

# RESERVATION REPORT

A Monthly Media Letter Regarding American Indian Policies

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## **NEW GAMING RULES FOR INDIAN TRUST LANDS BEING SCRUTINIZED –**

**Let it be noted that on April 3<sup>rd</sup> the *Albuquerque Journal* published a special commentary by Ernie Stevens, Jr., the Chairman of the National Indian Gaming Association. This was timed to coincide with the opening of NIGA's annual trade show in New Mexico's largest city where, as well, on April 5<sup>th</sup> there would be an important public hearing by the U.S. Department of Interior's Office of Indian Gaming Management and at some point the National Indian Gaming Commission would meet.**

The hearing, one of several around the nation since the next to last day of March and throughout this month of April, was to consider the modification of rules related to Indian gambling activity on federal Indian trust lands – rules reportedly drafted in 2004 and early 2005 and then shelved as possibly too controversial. Rule changes are being recommended by Acting Deputy Assistant Secretary of the Interior for Policy and Economic Development, George T. Skibine. The schedule of hearings was initially distributed by Skibine with the clear indication it was designed for the special consideration of "tribal governments on the development of proposed regulations which will establish standards for implementing Section 20 of IGRA (the Indian Gaming Regulatory Act)." After citizens complained, public participation was invited.

"Since enactment of IGRA in 1988, narrow exemptions for siting *off*-reservation, tribal casinos, as defined in Section 20 of the Act, were frequently approved (38 to date) to cause a trend known as "reservation shopping." BIA officials facilitated tribes desiring larger urban gaming markets far from their homelands, often out-of state, and are now accused of abusing Section 20, to a point where certain Congressmen and citizens across the country are demanding either repeal of Section 20 or serious reform, but reform legislation contains a questionable "grandfather" clause prompting a rush of tribes to beat an April 20th deadline imposed by Senator McCain, in order to guarantee certainty for expanded "reservation shopping."

**Thus it was especially significant that in his newspaper commentary, Stevens declared: "Indian gaming is a sovereign right inherent in tribal governments, not a Congressionally-bestowed gift to tribes."**

This led to a prompt retort from Dr. Guy C. Clark, chairman of the Washington, D.C.-based National Coalition Against Legalized Gambling (NCALG): **"States and the Federal Government should be very cautious in negotiating with an organization that believes they have a God-given right to open casinos irrespective of federal law.** Are we going to see tribal casinos open up around the country without any consultation with the Department of the Interior or state governments?"

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**On reservations:** *"Tribal ownership of the land is defended as the sine qua non of Indian sovereignty, which many activists regard as sacrosanct. It maintains the semi-fictional notion that the reservations are separate nations within the U.S. Although tribal members are American citizens, the reservations themselves are exempt from many federal and state laws. This is why so many Indian casinos have sprung up in areas that otherwise curb gambling."* **John J. Miller, author and historical analyst, in January 25, 2006 Wall Street Journal commentary.**

## Page 2 – RESERVATION REPORT

### **PARR GROUP’S EDITOR COUNTERS SUPERVISOR’S SLANDERING –**

Reporter Patti Wenzel of the *Lakeland Times* of Wisconsin recently described a Vilas County Board of Supervisors’ meeting in which a proposal to send a member of the board to attend this year’s annual conference of the national Citizens Equal Rights Alliance (CERA) in Washington, D.C., was voted down. The negative vote followed supervisor Ed Bluthardt’s slanderous contention that CERA is a “hate group” on the “FBI’s watch list,” according to the reservation Indians he represents on the Board. Wenzel added, without attribution, that CERA has been in this manner on unspecified Indian tribal websites. Lana Marcussen, the Phoenix-based attorney often involved in litigation involving Indian tribes and reservation-related issues, and a sometime-consultant to CERA on such matters, promptly advised Wenzel that, as one who regularly monitors Indian websites, there is no evidence to support Wenzel’s allegations.

**It should be noted that CERA and its foundation, CERF will be meeting, April 30 through May 4 at Holiday Inn Central, in D.C. The organization will be focusing, as it has for many years, on the abuses and dysfunction of federal Indian policy, the unchecked expansion and loose monitoring of Indian casino gambling activities, and the degradation that has resulted from corrupt management on so many U.S. Indian reservations. A number of prominent authorities on Indian-related issues will be on the program.**

Also responding critically, following an editor-to-editor telephone discussion with the *Lakeland Times*, was Bob Manzke of Milwaukee, executive secretary and newsletter editor for Protect America’s Rights & Resources (PARR), an influential civic organization in the Badger State. In a published April 4<sup>th</sup> letter to the newspaper he declared: “I just finished reading the March 24 issue of *The Lakeland Times* and I must admit that the article ‘*Vilas delays trip on Indian issues*’ in part contains the biggest pile of unsubstantiated babble-speak being spewed by a so-called public official that I have had the misfortune to read.” Manzke wrote that Ed Bluthardt, the Board’s chairman of a committee that addresses tribal issues, had added even more intemperate remarks to besmirch the CERA organization’s good name.

In a remarkable and unsolicited show of support for an unstructured alliance on Indian-related issue concerns, Manzke asserted: “PARR and CERA have similar goals and have similar philosophies. So I would like to find out if PARR is on a ‘watch list’ as well.” Manzke said Bluthardt employed a “political tactic often used in character assassination.... CERA is PARR’s sister organization, therefore accusations made against CERA are made against PARR. Consequently PARR insists that Mr. Bluthardt print the proof of the accusations he made or issue an apology.” Wenzel has since written a long article quoting the chair of CERA, Elaine Willman with a convincing refutation of the Bluthardt slurs.

### **SAGINAW CONSCIENCE OR WISE POLITICS PROMPTS GRANT RETURN –**

One of the wealthiest Indian tribes in the United States – the Saginaw Chippewa of Michigan – is handing back to the Department of Interior and BIA a three million dollar grant it received for school construction. The grant was obtained by Senator Conrad Burns (R-MT) after he pressured Interior officials, despite the fact the Saginaw’s relatively small membership has a per capita income wealth far greater than nearly any other tribe in America or Canada.

Saginaw leaders said they agreed the three million dollars provided by Burns should really be re-distributed to tribes that are very poor and much in need of help with their schools.

Burns activities are under intense scrutiny since it was discovered he received \$141,590 in political campaign contributions from the lobbying efforts of Jack Abramoff that are now being investigated for corrupt practices by the Justice Department and Congressional Committees.

### Page 3 – RESERVATION REPORT

#### **HAWAII, FULLY EMPLOYED, MAY SHY AWAY FROM “NATIVE” SEPARATISM –**

Some may have missed reading an Associated Press report March 24<sup>th</sup> that said: “At 2.4 percent, Hawaii’s unemployment rate for January, the most recent figure available, is the lowest in the country.” The national average in that first month of 2006 was 4.7 percent and has since risen slightly. Businesses and other employers in the island state are paying all sorts of bonuses and other inducements to persuade Hawaiians to take jobs. The First Hawaiian Bank even offers a \$500 bonus to have employees sign on.

It is hard to believe that rank and file, now gainfully employed and generally prospering citizens of the State of Hawaii would still seek Senator Daniel Akaka’s legislation for “native” separation and virtual independence from the state and nation within which they have achieved some large and rewarding portions of the “American Dream.” But then, of course, it is hard to figure why Senator Akaka (of partially Chinese immigrant heritage) and Senator Daniel Inouye, a co-backer of the legislation (with Japanese antecedents) are touting a means for destroying the American melting pot dream as well as encouraging the end of Hawaii’s statehood.

Senator Akaka’s proposal, for what may become multicultural chaos, is also backed by Hawaii’s Republican Governor. It would give anyone in the world with a drop of Hawaiian blood full membership in an independent “native” Hawaii, no longer subject to the laws of the rest of the U.S.A. but, presumably, still willing to receive generous benefits from U.S. taxpayers.

Some political economists have suggested that if such a proposal ever became law, and the “native” population no longer felt obligated to live by the same rules and in the same all-American patriotic spirit as the rest of our nation’s citizens, the structure of both Hawaiian society and the state’s economy would begin to crumble. Of course the next thing to collapse would be the high employment now existing. Along with that, American taxpayers might be strongly inclined to pull the plug on more than minimum charity relief payments to islanders who rejected being full-time Americans. But maybe passage of the Akaka Bill isn’t quite as appealing to many Hawaiians as full employment.

A quick purview of the April edition of *KA WAI OLA*, the official tabloid journal of the Office of Hawaiian Affairs (OHA), leads some viewers to question the actual degree to which the population of America’s beautiful island state is united behind OHA’s advocacy of “native sovereignty,” independence and severance from the United States in terms of governmental authority, taxes and the laws and court system of the American Nation and State.

For several years OHA has represented its Native Hawaiian political base as overwhelmingly unified and anxious to reject statehood status, while rewriting the history of how the Government of the U.S.A. “illegally” replaced native tribal leadership at the administrative helm of the cluster of islands in the mid-Pacific at the end of the 19<sup>th</sup> Century and how the subsequent political evolution achieved statehood by the middle of the 20<sup>th</sup>. Of course, a bountiful supply of demonstrably accurate research tends to dispute or actually refute these claims. Yet the OHA campaign, unusual as it is for a government agency to virtually preach sedition month after month, may be slipping in effectiveness. OHA’s latest printed references suggest:

- (1) more and more “native” Hawaiians now live in the U.S. mainland (wonder why?);
- (2) “most” currently pending OHA-drafted state legislative recommendations have not been approved (wonder why?); and
- (3) OHA finds it propitious to feature a Hawaiian Vietnam War veteran’s bitter blast that the U.S. military “occupation” of the islands over a century ago was illegal and its presence now in the islands must cease. OHA offered a veiled disclaimer but obviously OHA’s editor invited and accepted the blast (wonder why?).

**Just imagine Hawaii’s future without the U.S. Navy and its islands’ payroll! Need a job?**

## Page 4 – RESERVATION REPORT

### **U.S. JUSTICE SEEKS REMOVAL OF JUDGE PRESIDING OVER INDIAN LAWSUIT –**

For ten years, in the litigation, which now is known as *Cobell v. Norton*, Native American Indian tribes have been seeking billions of dollars in fees and other revenues they allege should have been paid tribal members by the Department of Interior and its Bureau of Indian Affairs. The claims cover funds dating as far back as the 1880s though the federal government has every right to point out that in that time frame American taxpayers have shelled out many billions, as well, to support Indian health, education and welfare programs.

Presiding over this dispute throughout has been U.S. District Judge Royce Lamberth. He has demonstrated increasing impatience born of frustration through recent years, imposing contempt of court charges against the Interior Secretaries of the Clinton and Bush administrations, badgering government lawyers who try in vain to explain that for reasons that range from likely incompetence in the largely Indian-staffed BIA to rats in southwestern U.S. storage facilities where records have been kept, a tabulation for accounting purposes has been hard to assemble.

Now that Judge Lamberth and the Justice lawyers are both exasperated, the Attorney General's office has asked an appeals court to consider steps to remove Lamberth from the case.

### **COPYING OLD U.S. “MACHINE” POLITICS, TRIBE TRIPS OVER A PHONE BOOK -**

Reservation Report's Maine correspondent Steve McCormick notes that the Passamaquoddy Indian Tribe, in rounding up 61,000 names last fall for a November ballot petition to try to win racino gambling approval, “learned the hard way” that the corrupt old U.S. political trick of just copying names from a phone book could no longer fool even fellow tribal members.

Fred Moore, the tribe's legislative representative, disclosed that one tribal member, seeking to make money by submitting a long list of names, had busily copied the phone listings and been caught doing so by tribal authorities. Moore explained to a meeting of the Machias Bay Area Chamber of Commerce in northeast Maine that his Passamaquoddy colleagues determined that some 700 names were fraudulently compiled from a local phone book during the tribe's ballot initiative effort.

Maine's Secretary of State staff also disqualified 12,985 other names not connected to the phone book fraud, enough to void voter action on the racino proposal for another year.

### **DID FIRST *HOMO SAPIENS* EMERGE IN ASIA RATHER THAN IN AFRICA? –**

At least two prominent anthropologists – one from the U.K. and one from the Netherlands - believe it is time to challenge the “out of Africa only” assumption that has gained such widespread acceptance. What is more, Robin Dennell of England's University of Sheffield and Wil Roebroeks of the Dutch University of Leiden say there is so much new evidence from fossil remains in parts of the former Soviet Union eastward into Central Asia that suggests a definite Asian connection, that the scientific community should not lock itself into the Africa-only origins of the human race.

This new argument is reported in the May, 2006, edition of *Discover* magazine.

There are also increasing indications from new studies that the first *Homo Sapiens* may have interbred with other early hominids such as the Neanderthals during millennia of migrations across the face of the Earth. This adds further impetus to the stepped up questioning of such primitives as America's “first natives” (slapped with the “Indian” label by Columbus and other European explorers hoping to reach India and Cathay) who may, or may not, have originated in Asia, Africa or Europe in order to reach what is now Canada, the U.S., Brazil, Mexico or the other Americas by way of the Atlantic or the Pacific. **(NOW SEE PAGE 5!)**

## Page 5 – RESERVATION REPORT

**WERE THE EARLIEST “NATIVE” AMERICANS “EUROPEAN,” 50,000 YEARS AGO? – Some very highly qualified archaeologists and anthropologists with increasingly hard site evidence from... South Carolina...Virginia...Florida...and Pennsylvania, to mention just a few sites, are persuaded the answer is a resounding “Quite possibly...even probably!” So suggests the May-June 2006 issue of *ARCHAEOLOGY Magazine*.**

**In fact, even John Smith’s claim to be a “first European settler” in an established village may now be at risk of being slightly tarred, just as Virginians prepare for next year’s 400<sup>th</sup> anniversary celebration at Jamestown. But first, a little 20<sup>th</sup> Century history:**

In 1932, in the vicinity of Clovis, New Mexico, a major archaeological find of spear points, scraping tools and other artifacts and implements of relatively advanced sophistication were unearthed along with the bones of mammoths and other prehistoric animals. The findings were dated at around 9,000 years, in keeping with educated estimates that the crossing from Asia/Siberia may have begun around 11,500 years ago. Around this evidence the Smithsonian archaeology specialists and other scientists from academia established the concept that North America’s first humans probably were hungry, adventuresome Mongol-type hunters and gatherers from Siberia and Northeast Asia who trekked eastward after big game.

The easiest and simplest explanation that has thus prevailed in Canada, the U.S. and in Indian tribal circles had all “first Americans” following a single narrow path by crossing Ice-Age-bound and barren frozen wastes now known as the Bering Sea and the Aleutian Islands at a time when the sea level was sometimes 300 feet lower than presently is the case. And when they reached the territory we call Alaska, their path extended to what we now call New Mexico. All else regarding the first humans thus begins between 9,000 and 11,000 years ago.

**But in the 1990s a new and perhaps more adventurous breed of young archaeologists and a new era of archaeology in the Americas emerged as cited herewith:**

### **KEY “DIGS”**

(1) The **Monte Verde site in faraway Chile** was thoroughly explored and documented by U.S. archaeologist Tom Dillehay, now a professor at Vanderbilt University, as having hundreds of stone tools and weapons NOT of the Clovis culture and dating back 14,400 to 16,000 years.

**So if the Clovis *aficionados* insisted that it took from 11,500 to 9,000 years to reach New Mexico, how did even earlier humans manage to reach the southern tip of South America up to 7,000 years sooner than those reaching the American southwest?**

(2) **Meadowcroft rock shelter southwest of Pittsburgh** turned up pre-Clovis artifacts and the carbon evidence indicated human occupancy as early as 17,000 years ago.

(3) **Saltville Valley in southwest Virginia** near Kentucky and Tennessee borders, also offered up evidence dating to 17,000 years though, as always, Clovis advocates question the legitimacy of the artifacts found.

(4) At **Cactus Hill** along **southeast Virginia’s Nottaway River**, much deeper in the ground than Clovis evidence, a wealth of artifacts and weapon points have been located that date back 18,000 years.

(5) The **Aucilla River of north Florida** has a submerged sinkhole in which animal bones on which human tools have been used for scraping or probing for marrow, etc., date to 14,000 years and the “flat-fluted points” retrieved from the bottom of the river pre-date Clovis by at least 1,000 years. Yet to come is new Florida State research of ocean beds up to four miles out into the Atlantic since Ice Age seas were so much lower than now and researchers have already found some 40 artifact sites off the coast.

**(Continued on Page Six)**

## **PAGE 6 – RESERVATION REPORT**

**THE EARLIEST “NATIVE” AMERICANS – (Continued from Page Five) – But the most exciting and controversial news in American archaeology, according to Atlanta Journal and Constitution science writer Mike Toner, who authored this latest magazine headliner, is the University of South Carolina’s Allendale Paleoindian Expedition along the banks of the Savannah River. At a site named “Topper,” Expedition director Al Goodyear has hit a “mother lode” of hundreds of artifacts, a few of them Clovis but most, pre-Clovis with the majority of the finds dating back to between 14,000 and 18,000 years.**

Aided by a large number of volunteers, Goodyear has dug several feet below the most likely terrain for Clovis discovery and because he has turned up so much at such greater depths, the pits and trenches at Topper site are getting deeper and deeper. **Why? Because Goodyear is now convinced that if he digs deep enough he and his associates are going to find “evidence of human activity here in the interior of America 40,000 to 50,000 years ago. It looks like people came here periodically to get chert (the stony material for tool-making and weapon points)....Where they came from and when, I still have no clue.”**

But as Reservation Report has noted in a number of prior editions, archaeologists, anthropologists and linguists from Europe, Canada, Brazil and the United States are more and more convinced that the earliest humans to reach North America arrived on the U.S. East Coast from Europe and possibly Africa. And the hardest evidence so far comes from the close similarities between pre-Clovis tools and weapon points found in North America and those found in abundance between France and Spain from a pre-history culture known as the Solutreans.

There is even genetic evidence of such a connection and language study specialists who have most closely analyzed the words and speech patterns of today’s American Indians find clear indications that such a trans-Atlantic connection existed, perhaps up to 20,000 years ago.

Those scientists and others who cling to the Clovis-Asian origin mythology – not the Indians themselves, who are convinced they originated on North American soil – may soon find such claims to be without convincing substance. It may be just as likely, if not more so, that some, such as Kennewick Man for example, have come from a ubiquitous “somewhere else.”

## **TWO NEW YORK COUNTIES WORRY OVER RUNDOWN INDIAN PROPERTIES –**

Madison and Oneida counties are voicing concern to the news media and general public that many properties, acquired during the past decade by the Oneida Indian Nation throughout upstate New York, have not been properly maintained and, in some instances, are in a sad state of disrepair. Madison County told the Bureau of Indian Affairs in a letter: "In many cases, those buildings are creating a public nuisance and life-risk hazard, This situation calls into question any tribal need for ownership or justification for these properties to be held in trust."

*Syracuse Post Standard* writer Glenn Coin reports: “County officials say if Oneida land is taken over by the federal government, as the Oneidas have requested, local governments will lose any chance to have those eyesores fixed up. In documents recently submitted to the federal Bureau of Indian Affairs, Madison County officials included photos of dozens of nation properties. Many, the county says, are in bad shape, with broken windows, downed wires and peeling roofs.”

An Oneida tribal spokesman retorts: "These are properties that were in disrepair when the nation acquired them, and the nation is moving in a responsible way in repairing and demolishing when appropriate." The Tribe has bought some 17,000 acres of land with assorted structures including small business establishments, barns, a few homes, etc., and now is asking the federal government to take possession, and thus responsibility, for the properties.

## **PAGE 7 – RESERVATION REPORT**

### **OGLALA SIOUX LEADER PLANS RESERVATION ABORTION CLINIC IN S.D. –**

Tribal President Cecilia Fire Thunder challenged the Governor and Legislature of South Dakota, following their approval of a statewide ban on all human abortions. She said that on behalf of the activist feminist organization, Planned Parenthood, she would establish an abortion clinic on the Pine Ridge Indian domain.

According to Rapid City, SD, attorney Charlie Abourezk, who sometimes represents the tribe and its President: “In our culture, children are sacred, but women are sacred, too, and somebody who has been victimized by rape or incest, should have options.

In flaunting her plan as a contentious threat at state and federal authorities who might feel compelled to fulfill legal obligations to uphold the new South Dakota anti-abortion act, Ms. Fire Thunder warned that “tribal sovereignty” would protect her right to establish the clinic on her land within the reservation. State Attorney General Larry Long, a Republican, agreed that the reservation “sovereignty” claim would forestall enforcement if an abortion clinic should open there.

The Oglala Sioux tribal code contains some interesting language not particularly supportive of Ms. Fire Thunder’s position: “A child conceived but not born is deemed to be an existing person so far as may be necessary for its interests and welfare to be protected in the event of its subsequent birth.”

In addition, says retired Chief Judge of the Oglala Sioux Tribe, Patrick Lee: “While the tribe is immune from the application of state law directly, there is a federal law which makes state criminal prohibitions applicable to Indian reservations. The federal Assimilative Crimes Act incorporates the substantive law of state prohibitory laws and applies them to the reservation as federal laws. The ACA is rarely used these days but the statute is still on the books and could conceivably subject reservation abortionists to federal prosecution for violating the substantive law of the state. State jurisdiction is not involved.

“Another problem Cecilia would face as tribal president is her special oath of office. President Fire Thunder was sworn into office upon being elected and took an oath to uphold the laws of the Oglala Sioux Tribe.” Since an unborn child is deemed to be an “existing person...a reservation-based abortion clinic could be a violation of the child’s right to protection.”

Judge Lee went on to explain that under the circumstances he outlined, President Fire Thunder could be impeached if she goes much further toward establishing an abortion clinic and if she went as far as overseeing or allowing an abortion in such a reservation clinic, she could face a prompt murder charge. Indians who respect tradition, don’t take kindly toward abortions.

### **SENATOR COBURN PUSHES “TRANPARENCY” ON TRIBAL GAMING PROFITS**

- Overcoming objections from many tribal leaders, the Senate Indian Affairs Committee has accepted Oklahoma Republican Senator Tom Coburn’s recommendation that a comprehensive Indian gambling reform act require that revenues from casino operations are fully reported to tribal members – an item of information most casino-owning tribes do not, presently, share. Coburn declared: “Sunshine and transparency are essential to providing citizens with the critical information they need to hold their government accountable. Governments that oppose sunshine and disclosure are much like politicians who oppose campaign disclosure proposals –they have something to hide. Tribal citizens have a right to know if these revenues are being used to improve the tribe and the lives of its people. Tribal citizens, if given the facts, can do a far more effective job of holding their governments accountable than the NIGC, the Congress , or any other regulatory scheme.”

## PAGE 8 – RESERVATION REPORT

### ANOTHER VIEW OF “SOVEREIGNTY”

**Editor’s Note: In March we published an analysis of the term “sovereignty” by Arizona attorney Lana Marcussen and a definition of the term by the English legal scholar Blackstone. Reservation Report invited other commentaries on a subject that has long been at the center of misunderstandings involving American Indian tribes who claim “sovereignty.” Two who take issue with Ms. Marcussen now contribute their understanding of the word. In May we hope to provide a rebuttal to the views of Fleming and Lynch.**

**By John A. Fleming**

Most, if not all, of the Indian tribes in our country claim to possess sovereignty as a tribe. This is both untrue and not possible under our U.S. Constitution and the Constitutions of the several States. Today, and indeed since the Indian Citizenship Act of June 2, 1924, which gave the then non-citizen Indians (mostly tribal members) citizenship by birth, all American Indians are citizens of the United States of America and of the state that they individually lived in.

They each, as well as all other citizens of the United States, possess the attribute of sovereignty that is given to each citizen of our country by the Constitution of the United States. Sovereignty in our nation belongs to the citizens. It does not rest in the state capitals, nor in the federal government at our national capital, Washington D.C. .Our sovereignty is not vested in a king, a dictator, a president, nor in elected position of the various states or federal government, and indeed--not in tribes.

In short, when our thirteen colonies/states came together and decided to unite, they declared and established a number of principles and rules to include the following: **Majority Rules**; then, **Sovereignty** would rest with the citizens; Through the **Articles of Confederation** and then the Constitution, they needed and established a **national government** to do limited national activities with enumerated powers only; Through these Articles and then the **Constitution**, they assured the rights of the **sovereign and several independent states**, the freedom, liberty and certain other **individual citizens’ rights**, and placed fixed limitations upon the federal government; They established a **method to change the Constitution**.

Indians and their tribes were not only considered but they were mentioned in the primary documents that established our nation. The tribes were not given a place in our federal system of government. The Tenth Amendment of our Constitution specifically provides guidance on this matter and tribes are not included in the distribution of power (to govern). It is well worth reading in order to reacquaint ourselves with these documents.

**The Declaration of Independence** gives a good idea of how our forefathers thought of the Indians at that time in our history. Treaty after treaty stipulated that the tribes were to obey the Constitution and the **acts of Congress**. **Supreme Court cases** abound with the clear facts that the tribes were no longer sovereign but bound to the Constitutional requirements and the will of Congress.

Battle after battle defeated the Indian tribes resulting in the tribes being conquered, subjugated and actually subordinated to the will of this nation.

*(Perhaps the best author to read on this subject is John Randolph Tucker and his works, **THE CONSTITUTION OF THE UNITED STATES**, Callaghan & Co. , Chicago, 1899, Second printing (1981), ISBN 0-8377-1206-8).*

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John A. Fleming BA, JD, retired from the Indian Health Service, is an analyst and consultant for Federal Indian Programs Oversight. Since 1998, he has provided pro bono services from his Federal Indian Program Oversight Office, La Conner, Washington. Contact: [custer1@wavecable.com](mailto:custer1@wavecable.com)

## PAGE 9 – RESERVATION REPORT

### ANOTHER VIEW OF “SOVEREIGNTY”

by James P. Lynch

It is the position of this writing that the individual is not a sovereign within a representative republic. In order to argue this proposition we must understand what the term “sovereign” means and implies. This term “sovereign” denotes “*a supreme repository of power*”, “*a political unit possessing or held to possess sovereignty*”. Sovereignty in turn denotes a “*supreme power especially over a body politic*”, a “*controlling influence.*”

A question arises from the above definitions concerning the individual. Is this individual a co-equal “as a supreme repository of power” with the powers of a state or the federal government? Of course he or she could not assert such powers. An individual citizen could never assert the powers of a sovereign in such areas as treaty-making or declaring war against a foreign nation, or proscribe laws. Sovereignty is an absolute. There are no degrees of sovereignty.

It’s just like pregnancy; either you are or you aren’t. An individual’s standing in relation to his or her state or the national government, as the English Philosopher John Locke (1588-1689) argued, is that of one member of a “*social compact.*” Within the parameters of this “compact” the individual voluntarily cedes any notions of a perceived sovereignty to the national government for the good of the whole body politic. As Locke noted; “*The great and chief end, therefore, of men’s uniting, and putting themselves under government, is the preservation of their property.*”

In return, the sovereign guarantees to protect the rights accorded to the individual as stated in their compact. According to Locke, without this compact man would live in a “*state of nature*” wherein man would be a sovereign unto himself doing what is necessary for his own self-interest: a Hobbsian (Thomas Hobbs 1632-1704) anarchistic “war of all against all.” Instead, Locke argues man must live under a government according to the “*law of nature. The only way one divests himself of his natural liberty and puts on the bonds of civil society is by agreeing with other men to join and unite in a community,*” which governs on the basis of reason and experience. At the core of this sovereign government is a law (compact)-enacting legislative body.

The rights of the individual are defined by the stipulations present in the compact. The framers of our compact, the U.S. Constitution were deeply affected by the writings of Locke. In its genius, the Constitutional Convention outdid Locke. It allowed those governed by this compact to select those who are to govern over them. They, as was Locke, were wary of arbitrary executive power and government by decree. This does not make these collective voters the sovereign power, but they are the ones who ultimately define the nature of the sovereign and the power it wields, by the terms of the compact. The Constitution is our sovereign document. In it and by it, the powers of eminent domain are asserted by the sovereign government. Within such a government there is no room for the individual to maintain any notion of being sovereign. We have only guaranteed rights. Our freedoms under the laws of nature are limited to the rights written in our social compact, that masterpiece called the Federal Constitution.

The 1886 U.S. Supreme Court decision, *United States v. Kagama*, aptly stated the main point of this essay, “*The soil and the people within these limits are under the political control of the government of the United States, or of the states of the Union. There exists within the broad domain of sovereignty but these two...*”

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*James P. Lynch is a nationally recognized Ethno-historical, research consultant. He has authored several books, numerous research publications, and articles on tribal land claims, tribal sovereignty and tribal history. He is the owner of Connecticut-based Historical Consulting and Research Services. Contact: 203.573.0012 or [jajpl@aol.com](mailto:jajpl@aol.com).*

## PAGE 10 – RESERVATION REPORT

### VIRGINIA’S RAPPAHANNOCK TRIBE SEEKS “NO GAMBLING” LEGISLATION –

One of six tribes now well into their fourth year of waiting for Congress and the Bureau of Indian Affairs (BIA) to grant them federal recognition, has broken ranks by requesting First District Republican Representative JoAnn Davis to sponsor a separate bill that specifically forbids the Rappahannock Tribe from seeking or obtaining any federal gambling license if it is recognized by Uncle Sam.

Congressman James Moran, a northern Virginia Democrat, has been sponsoring the six-tribe recognition request with support from all but one or two of the State’s Congressional delegation. That one most opposed is GOP Representative Frank Wolf who is an outspoken critic of federal gambling licensing for any Virginia Commonwealth tribes if they win authorization for federal benefits. Wolf reportedly has firm support for his position from many Virginia voters and among some in the White House. He has been effective in forestalling any action on the matter in the House of Representatives.

Mrs. Davis, representing most of the Northern Neck peninsula between the Potomac and Rappahannock rivers to their confluence with Chesapeake Bay, as well as a portion of the Middle Peninsula down to her home near Newport News and near the Jamestown-Williamsburg area, said she is introducing the separate bill for the Rappahannock Indians both in response to the tribe’s request for a separate “pitch” to Congress and because she hopes it might break the prolonged stalemate over the recognition issue in time for 2007’s celebration of Virginia’s 400 year anniversary of European settlement. Two of the oldest tribes in Virginia, with historic linkage to the Jamestown Settlement by Captain John Smith in 1607, have not sought federal recognition and have shown no desire for gambling privileges. The Rappahannock Tribe plans to join with them in historic anniversary activities.

Despite the fact that the five tribes still supporting Moran’s legislation have given lip-service indications of no-gambling intent, many Virginia voters and critics of Indian gaming and federal Indian policy in Washington, D.C. and around the nation are suspicious.

The track record since federal gambling licensing was authorized in 1988, with enactment of the Indian Gaming Regulatory Act (IGRA), is pock-marked with cases in which tribes say they have no gambling intentions but, as soon as federal recognition is granted, promptly seek a casino license. The five petitioning tribes under Moran’s legislation are so far, unwilling to include any ironclad ban on gaming in the Moran bill.

The Rappahannock Tribe’s forceful position against gambling now intensifies the public perception that the other five tribes are not honest in their disavowal of a gaming interest.

As a multiple term Congressman with increased seniority on the House Armed Services Committee from the Virginia District representing the NATO naval fleet headquarters in the Newport News-Hampden Roads-Norfolk complex, Mrs. Davis’ unilateral effort for the Rappahannock Tribe sends a tough message to the rest of the Virginia delegation and the House leadership regarding Indian recognition issues.

**TO RECIPIENT EDITORS, COLUMNISTS & TALK SHOW HOSTS:** *Reservation Report* is a monthly news-alert service regarding U.S. federal Indian policies, reservation and casino issues, and the spread of multiculturalism affecting the lives and welfare of Indian and non-Indian residents and businesses. **RESERVATION REPORT’S** Executive Editor is John Fulton Lewis of Reedville, VA. E-mail: [nccomm@crosslink.net](mailto:nccomm@crosslink.net)