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Interviewer: Harry Kersey
Interviewee: Bobo Dean

K: Today is October 30, 1998. I am Dr. Harry Kersey of Florida Atlantic University. I am interviewing Mr. Bobo Dean in Washington, D. C. Over the last thirty years, Mr. Dean has been closely associated with Buffalo Tiger as an attorney for the Miccosukee Tribe of Florida. Mr. Dean, I would like to know some general background on how you became associated with Buffalo Tiger. How did you get involved with the Miccosukee's efforts to protect their lands?

D: Well, back in the late 1960s, I was working as an associate with the law firm--which was then known as **Strausser, Spiegelberg, Creed, Frank, and Kempleman**. [I was working] with the Washington office of that firm. The office is part of the firm in New York. The firm was founded by Felix Cohen, who is the acknowledged authority and, in some respects, almost the creator of federal Indian law through writing his treaties on federal Indian law. Mr. Cohen was an expert in Indian law and immigration and had started the office of that firm here in Washington. His first two associates were Richard **Shifter** and Arthur **Lazarus**, who have been leading authorities in Indian law. I came to work for the firm in 1965 and, at that time, the firm was council to a nonprofit organization called the Association on American Indian Affairs. This organization has been very prominent in the history of Indian affairs and is still a leading nonprofit organization. The firm did not represent the Miccosukee Tribe directly, but it had provided assistance to the Tribe in organizing its Tribal government in the early

1960s through the efforts of the Association The director of the Association, Laverne **Mattican**, whom I did not know because, I believe, she had passed away. When I came on board, Bill **Biler** was the director, and Bill had worked very closely with Buffalo in the period when the Association assisted in their organization of a tribal government under the Federal Indian Reorganization Act. You may know the background and Buffalo's involvement in that, but it is a dramatic story which I was not personally involved in. My understanding is that, having refused to have any real dealings with the federal government, the Miccosukees along the Tamiami Trail decided in the early 1960s that it was time to make clear that they were not part of the larger Seminole Tribe, which had been organized already under federal law, and to take the step of adopting a constitution. While that was not unanimous--and there are still, I believe, Indians of Miccosukee descent who do not join the Tribe because of political reasons--that step was taken. The Association asked the firm, from time to time, to do work for the Miccosukees. As a young associate who came to the firm mainly to work on Indian matters, was assigned, usually by Arthur Lazarus, to assist Miccosukees on various matters that came up, most of which I cannot now remember the substance of them. In 1970, you have seen the file on this, and there are some key papers in there that I want to make sure you have focused on, in general, what happened was that we had a call from Bill **Biler.** [He told us] that Buffalo and the Tribal Business Council had decided that the school and other Bureau of Indian Affairs programs, which had been started by the Bureau

after the Tribe organized or at the same time that the Tribe organized in the early 1960s, could be run better if the Tribe were running them, rather than having the BIA superintendent in charge. I forget the name of the superintendent, but he was a Creek from Oklahoma. I know that one of the concerns was that he chose to live in Homestead, which was a long way from the Miccosukee community. The Association asked Strausser-Spiegelberg, and I was assigned the job of assisting the Tribe in determining whether or not it would be able to contract for the entire BIA program at Miccosukee. I knew and had done some work for other tribal clients related to so-called **BIA** Indian contracts, which, under the ordinary procurement laws, the BIA was enabled because they could give a preference to tribes under BIA Indian to contract various aspects of their program. In general, that had been like laundry services, but also law enforcement. The Bureau had, not infrequently, contracted with the tribe to hire policemen and so forth. As of 1970, there was no situation in which an Indian tribe had entered into a contract to run all of the federal programs provided through BIA. There were two instances I can recall that were supposed to reflect the new policy of allowing tribes to run those programs that the BIA typically do.

K: The so-called Indian Self-determination.

D: That is right. That term was not yet in a statute. There had been in the statute since the nineteenth century a provision allowing the BIA employees to work under tribal direction. It was an old statute almost never used. In two instances,

at the pueblo of Zuni and the Tlingit and Haida, by 1970, that had been utilized. From the Bureau's point of view, that was their great breakthrough, that they were allowing the Tribal Chairman to give direction to the BIA superintendent, but all the employees remained federal. That was one option to achieve what the Tribe wanted. In looking into that, I discovered that there were many who felt that this was a phony, that it is was not real self-determination. I do not know that in terms of my own personal knowledge, but I heard that. We decided, in consultation with Mr. Tiger and the Business Council, simply to submit a proposal to contract for everything that could be contracted, which would be primarily the school but, also, there was some other resource management and some other small programs. We also proposed to contract for the salary they were paying the superintendent and pay Buffalo to administer the programs. Later, I will show the documents that I regard as being key. The person I was referred to in the Bureau was **Bill King**. I want to mention three individuals who I regard as being key in this, what really was an, epic-making new initiative. Bill King, Ernie **Stevens, Sr., and Sandy McNab** were, among a few others, described as the young Turks in the BIA, under **Louie Bruce**.

K: Bruce was later commissioner?

D: Yes, he was commissioner. They were looking for ways to turn a new leaf and really allow tribal governments to function as governments. I called Bill King and described what the Miccosukees wanted to do, and he told me, this is just what the Nixon administration is thinking of, we are about to send a message. That

was Nixon's message to Congress in 1970. It was just about to be signed off. They were going to propose to Congress that any tribe that wishes to can give us a notice, and then the tribe can take over and operate the programs within, I think, 90 or 120 days, some specified time period. They were delighted that a tribe is interested in doing this, and [he said that they would] work with us. With the help of Bill King, McNab and Stevens, all of whom got involved at some point. Tony Lincoln who also deserves credit and who later was the Navaho area director--who, on one day, was the acting commissioner. Mr. Bruce was out of town. We presented the tribe's plan, and Mr. Lincoln signed a letter--this was in early 1971, after the message had gone to Congress--that this year, we will contract with you, and the budget will be based on the unexpended amount. It was a definite commitment that the Bureau would do this, and Mr. Lincoln signed it for Mr. Bruce. Then, we sat down and began to negotiate terms and, as we got towards the spring, in that period, there was one obstacle after another. I think the letter from Lincoln is a key document. Also, the question was raised by the associate solicitor, for procurement of patents and this associate solicitor for Indian affairs, as to whether there is legal authority. After all, we have asked Congress for this legislation and, until we get the legislation, we cannot do this. The position that we took is, well, you have got procurement contracts with the tribes to run police departments; why can they not do everything? There is an area of things that cannot be contracted, so-called inherent federal functions, and we knew that at the time, but most things that are

done at the agency level are not. So, why can you not contract everything in the agency. Those things that cannot be contracted can be pulled back, and the area office can do that. The associate solicitor took the position that there was no authority to do this with a tribe but that if we relied upon the authority of the Johnson **O'Malley** Act, which had been passed in the 1930s, and authorized contracts by the Bureau with private corporations to provide educational and social welfare services to tribes. It really was not a self-determination act. It was to let the Bureau go out and contract with some, maybe, non-Indian private entity to provide those services. If we did that, if we had a nonprofit corporation, then the contract would be legal. So, we recommended to Mr. Tiger that, rather than fighting this point, we simply form a corporation. There was authority that tribes have the inherent authority to charter corporations that are distinct legal entities from the tribe. The solicitor had already ruled in favor of that position. So, we drafted a charter for the Miccosukee Corporation, and it was incorporated, or chartered, by the Business Council under its inherent authority as a tribal government. We brought that charter back, and so the associate solicitor said that was fine. I believe there is a letter in here which was an opinion by the associate solicitor for procurement and patents who said there is no legal authority to do this. There was discussion with him, and he was turned around. A few days later, he withdrew his objections. Then, there were problems with the department. **Harrison Lesh** was at that time, I believe, the under-secretary above the commissioner. In the office of Survey and Review,

they questioned whether there was legal authority to do this. So, each time these obstacles or problems came up, I would either communicate with Mr. Tiger or he would come up here, and we would have meetings. I became increasingly irritated. Mr. Tiger, having been faced with this sort of thing from the government all of his life, was very patient. I will make one possible side. I keep referring to him as Mr. Tiger. That arose out of my concern that when we met with government officials, they would always call him either Buffalo or Buff, as though they were great personal buddies. That struck me as inappropriate, so I felt, as his attorney, I would always call him Mr. Tiger. The unfortunate result of that is that he took up the practice of calling me Mr. Dean. I think we still are on that, although I feel that I know him well enough now to call him Buffalo.

K: If it is any consolation, it took me ten years to get away from Mr. Tiger.

D: [Laughs.] But, in the context of negotiations by the Tribal Chairman of the Sovereign Indian Tribal Government, I felt the way that they behaved towards him was inappropriate, and I tried to make that clear. There is, again, in this file a long letter in which I recited--and this is probably in March or April of 1971--to Mr. Tiger the latest obstacle, and it tells all of the things that we went through. I will not repeat that, but I think your taking a copy of that letter would be useful because that tells the story up to that point. What we had done, finally, was to negotiate an agreement with the Bureau, and we were then told that unless this was approved by the authorizing and appropriations committees of the Congress, the Bureau would not honor the commitment that had been made in

the letter signed by Mr. Lincoln. They would conclude that the Congress did not want them to do this. We did a substantial amount of lobbying with the Florida delegation. We had correspondence from Senator Gurney, which is in the file, and I think a key was Haley, the congressman from Fort Myers [James Henry Haley, Dem. Congressman, 7th District]. He was the Ringling Brothers manager and had been an acrobat, I believe, a fascinating person--met with us, was convinced it was a good idea, and wrote a really sharp letter to the department that they ought to get on with this.

K: Was he still, do you recall, chairman of the committee at that time?

D: He was chairman of the committee that was responsible for Indian affairs, so he was a key player. Ultimately, there was a lot of Congressional pressure, and the committees approved it, but they did require this approval. Now, in all of this negotiation, basically, the main program was the school. That is where most of the money went. We had started in the summer of 1970, before the school year started. We negotiated up until May and when the contract was finally signed and put in effect, I believe, it was like three or four days of the school year were left. But, they did go through with it. They turned over the programs to the Tribe, and the Tribe has operated all the Bureau services from 1971 to the present.

What I would like to add is that, basically, the philosophy of the Miccosukee contract, as distinct from the Zuni and Tlingit and Haida, was the view that if the

Tribe was paying the employees, then they would have a handle on what was going on. As long as the employees were federal, they would be worried about what is the federal position. If the Tribe could hire and fire, they would really control the programs. A number of people, some of them with definite hearts in the right place said, why did the Bureau pick a tribe like the Miccosukee? Maybe they picked them, and I want to say--and how you deal with this is up to you--that at that time, the average educational level in the Miccosukee Tribe was the second grade. People thought they were not going to be able to handle it. What happened was--and it was due to the wisdom of Mr. Tiger and the business council--that the Tribe did not try to employ tribal members who may not have had the skills at that time. They brought in some non-Indians. They have continued to not be reluctant to employ non-Indians where they felt that they did not have, within the Tribe, the necessary skills. The handle they had on the non-Indians, however, is that they could hire and fire them, and they have fired people when they did not do what the Tribe wanted. Then, from 1971-1975, the Miccosukee Tribe, together with a number of contract schools, were the pioneering of doing self-determination through a contract. On the Navaho Reservation, a number of local school boards contracted their schools at Pine Ridge, and around the country, there were other schools. Again, that was a situation where the money went to the tribe or tribal organization. They would hire the employees, sometimes using Intergovernmental Personnel Act assignments, so that people would stay federal, but often hiring them.

Meanwhile, the administration's request languished in the Congress and partly because of the tribal feeling that the proposal in the Nixon Administration was too revolutionary. It did not allow the Bureau to refuse to contract even if it was convinced that the tribe was totally incapable of administering the program. It was entirely up to the tribe. That was the young Turk approach to this. What ultimately happened is at the Bureau, Louie Bruce said, look, we are not getting anywhere with this. Let us try something more modest. **Brice Lay**, a former superintendent with whom I met with several times, drafted a bill which would eliminate contracting problems and the concerns in the department that this was beyond what they had authority to do. That bill was sent as a compromise. That would have basically authorized, expressly, what we were doing at Miccosukee. The key to the Indian Self-determination Legislation, as it was finally adopted, and I cannot take credit for this. I reviewed and made suggestions and consulted with Mr. Tiger about how we should get this legislation done. Another attorney for the **Rayma** school board, Mike **Gross**--the **Rayma** school board was a contracting school--proposed in his testimony that, where the bill said, the Bureau of Indian Affairs was authorized to contract, they changed it to authorized and directed to contract. With that direction came a provision allowing the Bureau to decline to contract based on specific standards. To me, that has been the key to the success of 638, as it became known, public law 93-638. The Bureau and the Indian Health Service, which was also included, gets a tribal proposal. They look at it, and there are certain things that they can ask for.

They can decline but, initially, only on three grounds, the main one being that the services would not be satisfactory. Then, they have the burden of establishing that in an appeal, which now would go up to the board of Indian appeals or ultimately to a court. There is also a declination on trust resources which would not be protected. Then, if the project could not be properly completed or maintained. Later, legislation has added a couple of other declinations. There are five. It is very difficult for the Bureau to exercise its right to decline. It really has to show some real inadequacy, which probably means that the tribe should not be contracting. Normally, the Bureau will follow, of course, the least resistance and not decline. That has been the experience. That legislation was passed in 1975 and became the Indian self-determination act. I think of the contracts that took place prior to 1975, the Miccosukee tribe's contract and the various school contracts were the precedent and led the way in that. That makes Buffalo's role in self-determination very important.

K: Was he an active participant?

D: Absolutely.

K: The question is always raised. Here is this mountain of correspondence, obviously not written by a man who has limited formal education, so the question is always raised, just like it is raised with historians. Are you really presenting their point of view, or have you tidied it up? What is your feeling of that? You were so close to him.

D: What I can say is that I meticulously, I think he would agree with this, followed his direction. I, of course, cannot speak Miccosukee. The client, although more Miccosukee speak English today, in the 1960s and early 1970s, many older Miccosukees were not fluent in English, and Buffalo was the person who communicated their wishes. The contracting was, in fact, a political issue. It was Buffalo who led the Tribe and persuaded the Tribe. In an election, I think in the early 1970s, there was an opposition, and the vote came out for Buffalo, which was a sanction from the Tribe for going forward. So, I would have to say that Buffalo is far wiser and far more effective than many people that I have worked with in Indian Affairs, many of whom are federal and some tribal officials, or folks, and who are far more fluent in English than he is. I worked closely enough with him to be absolutely convinced of that.

K: So, the fact that the letters were drafted by you, it still reflected his point of view totally.

D: His direction, exactly. That is correct. The point is that I did for the Tribe and Mr. Tiger what lawyers typically do. Notwithstanding the great prejudice against lawyers, lawyers have certain skills. You do not have to be a Miccosukee not to have those skills. The average person on the street cannot write a will that will work. Therefore, I have always felt that our profession did provide a useful service. Sometimes, it charges to much. I would like to recite one incident which I have always remembered. It was a meeting that the Bureau had, and I believe it was after the enactment of the legislation. It was the process of

developing regulations. It was one of the first meetings on that. Two tribal chairmen spoke after the Bureau explained how they were going to go about to develop regulations and guidelines and so on. One of those was the chairman of the Mississippi Band Choctaw Indians, **Chief Martin**, who is still their chairman. Chief Martin was an outspoken supporter of self-determination, and he basically blasted the Bureau. He put on quite a show and blasted the Bureau for trying to cut back on rights which, of course, the Bureau has always tried to do. On the other hand, the chief of the eastern band of Cherokees, who was then a **Mr. Crowe**, spoke and denounced the act and said that this is just like the termination legislation and that no consultation had taken place. He called it the Indian Self-termination Act and did not want to have anything to do with it; the federal government should forget about this and so forth. So, you had these two significant tribal leaders taking opposite positions. It was actually a meeting, a briefing, for eastern area tribes. Then, I remember Mr. Tiger getting up and saying, now, I have great respect for my good friend, Chief Martin. [Then he continued], I really think that everything that he said was very good, for his tribe, and I have a lot of respect for my good friend, Chief Crowe, and I think everything he said was really good for his tribe. The thing that we need to be clear on is that each tribe has the right to follow its own way. His speech, which was longer than what I have reported, but that was the gist of it, calmed down that consultation meeting. The point gradually emerged that you did not have to contract if you did not want to. This was not something being forced on tribes,

but it would give tribes an option to contract. I have watched him, in many instances, play that kind of role which, to me, was impressive in terms of his understanding of the people that he was dealing with, in what I would describe as wisdom, which has very little to do with formal education. I think of the old expression about educated fools. People can have many degrees but not really have a perception about the people they are dealing with or not be able to communicate effectively. The tribe has gone on. It has always been in the forefront of self-determination; played a role in amendments to the act to strengthen it; submitted testimony; played roles in the development of better regulations; and continues to do that.

K: That is a wonderful summary of the self-determination. Maybe we could move on. There are other items that I listed for you to look at. Of course, the mammoth one here, other than what had transpired in 1970 and 1971, has to be the act of 1982, in terms of finally establishing an agreement. Would you agree with me that these are _____?

D: Yes. Yes, the land situation.

K: That took a long time in coming to, as I recall, because there was a lease in 1960, or they thought they had a lease. Then, the Attorney General's position in 1975 that said that there were some problems in how that lease had been granted and threw the whole thing back up for negotiations, I recall.

D: It was a license, basically. It was revocable license. One thing I recall, and you may have come across this, is that Governor Collins was involved in meeting

with them. The idea was that this land which was north of the Tamiami Trail--you are familiar with the establishment of the park and how the Miccosukees were basically living in what became the park. The legislation establishing the park had a proviso that this would not affect Indian rights. Then the park service was prepared to move them out anyway and ultimately agreed that they would have this little 500-foot strip on the northern edge, which is where the community is. Then, across the Tamiami Trail was this undeveloped area which the Miccosukees wanted to have some rights to. They also had rights in the so-called State Reservation, which is now called the Alligator Alley Reservation because Alligator Alley runs through it. That had been a State Reservation provided to all the Florida Indians, and that ultimately was interpreted as meaning the Seminole Tribe and the Miccosukee Tribe as the two organized tribes.

K: I think the legislature finally officially divided them.

D: That is right. It was ultimately partitioned. I believe, at the time it was partitioned, the state authorized the transfer, if they wanted to, to transfer it to the federal government so it would become a Federal Reservation. The problem with that reservation is that the Miccosukees did not live up there. The area they were more interested in was the area right across the road. The revocable license was something that was issued before I had any contact with the Miccosukees, but that was one of their problems. Their rights in it were very

limited, and it was revocable. So, there was an effort to negotiate a perpetual lease agreement. Ultimately, we advised the Tribe to file a suit.

K: That was the 1979 suit.

D: That is right. The negotiations were not getting anywhere. The Tribe really did not want to sue. It had a policy. It did not want to sue the state, but basically decided to do it because we were not getting any place in talking with the state. I think what is interesting is a key to the leverage was a legal issue which we uncovered and described to Mr. Tiger and the Tribe that we felt should be raised. That involved the so-called 1839 Reservation which was, in a sense, the Treaty which ended the Seminole War. It was in 1839 and then later reaffirmed, I believe, in 1842 by the military, signed off on by the military commanders. It had never been approved as a treaty by the Senate, but it was an agreement.

K: This was Macomb?

D: The **Macomb Settlement**. The effect of that was that, basically, the war would be ended with the boundary for the Miccosukees behind which they would withdraw. There was also a buffer zone. It was essentially southwestern Florida with a line going through the middle of Lake Okeechobee, I believe, following the Kissimmee River for a while and maybe the Caloosahatchee.

K: Then the Peace Creek over to Charlotte Harbor.

D: The Peace Creek, that is right. That whole area. Now, that area, of course, included, by the 1970s, Fort Myers and Marco Island and a whole bunch of places of very valuable real estate. We discovered a wrinkle, that pursuant to

that agreement while it had not been approved by the Senate, the lands had been withdrawn from the public domain and set apart for the Indians by, I think it was, President Tyler. Anyway, it was presidential order that withdrew the lands from the public domain so that folks would not go in and stake out claims and disturb the Indians. The last Seminole War was in the 1850s.

K: 1855-1858.

D: The so-called Billy Bowlegs outbreak, and that resulted from folks going in and surveying in his farm and caused him to fight. Then, he and some other Indians were then removed. But, at the time that surveying took place, the land had not been restored to the public domain. There is no evidence that the lands were ever restored to the public domain. So, our suit claimed that these lands were not in the public domain. Therefore, although the Indian Right of Occupancy could be terminated, it had never been terminated. We actually were able to get in the *Miami Herald* and other papers maps that showed this area. That did have an impact. This was after the main case had come up, and title companies were very upset about Indian claims. While the Miccosukees and Buffalo had explained to me, their policy of not wanting to be confrontational in dealings with the state, they did go along with applying this pressure. And, it worked, and we began to negotiate toward a settlement. Ultimately, there was what is called the Florida Indian Land Claims Settlement Act of 1982 in which the tribal rights under that executive order of 1839 were relinquished, except with respect to certain areas. The areas that the Tribe got confirmation to was its part of the

State Reservation that was federalized as a result of the settlement. Also, a perpetual leasehold in the so-called license area. What was not resolved was the status of the lands within the Everglades National Park, the permit which, initially, had been issued to the BIA and then later issued to the Tribe. Very recently, Congress has enacted legislation that does change that status and resolves the rights of the Miccosukees to remain within the park. That was just this year. That was something that was still pending. The 1982 legislation was a major step in achieving what the Tribe had wanted in terms of having some permanent land they could regard as their homeland.

K: The Macomb Treaty Claim was also part of the Seminole Tribe's action, but the Indian Claims Commission dismissed that.

D: That is right, and the distinction there was the nature of the claim. In the Indian Claims Commission, it was a claim that this land had been taken and, therefore, the Tribes are entitled to compensation. That was decided by the claims commission; they were not entitled to compensation which is probably, under the law, unfortunately, a correct interpretation. The principle was that the rights accorded by that treaty, or that alleged treaty, did not provide compensable rights. It provided a right of occupancy, but the federal government can take it back, as they can take Aboriginal Title without compensation, but Congress does not provide especially for compensation. That was a tragic failure of **Felix Cohen** in, I think it is, the **Teton Case** in the early 1950s in which the court held the rights of Indians to occupy lands because they have occupied them from

time immemorial is not good against the United States as the sovereign. That was a horrendously embittered, really sad point in his career. Of course, those of us who are sympathetic to Indian Rights would think it was wrong, but it is now the law. If the government has entered into a treaty or deeded land or, in some way, recognized the Indian ownership as the 1982 Act did, then it is protected by the Fifth Amendment, against taking without just compensation. The Aboriginal title is not so-protected. That is embedded in the racist background of our dealings with the Indians. We did not regard their ownership, under their laws, as being good in what **Justice Marshall** called the courts of the conqueror.

K: You bring up Justice Marshall. I am not an attorney, but I know a little bit about Marshall. Even in his, **Johnson D. McIntyre's** decision, where he talked about inherent rights and inherent sovereignty, it seemed like it was sort of a halfway recognition.

D: It is halfway.

K: He said we have it but now, if you want to sell your land, you have to sell it to the government.

D: That is right.

K: It seemed like it had been _____.

D: The protection is that the Aboriginal rights are good against a private party, a private trespasser, or a private land company. What Marshall did establish was that the sovereign--and that was based upon the practice of George III. This is digressing, but my own feeling is that Marshall, in his approach to Indian law

matters, gets mixed credit. But, his approach was far better than that which was taken by some of the justices on the court at the time, who basically took the position that the Indians had no rights and needed to respect the white man and said that in their minority opinions in Cherokee Nation. That is clear. Then, Marshall, in the *Wooster vs. Georgia*, really laid the ground work for such Indian Tribal rights as we have. It makes them clearly subject to federal law almost completely, but in land, if they really do own it, then it is protected by the Fifth Amendment just as your land or my land would be. The idea was that Aboriginal title is really not ownership; it does not rise to the dignity of being protected.

K: So, they are really in much better shape, as you say.

D: If the land is held by the United States in trust for the Tribe, and the Tribe is the beneficial owner, its ownership is as good as anybody's. The trust title is useful because it helps to alleviate state control, protects the Tribe some from state control, and gives the United States a trust relationship. There are some Indian lands like the Pueblos in New Mexico, which have basically been treated, finally, by American law in the same way as trust land, but there, the Pueblos hold their land as grants from the king of Spain. The title is in the Pueblo, but the courts held that the title was restricted, that the United States has the same role with respect to those tribes and their lands as if it held the title. Essentially, that enabled those Pueblos to have the benefit of Indian programs, rather than being treated, essentially, as non-Indians. So, although it sounds like it is a curtailment of Indian rights, it really was not. The curtailment would have worked

the other way because anybody could go in, then, and buy lands and ultimately take the land away from the Indians. It has happened.

K: To bring us back to 1982 then, actually the act is a great advancement for the Miccosukee rights?

D: That is right. That is my view. It did not solve everything. It was not perfect. It was a negotiated settlement, so it did leave things but basically, the Tribe has continued to work on that. I am wondering, one of the points in your question here relates to the Alligator Alley issue.

K: Yes.

D: I can just briefly address that because that is in the background of the new, what the Tribe has achieved, which I am not directly involved with. Although we were in the early stages, **Mr. Layton** has handled the more recent negotiations because there has been a new agreement with the state. When the decision was made to build Alligator Alley, which would cross the Miccosukee Reservation--that is the former state federalized reservation--the state came to the Tribe and obtained what was called a drainage easement. They obtained the right, the Tribe approved, for them to build a highway and to have a drainage easement along the edge of the highway. The Tribe received certain benefits. It was a negotiated arrangement. As a result of the work that we were doing, it became our view that the state was using that drainage easement as a borrow canal. The distinction is that the drainage easement is for drainage. The borrow canal is to use the dirt for a productive purpose and, in fact, they used the dirt to

build the highway. The compensation provided to the Tribe was not nearly enough to compensate them fairly for the borrow canal. So, back years ago, we began to have discussions--and this was while Mr. Tiger was still the chairman--with the state about reopening that issue. There are two anecdotes about that, that struck me as interesting. One was sitting across from the state people at the Department of Transportation and, I think also, the Water District, South Florida Water Management, they were all kind of involved in this because the easements passed back and forth. The Department of Transportation was an ultimate officiary of it. One thing that I remember, sitting across from the state officials and their saying to me, well, you just made a bad deal with us and, now, you are trying to reopen it. You are just mad because you did not bargain hard enough. That really was an admission to me that they knew that the compensation that they had offered was not adequate. The other thing, when I pressed them about borrow canal, one of the officials, and I cannot remember which agency, looked at me with a very lofty face and said, well, borrow canal is not a technical term that we use in our work. I have never heard anyone confirm that, that statement made any sense whatsoever. He, in fact, said borrow canal, what is a borrow canal? Well, the Tribe did pursue that and, as a result of filing litigation with respect to additional compensation, after lengthy negotiations, a settlement agreement was reached in which the state, I believe without admitting any wrongdoing, has provided substantial additional land rights and compensation to the Tribe.

K: Around $2.1 million, something around $2.1 million plus other rights.

D: That is right, plus other rights. It is unfortunate that it is necessary for tribes to be litigious. The Miccosukee did have this policy and approach that they really did not want to have to go to court, but it is not their fault that they had to go to court in this case. I think that it was important that number one, there were specific benefits and advantages that the Tribe wanted, and this was a way of obtaining those. It is also important that the state recognize that when it deals with Indian tribes, it has to deal not as though it is dealing with children but with governments that have significant rights that need to be respected.

K: Two other points, briefly, that we might just talk about, and I know they go way back, the items up at the top there, on the Jet Port and the Big Cypress Preserve. I know you were involved in that, maybe not as much as you were in the items we have been talking about. But, it seems like the Miccosukees always seem to be in the line of fire on something like this. Do you have any recollections of that?

D: I was not directly involved on the fight against the Jet Port, but I know generally--and you would probably get better information from Mr. Tiger--but I do know that when they built the preliminary runway, training site, they apparently built it right over a sacred Miccosukee ground. There is no question that, notwithstanding whatever boundaries the feds draw or the state draws, the area was an area used by Miccosukees from time immemorial. They did not pay that much attention to the boundaries, and their were Miccosukee villages within what has

now become the Big Cypress Preserve and the Green Corn Dance had been held there. My understanding that the Green Corn Dance is not always held in the same place, and that also the villages traditionally have moved. But, the whole Big Cypress area was an area of Aboriginal occupancy and raises this issue, that the title was not recognize. But, there was no question that there had been, and continued, Aboriginal occupancy. I guess you know that in 1982, I left the **Creed-Frank** firm, and I might fill this in. After doing the work for the Association, the Miccosukee Tribe then hired us as its council, hired **Strausser-Spiegelberg** as its council. Then, when I left that firm in 1982 and we founded _____ and Walker, for some years, the tribe used both firms. **Arthur Lazarus** continued to give them advise, and I gave them advise primarily on the BIA and _____ contracting area. So, it may be that some of this, the Jet Port was maybe that Arthur was more involved with. I do not remember that.

K: Some of your correspondence that I saw was, I will not say a superficial level but, a minimal level of involvement.

D: That is right. What I was involved with is when the Big Cypress Preserve Act was enacted, which ended the notion of building an airport out there and set it apart as a wilderness kind of preserve. We represented the Tribe in obtaining some specific language to protect existing tribal rights, including economic rights. Then, there were regulations that were developed, and we represented the Tribe.

K: That seemed to be a struggle to get that language. Senator Jackson seemed to go back and forth on this a good bit. What was the problem?

D: Right. Well, with the statute, we did not have that much of a problem, but once we got to the point of dealing with the Park Service, my recollection is--and I have not reviewed the file on this but--the real bottom line issue was what were the existing rights. In other words, are you going to take a narrow view and take a picture as of the date of the enactment, what are Miccosukees doing right now? Or, are you going to recognize that this is a process? One of the areas which we did fight for, and I believe successfully, although I am not current on exactly how it is working now, is that there were Miccosukee families who had traditionally taken cypress poles because they had a business of building chickees for the non-Indian market. Our position was that this was a traditional use, that certain Miccosukee families were making. Another problem is that if there is an existing village, if traditionally the villages have moved, or the campsites have moved, then our position was that they can continue to move, in other words, the pattern of use be maintained. A lot of the work on that was done by **Dean Swagey**, in our office. He is now a council to our firm, but he is an environmental law specialist. He was involved in commenting on and working with the Tribe in that area. There have always been--and I am not sure if they are all resolved--issues between the Tribe and Park Service in terms of the administration of the Big Cypress. At least, there was recognition of the rights of

the Indians, both Miccosukees and Seminoles and unaffiliated. There are also Indians there who are not members of either Miccosukee or Seminole.

K: Would it be fair to say, just looking back over these list of things we have talked about, starting with the Jet Port and the Big Cypress and, certainly, the contracting and leading on to 1982, that all of these were sort of a cumulative build-up of sovereignty, in terms of reinforcing tribal sovereignty. It seemed so to me and, from a legal perspective, you have pointed out a few flaws here and there, but the cumulative effect is to enhance the sovereignty of the Tribe.

D: Let me make one comment, and then I am going to have to do this interview. But one comment which I suspect is a continuing issue, and I see it raised from time to time in questions that I get asked. In a sense, you can say that the sovereign rights of the Miccosukee Tribe and their land rights are far more embedded in the laws of the United States and of the state of Florida today than they have ever been before, certainly in comparison, say, with the late nineteenth century. On the other hand, in comparison with the late nineteenth century, the Miccosukees are far more embedded in the American society. For Miccosukees with a long memory, and my guess is that many of the older people, particularly, do and some of the younger people, if they look back to the pre-1960s period, that may be viewed as a kind of golden age. In particular, I believe you have written about the period when they were really quite prosperous because of the trade.

K: Hunting and trapping.

D: Hunting and trapping--and they were let alone. I remember back in the 1950s, before I had any direct contact, I think, it was **Ingraham Billy** who was quoted in the paper as saying, "Give us land nobody wants and leave us alone." Now, that has not happened. The Miccosukees have not been let alone. I think a decision made in the 1960s by the tribal leadership, more than just Mr. Tiger, but he played an instrumental role in that, was that they recognized that they were not going to be let alone. It was essential, if they were going to survive, to get involved in, what the Indians like to call, the dominant society. That has led them now to having a very successful gaming enterprise. It has led to an economic base which is far advanced over what they had before, but at the same time, requires a degree of acculturation which nobody was imposing on the Miccosukees in the 1890s, or even down to the 1950s.

K: It is evolutionary.

D: That is right, and it is still going on. As always, the future is uncertain. I guess I would like to leave you with one comment I always make when people have asked me over the years. Something that I became aware of with the Miccosukees is that they were determined to remain as a distinct community, notwithstanding the relatively small size. One thing I have not mentioned that I did is that I helped them develop a criminal and civil code, and a court structure which functions. I wrote it up, a lot of it. But, I met with a law enforcement committee---this would have been in the 1970s--most of whom were non-English speaking. The present chairman, Mr. Cypress, interpreted. The decisions were

made by that committee, and we went through each and every provision, and they would decide whether they wanted this or that. That was a really enlightening experience for me. Some tribes have simply adopted codes without even knowing what was in it, told the lawyer, well, give us a good white man's code. The Miccosukees did not do that. I have been asked, what do you see in the future of Indians 100 years from now? Will they not be assimilated? And, basically, my answer has been no. I also say, when you ask that, you are thinking about assimilation to American society as it is today. I have not the foggiest idea what American society will look like 50 or 100 years from now. We might all be speaking Spanish. It is a continually changing thing, but there is no doubt in my mind that 100 years from now, there is going to be a community that still identifies itself as Miccosukee, as there will be a Navajo community and as there will be Sioux, Lakota, communities, and they will fit in to whatever kind of society we have at that time. That is my parting shot.

K: Thank you very much. It was a wonderful interview, and I will have it all typed up and send it to you for your review.