

Update on the Key Role Played by Dennis Hastings' and Margery Coffey's WISR Dissertation in Case Heard Before the US Supreme Court!

Breaking News! March 23, 2016: US Supreme Court rules unanimously in favor of the Omaha people, in a case regarding the Omaha's rights and sovereignty, and in which the WISR dissertation, by Dennis Hasting and Margery Coffey, on the history of the Omaha people provided key evidence. Justice Clarence Thomas wrote the decision.

The Supreme Court heard arguments on January 20th, and subsequently the following press release from the Omaha Tribal Historical Research Project points to the key role played by the WISR doctoral dissertation on the history of the Omaha people in the face of the European invasion, "Grandfather Remembers" by Dennis Hastings and Margery Coffey.

WISR's remarkable capacity to provide the institutional flexibility for world-class academic research can find no better example than the joint dissertation proffered by In'aska: Dennis Hastings and Margery Coffey: Mi'onbathin entitled "Completely Illustrated: Grandfather Remembers — Broken Treaties/Stolen Land: The Omaha Land Theft," (2009.) The yet unpublished work was referenced as a key document in the legal record filed on behalf of the Omaha Tribe of Nebraska and Iowa at the Tribal Court and District Court levels for litigation.

The Smith vs. Parker case was originally brought before the Federal Court in 2007 by the Village of Pender, challenged the external boundaries of Reservation lands imposed upon the Omaha by the U.S. Government originally through an 1854 Treaty. Pender lost the decision in all the lower courts. The state of Nebraska joined the village in a final appeal to the U. S. Supreme Court changing the name to: Nebraska vs. Parker (Docket 14-1406.) Oral Arguments before the U. S. Supreme Court were heard January, 20, 2016. "By far the most detailed account of the loss of Omaha lands during these years can be found in In'aska and Coffey, "Grandfather Remembers," pp. 491-620, 791-795, 802-804, passim," wrote Dr. R. David Edmonds of the University of Texas, cited in Joint Appendix, Volume 4, Page 1007, footnote 205, compiled by the US. Supreme Court.

The "excellent report," as it has been referenced, was based upon a 1,500 page manuscript with 1,500 historic photographs and artwork, many of which have never before been published; 126 pages total. Dr. Edmonds not only paid the WISR/OTHRP crafted work and the Omaha the highest professional compliment, but also delineated important criteria through which to present and interpret Native American history. Included in Dr. Edmonds' cited references were not only key passages of original research unknown to the authors of the published books on the subject — including one that was a finalist for the 1995 Pulitzer Prize; but also, a fictional parody and photographic montage. These are innovative narrative devices which, once published, will likely make publishing history by incorporating such stories and photographs for a visually-oriented culture rooted in oral history, demonstrating an equal weight of these stories and images in conveying tribal history as do "words." It will be used in creating a curriculum on the Omaha culture and history for the Omaha people. Just as important, given the fact that 80% of all Indian Reservations in the United States today are non-tribally owned, "Grandfather Remembers" is the first and most detailed account of the loss of tribal lands in the post-Reservation era.

The forthcoming book is thereby a model for the next half-century of archival research in the 21st Century, as The Omaha Tribe of Francis La Flesche and his collaborator Alice Fletcher was in anthropological field research, over 100 years ago at the birth of the 20th Century. This achievement with "Grandfather Remembers" provides key insight into how these lands all over the country were

diminished through deceit, stealth, thievery and crooked sales, a history in the last third of the 19th Century whose only human rights equal in “America” is that of the prior 200 years of slavery itself, and are being pushed again by wealthy forces in American government today.

Dr. Hastings and Dr. Coffey are currently preparing their dissertation manuscript for publication through WISR’s Academic Press.

OTHRP (Omaha Tribal Historical Research Project, Director and Founder, Dennis Hastings, and Assistant Director, Margery Coffey—both WISR PhD Alumni) Previously Reported on the Background of this Case:

Walthill, Nebraska—On January 20th the Supreme Court of the United States held oral arguments in Nebraska vs. Parker (Docket #14-1406). This case is known locally as Pender vs. Omaha Tribe.

According to the U.S Supreme Court’s website, the two questions before the court in this case are: In *Solem v. Bartlett*, the Court articulated a three-part analysis designed to evaluate whether a surplus land act may have resulted in a diminishment of a federal Indian reservation. See 465 U.S. 463, 470-72 (1984). The Court found that the “statutory language used to open the Indian lands,” “events surrounding the passage of a surplus land Act,” and “events that occurred after the passage of a surplus land Act” are all relevant to determining whether diminishment has occurred.

The questions presented by the petition are:

1. Whether ambiguous evidence concerning the first two *Solem* factors necessarily forecloses any possibility that diminishment could be found on a *de facto* basis.
2. Whether the original boundaries of the Omaha Indian Reservation were diminished following passage of the Act of August 7, 1882.

Transcripts of the oral arguments are made available by the Supreme Court to the public the same day the arguments are presented. Recordings of the oral arguments are made available on Friday of the same week.

This case was originally brought before a local Federal District Court in Omaha, Nebraska by the Village of Pender in 2007 to challenge a decision by the Omaha Tribal Council to exercise its sovereign authority in levying a 10% tax on all liquor sales made within the exterior boundaries of their Reservation which were imposed upon the Omaha by the U.S. Government through an 1854 Treaty.

The Federal District Court judge deferred the case to the Omaha Tribal Court to exhaust all legal remedies in that jurisdiction before taking the case under consideration. In a 45 page decision the Tribal Court ruled in February, 2013 in favor of the Omaha, a decision then taken under advisement by the Federal District Court.

A year later in early 2014 the Federal District Court affirmed in even stronger legal language in a 49 page decision the judgment made by the lower tribal court, which prompted the State of Nebraska to intervene on behalf of the Village of Pender for appeal to a three judge panel of the Eighth Circuit Federal Court of Appeals, situated in Kansas City, Missouri.

That appeal was made *de novo*, which means “as if the case were new.”

In a five page decision released in December, 2014 the three judge panel again ruled in favor of the Omaha, utilizing even stronger language than the District Court declaring how the previous court rulings were constructed “. . .in such a fashion that any additional analysis would only be unnecessary surplus.”

Nebraska and Pender then appealed to the full 11 judge panel of the Eighth Circuit, which declined without comment in February, 2015 to hear the case, setting up an appeal by the State of Nebraska/Pender to the Supreme Court, which accepted the case for review last October.

In their Petition to the Court, the State of Nebraska and the Village of Pender conclude:

For over 130 years, the people and businesses of the Pender, Nebraska area have developed justifiable expectations that their community was under the jurisdiction of the State of Nebraska. The lower courts' decisions in this litigation destroyed that longstanding status quo and upset the public's justifiable expectations. . . . Doing so, however, ignores this [Supreme] Court's observations that "when an area is predominantly populated by non-Indians with only a few surviving pockets of Indian allotments, finding that the land remains Indian country seriously burdens the administration of state and local governments." (emphasis added)

In response, the Omaha Tribe concludes:

At the heart of this Court's diminishment doctrine is the basic proposition that deprivations of Indian sovereignty must come from congressional action. . . .adopting Petitioners' freeform theory of de facto diminishment would undercut Congress' power to determine the boundaries of Indian reservations. . . .[b]asing a reservation's boundaries on ever-changing demographic trends, as opposed to laws fixed in the statute books. . . .as reservation boundaries are defined clearly — which would not be the case under the expansive de facto diminishment doctrine Petitioners champion — state, local, tribal, and federal officials can work cooperatively to allocate and, where appropriate, share jurisdiction.

Those interested in following the case at the Supreme Court level may refer to the website of the American Bar Association, at http://www.americanbar.org/publications/preview_home/2015_2016_briefs/14-1406.html, linked from the U.S. Supreme Courts website, for review of the primary and amicus briefs filed in this matter.

A fuller treatment of the entire case since the original filings in 2007 may be found at Turtle Talk, a website of the <https://turtletalk.wordpress.com/>, typing in the word "Pender" in the website search box, then clicking on the various entries concerning the case.

The Omaha Tribal Historical Research Project (OTHRP), the Official Cultural Authority of the Omaha Tribe of Nebraska and Iowa, played a key role in providing historical context for the legal arguments being presented to the court regarding whether "events that occurred after the passage of a surplus land Act" have relevance in this case. OTHRP's views may be found at <http://www.indianz.com/News/2014/016004.asp>. A rewritten and shorter version is found at http://norfolkdailynews.com/blogs/pender-case-was-doomed/article_66287130-92bb-11e4-bb61-13fa22bb9c51.html.

Independent commentary on this case by a columnist for Indian Country Today may be found at <http://indiancountrytodaymedianetwork.com/2015/12/19/judging-indian-character-nebraska-v-parker>

OTHRP encourages all interested citizens of the United States and sovereign Native Nations alike to take advantage of our 21st technology in being able to readily access the key materials available online, and be a participant in history.