

BEFORE THE INDIAN CLAIMS COMMISSION

THE YAVAPAI and the groups and bands)
 thereof, ex rel. Callaway Bonnaha,)
 Harry Jones, Fred Beauty, and)
 Warren Gazzam;)
)
 THE YAVAPAI-APACHE INDIAN COMMUNITY;)
)
 THE FORT McDOWELL MOHAVE-APACHE COMMUNITY;))
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 22-E

Decided: March 3, 1965

Appearances:

Abe W. Weissbrodt and
 I. S. Weissbrodt, Esquire,
 Attorneys for Petitioners.

Milton E. Bander, with whom was
 Mr. Assistant Attorney General
 Ramsey Clark, Attorneys for the
 Defendant.

OPINION OF THE COMMISSION

Watkins, Chief Commissioner, delivered the opinion of the Commission.

The petition in this case was timely filed by THE YAVAPAI and the groups and bands thereof, ex rel., Calloway Bonnaha, Harry Jones, Fred Beauty, and Warren Gazzam; THE YAVAPAI-APACHE INDIAN COMMUNITY; and THE FORT McDOWELL MOHAVE-APACHE COMMUNITY, as petitioners. The Yavapai-Apache Indian Community and the Fort McDowell Mohave-Apache Community are both Indian organizations recognized by the Secretary of the Interior. The Commission has found that petitioners have the capacity to bring this suit despite the objections of the defendant. Defendant takes the position that the individual petitioners do not have the capacity to bring

the suit because the contracts which they have made with their attorneys respecting the present suit have not been approved by the Secretary of the Interior as required by law. It is alleged that the corporate petitioners are ineligible because of limitations in their corporate constitutions and because they are not proper representatives of all the Yavapai Indians. We regard all these objections as being without substantial merit. This Commission, on numerous occasions, has upheld the right of incorporated Indian groups, having a constitution with similar provisions to maintain a suit before the Commission where the corporation includes among its members descendants of the aboriginal tribe or group for which the suit is being brought. These corporate petitioners have satisfied the Commission that they have among their members descendants of the three aboriginal Yavapai groups and that such descendants are properly represented by said corporate petitioners. Since the individual petitioners are members of the corporate petitioners, and the corporate petitioners have contracts with attorneys, which contracts have been approved by the Secretary of the Interior, it is, therefore, immaterial for purposes of maintaining this suit whether or not the individual petitioners are represented by attorneys having approved contracts, since both individual and corporate petitioners are bringing suit in a representative capacity on behalf of the same aboriginal group.

This phase of the litigation concerns the issues of what lands, if any, were exclusively used and occupied by the Yavapai Indians from time immemorial up until the time said lands were taken from the Yavapai

Indians and whether or not the United States is liable to the Yavapai Indians for the taking of said lands without compensation therefor.

In this connection, petitioners claim that the Yavapai Indians held Indian title to a described tract of land based on exclusive use and occupancy from time immemorial until March, 1875, when said Indians were removed to the San Carlos Reservation outside their own country by United States military forces. Petitioners claim that defendant, on the above date, took the claimed land from the Yavapai Indians without compensation.

Respecting these issues, defendant has alleged that there was never an over-all Yavapai tribe but rather several separate land using groups; that petitioners have not proven exclusive use and occupancy of the claimed land nor the continuity of occupancy of said lands required to show aboriginal title; and that petitioners have not sustained the burden of proof necessary to prove their claim under the Indian Claims Commission Act.

First of all, there is a question as to the identity and relationship of the Indians who used and occupied the claimed area from aboriginal times to the period when said Indians were removed from the area. It is conceded by defendant that the Indians occupying the claimed area "remained in their aboriginal state up to 1860, and more or less with slight change until they were placed on reservations in the 1870's." (Def. Ex. S-238; Part I, p. 5) Petitioners claim that the different groups and bands of Indians who occupied the claimed area at that time comprised a single land using entity, and as such, they had Indian title to said lands based on exclusive use and occupancy from aboriginal times to March, 1875, when it was taken from them without compensation by the United States.

Petitioners admit that the Yavapai Indians were composed of three main groups which were, in turn, subdivided into bands and that there was no over-all political organization binding these groups together. However, petitioners assert that an over-all political organization is not necessary for their claim. Petitioners' argument is that the cooperative efforts of these groups and bands in waging war and defending themselves against both the whites and other Indians, the fact that there was intermarriage between the groups, the existence of a common language and culture among them, and that all groups and bands were free to hunt, gather and pursue other economic activities over the entire claimed area without interference from other Yavapai groups or bands, bound the Yavapai Indians together as one people apart from all others and distinguished them as a single land using entity. Defendant denies petitioners' claim alleging that both the facts and the law support the position that the three Yavapai groups are separate land using entities.

We agree with petitioners. A single land-using entity need not have political unity if other more significant factors are present. (The Hualapai Reservation, Arizona vs. United States of America, 11 Ind. Cl. Comm. pp. 447, 492) The name Yavapai is applied to bands and groups of Yuman-speaking Indians who formerly hunted and gathered over a large portion of central Arizona. The early Spanish explorers distinguished three Yavapai groups. They termed those in the northeastern part of the claimed area "cruzados", southeast "nijoras", and west "tejuas". Though the Yavapai were in no way directly connected with the Apache, at various times and places they have been erroneously referred to as Apaches,

Apache-Mohaves, Apache-Yumas, and Apache-Tontos. However, in spite of the confusing terminology which has been used with reference to the Yavapai during historical times, in most cases the Indians living in the claimed area in aboriginal times are readily identifiable as the ancestors of the present day Yavapai Indians (see transcript p. 924).

Ethnologists have termed these three groups of Yavapai Indians the northeastern, southeastern and western Yavapai, corresponding to their geographical location in the claimed area. Each of the groups consisted of several bands, each of which had a leader (see transcript p. 254). Each of the bands consisted of two or more families and comprised forty to one hundred persons. The seasonal movements of these bands generally were restricted within the confines of a certain region. However, the particular region of both the bands and groups overlapped one another along their borders in areas where hunting and gathering were particularly good. There is no record of one Yavapai group fighting another of their own people. Aside from the cultural similarity of the different Yavapai groups, other activities tended to bind the groups together into a single unit, such as, friendly visits, intermarriage, and cooperation for mutual security against non-Yavapai enemies.

These Indians were not sedentary in their residence habits but ranged over a large territory, moving from one gathering or hunting area to another as the various wild food products ripened. They moved from one camp to another from season to season, their moves being dictated by the time of the year the various wild foods ripened and by the locale of the game they hunted during the various seasons. Corn occasionally

was planted by some groups in small quantities along streams where moist bottomlands were available but not in sufficient amounts to be considered a staple food. After planting the corn these groups would proceed to hunt and gather, returning in the fall to harvest their crops. Theirs was a cyclic existence which brought them back to the same camps or near vicinity year after year. They moved in small multifamily bands or groups. Normally, the membership of these bands was fairly constant. However, persons from other Indian bands could join them at any time and the members of a particular group were free to leave at any time. On occasion several bands would join to gather in the same valley or area if harvesting conditions were particularly good.

Descent was always figured on the mother's side of the family and after marriage a man would join the band of his wife. There were some exceptions to this latter rule among the southeastern Yavapais. The organization of these bands was rather loose but sufficiently strong to maintain a relatively stable status among members. An elder member was usually in charge though his decisions were not always binding to the group. He would decide when moves were to be made, accept others into the band, attempt to settle disputes within the band, select camp sites and the like. One of the younger men, however, would normally be the head of the hunting party and, in cases of warfare, one who had demonstrated his ability in such matters would take over. Many of the decisions of the head of the band were often made in council with other elder members. In some cases the wishes of the main chief were overruled.

There is no evidence that any of the band leaders controlled other than his immediate band.

Warfare was not national in character among the Yavapai. As a result of a battle between Yavapai and non-Yavapai Indians over a gathering or hunting area, the relatives of those who were killed or captured would gather a following of young warriors from several Yavapai bands for a retaliatory raid. The previous success of the warrior making arrangements to gather the war party together usually determined the size of his following for the new raiding party. After the raid was completed the warriors returned to their own bands. In some cases several bands joined together against the enemy, particularly against the Pimas and Walapais. (See Defendant's Exhibit No. S-238, Part I, pp. 1-5.)

Gifford, upon whose writings the experts for both parties rely, treated the Yavapai as a single group. He said in Plaintiff's Exhibit No. 237, p. 247;

Of all the Yuman groups, the Yavapai were unique in inhabiting a vast territory (see map) embracing some 20,000 square miles, roughly 200 miles in its east-west dimension and 100 miles in its north-south dimension. They were not confined to a single ecological area, as were the Yuma or the Havasupai, for example, but ranged over a wide variety of territory from the low country at the confluence of the Gila and the Colorado to the lofty Bradshaw and Mazatzal mountains in central Arizona, altitudinally from elevations of about 200 feet to 7000 and 8000 feet, from blistering desert to shady mountain streams, from lower Austral life zone to Canadian life zone.

Having this vast range of geographical environment, the Yavapai offer an unusual opportunity for a study of adjustments to various environments by a hunting and gathering people * * *

and on page 248;

