at 7-8, 39, 50.
\item\textsuperscript{20} EDWIN C. McREYNOLDS, THE SEMINOLES 313 (1975).
\item\textsuperscript{21} WORK, supra note 14, at 11 (“Although some of the tribes had officially supported the Confederacy, it is debatable whether the Seminole Nation had entered into a former government-to-government relationship with the South during the Civil War.”); see also WILLIAM T. HAGAN, TAKING INDIAN LANDS: THE CHEROKEE (JEROME) COMMISSION, 1889-1893 6 (2009); Treaty with the Seminole, Mar. 16, 1866, 14 Stats. 755.
\item\textsuperscript{22} Id. at 8.
\item\textsuperscript{23} William C. Wantland, A Brief History: The Seminole Nation Court System, COKV TVLVME, Nov. 2012, 10.
\end{itemize}
During the 19th century, the Seminoles did not have a written constitution, but may have had written bylaws adopted post-1856. However, the Seminole government continued to govern during this time period, pursuant to Seminole tradition and custom. By the 1880s, the Seminoles established a law enforcement group known as the “Lighthorse” which was comprised of approximately fourteen men and was a powerful tribal asset that ensured the maintenance of law and order on Seminole land. The Seminoles eventually created a “General Council” that acted as the dispute resolution forum. Lighthorse officers sometimes served as judges, although the Council used a jury-like system from time to time. The Federal Government recognized that the courts of the Five Tribes “could exercise jurisdiction over crimes committed by citizens of the tribes, and over certain civil matters.” However, there was exclusive federal court jurisdiction over certain civil and criminal matters pursuant to federal law.

In 1890, Congress passed the Oklahoma Organic Act, which granted exclusive jurisdiction over civil cases not expressly under the jurisdiction of tribal courts to the federal courts. The Act implicitly recognized the judicial authority of tribal courts in Indian Territory. Eight years later in 1898 however, Congress passed the Curtis Act, which threatened a significant intrusion into tribal jurisdiction. The Curtis Act aimed to disassemble the Five Tribes’ governments and judicial systems, and aimed at forcing the allotment of communal tribal lands into individually owned plots of land. However, then-Principal Chief of the Seminole Nation, John F. Brown, proposed a special Seminole allotment agreement that would allow the Seminole Nation to evade the Curtis Act, and leave the Tribe’s government intact. The Tribe affirmed its law over that of the Federal Government when, in 1903, the Seminole government passed the Revised Statutes, which codified Seminole law.

Despite the efforts of the Seminoles to resist the intrusion of federal law, and although the negative effects of the Curtis Act were

---

24 WORK, supra note 14, at 9.
25 Id. at 10.
26 Wantland, supra note 23.
27 Id.
28 Id.
30 Id. at 35-36.
32 WORK, supra note 14, at 46.
not supposed to apply to the Seminoles, the Federal Government still believed the Curtis Act applied to the Seminole Nation and that its judicial system should be dissolved.\(^{33}\) Even more devastating, despite the Seminole allotment agreement to keep the government intact, the tribal government itself was to be dissolved on March 4, 1906, pursuant to a Congressional Act dated March 3, 1903. However, on March 2, 1906, a mere two days before the dissolution was to take effect, Congress issued a joint resolution that allowed the governments of the Five Tribes to continue to exist.\(^{34}\) Ultimately the Seminole government was left intact, but from the 1907 establishment of Oklahoma statehood until the 1992 establishment of the Seminole Nation CFR Court, claims involving Seminole tribal members were adjudicated exclusively through the state and federal systems.\(^{35}\)

d. The 1907 Judiciary Disassembly upon Oklahoma Statehood

Federal policies of allotment and assimilation, as well as the admission of Oklahoma to the Union, had devastating effects on the tribal sovereignty of the Seminole Nation. On April 26, 1906, Congress passed the Five Civilized Tribes Act of 1906, which mandated that the Seminole Council could meet no more than thirty days per year and no action would be of any force unless approved by the Department of the Interior.\(^{36}\) The chief of the tribe was no longer elected, but appointed by the President of the United States, or by his designated representative.\(^{37}\) The appointed chiefs were used as tools to sign agreements, such as land deeds, on behalf of the Seminole Nation. These appointments continued until passage of a Congressional Act, dated October 22, 1970, which repealed the provision in the Five Civilized Tribes Act that allowed the Federal Government to appoint Seminole chiefs.\(^{38}\) In 1991, the Seminole Constitution was amended to eliminate a then-inactive provision allowing for presidential appointment.\(^{39}\)

\(^{33}\) Id. at 39; Wantland, supra note 23.
\(^{35}\) Wantland, supra note 23; U.S. Dept. of the Interior, supra note 1, at 73; WORK, supra note 14, at 125.
\(^{36}\) WORK, supra note 14, at 50.
\(^{37}\) Id. at 51.
\(^{39}\) SEMINOLE NATION OF OKLA. CONST. CERTIFICATION OF ADOPTION 1991.
Professor Blue Clark, an expert in Oklahoma tribal history, views the period of allotment and assimilation as a period of “dark ages” for the tribes. 40 Although the Seminole Nation continued to exist, there were significant federal limitations on tribal governmental function. First, in 1934 Congress passed the Indian Reorganization Act (“IRA”), which allowed tribes to organize under BIA-approved constitutions. However, then-Senator Elmer Thomas managed to exempt Oklahoma tribes from most provisions of the IRA, claiming that he “wanted to gain an understanding of [Oklahoma tribes’] condition in order to develop a legislative proposal that benefitted them.” 41 Two years later, in 1936, Congress passed the Oklahoma Indian Welfare Act (“OIWA”), allowing for Oklahoma tribes to organize under BIA-approved constitutions and bylaws. Importantly, the OIWA was eventually interpreted (much later by a federal court in 1988) as repealing provisions of the Curtis Act that had abolished the judicial authority of the Five Tribes. 42

e. The 1969 Seminole Nation Constitution

The first of the Five Tribes to adopt a constitution was the Seminole Nation of Oklahoma. Notably, the Seminoles did not organize under the OIWA. This is because they wanted to organize pursuant to their inherent sovereign authority based on the Treaty of 1856. 43 According to the current Principal Chief of the Seminole Nation, Leonard Harjo, the Seminole Nation is one of the few tribes that can claim its “government exists as the result of the inherent authority to establish its own government.” The chief also noted that if the Seminole Nation organized under an OIWA constitution, then they “would be organized under a federal law.” 44 Chief Harjo emphasized the importance of governing under inherent power, stating that “[i]f you are governing under your inherent power, you haven’t given anything up.” 45

In 1964, the Seminole Nation created a committee that prepared and submitted a draft constitution and bylaws to the General

---

40 CLARK, supra note 6, at 15.
41 JOHN S. BLACKMAN, OKLAHOMA’S INDIAN NEW DEAL 78 (2013).
42 WORK, supra note 14, at 119-120.
43 Id. at 136.
44 Telephone Interview with Leonard Harjo, Principal Chief, Seminole Nation of Oklahoma (Dec. 11, 2012).
45 Id.
Council on June 19, 1964. However, this constitution was not approved by the Council.\(^{46}\) Five years later, in 1969, a revised constitution was submitted to voters, and they approved it by a vote of 637 votes for and 249 votes against.\(^{47}\) As required, the BIA approved the constitution on April 15, 1969.\(^{48}\) The 1969 Constitution established a government with an executive and legislative branch, but it did not establish a judicial branch.\(^{49}\)

There were several reasons the Seminole Nation did not establish a judicial branch at this time. Primarily, although many tribes outside of Oklahoma had restored and began exercising judicial authority following the passage of the IRA, the Federal Government still believed that the Five Tribes had no areas subject to tribal jurisdiction,\(^{50}\) and that the 1898 Curtis Act had abolished the judicial authority of the Five Tribes.\(^{51}\)

**f. Reignited Desire for a Seminole Tribal Court System**

The Seminole Nation made several efforts to create a judicial system after the adoption of the 1969 Constitution. However, those who supported a judicial branch faced several hurdles. One of these hurdles was cleared by a federal court in 1988. As discussed earlier, the Federal Government had for decades assumed that the Curtis Act disallowed the Five Tribes from establishing tribal court systems, even after Congress passed the OIWA. However, in 1988 the D.C. Circuit held that the OIWA repealed provisions of the Curtis Act that abolished the tribal courts for the Creek Nation.\(^{52}\) Thus, *Muscogee (Creek) Nation v. Hodel* was a landmark case in Seminole judicial history because the court recognized the Five Tribes’ judicial authority. A second jurisdictional hurdle was cleared in 1990, when the Oklahoma Supreme Court\(^{53}\) held, *inter alia*, that an Oklahoma state court had no subject matter jurisdiction over a detainer action by the

---

\(^{46}\) WORK, *supra* note 14, at 137.

\(^{47}\) *Id.* at 144.

\(^{48}\) SEMINOLE NATION OF OKLA. CONST. CERTIFICATION OF ADOPTION 1969.

\(^{49}\) WORK, *supra* note 14, at 145.

\(^{50}\) See generally VINE DELORIA, JR. & CLIFFORD M. LYTLE, AMERICAN INDIANS, AMERICAN JUSTICE 111-16 (1983); WORK, *supra* note 14, at 145-46.

\(^{51}\) *Id.* at 215.

\(^{52}\) *Muscogee (Creek) Nation v. Hodel*, 851 F.2d 1439, 1446-1447 (D.C. Cir. 1988).

Seminole Nation Housing Authority because the defendant’s land constituted “Indian Country.” Under the basic tenets of Federal Indian law, state courts have limited jurisdiction over disputes arising in “Indian Country.” The same year, the Tenth Circuit held that Oklahoma had no law enforcement authority over alleged offenses by Indians on Cherokee trust land.54 These decisions helped reignite the initiative for a tribal court system, as the decisions demonstrated a trend of recognizing Seminole control over its people, land, and agencies.

Even with the federal obstacles overcome, the Seminole People themselves had to be convinced that a judicial branch would benefit the tribe. Principal Chief Leonard Harjo partially credited the judicial reestablishment movement to a group of men and women that later became known as the “Seminole Treaty People.” These people advocated for maximizing tribal sovereignty based on the Seminole Nation’s inherent authority under the Treaty of 1856. He noted that the Treaty People “raised an early voice for the Seminole powers of self-government, consistent with our treaties and agreements.”55 Another challenge for the proponents of a Seminole judiciary was to secure funding. This challenge was partially overcome in the late 1980s when the Seminole Nation obtained a grant with the intent to create a Seminole Nation Code of Laws for a future tribal court system.56

In 1990, the General Council passed a resolution recognizing “the need to establish a judicial system with civil and criminal jurisdiction over matters arising in Indian Country in the Seminole Nation” and it also stated the desire to “amend the Seminole Constitution to clarify its judicial authority and to enact judicial and law enforcement codes.”57 The Council further authorized the Principal Chief to seek funding to pursue these goals and established a Constitution Revision Committee and a Code Development Committee.58

54 Ross v. Neff, 905 F.2d 1349, 1352-53 (10th Cir. 1990). “Trust land” mentioned above refers to land that is held in trust by the United States for the benefit of Indian tribes, including the Seminole Nation. For more information regarding the federal Indian trust responsibility, see Seminole Nation v. United States, 316 U.S. 286 (1942); see also Cherokee Nation v. State of Ga., 30 U.S. 1, 5 Pet. 1 (1831) (origin of the federal Indian trust responsibility).
55 Dustin Gray, supra note 2.
56 Telephone Interview with William C. Wantland, Chief Justice, Seminole Nation of Oklahoma Supreme Court (Nov. 28, 2012); WORK, supra note 14, at 221.
57 WORK, supra note 14, at 221.
58 Id.
In 1991, the Constitutional Revision Committee prepared and submitted a constitutional amendment to the Seminole people for a vote that would have added “Article XVI – Courts” to the Seminole Constitution. This new section would have established a tribal court system for the Seminole Nation. However, the Seminole voters rejected the 1991 amendment by a vote of 107 votes for and 108 votes against.\(^{59}\)

\textbf{g. The 1992 Establishment of the Seminole Nation CFR Court}

After voters rejected the 1991 amendment and did not create a judicial branch, in 1992 the Secretary of the Interior established CFR Courts for tribes served by the BIA Muskogee Area Office. The BIA Muskogee Area Office included the Seminole, Choctaw, and Chickasaw Nations, and all three tribes would file suits in this court.\(^{60}\) The Creek and Cherokee Nations, the other two tribes comprising the Five Civilized Tribes, already had their own tribal courts by this time.

The regulations published by the Secretary of the Interior when establishing a CFR Court for the Seminole Nation stated that “decisions by both federal and state courts have raised serious questions whether the State of Oklahoma possesses criminal jurisdiction over offenses committed by Indians on certain Indian lands in the former Indian Territory, the historic realm of the Five Civilized Tribes, and what now constitutes 40 counties in Eastern Oklahoma, within the jurisdiction of the Muskogee Area Office of the BIA.”\(^ {61}\) The regulations noted that it was “immediately necessary for the BIA to establish a Court of Indian Offenses for the Muskogee Area to protect the lives, persons, and property of people residing on Indian Country lands, until the question of state jurisdiction is finally resolved or until the local Indian tribes establish tribal courts to exercise criminal jurisdiction over their own members.”\(^ {62}\)

In 1883, the Commissioner of Indian Affairs authorized the creation of Courts of Indian Offenses, known as “CFR Courts.” These Courts, still in existence today, operate under a set of rules and procedures created by the Bureau of Indian Affairs to help “civilize”

\(^{59}\) \textit{SEMINOLE NATION OF OKLA. CONST.}, \textit{supra} note 48.


\(^{61}\) \textit{Id.}

\(^{62}\) \textit{Id.}
the Indians. The CFR Courts are authorized “to provide adequate machinery for the administration of justice for Indian tribes in those areas of Indian Country where tribes retain jurisdiction over Indians that is exclusive of State jurisdiction but where tribal courts have not been established to exercise that jurisdiction.” An established CFR Court remains in force until the BIA and tribe enter into a contract or compact for the tribe to provide judicial services or until the tribe has put into effect a law-and-order code that establishes a court system.

Although many tribes had CFR Courts leading up to 1934, the passage of the IRA was a catalyst for the widespread development of written tribal constitutions, many of which eventually created tribal judicial branches and, thus, tribal courts. However, many tribes lacked the financial resources necessary to create a tribal court, forcing continued reliance on CFR Courts. CFR Court judges are appointed by the BIA, but can be confirmed by the Tribal Council. In addition to federally appointed judges, tribal custom may be considered in deciding a case. Although there was some room for Seminole tribal custom in the CFR Courts, the continued reliance on CFR Courts had detrimental implications for the Seminole Nation’s self-government because the CFR Courts had severe jurisdictional limits. For example, the CFR Courts could not (1) adjudicate an election dispute, (2) hear a suit against a tribe, or (3) rule on any internal tribal government dispute, unless the relevant tribal governing body passed a resolution, ordinance, or referendum granting the court such jurisdiction.

After the 1992 establishment of the Seminole Nation CFR Court, the Seminole Nation attempted to exercise control over several aspects of the court under 25 C.F.R. pt. 11.108, which provides the following:

The governing body of each tribe occupying the Indian country over which a Court of Indian Offenses has jurisdiction may enact ordinances which, when

---

63 MATTHEW FLETCHER, AMERICAN INDIAN TRIBAL LAW 68 (2011); WILLIAM C. CANBY, JR., AMERICAN INDIAN LAW: IN A NUTSHELL 70 (2009).
65 Elizabeth E. Joh, Custom, Tribal Court Practice, and Popular Justice, 25 AM. INDIAN L. REV 117 (2000-2001) (“Encouraged both by recent federal Indian policy and by a burgeoning sovereignty movement, tribal courts in Indian country are no longer the conscious instruments of assimilation and external control that they were in the nineteenth century.”)
approved by the Assistant Secretary—Indian Affairs or
his or her designee: a) Are enforceable in the Court of
Indian Offenses having jurisdiction over the Indian
Country occupied by that tribe; and b) Supersede any
conflicting regulation in this part.

The then-attorney general prepared a Code of Laws regarding (1) CFR
Court operation, (2) selection of CFR Court judges, (3) civil
procedure, (4) criminal procedure, and (5) evidence, which were
submitted to the BIA for review and approval.68 However, the BIA did
not approve the code, and the applied laws continued to come from the
CFR Regulations.69

In 2001, an election dispute over the head executive position of
Principal Chief revealed a significant flaw with the CFR Court. A
controversial tribal ordinance, passed in 2000, excluded Seminole
Freedmen70 from tribal membership and abolished the Council seats of
the two Freedmen bands.71 Importantly, the excluded Freedmen were
not included in the electorate for the disputed election, which could
have altered the election outcome. The CFR Court declined to hear the
case because of 25 C.F.R. 11.118, which prohibited jurisdiction over
election disputes unless there was a resolution passed by the General
Council granting such jurisdiction. Thus, the BIA, not the CFR Court,
resolved the issue.72 The Freedmen and Freedmen bands were later
reinstated back into the tribe.

The controversial ordinance’s passage and the following
election dispute were important events in the Seminole Nation’s story
of tribal court reestablishment. A year earlier, in 2000, the
Constitutional Revision Committee had proposed a constitutional
amendment to create a judicial branch. This time, unlike the 1991
attempt, a majority of Seminole voters approved the amendment.
However, the BIA did not approve the amendment for failure to follow

68 Work, supra note 14, at 221.
69 Id.
70 The Seminole Freedmen are descendants of free and escaped slaves that closely
associated with the Seminoles while in Florida before and after Indian removal. The
Freedmen were included in the original Seminole Nation membership rolls. For more
information on the Seminole Freedmen, see Kevin Noble Maillard, Redwashing
History: Tribal Anachronisms in the Seminole Nation Cases, 1 Freedom Ctr. J. 96
(2008).
71 Clark, supra note 6, at 332.
72 Telephone Interview with Jeffery Harjo, Former Council Member, Seminole
Nation of Oklahoma, (Nov. 28, 2012).
adequate procedures for amending the Seminole Constitution. Chief Harjo suggested that the BIA rejection of the 2000 amendment was linked to the controversy regarding the controversial ordinance and election dispute, particularly the vote that excluded Seminole Freedmen from the tribe. Chief Harjo opined, “the bureau declined to approve those amendments on technicalities that didn’t have anything to do with the merits of the amendment.”

**h. The Passage of the 2008 Amendment Creating a Judicial Branch**

In 2008, the Constitutional Revision Committee announced its intention to establish a tribal court. The Committee envisioned a tribal court that would have final say in matters of tribal law, use tribal law to solve disputes, and be free to interpret Seminole law free from outside interference. The Committee also proposed an amendment to remove the requirement that the Secretary of the Interior approve future constitutional amendment proposals, an idea that had been considered in the past. Former Principal Chief Enoch Kelly Haney saw the need for a tribal court so the Seminoles could “really become a government.” Votes for both amendments were held at the 40th annual Seminole Nation Days Celebration in September 2008.

Voters approved the 2008 amendment creating a judicial branch by a vote of 197 votes for and 108 votes against. Voters also approved the amendment removing the requirement of Secretary approval on future constitutional amendments by a vote of 196 votes for and 106 votes against. To ensure maximum Seminole participation in the voting process, the Seminole Nation set up five polling locations. The Seminole Nation also allowed for absentee ballot voting, which was not widely used. Furthermore, signs were

---

73 SEMINOLE NATION OF OKLA. CONST. Disapproval of 2000 Amendments.
74 Telephone Interview with Leonard Harjo, supra note 44; Telephone Interview with Jerry Haney, Former Principal Chief, Seminole Nation of Oklahoma (Jan. 7, 2012).
76 Id.
77 Id.
79 Id.
80 Telephone Interview with Jeffery Harjo, supra note 72.
placed throughout the Seminole Nation Days site, encouraging all tribal members in the crowd of 15,000 to vote.

Once the Seminoles internally approved the amendments, they had to await approval by the BIA. The BIA informed the tribe that there were no time limitations on final approval and that the process could take anywhere from eight months to a full year before rendering a decision. The approval process ended up taking two years; the BIA finally approved both amendments on September 2, 2010.81 This delay was, however, well used by the Seminole Judiciary Review Committee. The period allowed the Judiciary Review Committee to draft a Code of Laws and to transition from the Court of Indian Offenses to the Seminole Nation tribal court system.

i. The 2011 Reestablishment of the Seminole Nation of Oklahoma Tribal Court System

On August 8, 2011, the Seminole Nation of Oklahoma held a special ceremony to appoint three Supreme Court Justices and one District Court Judge. This ceremony formally marked the reestablishment of the Seminole Nation tribal court system. The ceremony featured several traditional elements, such as Mvskoke church hymns and ancestral songs and dances. The Seminole Lighthorsemen, guardians of their people, were once again called to action.

Mirroring the United States Constitution, the new Seminole Constitution states, “[t]he judicial power of the Seminole Nation of Oklahoma shall be vested in one Supreme Court and such District Courts and other subordinate courts as may be established pursuant to law enacted by the General Council.”82 The tribal court system has jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the Nation including common law, over all general civil claims which arise within the Nation’s jurisdiction, and over all transitory claims in which the defendant may be served within the Nation’s jurisdiction.”83 The Seminole Tribal Court has criminal jurisdiction over “all criminal offenses enumerated and defined in any ordinance adopted by the Nation insofar as not prohibited by federal law.”84 One example of an area which all tribes, including Seminoles,

81 SEMINOLE NATION OF OKLA. CONST. Approval of 2008 Amendments.
82 SEMINOLE NATION OF OKLA. CONST. art. XVI.
would like to further exercise jurisdiction but are superseded by federal law is created by the United States Supreme Court case, *Oliphant v. Suquamish Indian Tribe*, which provides tribes generally cannot exercise criminal jurisdiction over non-Indians.

The District Court began hearing Tribal Court cases on October 28, 2011. As soon as it opened, approximately four hundred cases were transferred from CFR Court jurisdiction to Seminole District Court jurisdiction. On January 20, 2012, the Seminole Nation officially ended CFR Court operation, and tribal members can now have their day in their own tribal court system.

### j. Reasons for the Reestablishment Delay

There were several reasons for the Seminole Nation’s delay in reestablishing its tribal court system. First, there were Federal Indian policy reasons for the delay, such as assimilation, faulty federal stances concerning the Curtis Act’s application to the Seminole Nation, the Curtis Act’s continued prohibition on judicial authority years after the passage of the IRA and the OIWA, and the belief that Seminoles had no territorial jurisdiction over their land. Another reason was a lack of financial resources. Justice Wantland recalled that when he was Attorney General of the Seminole Nation from 1969 to 1977, “the cost to operate a [tribal] court was very high,” and thus the Council originally decided they could not afford a tribal court. Following the 1991 failed attempt to create a judicial branch, the CFR Court option might have seemed enticing to the Seminole government given that the Federal Government largely funds CFR Courts.

There were other internal and political hesitations in proposing and voting on an amendment establishing a judicial branch. Principal Chief Harjo recalled a story he heard that some people thought that if they voted “no” on the 1991 amendment, then they would not be

---

86 However, tribal courts can exercise criminal jurisdiction over non-Indians in matters of domestic violence against women. See 25 U.S.C. § 1304(b)(1).
89 Telephone Interview with Tresa Gouge, Court Administrator, Seminole Nation of Oklahoma Tribal Court System (Dec. 10, 2012).
90 Telephone Interview with William Wantland, *supra* note 56; Telephone Interview with Jerry Haney, *supra* note 74.
subject to *any* court jurisdiction. Former Principal Chief of the Seminole Nation Jerry Haney accredited the failed 1991 vote partially to scare tactics and misinformation, such as that in Chief Harjo’s story. Seminole Nation Council member Jeffery Harjo mentioned that many people did not understand what would happen if they created a tribal court, they were accustomed to leaving things as they were, and they were simply not aware of the advantages of having a tribal court. Former Chief Jerry Haney noted another issue brought up that a tribal court would send more Seminoles to jail and thus would ultimately harm the Seminole people.

Another issue to consider is the historical power struggle between the executive and legislative branches after the 1969 constitution was passed. This was a time of “growing pains” for the Seminole Government. Furthermore, a percentage of Seminoles may have been distrustful of their chiefs. There were apparently similar historical power struggles between the executive and legislative branches of the Creek Nation of Oklahoma. Perhaps some people thought that adding yet another branch would further aggravate this sensitive struggle to find the appropriate equilibrium of power amongst the Tribe’s governing bodies.

By 2000, the Seminoles were ready for a tribal court system. In the 2000 amendment election, the Seminoles did vote “yes” for court establishment, but the BIA disapproved all of the amendments from the 2000 vote for not following constitutional amendment procedures. This vote indicated a clear shift in Seminole voter attitude toward creating a tribal court between 1991, when a similar amendment failed by one vote, and in 2000, when the Seminole voters resoundingly said “yes.” Had the BIA approved the 2000 amendments or a single person changed his or her mind in the 1991 election, the Seminoles might have had a court system much sooner than 2011. However, it is worth noting that there were only 305 votes cast in the 2008 amendment vote. This is surprising because the Seminole Nation Days had 15,000

---

91 Telephone Interview with Leonard Harjo, *supra* note 44.
92 Telephone Interview with Jerry Haney, *supra* note 74.
93 Telephone Interview with Jeffery Harjo, *supra* note 72.
94 Telephone Interview with Jerry Haney, *supra* note 74.
95 Telephone Interview with Leonard Harjo, *supra* note 44; *WORK*, *supra* note 14, at 5.
96 Telephone Interview with Douglas G. Dry, Former Prosecutor, CFR Court of the Seminole Nation of Oklahoma (Nov. 23, 2012).
attendees and the tribe currently has over 18,000 enrolled members.\textsuperscript{98} Despite the large number of potential voters, there was a low voter turnout at the Seminole Nation Days and there was also a low use of absentee ballots.\textsuperscript{99} These factors played important roles in the outcomes of the 1991, 2000, and 2008 attempts to establish a Seminole Nation tribal court system.

**k. The Seminole Nation CFR Court: Only a “Stepping Stone”**

When the Seminole Nation finally overcame internal and external obstacles that led to the passage and BIA approval of the 2008 amendment to create a judicial branch, why did the Seminole Government desire this court when it was already using the CFR Court? The CFR Court might at first glance appear to have been a desirable solution. First, it was heavily funded by the Federal Government. Second, it seemed to be more tailored to the tribe than the state or the federal systems because tribal customs could be considered. Third, the Council could confirm BIA appointments of CFR Court judges, which arguably gave the tribe at least some control over who heard and decided cases involving Seminole citizens. Fourth, there was a provision allowing tribal ordinances to supersede CFR Court provisions, giving the Seminoles an opportunity to impose Seminole law on the CFR Court.

However, there are many reasons why the CFR Court fell short as a permanent solution, and not just for the Seminole Nation. For tribes who organized under the IRA, many had long before developed tribal codes and transitioned from the CFR Courts to tribal courts.\textsuperscript{100} However, according to scholars, the CFR Courts were vehicles for assimilation as they were modeled on Anglo-American courts with western ideals of justice.\textsuperscript{101} According to the scholars Vine Deloria, Jr.

\textsuperscript{98} Gray, \textit{supra} note 75.
\textsuperscript{99} Telephone Interview with Jeffery Harjo, \textit{supra} note 72.
\textsuperscript{100} FLETCHER, \textit{supra} note 60, at 69.
\textsuperscript{101} Margery H. Brown and Brenda C. Desmond, \textit{Montana Tribal Courts: Influencing the Development of Contemporary Indian Law}, \textit{52 Montana L. Rev.} 211, 216-217 (1991) (“Because many non-Indian government officials and others did not see or understand the traditional mechanisms used by tribes to maintain law and order among their members, non-Indians tended to believe that tribal societies were lawless. Although clearly erroneous, this widespread belief generated attempts by non-Indians to fill what was perceived as a void with Anglo-American law, legal structures, and to some extent, decisionmakers.”).
and Clifford M. Lytle, “[w]ith the authorization of the IRA corporate form of government, all but a few tribes assumed judicial functions as a manifestation of self-government and rid themselves of this hated institution.” Deloria and Lytle further noted that the IRA “provided an opportunity to resurrect the traditions and customs that had been so important to Indian culture before being dissipated by the bureaucratic controls from Washington.” According to William Canby, “[n]either these courts nor the codes they administered were fashioned after indigenous Indian institutions,” but were “imposed as federal educational and disciplinary instrumentalities in furtherance of the civilizing mission of the reservations, so certain religious dances and customary practices, as well as plural marriages, were outlawed.”

Former Chief Jerry Haney believed that “the CFR Courts were limited in what they could do.” The CFR Court was generally limited to criminal misdemeanor-type activities. Former Seminole CFR Court prosecutor, Doug Dry, remembers there were not many more than fifty defined CFR crimes and many not tailored to Seminole needs, which he saw as a limitation. With its own tribal system and with the abolition of Secretary approval on further constitutional amendments, the tribal court may in the future hear more and higher-level crimes. Additionally, the Judiciary Review Committee can now search for and recommend its own judges as opposed to federal appointment, maximizing the Seminole Nation’s ability to find suitable judges to hear Seminole cases without outside influence. According to Justice Wiley, one of the main objectives of the tribal court is to try to get Indian judges.

Furthermore, with a tribal court, Seminole-picked judges using Seminole laws can resolve disputes such as the 2001 Principal Chief election dispute, free from outside interference. While the CFR Court could have heard the 2001 election dispute if the Council had granted such jurisdiction, the Council in 1992 enacted a law precluding the CFR Court from hearing election disputes, reasoning that “it would be contrary to the sovereign status of the Seminole Nation for the CFR

\[102\] Deloria, Jr. & Lytle, supra note 50, at 115-16.
\[103\] Id. at 116.
\[104\] Canby, Jr., supra note 60, at 21.
\[105\] Telephone Interview with Jerry Haney, supra note 74.
\[106\] Telephone Interview with Leonard Harjo, supra note 44; see generally 25 C.F.R. § 11.4 (2012).
\[107\] Telephone Interview with Douglas G. Dry, supra note 96; see generally 25 C.F.R. § 11.4 (2012).
\[108\] Telephone Interview with Roger Wiley, supra note 97.
Court to render decisions involving internal constitutional and governmental affairs of the Seminole Nation.”109 Chief Harjo noted that the Council was always “careful not to extend the CFR Court’s jurisdiction.”110 However, according to Chief Harjo, the CFR Courts “were a good stepping stone to recovering [the Seminole Nation’s] judicial authority.”111

III. TRADITION AND CUSTOM IN THE SEMINOLE NATION TRIBAL COURT SYSTEM

The Seminole Nation, through persistence and determination, successfully battled against constant adversity to re-establish its tribal court system. This achievement is significant for all tribes because it highlights a tribe’s ability to fight for its basic sovereign right to resolve disputes. However, tribes with tribal courts still face a daunting task of developing a tribal court system that embodies the individual tribe’s custom and tradition as it relates to dispute resolution. This section will describe (1) custom and tradition in contemporary tribal court systems and associated problems of authenticity and legitimacy, and (2) the Seminole Nation’s pursuits of identifying and implementing Seminole custom and tradition.

a. Custom and Tradition in Contemporary Tribal Court Systems: Problems of Authenticity and Legitimacy

In order to understand contemporary tribal dispute resolution systems, one must have a basic understanding of the social, cultural, and political transformations undergone by tribes since the arrival of Christopher Columbus to the New World in 1492. At that time, tribes functioned under completely different notions of “government” and “justice” than those brought by Europeans. In general, tribes often governed according to unwritten, orally passed down laws.112

As history progressed from colonization, to the American Revolution, to Indian Removal, to Allotment, to Reorganization, to Termination, to Self-Determination, and to the present day, there was a

109 Work, supra note 14, at 220.
110 Telephone Interview with Leonard Harjo, supra note 44.
111 Id.
dramatic shift from traditional governing and dispute resolution structures to heavily emulated American forms of governance and justice systems. Many tribal constitutions today have features such as three branches of government with separation of powers, four-year executive terms, due process protections, unreasonable search and seizure protection, protection against self-incrimination, and so forth.

The result of the catastrophic history between the 1492 arrival of Christopher Columbus and present day United States is that purely traditional indigenous law systems are virtually non-existent. Many of today’s tribal systems still have distinctive features, but are often heavily modeled after American forms of government and judiciary. The federal Indian policies listed above created great difficulties for tribes to create and maintain purely traditional indigenous systems informed by traditional governing customs. Because of the culturally destructive policies of assimilation and allotment even tribes that reorganized under the IRA or the OIWA had difficulty identifying long lost traditions and custom, and when they could be identified, there were difficulties in reconciling these values with the assimilated United States model used by many Tribes. Thus, many contemporary tribal court systems are still very much in assimilated form, and not that different from the models imposed by the CFR Court systems.

Because the majority of tribal courts have been assimilated into a western model, because many of these systems are unable to identify tradition and custom, and because some tribes choose not to use tradition and custom, there may be internal and external critiques regarding a tribal court’s legitimacy and authenticity. However, the measure of legitimacy and authenticity should not be directly

113 Id. at 139.
114 Id.; see also Nevada v. Hicks, 533 U.S. 353, 384-85, 121 S. Ct. 2304, 2323, 150 L. Ed. 2d 398 (2001) (“Although some modern tribal courts ‘mirror American courts’ and ‘are guided by written codes, rules, procedures, and guidelines,’ tribal law is still frequently unwritten, being based instead ‘on the values, mores, and norms of a tribe and expressed in its customs, traditions, and practices,’ and is often ‘handed down orally or by example from one generation to another.’ (Citations omitted). The resulting law applicable in tribal courts is a complex ‘mix of tribal codes and federal, state, and traditional law,’ (Citations omitted) . . .”).
115 Andrew M. Kanter, The Yenaidlooshi in Court and the Killing of a Witch: The Case for an Indian Cultural Defense, 4 S. CAL. INTERDISC. L.J. 411, 416-17 (1995) (“Often, nontraditional laws are superimposed on traditional customs, and societies then struggle, generally unhappily, with the coexistence of the old customs and the new laws.”).
116 Brown & Desmond, supra note 101, at 219-220.
correlated with how much a tribal court decides to borrow from external sources. Rather, the mere fact that tribes have persevered through centuries of colonialism, violence, racism, and assimilation demonstrates their rightful status as resistant, powerful, and legitimate sovereign nations.

Professor Gloria Valencia-Weber has articulated the following features of tribal courts that lend to their increasing legitimacy, with custom and tradition being a factor but not the sole reason. According to Professor Valencia-Weber, factors to consider are: “(1) the increase of legally trained Indian people within the many judicial systems; (2) the revisions in tribal constitutions and development of codes; (3) the continued recognition of tribal courts by the U.S. Supreme Court as well as state courts; and (4) the development of customary law.”¹¹⁷ Valencia-Weber argues that, “the development of tribal-specific law presents the strongest case for a judicial system tailored to serve the evolving indigenous sovereigns, although the other elements matter.”¹¹⁸ While the factors put forth by Valencia-Weber do contribute to external and internal perceptions of legitimacy and authenticity, tradition and custom should not necessarily be prerequisites for such perceptions.

No tribal nation’s culture, nor any other nation’s culture, is static. Every culture continuously progresses and evolves. Although external forces have undoubtedly shaped tribal culture, tribes still have a keen sense of identity, and are fierce in the protection of their inherent sovereignty. This article in no way advocates either for assimilation or that tribes should not attempt to revitalize culture that suits contemporary needs. In recent years, revitalization of culture has become possible and has been essential for recovering a sense of tribal identity. However, the fact that tribes have hybrid systems takes nothing away from that identity, legitimacy, or authenticity. Tribal courts will continue to evolve pursuant to their self-determination, and will continue to borrow from outside law, and will continue to adapt to their environment.

¹¹⁸ Id.
b. The Pursuit of an “Authentic” Seminole Tribal Court System

Currently, the Seminole Nation is taking proactive steps in grappling with the issues of tradition, custom, authenticity, and legitimacy described above. The four member Seminole Nation Judiciary Review Committee is responsible for drafting the Seminole laws and recommending judges to the Principal Chief for appointment. According to Justice Wantland, one member of the Committee should have legal experience, one member should be on the Council, one member should have experience in administration with an emphasis in family issues, and one member should be an elder. Once drafted, the proposed laws go to the Principal Chief’s office to be sent to the General Council for approval. Tribal member input is also very important in the development of laws. The Judiciary Review Committee conducts public workshops in which the public and Council members are invited to participate in the development of the codes. Most of time the Council adopts the codes as they are presented, with occasional amendments.

While Justice Wantland was on the Judiciary Review Committee, he worked to ensure the law was “Seminole.” The Committee he led sought to determine what the Seminoles had done before Oklahoma statehood and what the tribal traditions and customs had been in the past. Justice Wantland noted that searching for past tradition and custom is one of the reasons to have an elder on the Judiciary Review Committee. Former Chief Jerry Haney currently serves this role. At age 80, Chief Haney is a person with significant experience with Seminole ways and with the development of the Seminole Nation tribal court system. In drafting the codes, the Judiciary Committee consulted the 1903 Seminole Revised Statutes, the 1991 Seminole Code of Laws, written clan laws established after the Treaty of 1856, as well as some state and federal laws. A former Committee member, Jane Northcott, translated into English Seminole laws from the 19th century. These translations could potentially be...

120 Telephone Interview with William C. Wantland, supra note 56.
121 Id.
122 Id.
123 Id.
used to further develop current Seminole law that reflects traditional values.

The importance of Seminole custom and tradition has been codified in the Seminole Code of Laws. The Seminole Code of Laws provides that “in matters not covered by Statute, the Court shall apply traditional tribal customs and usages, which shall be called the Common Law. When in doubt as to the Common Law, the Court may request the advice of counselors and tribal elders familiar with them.”

Seminole culture is even incorporated into court proceedings. For example, at the beginning of every session, the bailiff of the court states, “[a]ll rise, the court is now in session” in the Mvskoke language.

It is true that the Seminole Nation tribal court system closely resembles a western model with “district courts” and a “supreme court.” And, after examination of the Code and Constitution, it is clear that much of the language is borrowed from state, federal, and other tribal court codes. However, the borrowing of outside laws merely represents the judgments made by the Seminole Nation that such laws are compatible with contemporary Seminole values. Furthermore, the Seminole Code also provides for identifying tradition and custom, and as discussed, the Seminole Nation has been making a special effort to develop laws that look back to old written clan laws from the 19th century.

While the Seminole Nation’s pursuit of “going back” to old written clan laws will undoubtedly enhance the tribal court system, even Justice Wantland has suggested that the clan laws are not necessarily a prerequisite for an authentic Seminole-made law. Through the resolution of future disputes, the Seminole Nation will continue to create Seminole “common law” that encapsulates authentic Seminole-made law. Regardless of the amount of past custom and tradition the Seminole Nation can locate, the authenticity and legitimacy of the Seminole Nation’s court system stems primarily from its perseverance in the face of adversity in reestablishing its tribal court system.

Former Assistant Chief of the Seminole Nation, Ella Colman, said it best when she described the future role of the tribal court system as keeping “[Seminole] culture, traditions, beliefs, values and

126 Telephone Interview with Tresa Gouge, supra note 89.
127 See SEMINOLE NATION OF OKLA. CONST. ART. XVI.
128 Telephone Interview with William C. Wantland, supra note 56.
ceremonial songs, church hymns, and language alive, and . . . protect[ing] and respect[ing] tribal sovereignty as [the Seminole Nation begins] this new chapter.” 129 These words summarize the importance of the Seminole Nation’s new journey to recover lost tradition and custom when creating Seminole-made “common law.”

IV. THE CHALLENGES AHEAD

Although the Seminole Nation is proactively taking on the challenge of developing a tribal court system that is “Seminole,” there are several other challenges in preserving and furthering the Seminole Nation tribal court system. According to Former Chief Jerry Haney, one of the greatest challenges is money. The Seminole Nation tribal court system simply needs more funding for its operations. 130 Funding for the court comes from sources such as (1) the Tribal Court Assistance Program (“TCAP”) sponsored by the U.S. Department of Justice, (2) a BIA 6.38 service contract, and (3) tribal revenue-generating activities such as Indian gaming, convenience store sales, and car tags. 131 However, the Seminole Nation did not receive TCAP funding in 2011. 132 Therefore, maintaining adequate funding for the Courts is always a “top priority” according the Court Administrator of the Seminole Nation tribal court system, Tresa Gouge. 133

Another challenge the Seminole tribal court system faces is ensuring that tribal court jurisdiction is maximized. According to Chief Harjo, “as a nation and under our recognized status within federal law, we have much more potential to exercise government than we have sought to do. The Council needs to pass laws that protect sovereignty. If we don’t exercise a broad range of power, we’re subject to losing it.” 134

The Seminole Nation has been proactive in this regard. For example, under the amended Seminole Constitution at the time the tribal court was established, tribal court civil jurisdiction was limited to “civil matters, whether or not arising on trust or restricted land within said jurisdictional boundaries, arising between members of the Nation or involving nonmembers who voluntarily submit themselves to

129 Gray, supra note 2.
130 Telephone Interview with Jerry Haney, supra note 74.
131 Telephone Interview with Tresa Gouge, supra note 89.
132 Id.
133 Id.
134 Telephone Interview with Leonard Harjo, supra note 44.
the civil jurisdiction of the Nation’s courts . . .” 135 Under original tribal court civil jurisdiction, the nonmember party had to voluntarily submit himself to tribal court jurisdiction whereas the CFR Court did not have this limitation – the CFR Court had civil jurisdiction over nonmember parties in cases where at least one party was an Indian.136 According to Justice Wantland, “this [difference was] something that need[ed] to be addressed.” 137 In July 13, 2013, the Seminole Constitution was amended to delete the requirement that non-members had to voluntarily submit themselves to the civil jurisdiction.

Criminal jurisdiction poses another challenge for the Seminole Nation, as tribes generally may not exercise criminal jurisdiction over non-Indians and tribes also have limits on criminal sentencing. The Tribal Law and Order Act of 2010138, however, potentially expands Seminole Nation criminal jurisdiction since the Act allows a tribal court greater authority over criminal sentencing and will strengthen communications between both tribal and federal law enforcement agencies and courts.139

Yet another challenge according to Chief Harjo “is trying to figure out how to grow to continue to meet the needs of our people within the context of the court system.”140 So far, the Seminole court system has greatly exceeded expectations in that it already handles more than twice the caseload of the CFR Court.141 Justice Wantland thought that the Seminole Nation would have court hearings one or two days a month, but he noted that they “vastly underestimated that need.” The Seminole judiciary cooperates and finds unique solutions to these problems. For example, to alleviate the burden of District Court Judge Gregory Bigler, Supreme Court Justice Kelly Stoner decided that she would rather be a District Court Judge because, at that time, no appeals had been filed, and because the District Court is “where the action is.”142 Another major step in meeting the needs of the community is creating a network of attorneys and judges. To do this the Seminole Nation Bar Association was created. According to Justice Wantland “[t]his is more than just collecting your money so

137 Gray, supra note 88.
139 Gray, supra note 88.
140 Id.
141 Telephone Interview with William C. Wantland, supra note 56.
142 Dustin Gray, Editorial, Tribal Court Appoints New Justices, COKV TVLVM, NOV. 2012, 2.
that you can practice before the courts,” but “this is to be a real Bar Association.”

There are other challenges that need to be addressed within the Seminole tribal court system in order to reach its full potential. First, there is a great need for a courthouse building because cases are currently heard in the Council House. Second, although there are three Supreme Court justices, the physical bench only seats one person. Third, when hearing cases involving children, the audience is not allowed to be present in the Council House, but there is no immediate inside waiting area, so the audience must go outside. This is undesirable, especially during the winter. Furthermore, according to Court Administrator, Tresa Gouge, pro se litigation forms need to be more user-friendly.

No matter what the challenges, it is important to remember that the Seminole Nation is learning how to operate a court system for the first time in over a century. Chief Leonard Harjo noted that “[t]his is all going to be new to us” and Seminole Nation Supreme Court Justice Roger Wiley stated that “we learn as we go.” The Seminole Nation has made great efforts to encourage community involvement in tribal court development. The Judiciary Review Committee holds public workshops to encourage public participation in the development of the Seminole Nation Code of Laws. Furthermore, the Constitutional Revision Committee holds regular meetings and invites Seminole citizens to provide input about what they would like to see changed within the Seminole Constitution. Also, pursuant to the Code of Laws, the tribal newspaper, *Cokv Tvlvme*, is obligated to publish court filings and legal notices, making court information easily accessible to Seminole citizens. With these examples, the Seminole Nation shows that it will actively and aggressively take on any challenge to the establishment of its court that comes its way.

---

143 *Id.*
144 Interview with Tresa Gouge, supra note 89.
145 Telephone Interview with William C. Wantland, supra note 56.
146 Interview with Tresa Gouge, supra note 89.
147 Dustin Gray, supra note 88.
148 Telephone Interview with Roger Wiley, supra note 97.
149 *Cokv Tvlvme* is pronounced /koʊ-CHä/ /tōl-um-ā/.
V. CONCLUSION

Through the examination of Seminole Nation history as it pertains to the reestablishment of the Seminole Nation tribal court system, the tribe’s courage, creativity, and perseverance are apparent. The Seminole Nation’s desire for a tribal court stems from its desire to maximize its sovereign authority by having a government that not only makes and enforces laws, but that makes and enforces laws the Seminole way. Although after 1992, the Seminoles could resolve disputes through the CFR Court system, this was never to be a permanent solution for the Seminole Nation’s desires or needs. The tribal court’s heavy docket has validated this need. The Seminole Nation can now create and enforce laws that are of Seminole nature, rather than rely on standard administrative offenses that are not tailored to Seminole identity. The Seminole Nation can now have Seminole-chosen judges adjudicate claims, rather than BIA-appointed judges.

The delay in attaining a Seminole court can be explained by looking at history. Federal Indian policy concerning the Five Tribes, the main reason for the delay, created the lag in establishing a court, but there were also financial reasons since the CFR Court was significantly less expensive to operate than establishing a tribally-run tribal court system. Furthermore, it took time to convince the Seminoles that the court was for the long-term betterment of the tribe. It is evident that political, ideological, and practical reasons lengthened the journey of the Seminole Nation tribal court system. No matter the challenges, the members of the Nation continued pushing for their vision. It is impossible to credit any one person or group of people for reestablishing the tribal court. The effort to reestablish judicial authority from disassembly upon Oklahoma statehood in 1907 took over 100 years, and thus the perseverance was of a Seminole national effort, from Seminole citizens, Council members, chiefs, administrative workers, and attorneys alike. Without a doubt, there are many challenges ahead in preserving and furthering the Seminole Nation of Oklahoma tribal court system. However, if history is any indication, the Seminole Nation will rise to the challenge and will prevail.