

# SPOTLIGHT ON JON VELIE: A MAN ON A THIRTEEN YEAR MISSION

By Lydia Edwards\*



Dan Wahl

**I**t all started one month after he passed the bar. Sylvia Davis, a black Seminole, came to Jon for help. She had been to many lawyers already. She told Jon Velie her story about how her 13 year old son was denied clothing benefits because he is black. “It hit me as obviously wrong. So I naively took the case on a contingency basis not knowing there would be no real payment. I naively thought I could inform the Bureau of Indian Affairs (BIA) and the tribe they missed this.” What Jon really stepped into was something like the uphill civil rights battles of the 1960s. “It was straight up racism in conversations with the involved parties including the tribe and BIA; the ‘N word’ was thrown all around.” For his entire legal career, Jon Velie has sought to bring justice to Ms. Davis and other black Seminoles as well as black Cherokees.

## BACKGROUND INFORMATION

Jon Velie graduated from University of Oklahoma Law School in 1993. As an undergraduate at U.C. Berkeley he was a Native American studies major. During law school he was a research assistant for Rennard Stickland, a renown Indian Law scholar who is now Dean of Oregon Law School. Before attending U.C. Berkeley, Jon had already developed an affinity for Native American issues. As a child he grew up in the Absentee Shawnee tribal community. Many of his friends were from the tribe and he was exposed to sacred activities otherwise unseen by outsiders. His father, Alan Velie, taught the first course in contemporary Indian studies.

Alan Velie was a Shakespearean professor at the Oklahoma University in the 1970s in the midst of the American Indian rights movement when he was approached by Native American students and agreed to teach a course on American Indian literature. At the time, all the courses taught about Native Americans were concentrated on the past and more in the anthropological sense. He now travels the world talking about Native American literature and has written seven books on the subject.

## WHO ARE THE BLACK INDIANS?

Unbeknownst to most Americans, the Five Civilized Tribes (Choctaw, Chickasaw, Cherokee, Seminole, and Creek) have had long traditions of African membership and enslavement.<sup>1</sup> The Cherokee, Creek, Choctaw and Chickasaw tribes had a form of African slavery that closely mirrored that of Southern white plantation owners. The Seminole tribe, however, has had a unique relationship with its African members. The Seminole tribe and its African members (commonly referred to as Freed-

men) have coexisted together since the 16th Century.<sup>2</sup> Many slaves of white plantation owners ran away to live with the Seminole tribe. Both Seminole Wars were fought over the number of runaway slaves who lived with the tribe. African members could intermarry and take on positions of leadership. Many served as translators between the Spanish, the tribe, and southern white plantation owners.

During the Civil War, the Five Civilized Tribes fought with the Confederacy against the Union. After the war, all of the tribes signed treaties with the United States government in order to maintain their sovereignty and reinstitute an autonomous government. In all of their treaties, there were clauses ordering the tribes to free their slaves and treat them and their descendants equally.<sup>3</sup> Over the years, Congress and the courts have enforced the treaties to assure equal rights for the black Indians.

In the late 1800s and early 1900s, Congress set up the Dawes Commission to record all the members of respective Indian Tribes. Their records are called the Dawes Rolls. The commission recorded black Indians on separate rolls for all of the tribes. Cherokees and Seminoles that were  $\frac{3}{4}$  white were recorded on a “full blood” list while their black members were enrolled on the Freedmen list. The quantity of Indian blood of each black Indian was not recorded by the Dawes Commission.

## DISENFRANCHISEMENT

In 1823, the United States acquired land from the Seminole Nation. The tribe was later compensated for the land in the 1970s. The tribe received 56 million dollars, often referred to as the “Judgment Fund,” for the land. This transaction also marked the tribe’s dispute with the Freedmen because many blood line tribal members did not want to share the money with the Freedmen. The Freedmen were quickly stripped of their membership and denied access to the funds. The Cherokee also denied their black members’ voting rights and membership. In both cases, by losing their membership the Freedmen lost access to federally funded programs such as clothing funds, burial funds, elderly programs, and day care programs.

## LEGAL ISSUES

As sovereign nations, Indian Tribes have immunity from lawsuits in federal and state courts. All civil matters against a tribe must be brought in tribal court. As a result, most suits against a tribe brought in federal court are usually dismissed. So instead of suing the tribe, Mr. Velie tried suing the federal government for not monitoring the discrimination in the tribe. Mr. Velie filed suit against the Bureau of Indian Affairs in the Tenth Circuit Court of Appeals. The government claimed that the tribe was an indispensable party.<sup>4</sup> The court agreed with the govern-

ment and dismissed the suit.<sup>5</sup> The Supreme Court later denied a writ of certiorari.

In response to the Seminole tribe's refusal to share the "Judgment Fund" with the Freedmen, the BIA discontinued payment of the Fund.<sup>6</sup> Although the tribe sued to reinstate their rightful settlement, a district court upheld the BIA's actions to deny funding and refusal of recognition of the Seminole government.<sup>7</sup>

Years later, the Cherokee Nation denied black Cherokees their voting rights in a 2003 election. In the same election, that in which black Cherokees could not vote, the Cherokee Nation changed their membership qualification so that members were defined by blood quantity. This act effectively eliminated the black Cherokees from membership. Although many Freedman can trace their ancestry to a person on the Dawes Roll, the Dawes Commission failed to quantify the amount of blood in the black members. As a result, many Freedmen cannot trace their ancestry through blood and were pushed out of the tribe. Jon Velie filed suit against the BIA for recognizing the 2003 vote and recognizing the tribe's new leadership.<sup>8</sup> In particular, Mr. Velie argued that the BIA's treatment of the Seminole tribe versus its treatment of the Cherokee tribe was inconsistent. The suit is currently being litigated; most recently the Cherokee Nation sought to intervene in the suit in order to file a motion to dismiss.

### "SOME THINK THAT I'M THE BAD GUY"

Since taking Sylvia Davis' case, Mr. Velie has faced criticism. "I have lost clients because of this. I represented the Chickasaw Nation (one of the Five Civilized Tribes) in economic development. That was what I really wanted to do, to help tribes increase their ability to support themselves. After I filed the case for the black Seminoles, one of the Chickasaw council members pulled me aside at a conference and told me I couldn't represent them anymore. Some think I'm the bad guy. My position is that I am a supporter for tribal sovereignty. I believe in [tribal] self-government. I am opposed to government corruption. If a tribal official wants to hide behind the concept of [sovereignty] to oppress other people then I'd like to stop that. Indians and tribes aren't corrupt but corrupt people have discovered the pocket where jurisdiction doesn't exist. They aren't more a part of the tribe than the people they have kicked out. As wrong as it would be for the chief to take money and leave, it is just as wrong to violate their treaties. When they do it, it is a slippery slope. This can really hurt [the tribes] by vio-

lating the treaty. If a tribal official feels that I am the person hurting sovereignty, the real person hurting it is someone hiding behind sovereignty to break laws. I feel no loyalty to them." Indeed some Indian law professors have expressed concern that the continued bickering will only serve to hurt tribal sovereignty. If the federal government doesn't believe the tribes are capable of handling their affairs without excluding half the tribe when money is at stake, the federal government may just completely take over the distribution of future monetary settlements. Many Congressional Black Caucus members, who traditionally are the biggest supporters of Native American rights, have expressed disdain for the treatment of the black Seminoles.

### "TO WHAT END AM I FIGHTING FOR?"

"Most lawyers don't get to deal with law from centuries ago. It is really fun to go litigate something on the violation of the Thirteenth or Fourteenth Amendment. Most lawyers can't argue provisions from treaties from two centuries ago. Indian law is fascinating. It changes from week to week. However, Indian law isn't for the money. I just do what I can where I can on these types of issues. I intended to go into Indian law for development and stay away from civil rights but you end up doing what you do. I am torn fighting for particular clients. To what end am I fighting for? I won't defend the rights of people who think they are above the law and can oppress other people's rights. This is one of the blackest hours in Indian Law. This is not the United States termination of a tribe. Individual Indians are terminating the identity of other Indians. If certain tribal officials are angry at me for calling that up then I'll take that."

"Whether it is Indians oppressing other Indians or black Indians or white Indians oppressing black Indians, their rights are worth fighting for. It's like someone telling you that you are not American. It's like the United States government saying you are no longer an American and taking away your status. The \$125.00 clothing fund denied to Ms. Davis' son was not the point of the thirteen year fight. It was identity. For example, Ms. Marilynn Vann, a black Cherokee, who was excluded from the tribe is the first cousin of the Chief of the Cherokee Nation of Oklahoma and doesn't have a right to vote for him. I thought we were past this as a country but I feel lucky to be the first to do something about it."

*Jon Velie graduated from University of Oklahoma Law School in 1993. He is married to Laura Velie and has three children: Gabbey 8; John 7; and Chloe due May 5. He owns his own practice with his brother Will in Norman Oklahoma and their legal specialties include immigration and Indian law.*

## ENDNOTES

\* Lydia Edwards earned her B.A. in Political Science and Legal Policy Studies at Marymount College of Fordham University and is currently a second year law student at American University Washington College of Law.

<sup>1</sup> See generally DANIEL F. LITTLEFIELD JR., AFRICANS AND SEMINOLES: FROM REMOVAL TO EMANCIPATION 4-6 (1977); WILLIAM LOREN KATZ, BLACK INDIANS: A HIDDEN HERITAGE 50 (1986).

<sup>2</sup> *Davis v. United States*, 199 F. Supp. 2d 1164, 1173 (W.D. 2002).

<sup>3</sup> See generally Treaty with Seminole, Mar. 21, 1866, U.S.-Seminole Nat., art. 2, 14 Stat. 755; Treaty with the Cherokee, July 19, 1866, U.S.-Cherokee Nat., art. 9, 14

Stat. 799; Treaty with the Creeks, June 14, 1866, U.S.-Creek Nat., art. 2, 14 Stat.

785; Treaty with the Choctaw and Chickasaw, Apr. 28, 1866, U.S.-Choctaw Nat. and Chickasaw Nat., art. 2, 14 Stat. 769.

<sup>4</sup> See *Davis v. United States*, 199 F. Supp. 2d 1164, 1173 (W.D. 2002).

<sup>5</sup> See *Davis v. United States*, 192 F. 3d 951 (10th Cir. 1999).

<sup>6</sup> See generally *Seminole Nation of Okla. v. Norton*, 223 F. Supp. 2d 123, 124 (D.D.C. 2002).

<sup>7</sup> *Id.*

<sup>8</sup> See *Vann v. Norton*, No. 03-1711, (filed Aug. 11, 2003 D.D.C.).