

**“Life Ain’t Like in the Movies: Or Ten Things
Candidates (and the rest of us) Need to Understand
About Twenty-First Century Native American People
and Policy”**

by

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**Presented
March 9, 2004
Presidential Debate
Issues Forum
University of Miami**

Thank you. It is a great honor to have been invited to participate in this important presidential debate lecture series. I want to thank my former University of Wisconsin colleague and Chancellor Donna Shalala who is now your President here at Miami and your dean, my former decanal colleague Dennis Lynch with whom I served on the Law School Admissions Council Board. Furthermore, I want to extend a special thanks to the Miccosukee Tribe and Chairman Billy Cypress whose generosity has made this series possible and who serve as an example of the leadership that Native Nation's bring to "government to government relations." Their partnership with the University of Miami is a model for other tribes and educational institutions. I particularly want to acknowledge Dexter Lehtinen who teaches Indian law as an adjunct here at this law school and who represents the Miccosukee for his assistance in helping me understand several important contemporary Indian legal issues here in Florida.

More than thirty years ago when I was doing my early scholarship on tribal laws and Indian sovereignty, I had the pleasure of working under a Doris Duke Foundation grant with each of the Florida tribes including the Miccosukee. This was one of the most intellectually satisfying and personally enriching experiences of my life. One of my favorite books, [Plug one] *Creek Seminole Spirit Tales* which I co-authored with Jack Gregory, grew out of that opportunity to come to know these tribal Elders. So it is indeed a great pleasure to be back in South Florida and to see the miraculous transformation of the Miccosukee and their fellow Native people over the last three decades...

I particularly want to thank the University of Miami for including the question of Indian policy in the series of lectures. This reflects, I think, an appreciation that Native American issues have a much broader dimension than the census numbers of surviving Indian people. More than half a century ago, the distinguished lawyer, philosopher and scholar Felix Cohen summarized the significance of Native people and their treatment, when he wrote:

Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians, reflects the rise and fall in our democratic faith

“Life ain’t like in the movies,” the title for this lecture, comes from the controversial British barrister and poet A.P. Herbert. Herbert selected this phrase for his humorous poem about cinema in a cockney community. It is the recurring refrain of a working class woman after her film inspired romantic expectations of a Clark Gable like suitor are dashed by her less than romantic cockney boyfriend. “Life,” she proclaims, again and again “ain’t like in the movies.”

And it is so with the life of Native Americans. Indian life ain’t like in the movies. Among the best examples of this distortion is a 1955 action adventure supposedly set in Florida between blue coated Cavalry and beaded and feathered warrior Indians called *Seminole Uprising*. It features Sioux war bonnets worn by buffalo chasing Indian scouts on desert buttes and mountains. No self-respecting Miccosukee or Floridian for that

matter would recognize the people or place. Unfortunately, in recent history many of America's presidents, not just Hollywood producers, but our elected Chief executives seem to suffer from the inability to distinguish between romanticized and demonized Indian life on the screen and in legend and Indian life, in life. For example, both President Jimmy Carter and President Ronald Reagan suffered this confusion. To them -- and many other Americans -- "Indian life is like in the movies - - it is the movies." The Real (- r-e-a-l) Indian is mistaken for Reel (- r-e-e-l).

President Reagan, toward the end of his term, meeting with students in the Soviet Union at a "town hall" answering questions about American government and history was asked about Indians. He responded with enthusiasm quoting cinematic dialogue and using images directly out of one of his Warner Brothers "B" westerns. The transcript includes the following:

Let me tell you a little something about the American Indian in our land. We have provided millions of acres of land for what are called preservations or reservations. They, from the beginning, avowed that they wanted to maintain their way of life, as they had always lived there, in the deserts, and the plains and so forth. And we set up these reservations so they could, and have a Bureau of Indian Affairs to help take care of them. At the same time, we provide education for them and - - schools on the reservations and they are free to leave the reservations [and be American citizens among the rest of us.] And many do. Some still prefer, however

that way -- that early way of life -- and we've done everything we can to meet their demands as to how they want to live. And maybe we made a mistake, maybe we should not have humored them -- and wanting to stay in that kind of primitive life style. Maybe we should have said NO -- come join us: Be citizens along with the rest of us. As I say, many have; many have been very successful. [And I am very pleased to meet with them and talk with them at anytime and see what their grievances are or what they feel they might be.] And you'd be surprised: some of them become very wealthy because some of these reservations were overlaying great pools of oil, and you can get very rich pumping oil. And so I don't know what their complaint might be."

Jimmy Carter, during his initial presidential campaign and as recently as two months ago appearing on a Cooking Channel, romantically proclaimed the legend of his pioneering family who had "lived in Plains, Georgia since the Indians went away." Went away? Georgia and Florida Indians did not "went away." Those who "left" were driven at gun point on what history has called the "The Trail of Tears" with thousands perishing in the roundup, imprisonment in stockades and in the displacement. The ones that remained here in Florida, hid out and fought one of the most strategic, most costly and most successful Indian wars in frontier history.

My goal with this forum lecture is to help wipe out presidential illiteracy, to address some of false images as they relate to law and policy for America's Native

Nations and their people. We are going to review a list of ten things Presidential Candidates need to know about 21st Century Indian People and Policy. This afternoon let us strip away stereotyped “Hollywood Indians,” and sports mascots and explore the reality of the Native American at the beginning of the twenty-first century. What do the presidential candidates -- and the rest of us -- need to understand about twenty-first century Native America? What is left when we step back from James Fennimore Cooper’s “The Last of the Mohicans,” Zane Grey’s “The Vanishing American” and even Kevin Costner’s “Dances with Wolves.” All of these like Frazier’s “End of the Trail” sculpture are lingering, often dominate images of Native Americans “on the road to disappearance,” Indians seen as a “people of the past in a land of the future”. Under FCC Rules on advertising, I should be allowed 3 promotional breaks so – for those of you who want more detail about specific films read *Tonto’s Revenge*, available at fine book stores everywhere. [Plug Two]

It seems particularly appropriate to challenge these concepts here in Florida where we are within rocket shot of the heart of the space industry. For in the fall of 2002, just before grade schoolers dressed up in their cardboard feathers and pilgrim hats for the annual Thanksgiving pageants, Naval Commander John Herrington became the first Native American in space. This Chickasaw, born in Oklahoma and raised in Colorado and Wyoming, orbited the earth in the Space Shuttle Endeavor. In February 2003, Commander Herrington, speaking to the National Congress of American Indians, described the thrill of looking down on “the jewel that is Mother Earth.” He passed over Indian lands and former tribal domains while playing on a traditional flute and watching

eagle feathers he had brought on board float weightlessly. Thus, the first Indian gazed from space on the homeland of America's Native people.

Hold that image in you mind -- the picture of a Native American astronaut high above the earth. Now think back a little more than five centuries. From ocean going galleons Christopher Columbus and his European sailors saw new lands and experienced similar amazement. They too, glimpsed for the first time this "remarkable jewel" -- the Americas. Juxtaposing these two portraits, we see Harrington walking in space above the Caribbean and Columbus stepping ashore in the Caribbean.

More than five centuries of history and policy stands between Christopher Columbus and Chickasaw astronaut John Herrington. And yet, in term of the Native American experience, five hundred years is barley current events. There is a popular joke in the Indian Community that immigration policy was the greatest failure of Native government. For recently arrived immigrants -- and by Indian standards all others are recent arrivals -- the length of tribal historic lineage comes as a surprise.

A recent University of Oregon potlatch highlighted this distinction. On this occasion, the University presented almost fifty area tribes with archival copies of historic records that Indian students had gone to Washington to locate and copy. A Coos tribal leader, thanking the Native students and the university, reminded the audience just how far back tribal history stretches. Based on recent scientific evidence and archeological findings, he noted, Native people have occupied the North American continent for more

than 800 generations. European occupants, by contrast, have been here only 20 to 25 generations. From a Native perspective as, for example, the Kiowa's record time, "European settlement is like the flash of a firefly in the night." While the time since white contact is short, we must remember that the changes of the last five hundred years of western confrontation dwarf those of the previous twenty-five thousand.

To understand those changes let us compare the America of Columbus' landing with the America over which Commander Herrington passed. From this vantage point it becomes quite clear that the five hundred years of change between Columbus and Herrington do, indeed, dwarf those of the previous 25,000 years. The most shocking change has been the collapse of Native population. The number of tribal people in what is now the United States dropped from 50 million (estimated on the high side) or 25 million (on the lower) in 1492 to only 250,000 in 1890.

Even the most conservative demographers (regardless of the starting numbers) acknowledge a 95 percent drop in Native population over that four hundred years. Remember that in the fifteenth and sixteenth century Cahokia, the mound city in Illinois, was larger than London, Paris or Rome. This cataclysmic drop in Native numbers does not begin to reverse itself until the 1900 census. One hundred years later, by the time of Herrington's 2002 flight, according to the 2000 census, the Indian population in over 560 tribes, bands & villages had risen for the first time in post-contact history to over 2 million. The loss of tribal land and control of natural resources as well as the destruction and degradation of the environment is equally dramatic. Losses must be reckoned not

only in hundreds of millions of acres gone but in sustaining economic resources such as the vast herds of deer and buffalo, schools of salmon and pods of whale. The magnitude of the 500 years of change was so severe that President Lyndon Johnson observed “the first American’s have become the last American’s” -- A situation that has not substantially changed through Johnson’s seven successor presidents who have all retained an Indian policy rooted in the age of Columbus for an Indian people who are citizens of the space age. Janet Reno, while attorney general, attempted to address these issues with staff additions in the U.S. Attorney’s offices in Indian Country and with national conferencing. Perhaps the most difficult issue for Indians is getting presidential attention. For example of the more than 3,000 linear feet of presidential papers in the Kennedy Library less than ½ of an inch is indexed as being Native American. Over the last century Indian people are almost never mentioned in any presidential address other than rose garden meetings with Native delegates or special tribal messages. President Johnson was right!

This idea of Indians in space raises interesting analogies of the past, present and future. Let us ask ourselves and our would-be presidents if citizens of Planet Earth, would be willing to have a race from a galaxy far, far away apply the same laws, treaties and policies to Earthlings as Europeans applied to Native Americans? Could the United States, “take a little of its own medicine” were it “discovered” by an “advanced” intergalactic civilization? Muskogee Creek filmmaker Bob Hicks asks a similar question in his AFI production *Return of the County* (1985) which cinematically turns the tables of dominance from white to red. An Indian President in Hick’s original screenplay appoints

a Bureau of Caucasian Affairs, which is instructed, among other tasks, to acculturate little Anglo boys and girls into mainstream Indian culture. Can you imagine the United States living under a similar Martian or Venusians policy? This draws to mind the haunting image of United States citizens gathered in holding pens around the Washington monument waiting to be shipped to less valuable lands on another planet. With perhaps a few earthlings hiding out in Foggy Bottom or making a last stand in Chevy Chase.

Five centuries of enforced acculturation, in Native American Policy, forced migration and domination raises haunting questions that should touch the very soul of our Nation and her would-be leaders. Since September 11th I've obsessed over D.H. Lawrence's declaration of the "curse of America." Lawrence's observation is set forth in this oft-quoted passage:

America hurts, because [the land] has a powerful disintegrative influence It is full of grinning, unappeased aboriginal demons, too, ghosts, and it . . . is tense with latent violence and resistance Yet one day the demon of America must be placated, the ghosts must be appeased, the Spirit of Place atoned for.

Soon after September 11th the Apache leader Geronimo's picture was reprinted in newspapers across the country captioned "Geronimo was Nations first terrorist." What does this say about our ability to demonize, to understand those who act in the defense of home and family? Talk about the concept of "Homeland Security!" When I listened to

television broadcasters reporting on the maneuvering of Apache helicopters in Gulf War Two, I wonder what Geronimo's response would be? There is a popular Indian tee-shirt that one sees at pow wows which proclaims: "Native American = 500 Years of Struggle for Homeland Security."

A year ago, in early March, about a week or so before the start of the Second Gulf War, Secretary of State Colin Powell answered a question about the disposition of Iraq's oil fields. "We will," Powell declared at that time, "hold them 'in trust' for the benefit of the Iraqi people." This sent shudders down the spines of Native Americans regardless of their political persuasion or attitudes about this war. It was Chief Justice John Marshall who in 1829 formally denominated the historic "trust" relation between the United States and the Indian Nations. To him it was like "ward to guardian." Marshall thus unleashed the "trust doctrine" now the subject of the multi-billion dollar Cobell law suit. Apparently this ill-fated nineteenth century Indian doctrine of "trust responsibility" is being applied in our twenty-first century Iraq enterprise. It is not my intention to focus on the wisdom, morality or legality of our current war, that is for the candidates themselves, but to suggest that this moment in history provides a unique and ironic vantage point from which to look backward and forward at Native American policy.

I do not intend to imply that Native Americans are, or should be, constantly "at war" with the people or government of the United States. Quite the contrary, Indian warriors have been among the bravest and most loyal in this Nation's history. From the earliest European wars fought in the Americas to participation in Gulf War Two, Native

Americans have served, indeed, shed their blood in far greater numbers than their proportion of the population. Among the first casualties of our current war were a Navajo man and a Hopi woman.

Anyone who has attended a modern Indian pow-wow or celebration is impressed and in light of the historic experience amazed with the opening flag ceremonies and the patriotism in the Native veterans groups. We are just now beginning to appreciate the Navajo, Comanche, and Choctaw code talkers of World War Two.

Nonetheless, most contemporary Indian survival battles occur in courtroom and legislative halls, in BIA offices and on television and at the movies. Mister Would Be President, let me remind you that many of these seemingly unimportant but monumentally significant Native battles are about Indian stereotype - - false conception or, perhaps more correctly, false misconception. This issue is much broader than the team name Redskins or Tonto and the Lone Ranger. This is not just the sixteenth century Spanish cleric who reports Native women with jewels growing naturally from their navels or the French explorer who records aboriginals eating smoked unicorn. Yes, you heard me - - smoked unicorn. The preparation of which he describes in cookbook like detail. We do not know, however, whether or not unicorn tastes like chicken. You always wondered what happened to the unicorn? Now you know to add this to the alleged crimes of Native people - - Indians must have over hunted them.

Such misconceptions would be funny hardly worthy of presidential concerns but for the impact these myths have on the daily lives of individual Indians, particularly the young. Indian children are struggling for their identity and personal survival, for their future in a world in which they are mislabeled and limited by these false images. Take the case of Raymond Nakai the Navajo flutist, the first Native American Grammy winner and an Indian musician who has performed with the greatest orchestras of the world. Nakai recalls his experience in being so judged:

I spent time studying, getting prepared knowing a little bit about music theory [W]e decided that maybe I should try my hand at getting [into] a music school. So we wrote a letter to Julliard. Two band directors in high school and my bandmaster in the Navajo tribal band all wrote letters. And different people in the Navajo tribe wrote letters of support.

We were very hopeful. And then a letter came back, [saying] that although my grade point average and everything else was good - - I think it was, "Mr. Nakai would be very hard pressed and would find it very difficult to survive in our school of music, because American Indians do not have a music culture to speak of." And I thought, wait a minute now, we have all the ceremonial music, we have all the social songs, and things very much like the folk culture of other people in the world. There's a problem here.

So I think much of what I do now is [because] I need to show people that my culture is important. The culture of music that I inhabit in my own traditional world - - and the world I am working in today . . . is an actual rendition of how I see myself using a philosophy of music in which to communicate.

As far as we know the Ballet Russe de Monte Carlo did not tell the Osage sisters Marjorie and Maria Tallchief that there was no Native American dance nor that they were precluded from merging their Native heritage with European dance tradition. And Peggy Lee always claimed that Lee Wiley, the Native American Jazz diva, was the greatest influence on her singing style.

I am struck by the similarity of a letter from the Sioux artist Oscar Howe and the observations of Navajo flutist Nakai. This letter was written in 1959 after one of Howe's paintings was rejected by white judges at an Indian Art show. The work was excluded because the painting was "non-Indian" and embodied a "non-traditional Indian style." Howe responded:

There is much more to Indian Art than pretty, stylized pictures. There was also power and strength and individualism (emotional and intellectual insight) in the old Indian paintings. Every bit in my painting is a true studied act of Indian paintings. Are we to be held back forever with one phase of Indian painting,

with no right for individualism, dictated to as the Indian always has been, put on reservations and treated like a child, and only the white man knows what is best for him? Now, even in Art, “you little child do what we think is best for you, nothing different.” Well, I am not going to stand for it. Indian Art can compete with any Art in the world, but not as suppressed Art.

I see so much of the mismanagement and treatment of my people. It makes me cry inside to look at these poor people. My father died there [at Pine Ridge] about three years ago in a little shack, my two brothers still living there in shacks, never enough to eat, never enough clothing, treated as second class citizens. This is one of the reasons I have tried to keep the fine ways and cultures of my forefathers alive. But one could easily turn to become a social protest painter. I only hope the Art World will not be one more contributor to holding us in chains.

Howe exemplifies what I call a “paintbrush warrior.” He is but one of many Native artists, writers and musicians who use their talents to wage the battle for survival. The arts are as is law and medicine and science vital weapons on this shifting battlefield. Art and literature, music and dance, theatre and film attack the false image through beauty and majesty, satire and pathos, in real and imagined situations. Today the Indian Community is made up of “briefcase warriors,” “test tube warriors” and “typewriter warriors.”

False images and common misconceptions confront Indians on a daily basis. To inject a personal example, I've spent my life responding - - or not responding - - to "but you don't look like an Indian." Commander Herrington recalls that upon his return from space among the first questions he was asked were "did you grow up on a reservation?" and "how much Indian are you?" In response to the "pale face" assertion of "not looking like an Indian," I wish I had been gutsy or clever enough to come up with the response of the Smithsonian's Native American folklorist Rayna Green. Her reply to the person who asserts "You don't look like an Indian" is "you don't look rude, either."

On a more serious contemporary note: both President Bush and the United Nations were rightly focused on the location of "weapons of mass destruction" especially biological warfare. It is ironic, in light of United States history, that smallpox is the most frequently discussed and feared disease in the modern germ warfare arsenal. Historically, more Native people died of smallpox than were killed in all the military battles combined. While there is no "smoking gun" or official United States letter of policy ordering "germ warfare," there is overwhelming evidence that European powers, including Lord Jeffrey Amherst, a British Commander, used smallpox as a weapon of war. Official U. S. government documents record the decision not to provide smallpox inoculation for tribal members. Despite treaty obligations of the "trustee" to inoculate, few Indians were ever protected from smallpox epidemics. And this was at a time when the United States systematically inoculated all frontier soldiers. Based upon thirty years of study of United States Indian Records, as well as French, Spanish and English

documents, I am convinced that smallpox was a primary weapon systematically used in the extermination of Native populations.

Perhaps our presidential candidate might think such atrocities are historic, limited to eighteenth and nineteenth century policy. It is easy to believe that such conduct was long ago repudiated. Not so. The record is tragically clear: The Indian Health Service regularly and systematically sterilized Native American women, without consent, as recently as the 1960's and 1970's and likely into the early 1980's. One of my Indian law students and current doctoral candidate, Donna Ralstin-Lewis summarized the data. It is hard and clear and overwhelming. Decisions to sterilize were routinely made at Indian hospitals across Indian Country. From 1973 to 1976, a General Accounting Office (GAO) investigation of only four of twelve IHS hospitals revealed that 3,406 Indian woman were sterilized. Dakota Senator Jim Abourezk argued that considering the small number of Native Americans in the population, sterilizing 3,406 Indian women would be comparable to sterilizing 452,000 white women.

One young Indian woman who went to a private doctor for fertility treatment learned only then that the Indian service had surgically rendered her sterile - - incapable of having the family that she and her husband desperately wanted. Her question to the doctor suggests the need for, and tragically the limits of, Native medical warriors. She asked: "Could I have a womb transplant?" Frontier generals in the nineteenth century instructed their troops to shoot women first because "little nits come from big nits;" if you killed the women, you didn't have to fight the unborn sons.

With this recognition that such treatment is a historic reality let us look at our list for ten things the presidential candidates need to know about America's Indian people and policy.

1. Indian policy is not a passing issue but a significant and continuing obligation of the United States. For Indians are not people "on the road to disappearance" but among the youngest most vital and fastest growing segments of the United States population. Just as foreign policy, health care policy, education policy are a continuing issue for every administrator, so is Native American policy. It is not something that "went away" or is ever likely to do so.
2. Contemporary Indian citizens and tribes are richly diverse in background and experience with differing historical and legal relationships with the United States. Native peoples are U. S. citizens who pay federal income tax just like their fellow citizens. My two tribes - - Osage & Cherokee -- once very different from each other.

Miccosukee → Key issues:

- 1.) Protection of the environment –Natural Resources, their homes and ours;
- 2.) Assurance of fairness in application of laws → State and tribe be held to the same standards of enforcement;

3.) Application of regulations like PL280 in their own historical setting;

4.) Reservation Sovereignty

3. Native tribes are not social clubs or volunteer organizations but are sovereign governments. Tribes and tribal members are different bodies and may have separate interests and concerns.

Tribal Support and Citizenship:

- a. Miccosukee → Pres. Debate
- b. Cherokee → School Dist.
- c. Education → Mohican Sun
→ Oregon....

4. All Native Americans are not “oil rich and bingo flush.” Children incapable of creating and sustaining strong economic and political structures.

We have seen and will continue to see remarkable self-reliance and economic development within the context of traditional tribal values.

Chad Smith, chief of Cherokees, works to decrease dependency
2% a year = 50 years; 5% a year = 20 years – Richness of language and culture. 80% in 20 years.

5. The Federal Government has a trust responsibility for Indian tribes which continues to be ignored and often violated.

Enron, Martha Stewart and Moss. Com → \$ Billions and Billions.

- 6.) Treaty law and land rights do not expire or terminate but remain valid and vital, moral and legal obligations of the United States.
- 7.) Native people are regulated, subjected to restrictions and limitations not imposed upon any other groups of citizens.
- 8.) Stereotypes about Indians are widespread and debilitating, particularly dangerous and damaging because of the federal regulation of control of tribal resources and education.
- 9.) Atrocities, discrimination and bias are not just a historic, nineteenth century phenomenon but something which Indian people and their federal trustee must be ever vigilant to prevent.
- 10.) To the extent that Native Americans share values and interests, they share them with the non-Native American. For example, Native people are not “lawless” but possess a strong sense of justice and fairness. Indeed, on many issues the larger society has significant lessons to take from the Native American experience.

Mr. Future President:

In conclusion, let me suggest that these Native values may be of immense value to non-Indian society. Indeed in *Tonto's Revenge* [Plug Three] I argue that this may be our only hope for survival as a Nation. In Indian society the grandfather was the teacher. The contrasting and conflicting roles of continuity and change in Indian and white society are highlighted by Erik Erikson in *Childhood and Society*. White society, he wrote half a

century ago, “subjects its inhabitants to more extreme contrasts and abrupt changes during a lifetime or a generation than is normally the case with great nations.”

In settled Indian societies it is the grandparent -- the grandfather/grandmother figure -- who supplies ideals and a sense of the continued validity of the family and the traditions of the culture. Mr. Presidential candidate → using the Indian as the teacher -- the grandfather to us all -- could help all American society through the uncertainty of modern change. Who understands survival in the face of change better than Native peoples like the Miccosukee and their sister and brother tribes. Who better than the Indian in space?

Indeed, the Miccosukee’s symbolized not only survival but endurance, emergence and the strength of tribal values in a changing world. The last 30 years proves that! One of the greatest joys in my professional life was introducing my Chief Wilma Mankiller as the AALS annual meeting speaker in 1995. She remains the only head of state as the Cherokee’s elected leader ever to address the Association of American Law Schools. With Chief Mankiller’s help, I’d like to close this lecture with an answer to the question of Native survival itself.

I firmly believe [she predicts] that 500 years from now there will be strong native people in the Americas where ancient languages, ceremonies and songs will be heard.

I share Chief Mankillers optimism. Perhaps my focus has been too narrow or legalistic. There may be only one thing, not ten that our presidential candidates need remember. Justice Hugo Black articulated this principle in his dissent in the Tuscarawa Power Case – “Great Nations, like great men, keep their word!”

Thank you!