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CERA NEWS

MANY CULTURES • ONE PEOPLE • ONE LAW

It May Take a Constitutional Amendment to Bring True Justice to Indian Country

By Ed Des Lauriers

By virtue of the Indian Citizenship Act of June 2, 1924, all Indians born in the United States are citizens of the United States, and citizens of the states they live in, even though they may live on a reservation. They can vote. They pay most local, state and federal taxes, including sales taxes. (They do *not* pay tax on land held in trust for them, or on income from that land.)

In 1961, a Constitutional Rights subcommittee of the Senate Committee on the Judiciary undertook a thorough investigation of the legal status of Indians and the problems they had exercising their constitutional rights in their dealings with federal, state and tribal governments. The work of the committee resulted in the passage of the Indian Civil Rights Act of 1968, a document patterned after the original Bill of Rights, which said that Indian tribes exercising their powers of self-government would be subject to many of the same constitutional limitations and restraints that are imposed on federal, state and local governments.

A noble effort that's not working.

A Supreme Court decision in 1978 (Santa Clara Pueblo v. Martinez) pretty much rendered the Indian Civil Rights Act worthless. The court ruled that Indian tribal governments themselves could decide how and to what extent Indian civil rights would be applied. The result is that Indians today – our first Americans – are consistently denied constitutional protections of speech, press, and perhaps most importantly, the protections of a fair and just legal system.

"If you cannot afford a lawyer, one will NOT be appointed for you!"

Even the Civil Rights act of 1968 did not include the right to counsel except at the defendant's "own expense", but that is not the largest problem with the Indian in-justice system. The major problem is that there is no separation of powers on the reservation. Tribal leaders are the executive, legislative, and judicial branches of government all rolled into one. Not since the Feudal Lords our forefathers crossed the Atlantic to escape, has there been such tyranny in a system of government.

Due process is a different process in Indian country.

Generally, Indian citizens subject to the jurisdiction of tribal governments must first exhaust venues provided by tribal governments if they wish to enforce their equal protection guarantees in federal court. (And, as we've mentioned earlier, counsel is not provided except at defendant's expense.)

In a noteworthy case a few years ago, during the 2 year reign of Roger Jourdain on the Red Lake Reservation in northern Minnesota, his administration controlled a court that, according to *Minneapolis Star and Tribune* investigation, denied jury trials, jailed people for days without specifying charges, and denied prisoners the opportunity to post bail. Jourdain and his council actually managed to bar lawyers in the state of Minnesota who could qualify on that basis.

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The Tribal Response to the Hicks and Atkinson Decisions

By Darrel Smith

Several recent Supreme Court decisions have been very encouraging. In the recent Nevada v. Hicks case, the Supreme Court allowed state wildlife officials to enter a reservation to enforce state regulations that had been violated off of the reservation.

In the Atkinson Trading Co. v. Shirley, the Supreme Court declared that the exceptions that allow tribal government jurisdiction over non-members listed in the 1981 Montana v. United States case really are exceptions. The 1981 Montana case limited tribal jurisdiction over non-members to exceptional situations:

"A tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements."

"A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Since the Montana case, tribes have been arguing that essentially everything falls under one or more of these exemptions and lower courts have had a tendency to agree with them. The history of the Atkinson Trading Co. v. Shirley case is instructive. Atkinson lost in tribal court, tribal appellate court, U.S. district court, and U.S. appellate court before winning with a 9-0 decision from the U.S. Supreme Court. The Supreme Court in its Atkinson decision appeared to be frustrated with this situation and wrote an opinion stating that the exceptions in Montana really are limited exceptions and don't obliterate the general rule restricting tribal authority over non-Indians.

When the Supreme Court decides an issue, most individuals and groups in this country consider the issue settled. The reaction of the tribal establishment to recent Supreme Court decisions clearly demonstrates their level of respect for the Court, their agenda and the importance they attach to their agenda.

On August 24, 2001 the Navajo tribal council approved a Policy Position by a vote of 62-0-0, "in preparation for presentation at several regional inter-tribal meetings, including, a Tribal Leaders Forum scheduled on September 11, 2001 in Washington D.C., sponsored by the Native American Rights Fund, National Congress of American Indians and the National American Indian Court Judges Association." In this Policy Position the Navajo Council "encourages all Indian Nations to unite as one…to work with the U.S. Congress…Congress must recognize that sovereignty as absolute." The Policy Position defines Indian Country "as (a) all land within the limits of any Indian reservation… (b) all dependent Indian communities within the borders of the United States… and (c) all Indian allotments…" It goes on to state that "dependent Indian community…must be clarified…to mean any area which is Indian in character by reason of population patterns and the existence of distinct Indian communities, including all areas outside a given Indian Nation's reservation and in areas where federal services are provided to Indians, regardless of tribal membership or land status."

The Policy Position asks for "Congressional response to recognition of Indian Nation's regulatory authority in hunting and fishing, leasing and rights-of-way. A congressional recognition of civil authority to Indian Nations including the right to tax and regulate all commercial activities taking place within the exterior boundaries of Indian country. State juris-

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Letter to President Bush on Campaign Finance Reform

The following letter was sent to President Bush February 23, 2002. Darrel Smith's article on the Hicks & Atkinson decision was included as an enclosure.

Dear Mr. President;

Citizens Equal Rights Alliance (CERA) has spent over 15 years, informing and educating the country about the increasing civil and constitutional problems arising from Federal Indian Policies. We believe the current Shays-Meehan bill will increase these problems because it ignores the issue of tribal government campaign contributions. These political contributions are financed primarily from federal funds, state and federal grants and by casino gambling revenues. These revenues total approximately ten to twenty billion dollars.

On May 15, 2000, the FEC ruled in Advisory Opinion No. 2000-05 to essentially allow tribal governments to contribute as much as they choose to political campaigns each year. Under the ruling, tribal governments are considered as a "person", but are not considered individuals. While individuals are limited to the amount they can contribute annually to $25,000, tribal governments are not. In reality, tribal governments are not "persons" or "individuals" or "trade groups, associations and partnerships," or even "special interest groups." They are tax-supported, federally-recognized governments.

According to the National Journal, six of the top 10 soft money donors among interest groups nationwide in 1999-2000 were Native American tribal government interests. Tribal governments are the only governmental entities that can make campaign contributions, and they can make them in essentially unlimited amounts. We think this is clearly unfair and wrong.

In the 1996 election cycle, a report from Center for Responsive Politics showed that tribal government interests gave more than $1.5 million to national party committees. Interestingly, it appears the top individual recipient of this money during the 2000 election may be campaign finance crusader John McCain, who also sits on the Senate Indian Affairs Committee.

Federal Indian policy, federal grants and the Indian Gaming Regulatory Act are intended to improve the social and economic condition of tribal members not to provide political contributions for partisan elections. While tribal leaders sometimes talk about the great economic achievements from gambling (the "new buffalo") the fact is, only a small number of Indians actually benefit, and they often benefit enormously. According to Bill Lawrence, Editor of Native American Press/Ojibwe News, the nation's only major independent Indian newspaper, "... federal government expenditures on Indian reservations have grown, doubled or tripled, in the last ten years. Indian graduation rates are declining. Arrest and crime rates are increasing. Social problems, especially on the reservations, are increasing. Despite extensive federal, state and tribal housing programs, Indians are twenty times more likely to be homeless than the majority population. Despite multiple nutrition programs, Indians disproportionately patronize food shelves--and have the worst health and lowest life expectancies of any identifiable group in the U.S."

Tribal government campaign contributions divert funds designed for the benefit of tribal members. Tribal government campaign contributions can't represent the diversity of their members and effectively force tribal members, without their consent, to donate funds to political campaigns they may, or may not, personally support. Tribal government campaign contributions provide tribal governments with an unfair political advantage because tribal governments can effectively use tax, grant and gambling money that is difficult, if not impossible, for opponents to match. This unfair political advantage will be increased after the passage of the Shays-Meehan bill. In fact, the possibility exists that tribal governments may become conduits for the campaign contributions of other entities. Tribal governments are

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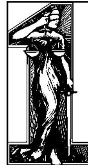

CERA's Mission Statement

Federal policies currently deny millions of people living on or near Indian reservations their full constitutional rights. It is therefore CERA's mission to advocate equal protection of the law so that this nation of many cultures may be one people, living under one system of laws.

CERA's Objectives are to...

Guarantee constitutional and civil rights for Indian Americans living on reservations.

Protect all who live on or near Indian reservations from discrimination by United States, State and Tribal laws and policies.

Ensure the right to own private property on or near Indian reservations.

Ensure the fair administration of natural resources on public lands for the general welfare.

EPA and TAS – Treatment as States

By Elaine Willman, *Executive Director Citizens Standup! Committee*

A policy known as Treatment As States (TAS) must be given serious EPA agency review. Each of us must take the time to write our elected officials and EPA Assistant Administrators. Issues that we must bring to their attention, include:

1. INDIAN COUNTRY.

The definition of "Indian Country" varies in Federal statutes, and within recent U.S. Supreme Court rulings. An inconsistent Federal definition of "Indian Country" promulgates unnecessary delays in projects, and costly litigation across the country. EPA defines Indian Country as ALL lands within the exterior boundaries of a federally recognized reservation. Yet, where reservations have been formally disestablished by Congress (i.e. Mille Lacs Reservation), EPA arbitrarily "constructs" a reservation for purpose of a Garrison-Kathio-Mille Lacs Wastewater Treatment Plant. Another example: U.S. Attorney James Shively recently ruled that the municipalities located on the Yakama Reservation, are not "Indian Country," based upon a predominant (90%) non-Indian population and existence of some 9,728 fee-simple (non-Indian owned) parcels. On "checker-boarded" reservations with majority fee-simple parcels, and reservations that are predominantly non-Indian populations as documented by the U.S. Census, the EPA policy of TAS poses serious concerns to state, county and municipal entities located within or near reservation boundaries. Major concerns include:

> ***An inconsistent Federal definition of "Indian Country" promulgates unnecessary delays in projects, and costly litigation across the country.***

A. A loss of the Constitutionally guaranteed right to representative government, and the right to recourse (appeal). Non-Indian citizens subject to Tribal control of air, energy and water experience a direct loss of representative government and right of recourse; including a Federally constructed taking of such basic public health resources as air, energy and water;

B. A profound change in the legal character of a PUBLIC resource such as air or water, into a non-public (tribal government) property.

C. Justice Scalia wrote in U.S. Supreme Court, Nevada v. Hicks, decided on June 25, 2001, states: "…the Indians right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation. State sovereignty does not end at a reservation border…an Indian reservation is considered part of the territory of the State."

> ***EPA's "special trust relationship" with Federally recognized Tribal governments is being perceived across the country as "no relationship whatsoever" with other citizens and units of government.***

A review and revision of the Federal definition of "Indian Country" should result in a definition that is consistent with Tribal self-government and self-determination, but that does NOT infringe upon or remove non-Indian rights to representative government, and right of recourse for non-tribal citizens residing within actual Indian reservation boundaries. State and local government authority over public resources and non-Indian citizens on reservations is the only guarantee for preservation of Constitutional and States rights.

> ***…we are not "567 Nations Under God." We are "One Nation Under God" including 566 Federally recognized tribes, whose members are first and last, citizens of the United States.***

2. SECTION 6 OF THE 1984 EPA INDIAN POLICY.

This section states: "Sound environmental planning and management require the cooperation and mutual consideration of neighboring governments, whether those governments be neighboring States, Tribes, or local units of government. Accordingly, EPA will encourage early communication and cooperation among Tribes, States and local governments. This is not intended to lend Federal support to any one party to the jeopardy of the interests of the other. Rather, it recognizes that in the field of environmental regulation, problems are often shared and the principle of comity between equals and neighbors often serves the best interests of both."

Section 6 of the 1984 EPA Indian policy is NOT actually practiced in EPA planning, management , permitting and other decision-making processes. EPA staff consistently ignore this critical section of their 1984 EPA Indian Policy completely skewing a process that now "lends Federal support to one party." There is almost zero consideration of state and local unit of government interest and responsibility to non-Indian citizens within an area being considered for TAS. EPA's "special trust relationship" with Federally recognized Tribal governments is being perceived across the country as "no relationship whatsoever" with other citizens and units of government.

3. EPA IGNORES THE U.S. SUPREME COURT.

The EPA is required to follow Congressional legislation and judicial directives but systematically ignores rulings of the U.S. Supreme Court. Cases with origins generally proceeding from the Montana cases, have narrowed tribal governance or jurisdiction over non-Indian persons and lands. Just a few recent cases EPA ignored are:

Brendale, 1989: Tribal government may not zone non-Indian fee simple parcels

Cass, 1998: States may impose ad valorem tax upon alienable lands repurchased by Tribes.

SD v. Yankton, 1998: Congress intended to diminish the Yankton Reservation

Klamath Water 2001: Tribal documents are not exempt from FOIA.

Atkinson, 2001: Tribal government may not tax non-Indian entities on fee simple land

Palazzolo, 2001: The Takings Clause of the Fifth Amendment, applicable to States through the 14th Amendment prohibits the government from taking private property for public use without just compensation.

Nev. v. Hicks, 2001: State authority does not end at a reservation border.

4. AMERICA'S HOMELAND SINCE SEPT. 11TH, 2001.

We are a legitimately endangered homeland in need of strengthening domestic food and energy resources, and economic stimulus. We are the United States of America and Americans. We are not Native-Americans, Hispanic-Americans, Chinese-Americans, Muslim-Americans; nor can we afford to continue fostering this hyphenated-American divisiveness. We can ill afford to parcel out critical resources of air, energy and water to tribal governments that balkanize and negatively impact or outright destroy a region's ability to strengthen domestic food and energy supply.

In the greatest possible leap of our society's imagination, we are not "567 Nations Under God." We are "One Nation Under God" including 566 Federally recognized tribes, whose members are first and last, citizens of the United States. Our country is in need of greatest possible unity at the current time, and Federal Policy must reinforce this principle, perhaps now, as never before.

According to the TAS Matrix posted on the American Indian Environmental Office (AIEO) internet site, there are currently over 144 Tribes pursuing multiple requests for Treatment As States within the 50 United States. This program has profound impact on air, energy and water regulation within State territories, considering some 566 Tribes may also proceed with requests. Decisions by the EPA regarding TAS have direct and often debilitating effects upon our Nation's ability to produce food and energy. This must stop.

> ***Decisions by the EPA regarding TAS have direct and often debilitating effects upon our Nation's ability to produce food and energy.***

It is time to unite and demand fair and balanced EPA policy that embraces the needs of citizens of every ethnicity within every State, without diminishing the rights of such State or the civil and property rights of any citizen. Today the EPA is an autonomous governing nightmare unto itself. It's our own fault if we let this monster keep swallowing up our States and individual properties and rights.

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50 YEARS PAST THE DEADLINE – Part I of III

Why Are Indian Tribes Still Suing Over Ancient Treaties?

By: Randy V. Thompson, Esq. and Brandon Thompson of Stapleton, Nolan, MacGregor & Thompson, St Paul MN

co-authored this article on behalf of Proper Economic Resource Management, Inc. (PERM), a Minnesota non-profit corporation whose mission is the preservation and management of natural resources for all persons.

A Goal Unrealized

This August 13th marks the 50th anniversary of the deadline set by Congress for Indian tribes to sue the United States for grievances arising prior to 1946. Nevertheless, Indian tribes continue to file claims for loss of their treaty rights, loss of land, and other claimed injustices. The special law that allowed Indian tribes to file all claims and then closed the chapter on this part of America's history is now largely forgotten by the courts and the public.

On August 13th, 1946, President Harry S. Truman signed into law the Indian Claims Commission Act. Perhaps one of the most unique tools for judicial intervention in history, this Act created a special judicial body before which American Indian tribes could file claims of all kinds against the United States government. Any claim that any Indian tribe had against the United States, extending back to the American Revolution, could be brought before the Commission. In order to be valid, however, the claims had to be brought within five years of the passage of the Act. Any claims not brought before August 13th, 1951 would be forever barred by the statute. Despite the passage of the deadline, claims that arose from events prior to 1946 continue to be brought by Indian tribes. Congress passed the ICCA in order to allow Indian tribes the opportunity to "have their day in court," but that day has long since passed. The important goal of the Indian Claims Commission has been largely forgotten or ignored, as courts persist in allowing tribal suits. As Congress itself pointed out, the purpose of the Act was to "bring this practice to an end and to settle once and for all every claim [Indian tribes] could possibly have under the categories set forth in the law." Today, a half-century later, the Act's purpose still stands unrealized.

In order to be valid, however, the claims had to be brought within five years of the passage of the Act.

The Largest Real Estate Transaction in History

In order to fully understand the ICCA, an examination of the shifting relationship between the United States and the American Indian tribes should first be conducted. Even before the Revolution, Indians were under pressure to allow settlers to purchase tracts of land tribes had been using, and at times land was taken from the Indians by force. Back in the eighteenth century, however, huge amounts of available land usually allowed settlers and natives to coexist in relative peace. As the years passed, and the United States continued to expand, Congress realized that this cohabitation would not be able to last forever. The United States made treaties with tribes, at first affording them treatment of a somewhat similar nature to that given European nations. This soon gave way to the "removal" policy of President Andrew Jackson, which resulted in Indians from the Eastern states being "removed" to west of the Mississippi River. Rapid settlement in the West, fueled by both the railroads and the California gold rush, put an end to removal, however, and the government began to purchase land from the tribes and settle them on reservations. Tribes were eventually concentrated on land designated as "Indian Territory," (now Oklahoma) or moved to reservations on or near the land where they had once lived.

By the 1870s, nearly all tribal land had been acquired from the tribes, with the American government turning a blind eye to many injustices and actively assisting in some of the Indian's oppression. In 1871, Congress ended treaty making, stating that tribes would no longer be recognized as independent nations or powers. Without a doubt, the shifting policies of the federal government played the primary role in the transfer, with varying degrees of consent, of nearly all tribal land, and in the degradation and even destruction of American Indian culture and way of life. As President Harry S. Truman pointed out, the United States had been dealing with Indian land claims since the country's inception:

Any claims not brought before August 13th, 1951 would be forever barred by the statute.

Instead of confiscating Indian lands, we have purchased from the tribes that once owned this continent more than 90% of our public domain, paying them approximately 800 million dollars in the process. It would be a miracle if in the course of these dealings – the largest real estate transaction in history – we had not made some mistakes and occasionally failed to live up to the precise terms of our treaties and agreements with some 200 tribes. But we stand ready to submit all such controversies to the judgment of impartial tribunals. We stand ready to correct any mistakes we have made.

Adjudication Of All Tribal Claims

As Truman spoke those words, he was preparing to pen his signature on the Indian Claims Commission Act, signing it into law. The federal government, along with most other Americans, realized that wrongs had been committed in dealings with the Indian people. Until after World War II, however, few attempts were made to right the wrongs that had been done. What had happened between the United States and Indians were considered political, even military, matters over which the courts had no jurisdiction. As a result, tribes could not sue in court for damages, and Congress had to pass special acts for each claim in order to allow courts to hear cases or award any compensation to Indian tribes. This system was extremely complicated and time-consuming, which made it difficult for many tribes to successfully receive compensation. This was unacceptable to everyone involved with the issue and a better solution was sought. During the mid-1930s, the idea of allowing Indian tribes to recover for past wrongs in a specially designed body was put forth by John Collier, then Commissioner of Indian Affairs. It took a decade before Congress was able to agree on a bill that would garner enough support to pass both houses and be signed into law, but the Indian Claims Commission Act was finalized on August 13th, 1946.

Both the federal government and Indian tribes welcomed the creation of the Commission, realizing that it would be a means by which to decide all claims outstanding. The tribes embraced the Commission because it gave them the right to file all claims and gave much more latitude than the special jurisdictional acts, while the United States government appreciated the Commission as a way to allow all cases to be heard, decided and forever closed by a single judicial body. It was agreed that the Indian Claims Commission would be a positive development in the relationship between the tribes and the government.

The logistics of the Commission were a bit complex, since never before had such sweeping resolution of Indian claims been attempted. Though the Commissioners were required to be lawyers, typical legal concepts were not always applicable in these types of cases. For example, in most legal disputes, a statute of limitations forces claims to be brought within a certain time of the wrong being committed. American Indian claims, however, had been repeatedly thwarted by government action. In order to be fair, any claims originating after 1776 were heard by the Commission, regardless of how long they had been pending.

The cases brought before the Commission also differed from typical legal disputes in the types of arguments that could be made. Generally, lawsuits must be based on purely legalistic principles, but Congress gave the Commission authority to also hear claims that were moral in nature. Therefore, tribes could bring cases claiming that the federal government had coerced them into signing treaties, or misrepresented agreements, or acted in other ways that could be characterized as violating notions of "fair and honorable dealings that are not recognized by any existing rule of law or equity."

Of equal importance was Congress' understanding that no one should be allowed to litigate a claim forever. In return for the elimination of any statute of limitations on claims filed under the Act, tribes understood that the ICCA would provide complete, final closure to their complaints. If a claim existed by an Indian tribe prior to passage of the Act, that claim was forever barred if not filed by August 13, 1951. As long as the claim was filed before that date, however, virtually any interaction between the government and Indian tribes was subject to question before the Indian Claims Commission. In this way Congress "provide[d] for a final adjudication of all tribal claims."

Their Day In Court

Though the Commission was created to deal with the difficult questions arising from nearly 200 years of shifting federal policies and conflicting relationships, no one was quite sure how to go about answering the questions that had arisen. In order to deal with the uncertainties that lay ahead, Congress gave the commissioners only general guidelines, allowing them to set their own standards for dealing with claims. These individuals came from different backgrounds, different political parties, and different areas of the country. They had a common understanding of the place of the legal world, however, and this allowed them to gradually shape the Commission into a viable judicial body. The commissioners heard evidence from both the tribes and the government, determined which side had the stronger case, and passed judgment. In short, the Indian Claims Commission provided a prolific and effective forum for Indian tribes to have their "day in court."

– To be continued next issue.

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(Constitutional Amendment, continued from page 1)

Civil rights seldom enter the courtroom in Indian Country.

In another case on the Red Lake reservation, a woman reported being…"kicked out of my house a week after my husband died." She says her husband was long persecuted for his political beliefs which conflicted with tribal policies. She was at a probate hearing in a Red Lake Reservation courtroom when, she says, tribal police walked in with an order of exclusion signed by the chairman. She was escorted to the reservation border and told never to come back. She left behind her car and all her belongings. She says her civil rights were never considered.

What American would endorse racially-based courts?

Think of it: African-American Courts, Hispanic Courts, Hmong courts. A thoroughly un-American, un-constitutional concept you must agree. Yet, that's exactly what we have in the Indian in-justice system. While we may think we are doing Indian peoples a favor, allowing the myth of Indian sovereignty to continue under the guise of preserving Indian independence, history and culture, we have created situation of almost complete *dependence* on government programs, and established a nightmarish and redundant tribal court system.

> *"The accumulation of all powers-legislative, executive, and judiciary in the same hands may justly be pronounced the very definition of tyranny."*
>
> — **James Madison**

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in the time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, within its jurisdiction the equal protection of the laws.

While our non-Indian court system is not perfect, it at least attempts to afford us constitutional protections. Don't we owe that much to our Indian Citizens? We tried, and failed to deliver that in 1968. Maybe it's time to try again.

The 5th Amendment to the Constitution guarantees equal protection to citizens under the laws and regulations imposed by the federal government. The 14th Amendment guarantees equal protection to citizens under the laws and regulations imposed by state governments. But neither the 5th nor the 14th Amendments guarantee equal protection to citizens under the laws and regulations imposed by tribal governments. Instead, citizens subject to the jurisdiction of tribal governments must depend on the Indian Civil Rights Act of 1968 for equal protection guarantees.

We think it will take a constitutional amendment to fulfill the INTENT of the Indian Civil Rights Act of 1968.

The equal protection guarantees in the 1968 Act, while modeled after the U.S. Bill of Rights, is not coextensive with the Bill of Rights, and are not immediately enforceable in federal court. Generally, citizens subject to the jurisdiction of tribal governments must first exhaust venues provided by tribal governments if they wish to enforce their equal protection guarantees in federal court. Unfortunately, the separation of powers inherent in the U. S. Constitution is alien to the culture of tribal governments where the executive, legislative and judicial branches are inextricably connected. Therefore, citizens seeking to enforce equal protection guarantees afforded to them under the 1968 Act may , and usually are, subject to tribal government roadblocks which, because of the cost and delays are difficult, if not impossible, to overcome.

Therefore, CERA proposes passage of the 28th Amendment to the U.S. Constitution

Amendment XXVIII:

All persons (including natives and aboriginals) born or naturalized in the United States, (including territories, Indian reservations and trust lands,) and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No Indian tribe, band or community shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any Indian tribe, band or community deprive any peroson of life, liberty or property, without due process of law; nor deny to any person within its jurisdiciton the equal protection of the laws.

And giving reservation Indians these rights would require no costly lawsuits or expensive attorneys. We should simply grant them the rights, they deserve as American citizens.

Hicks and Atkinson (continued from page 2)

diction to tax any activity whether engaged in by Indians or non-Indians must be extinguished…" "In addition, Congress must enact legislation that ensures a substantive tribal role in the confirmation of all federal judges who adjudicate Indian Country matters." "[T]he United States Government… should recognize an Indian Nation's inherent criminal jurisdiction over all persons and offenses committed in Indian Country." The Council states that, "The spirit of Indian nations is so powerful that no one can diminish it if we stand together."

Because of changes in federal Indian policy and expanding reservations, several hundred thousand non-Indians currently live on Indian reservations. Note also that these demands apply to "Indian Country" which includes "dependent Indian communities" and these communities "mean any area which is Indian in character." Thus, they might apply to sections of many of our major cities and other off-reservation communities.

The Tribal Leaders Forum did meet in Washington D.C. on September 11th and according to the National Congress of American Indians' web site they reached a consensus to begin an organized effort to halt and reverse the Supreme Court's erosion of tribal sovereignty. Recognizing that this effort must be comprehensive in its approach, the leadership laid out an overall strategic plan. This plan is very ambitious and it was made clear that in order to achieve these goals, Indian Nations must unify and commit time, resources and effort on a great scale. In summary, the strategic plan is as follows:

I. Develop Federal Legislation to Reaffirm Tribal Jurisdiction

II. Form a Supreme Court Project to Support and Coordinate Tribal Advocacy Before the Supreme Court

III. Promote Strategies for Tribal Governance that Will Protect Tribal Jurisdiction

IV. Increase Tribal Participation in the Selection of Federal Judiciary

V. Develop a Media and Advocacy Strategy That Will Inform Congress, the Public and Tribal Leadership About Tribal Governance and will Promote the Overall Initiative

VI. Implement a Fundraising Campaign to Support NCAI and NARF and Related Expenses in Promoting the Initiative

"At the meeting, tribal leadership from every region of the country concluded that they must initiate a unified national effort to protect tribal sovereignty in the face of the threats posed by the Supreme Court. It was made very clear that tribal leaders must put forward a great collective effort for this initiative to succeed. Four national tribal organizations, NCAI, NARF, the National American Indian Court Judges Association and the National Indian Gaming Association coordinated in putting together the first meeting, and we invite all other tribal organizations to join with us."

The Fed. Bar Assn.'s 27th Annual Indian Law Conference in Albuquerque, April 4-5, 2002, is another example of the tribal response to these recent Supreme Court decisions. It is entitled "Reaffirming Tribal Sovereignty in an Era of Judicial Activism". One of the principle panels will be discussing the status of tribal jurisdiction over non-Indians. The conference will be evaluating various tribal proposals to overturn Nevada v. Hicks and find a "congressional fix" to give tribes increased civil and criminal jurisdiction over non-Indians.

The tribal establishment is aggressively demanding exclusive race-based governments not only to rule their own affairs but also those of other races even though these other races are excluded, because of their race, from all political participation in tribal government. With recent decisions, the Supreme Court has acknowledged this as a problem. Unfortunately, many of this country's elites in academia, the media and Congress are supporting tribal demands. Are "Indian nations…so powerful that no one can diminish them"? We may soon see.

Dick & Connie Talcot of UCE present a generous donation to CERA Chairman, Howard Hanson at 2001 Annual Meeting in D.C.

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CERF Notes

by Curt Knoke

Due to the dastardly terrorists attack on our nation, almost every other news worthy event on September 11, 2001 was lost in the fog of horror that day. One Item that slipped under the radar screen that day was a decision handed down from the United States Court of Appeals for the Ninth District.

The decision in this case has wide and potentially harmful consequences to all tribes and non-tribe citizens living on fee lands within the external boundaries of an Indian reservation.

The title of the case is Bugenig v Hoopa Valley Tribe. The Court in an "en banc" decision, ruled the Hoopa Valley Tribe had the power to restrict the activities of a non-Indian living on her own land.

Many of you are familiar with other United States Supreme Court decisions that held that Tribes have very limited jurisdiction over a non-member is forbidden unless the non-member activity threatens the tribal economy or cultural well being or has an active business contract with the tribe. These specific activities are known as the Montana exceptions.

Beyond the Montana exceptions, there is only one other situation that permits tribal jurisdiction over non-members. The Court has ruled that Congress has the authority to extend tribal jurisdiction over non-members only when there has been an "express delegation" of that power. This means that there must be clear and unequivocal language expressing the desire of Congress to confer this power to an Indian Tribe. Such an example would be where Congress, through the EPA can grant TSTS (Treatment Similar to States).

In Bugenig, the Ninth Circuit Appeals Court denied a non-member on fee land within the reservation, the right to cut and harvest trees on her own property.

While the Tribe did exert a claim to several of the Montana exceptions, the Court ultimately decided the case on the express delegation issue.

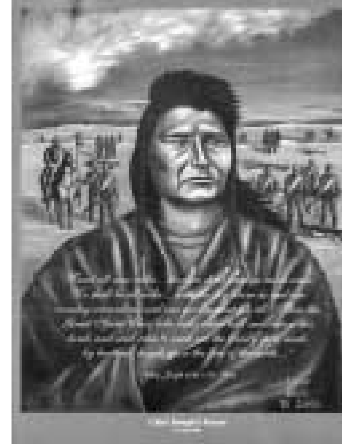
Apparently the Tribal constitution contained language that claimed Tribal jurisdiction over all lands and individuals within their exterior boundaries. The Court ruled that since the BIA had approved and affirmed the tribal constitution that this acceptance met the criteria for express delegation.

If this decision is allowed to stand, all Indians and non-members living on fee land within Indian Country are at risk of tribal jurisdiction simply on BIA approval of tribal activities. Do you like the idea that the BIA may be allowed to freely infringe on your property rights?

If not, I ask for your support. Citizens Equal Rights Foundation (CERF) is sponsoring a writ of Certiorari to the United States Supreme Court. This writ is being filed asking the Supreme Court to hear this case and hopefully reverse and further define and restrict tribal jurisdiction over non-members.

The cost of the writ is $12,000 and CERF is in the process of raising these funds. I would like to ask all of you with a stake in this matter to consider making a cash donation to CERF. CERF is a 501(c)(3) foundation and all donations are therefore fully tax deductible under current law. You may also consider gifting shares of stock. Stock donations are fully tax deductable with no capital gains obligations to the donors. We encourage you to support our effort. Any size of donation would be greatly appreciated.

How You Can Help



Please consider purchasing a signed and numbered print of Chief Joseph's Prayer, by Alyce Blue

Alyce Blue specializes in multi-cultural visual art and has dedicated herself to making a positive difference in society by bringing people together. Her work is widely published in books, prints, and note cards and her original works are held in private and public collections.

Her painting "Chief Joseph's Prayer" depicts Chief Joseph surrendering to the U.S. Army in 1877 after an epic fourteen hundred mile retreat. He is cold and battle-weary as he faces the setting sun. His face shows his grief and compassion for his freezing and starving people. He surrenders for their sake, but it costs them their freedom and forces them into the reservation system, a system that still exists today.

Chief Joseph made this plea for inclusion and equality two years later in Washington, DC to a large gathering of government leaders including President Rutherford B. Hayes. His quiet, eloquent speech was reprinted in The North American Review where it was read by thousands more. Alyce has stated...."Chief Joseph's prayer for unity, justice, and equality under one government was sadly not achieved in his lifetime. I pray it will be in mine."

These limited edition prints and/or note cards can be ordered from the Citizens Equal Rights Foundation (CERF), a non-profit organization dedicated to making Joseph's plea a reality.

Yes, I would like to help get the word out to more people regarding Failed Federal Indian Policy

CERF/CERF Membership/Donation Form

Name ____

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City ______________________ State ________ Zip _________

Email ____

___$35 Annual Membership Renewal ___$250 Organization Membership

For an additional $69.95 ($65 +$4.95 shipping) or more we will include asigned and numbered print of *Chief Joseph's Prayer*.

Please also consider making a tax exempt donation for the **Bugenig v. Hoopa Valley Legal Fund**.

___$1000 ___$750 ___$500 ___$250 ___$104.95($35 + $69.95) ___$50 ___$35 Other _______

To make a stock certificate donation please call Darrel Smith at: 605-845-2507

Please make checks payable to to CERF (Citizens Equal Rights Foundation) and send to:

CERF
P.O. Box 93,
Ronan, Mt 59864

CERF is a tax deductible 501(c)3 corporation

CERA Notes

by Howard Hanson

CERA Helps Stop Land to Trust

The supporters of CERA should be extremely proud for the role they played in stopping the new process of Tribes being able to put land into "Trust" that the Bureau of Indian Affairs had proposed.

When President Clinton departed, he had left the new "Acquisition of Title to Land in Trust" processing standards on the desk of President Bush for his signature. Thank goodness the new administration extended the comment period and gave more citizens the opportunity to voice their concerns about the serious economic and social ramifications more Tribal lands will create.

The decision to withdraw the final rule was based on comments from 93 tribes, 18 state and local governments and federally elected public officials and 28 were from interested groups and individuals such as CERA.

Meeting with the Department of the Interior.

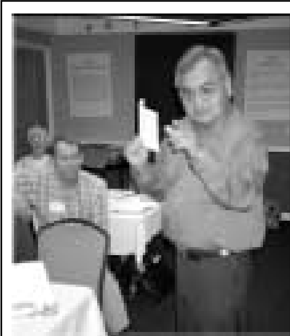
Since October of 1999 CERA has been writing letters to Washington D.C. on an annual basis concerning the conversion of fee lands to federal trust. We have done an excellent job explaining how the change from fee land to federal trust is disruptive to local non-indian governments and citizens and how it creates conflicts with local land use plans, zoning and law enforcement. It also places a devastating financial hardship on local governments by removing lands from the tax base.

In 1999 and 2000 we sent lengthy letters to President Clinton's administration stating:

> "It is the Citizens Equal Rights Alliance position that before land can be put into federal trust for the benefit of Indian Tribes, a determination must be made whether such an action is precluded by the Indian Claims Commission Act, 60 Stat. 1049 (1946). On August 13, 1946 Congress passed the ICCA creating a Commission with broad and exclusive jurisdiction to hear claims arising under Treaties, laws, executive orders, takings, and for unfair and dishonorable dealing. To the extent that the effort to put land into federal trust is based upon a historical or treaty claim to land, such as a claim that the land should be within the reservation, or a reservation was unfairly diminished, the ICC precludes the BIA from considering such a claim under Section 12 of the ICCA.
>
> > "No claim existing before such date (August 13, 1946) but not presented within such period (five years) may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress."
>
> 60 Stat. 1049, Section 12 (emphasis added).
>
> Any claim that land should be put in trust status that arises from a claim that could have been made, or was made, pursuant to the ICCA must be barred from hearing by the BIA. Specifically, if the claim is based, in whole or in part, upon treaties, laws, takings, unfair dealings or any other transaction or occurrence that happened before August 13, 1946, the BIA is precluded by Section 12 of the ICCA from even considering that claim."

This past year we sent letters to the President, and Senator Orrin Hatch, Chairman of the Judiciary Committee, requesting that they investigate the problems being created by Federal Indian policies. We put together an eight page fact sheet that explained the myths of Tribal Sovereignty and Civil Rights, the corruption within the agencies involved and the use of tribal members as "pawns" of the federal government to steal territory and resources from local citizens.

We wrote personal letters to every State Governor and Attorney General, every member of Congress, the Secretaries of the Administration and one thousand media outlets and personalities across the nation, asking them all to support our efforts to have Senator Orrin Hatchs' Judiciary Committee conduct a thorough investigation of Federal Indian Policy.



Tonny Bowman from New Mexico explains to CERA representatives how tribal members are excluded from the constitution of the United States. After a lengthy discussion and study of the words "except Indians untaxed" mentioned in Articles I and XIV, Tonny authored a CERA resolution for a 28th amendment to the constitution.

Did our request change the Senate?

We were going to call on Senator Hatch's office on Tuesday May 22 after the CERA annual meeting on May 20 and 21. The media had received our packets a week earlier and we are sure the phones started ringing asking how Senator Hatch was going to respond to our request.

The rumor of Senator Jeffords switching parties from Republican to Independent started on May 19 and by May 21 he had switched from Republican to the Independent party and so Senator Hatch's Conservative Committee was off the hook and our request ran into a brick wall of confusion and excuses.

Congratulations to PERM's "Save Minnesota" Campaign

Congratulations to Proper Economic Resource Management for their excellent amicus curiae brief that helped win the Atkinson case in the Supreme Court.

PERM's lawyer, Randy Thompson also defended a landowner named Keck Melby in north eastern Minnesota against the Grand Portage Band. The band was trying to make Mr. Melby get a tribal building permit for a building he had already obtained a local government permit to build. When the band saw they were going to lose in court they settled with Mr. Melby by buying his land for 1.6 million dollars.

Mr Thompson and PERM are also responsible for the Indian Claims Commission series of articles, which begin in this issue on page 4. Many thanks to the members of PERM!

More Comments to the BIA

CERA recently mailed a packet of prepared comments concerning "Gaming on Trust Lands aquired after Oct. 17, 1988", requested by the BIA. Again, CERA objected to any more trust lands and we will attempt to educate more than the BIA about the social problems associated with gambling and taking fee lands off the tax rolls.

Looking Forward

For this years campaign to D.C. we are preparing a request for a 28th Amendment to the U.S. Constitution that will give tribal members living on reservations, the full protections of the 14th amendment including instant access to federal courts.

CERA is currently writing Congress concerning HR380, the Campaign Finance Reform Act of 2001. The Federal Election Commission allows Indian tribes to finance their federal contributions with government funds. It is the only exemption to the federal law's fundamental requirement that all money used in federal laws must be derived from voluntary contributions of individual U.S. citizens. Incredible, but true!

Besides subjecting citizens to an undemocratic form of government with no 14th Amendment rights when fee land is moved to trust status new economic studies are showing the costs of casinos are at least 1.9 times greater than the benefits. That means for every dollar the tribe makes, we the taxpayers pay the social costs of pathological problem gamblers, greatly increased crime, suicide and bankruptcies.

If fee to trust lands and gambling aren't enough problems, add on the social costs of the depletion of local tourism economy from the over harvest of tribal commercial gillnet fisheries. Here in Minnesota and in many other states that had valuable sports fishing resources, the taxpayers are getting the "triple whammy" for sure.

Hope to see you in D.C., on May 19-23, 2002!

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- ❍ $25 Special Introductory Membership
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Mail to: CERF (or) CERA; P. O. Box 93; Ronan, MT 59864

Letter to the President (continued from page 1)

cooperating with each other and are rapidly increasing the amount and sophistication of their campaign contributions. These campaign contributions threaten to corrupt the entire political process of this country at the local, state and national level.

All governments should be equally barred from direct or indirect involvement in this country's partisan political campaigns. Mr. President, we ask you to do everything in your power to see that this bill is either amended or vetoed before it further corrupts Indian communities and our democratic process. We further ask that you initiate a comprehensive and inclusive study of the impact Federal Indian Policy is having on tribal members and the entire country.

Sincerely,

Howard B. Hanson

CERA Annual Meeting May 19-23, 2002 in Washington D.C.

Meetings will be held at Capitol Hill Suites, 200 C Street, S.E., Washington, D.C. 20003.

A meeting room has been reserved at Capitol Hill Suites for Sunday and Monday, May 19 and 20 for the CERA annual meeting. We are urging attendees to stay through Thursday so we can visit as many congressional and administration officials as possible. The following weekend is the Memorial Day weekend, so try to book your Thursday evening return flight home ASAP.

Please contact your state congressional delegation to arrange meetings, then let Lisa Morris know the dates and time. She will compile a master schedule of all appointments so we can make the best possible use of our time. If you have items you want included on the meeting agenda, please call CERA Secretary Jim Petik 1-605-347-5836 or email him, *cow@sdplains.com.*

WASHINGTON D.C. CERA SUMMIT 2001

Howard Hanson, Ms X, Mr Y and Mr. Z

Barbara Lindsey discusses…

Roland Morris leads a prayer breakfast