

### UNACKNOWLEDGED INDIAN TRIBES: Seeking To Have Their Voices Heard

Suppose your foreparents were members of Indian Tribes which made treaties of peace and land cession with the colonial American government during the 18th century. Later, members of your Tribe were removed from their homelands to lands west of the Mississippi that were "unsettled," and less desirable to white settlers; a remnant of your Tribe, however, remained.

Or, generations ago, all but a handful of your Tribe was wiped out by disease and war with white settlers. The rest, fearing persecution and death upon discovery, went underground or retreated into the hills or bayous, there quietly to continue their traditions.

Or, your ancestors in that territory that was later to become the 31st state, California, signed a treaty with the United States when the area began to attract non-Indians who were chasing rumors of gold. However, that treaty, which recognized the relationship between your ancestors' Tribe and the federal government, was not ratified by the Senate, but was hidden away in a sealed place for 50 years.

In each of these cases, the descendent Tribe today is what is called a "nonrecognized" or "unacknowledged" Indian Tribe. That is, the federal government does not claim a government-to-government relationship with that Tribe, nor provide federal services in exchange for lands that were ceded or lost. That Tribe may identify itself, and be recognized by other communities and even the state, as Indian, but lack of federal recognition denies that Indian community full governmental and political status.

Since 1978, non-recognized Tribes have submitted petitions to an agency within the Bureau of Indian Affairs known as the Bureau of Acknowledgement and Research, and undergone a process known as known as the federal acknowledgement process (FAP). (The courts and Congress can also recognize individual Indian Tribes, and have done so.) FAP petitions provide a broad array of cultural, political, and other evidence as proof that an Indian group has continued since earlier centuries to exist as a political unit, and therefore should be recognized as such by the federal government. However, FAP is notoriously detailed, costly, and slow, requiring tribes to wait years to have their petitions processed. Since 1978, 110 Indian groups have submitted petitions. Of those, 19 have been completed: eight petitioners were acknowledged and eleven denied acknowledgement.

To deal with this need to determine the status of unacknowledged Indian groups more expeditiously and more fairly, Sen. Inouye (HI) and eleven other senators introduced S. 611 in mid-March. This bill would establish guidelines for extending federal acknowledgement to petitioning Indian groups, which would be carried out by a new federal agency.

At a hearing on S. 611 on May 5, a wide array of views was expressed. A spokesperson for the Bureau of Indian Affairs noted a concern that under S. 611, all currently petitioning Indian groups would be "rubber stamped" for recognition. Several anthropologists, however, suggested that the petitioners would still be asked to provide substantial proof that they have continued to function as a tribe. Several tribal leaders from recognized tribes expressed the concern that if more Indians were recognized as a result of S. 611, federal dollars for services to tribes would have to be stretched even further; more "new tribes" would divide up the "budget pie" into smaller pieces. Spokespersons for several recently recognized and unacknowledged Tribes supported S. 611 as an effective way to facilitate the processing of petitions.

In a letter to members of the Senate Select Committee on Indian Affairs, FCNL expressed support for a fair process to examine suggested reforms to the federal

acknowledgment system. Indian groups should have the right to name themselves, and to have federal policy follow and recognize, rather than itself determine, what Indian people know to be true: that they identify and name themselves as an Indian tribe.

### INDIAN RELIGIOUS ISSUES: THE TIME HAS COME

Unlike most American citizens, American Indian and Alaska Native people do not take for granted one particular constitutional right: freedom of religious belief. Native Americans in one western state have been told by a federal land management agency that during their summer ceremonies, traditional religious practitioners will have access to their sacred area only between the "off" hours of 6:00 p.m. and 9:00 a.m., so that the ceremonies do not interrupt the flow of tourists.

In late 1987, grave robbers in Kentucky dug up an estimated 650 burial sites, strewing the ground with skeletal remains laid to rest centuries ago, and carting off grave goods. Such activity reveals a total absence of respect for Indian sensitivities and religious belief. It is yet to be sufficient to prosecute the ten offenders.

FCNL is pleased to see several measures introduced in the House of Representatives which deal with protection of burial sites, reburial of skeletal remains, return of remains and sacred objects, and amendments to strengthen the "American Indian Religious Freedom Act." While the last Congress saw action on these issues only in the Senate, action this year has occurred only in the House, though Senate action is anticipated.

#### **REBURIAL**

The "Indian Remains Reburial Act," H.R. 1124, was introduced on February 27 by Rep. Dorgan (ND). This bill would allow for a two-year study of historical (post-1500 A.D.) Indian skeletal remains by the Smithsonian Institution, after which time they would be returned for reburial to the tribe or Native Hawaiian group from which they originated.

On March 14, Rep. Bennett (FL) introduced H.R. 1381, the "Native American Burial Site Preservation Act," which would set civil penalties for the excavation of an Indian burial site or removal of a grave goods, unless exempt under state law.

The most comprehensive measure to date is H.R. 1646, the "Native American Grave and Burial Protection

Act," introduced on March 23 by the Chairman of the House Committee on Interior, Rep. Udall (AZ) H.R. 1646 would provide a mechanism to accomplish the return of Indian skeletal remains that are currently stored in museums and other institutions, provide that remains disinterred in the future will be disposed of according to the wishes of the appropriate Indian tribe or Native community, and clarify tribal ownership of grave goods and sacred objects found on public and Indian lands. The Interior Committee may hold a hearing on H.R. 1646 before summer.

Given the legislative handles before Congress on the issue of "reburial," and the general public's continuing education on the subject through articles appearing in highly visible periodicals, FCNL is hopeful that this is an issue whose time has come.

### **INDIAN RELIGIOUS FREEDOM AMENDMENTS**

On March 21, Rep. Udall introduced amendments to the "American Indian Religious Freedom Act of 1978," H.R. 1546. This bill would provide that federal lands historically used by or necessary to a traditional Indian religion could not be managed in a way that would "undermine or frustrate" Indian religious practices. Rep. Udall described the purposes of H.R. 1546 as giving "American Indians a fighting chance to alter management of Federal lands which poses a substantial and realistic threat to the continuing practice or their religion."

**ACTION:** Urge your representatives to co-sponsor these bills, which address issues fundamental to Native American beliefs and traditions-respect for the dead, protection of burial sites, return of ceremonial items for their use in tribal society, and access to traditional sites. There is a moral obligation to address these issues as a matter of respect for American Indian, Alaska Native, and Native Hawaiian peoples, and to insure that they fully enjoy religious and cultural freedom.

With the passage of these new burial protection laws, Kansas has joined the ranks of a growing number of states which have legislated in recent years to protect the sanctity of Indian graves from unnecessary disturbances and to prohibit the mistreatment of Indian dead.



*Paul Whitehead leads eight grade and high school graduates during a pow wow dance in their honor.*