

Shame on the Senate

By Elizabeth Morris

February 17, 2006

"I'm an Alaska Native Woman who used to work for a Native HealthCare Facility ...I'm also a US Citizen, what about the Bill of Rights, Civil Rights Act, nobody wants to help me..." - Kim E. Perkins

So begins one of many letters my husband, Roland Morris, and I have received from both tribal members and non-members. Some are seeking legal help, some simply seek someone who will listen and understand. Here are a few other examples:

"I am a full blood Cherokee and a Vietnam-era veteran of the US Marine Corps... if one is born a tribal member on the North American continent, ...one has no rights or recourse of action when civil rights violations are caused...by...tribal government. Like a Native American Indian living in a communist organization." - Billy R. McCoy

"I am an enrolled member to a federally recognized tribe. Over the past four and a half years, I have tried to help a friend, who is a non-Indian...The tribe allows the employees that have violated my friends constitutional rights, to claim sovereign immunity." - Jessie

"To Whom It May Concern: I am seeking assistance from any legal entity that is willing to take a stand for the rights of Indian heritage within a tribal court setting. Throughout Indian Country, tribal families are being denied their tribal rights through nothing more than bankrolled personal vendettas exercised in the name of tribal sovereignty...I am also Native American, a member of the federally unacknowledged tribe of Ohlone/Costanoan Esselen Nation. Sincerely, Lorraine."

"I have been told that ICWA doesn't apply to my children because they are not enrollable, but the tribe has said that it does." - Anonymous

"...our organization is called "United Hinthil Voices",...We meshed together to become a "watchdog" organization for all Indians in Mendocino County and who ever else in California that is tired of the numerous years of corruption." - Anonymous

Many of these people have tried to go to the federal government for help, but are frequently rebuffed. Senator Baucus commented in a statement concerning a recent Dodd/Lieberman bill, "I am forced to disagree...this amendment...requires the implementation of...adversarial hearings at the request of any interested party...and requires the Department to provide notice to officials of every state and local government ...where a tribal group may have ever been historically located."

In other words, Senator Baucus, a top recipient of Indian Gaming funds, wasn't interested in hearing any point of view other than that of the tribal government. Many in the Senate feel the same way.

Consider these quotes from the Honorable U.S. Senator Daniel K. Inouye, Chairman of the Committee on Indian Affairs, at a hearing attended by tribal leaders and lawyers on Feb.27, 2002:

"Congress should do something about the present trend of the Rehnquist Court", "...legislation to undo the effects of unacceptable results is necessary." "...the Court

seems to be applying a principle that tribal...jurisdiction over non-members would be inconsistent with the domestic status of tribal governments.” He then asked law professor David Getches, “... do you believe we can prevent the Court from applying this principle?” Mr. Getches replied, “...Even if the Court finds that constitutionally tribes never had a power, you can do it. ...Certainly even if a power didn't exist before, you could delegate it to an Indian tribe.”

Senator Ben Campbell then asked, “...Federal law requires Federal courts to implement arbitration decisions even if the Federal courts disagree with the result reached by the arbiters and even if they think the arbiter applied the law incorrectly. Could Congress require the Federal courts to implement tribal court rulings in a similar manner?”

The above discussion has cumulated in a 2003 legislative proposal, called the Tribal Governance and Economic Enhancement Initiative, prepared on July 25, 2002. Co-chairs of the Tribal Leaders Steering Committee and the Legislative Options Committee were responsible for drafting it. If the political shift is toward legalizing the loss of constitutional rights of non-members, what hope will there be for tribal members?

Sizeable campaign contributions could be a factor in the way these decisions have been made. Senator Russell Feingold states, “...tribes are considered “persons” for the purposes of the limits on how much they can give to individual candidates. ... (but) not “individuals” for purposes of the annual aggregate limit on how much can be contributed to candidates, parties, and PACs combined.” And although he states, “Under H.R. 2356, tribes, like all other campaign contributors, are barred from donating soft money for federal election campaigns,” research shows that over \$731,066 in soft money has been donated to the parties by various tribes and their councils so far this campaign cycle.

In addition, the Center for Responsive Politics reports that Indian Gaming has contributed over \$1,317,000 to federal candidates in individual donations, PAC funds, and soft money. \$653,309 of that has gone directly to members of the Senate committee on Indian Affairs. Senator Inouye is among the top seven Senators receiving funds from Indian Gaming. One tribe alone, the Mashantucket Pequot, is the top contributor to Senator Daniel Inouye’s war chest. The Mashantucket Pequot tribe is also among the top twenty contributors to Senator John McCain, another member of the Senate Committee.

In Montana, Senator Max Baucus has accepted at least \$48,000 from tribal entities: Tribal governments, Tribal PACs, tribally hired lobbyists, and/or their employees. Senator Conrad Burns has begun to accept funds from some of the same sources, and his staff has stated that Senator Burns will not support any tribally related legislation unless all the tribal governments agree to it. Representative Denny Rehberg has also begun to receive campaign funds from tribal entities.