

Issues in the Implementation of the American Indian Religious Freedom Act: Panel Discussion

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## **Issues in the Implementation of the American Indian Religious Freedom Act Panel Discussion**

*Walter Echo-Hawk, Lenny Foster, Alan Parker*

### **INTRODUCTION BY WALLACE COFFEY**

I would like to acknowledge all of our friends and relatives who have taken time to come and be with us. One of my good friends and colleagues and a former attorney for our Comanche tribe is here, Glen Feldman, and I know that he worked tremendously hard on the American Indian Religious Freedom Act, many times in the years back, and that's why we are going to discuss today the issues with regard to the implementation of the AIRFA. But I wanted to share with you that right after we conclude this panel, I'm going to call on my brother over there from the Ho-Chunk Nation to do a prayer and a short ceremony for Arvol Looking Horse. He just got a call that his mother is going into the hospital for back surgery. They were planning on leaving this conference and taking her up into Canada so she can participate in a ceremony, a healing ceremony, but unfortunately she had to be taken into the hospital on an emergency basis, so as Indian people, we always take time and we pray—pray to the spirits of our ancestors and through our loved ones that they will watch over and comfort his mom while she is going through this serious operation on her back. And to those of you who still have your parents, I wish you the best. I hope you have your parents—your moms and dads—for a long time. This past August, I lost my mom. Ninety-five years of age, and I'm very fortunate to have had my mother that length of time. But my greatest inspiration has

always been that one loved one, someone that has always inspired us, made us feel good about who we are. So today, you will see these individuals, and I know that there has always been that one special person that has inspired these individuals to maintain these convictions that they hold and to fight and to ensure that maybe with some breath of air, maybe some ray of light, we can find hope for the issues in the implementation of the American Indian Religious Freedom Act. And again, I want to apologize on behalf of Kevin Gover, my nephew, who unfortunately had to be in a different location today because of the legal issue. But I want to say thank you to these individuals, Walter Echo-Hawk, staff attorney for the Native American Rights Fund in Boulder, Colorado; Mario Gonzalez, one of the premier attorneys way back in time when there was no such thing as Indian law; Len Foster, who has devoted his entire life to recovery to improve the life of his relatives and family members on the Navajo Nation; Alan Parker, whom I first got to know when I was the director of the Nebraska Indian Commission in Lincoln, Nebraska, and who at one time, in Washington, DC, worked for the Senate Indian Affairs Committee.

Bunky (Walter Echo-Hawk), would you please begin this session. We're going to give each and every one of you a chance to give an overview from your perspective, and we'll have each and every one of you give a comment with regard to something they may have overlooked, and then we're going to ask questions from members of the audience, so Bunky, if you would, please.

#### **WALTER ECHO-HAWK**

It's very timely for Arizona State University to host this acknowledgment of the American Indian Religious Freedom Act. AIRFA was passed twenty-five years ago. It's been one generation since that historic federal statute was enacted into law. It's important to take stock now to see how far we've come in protecting Native American religious liberty in the United States and to see where we go from here.

The American Indian Religious Freedom Act is a historic landmark statute. For the first time Congress formally acknowledged, in the "whereas" clauses of AIRFA, that the First Amendment has never worked for Native American peoples in the United States. Congress found a long history of denial of Native religious liberty and was concerned that the First Amendment has not served to protect Native American traditional religious practices. The law squarely addressed itself to that long-standing classic cultural conflict between the indigenous peoples of this hemisphere and the newcomers from the old world recorded in Columbus's diaries, in which he stated on his very first day in this hemisphere that the Indians "will easily be made Christians because it seems to me they have no religion." Columbus brought old-

world attitudes of religious intolerance to this hemisphere, and introduced the notion that the religions of Europe are superior to those of this hemisphere. Since that day and through the machinery of government, we've had this cultural conflict between Native and non-Native peoples over the indigenous right to worship according to traditional religious beliefs. Even today, this conflict remains a paramount human rights concern of Native people in the United States, as well as indigenous people in other countries. The basic challenge, not only here but for all nations that have indigenous populations within their borders, is to justly determine the extent to which Native people will be secure in the practice of their indigenous religions and their cultural ways of life. We can look around the world, and even in our own land, and see many indigenous medicines and religions disappearing. It's a challenge to keep these ways of life—these ancient practices and beliefs—alive for future generations.

The AIRFA legislation was extremely important twenty-five years ago, even though it only articulated a policy—a simple policy—to protect and preserve traditional Native religious practices. Unfortunately, as Suzan Harjo explained, the act didn't go far enough. A bare policy alone is legally insufficient to protect human rights. When human rights are at stake, you need a law that has teeth in it, a law that is enforceable and requires courts to protect human rights. Martin Luther King and the black civil rights leaders did not rest on a mere policy when it came to protecting the human rights of African-Americans against centuries of ingrained racial discrimination and segregation. A simple policy does not work that kind of social sea change, and so they went forward and obtained civil rights laws that had teeth in them. That's the implementation goal we are faced with today: to implement the AIRFA policy through the legislative agenda that AIRFA set in motion a generation ago. We must direct the attention of the American government and Congress to address the root causes of this case of classic cultural conflict, remind them that the First Amendment has never worked to protect Native people in the United States, and urge them to enact a special set of laws with teeth in them to remedy this inequity once and for all.

I've been asked to talk about the litigation that I've been involved in under the American Indian Religious Freedom Act: how these cases were brought, some of the problems and successes, as well as future needs in these areas.

The area of law that relates to protecting Native American religious freedom in the United States is very broad. It includes not only treaties but also the American Constitution, as well as statutes, executive orders, federal rules and regulations, and case law and tribal law. It's a very broad field professionally. I will focus on the litigation aspect, when Native religious practitioners are forced into court to protect

their religious liberty from being infringed upon by government. Since the inception of the Native American Rights Fund, one of our priorities has been the protection of Native American religious liberty. In my view, you can have bingo halls and casinos, enjoy all of the rights of tribal sovereignty to govern over land and water, own abundant water rights—all of the bundle of rights that we enjoy as Native people—but if we lose our religion, then none of these other rights makes any difference at all. It's our religious rights, our spiritual rights, that give meaning to the rest of our bundle of legal rights that we enjoy as Native people and tribes—this is what we're all about. I've been fortunate and privileged in my career as an attorney to represent traditional religious practitioners in court—religious leaders, Indian tribes, and organizations such as the Native American Church.

I have observed that the American court system, composed largely of non-Indian federal judges, has demonstrated over the years an inordinate difficulty in applying regular principles of the First Amendment to Native religions. For some reason, judges resist applying the same rules of law that they routinely apply in any other religion cases. I think this illustrates that the classic cultural conflict still abides within the judiciary where there are cross-cultural difficulties in understanding, for example, why this peyote plant is sacred or why this waterfall or this mountaintop has to be preserved. Judges just can't really understand it. The courts have had so much difficulty that the U.S. Supreme Court, in the *Smith* case (1990) regarding peyote and the *Lying* case (1989) regarding sacred sites, finally gave up the task altogether. The Supreme Court referred the Indians to Congress and turned over the chore of protecting Native religious liberty to the legislative branch. These cases held that the First Amendment is simply not going to protect sacred sites from destruction by the government; these cases held that peyote should be criminalized. The Court makes it clear that the First Amendment just doesn't work in this setting and instructed Native people to go to Congress to get protection for worship. That's what the Supreme Court told us in *Smith* and *Lying* when it closed the courthouse doors on Native American worship.

I'd like to talk a little bit about prison litigation under AIFRA. It's been a zigzag history. I had worked with people like Lenny Foster from the early 1970s through the 1980s doing a lot of prison litigation on behalf of Native American inmates on many different kinds of issues, including the right to practice religion while incarcerated. We filed many cases in just about every state on this side of the Mississippi River during that period. *Califlooking v. Richardson* was filed against a federal prison in Washington State in 1974, before AIRFA. At that time, there was nothing in American prisons for Native Americans. Inmates could not even come together on a group basis; they could not have access to spiritual leaders, even though the prisons hired full-time chaplains for

inmates of other faiths and allowed them to congregate. So some of these earlier cases dealt with these basic issues under the First Amendment. The *Calflooking* case resulted in a court order consent decree granting the bare right of letting the inmates get together as a group and allowing their spiritual adviser, the late Janet McCloud, to come into the prison. *Teterud v. Burns* was filed against the Iowa State Penitentiary seeking the right to wear long traditional hair. The Eighth Circuit upheld that right under the First Amendment. *Ross v. Skurr* and *Indian Inmates v. Nebraska State Penal and Correctional Complex* were cases filed against state prisons to bring the sweat lodge into the penitentiary, and *Bear Ribs v. Carlson* did the same thing for the federal prison system in 1979.

Other First Amendment cases were filed against state prisons in Kansas, New Mexico, Oklahoma, South Dakota, Nebraska, and Idaho. They were successful under the legal standards that existed prior to 1987. Prison litigation, for those of you who are law students or attorneys, is very challenging. Prior to 1987, the legal basis was the First Amendment and its "compelling state interest test." Under that test a prison official cannot restrict a religious practice unless there is a compelling government interest that can't be protected in any less restrictive manner. Prison wardens, being unfamiliar with Native religious practices, were doing all kinds of things that infringed on the practice of freedom of religion for Native inmates. When challenged, they offered many bogus reasons to justify their restrictions that did not stand up in court. For example, they claimed, "You can't wear long hair because it might be some kind of a security threat." "Your hair might get caught in some kind of machinery in the institution or would be unsanitary if you are serving food, or you could get in a fight or even hide contraband." But once we went to court and scrutinized the evidence, we would find that these really weren't reasons at all. They couldn't prove, for example, that long hair presented a threat to security or cause any of these other alleged problems. When it came down to depositions and cross-examination, including expert witnesses from other prisons that accommodate Native religious practices, none of these justifications hold water. Therefore, the courts in all of these cases prior to 1987 ruled in the Indians' favor. AIRFA was not a significant factor because it was only a policy and that policy only applied to the federal government, not to state prisons. Prison litigation requires a high degree of litigation skills in terms of depositions, cross-examination, briefing, and basic litigation practices, as well as a specialized knowledge of prison systems: how they operate; what that insane, totalitarian, authoritarian environment consists of—its own quirks, as a way of life; and how that environment operates in relation to freedom of religion issues. And so the Native effort in the prisons was largely successful just by going to court. Prisons began to fall like dominoes. The corrections community follows precedent; when you see that some prisons can

operate with a sweat lodge without experiencing any penal problems, experts and administrators wonder why other prisons cannot do the same thing. Unfortunately, the Supreme Court changed the rules in 1987. The Court changed and weakened the legal standard in two cases involving Muslim inmates. The Court discarded the compelling state interest test and replaced it with a "we're-just-going-to-defer-to-the-reasonable-judgment-of-prison-wardens" test. Since then, until just recently, under that weak legal test many prisons went back to their old practices of infringing on Native religious liberty. However, there is a brand-new federal law that reinstates the compelling state interest test for prison inmates. This new law reopens the field. We've found that if you get a full trial under that test, you can usually win these kinds of cases.

The area of sacred sites protection presents a very challenging area of litigation. It has largely been an unsuccessful area under the legal standard established in the 1989 *Lyng* decision. NARF was involved in one of the few successful cases, the Kootenai Falls case in Montana on the Kootenai River. A hydroelectric company sought a Federal Energy Regulatory Commission (FERC) license to build a dam across a waterfall and route the river around the waterfall. This was a licensing proceeding before the FERC under the Federal Power Act. The question was whether FERC would grant a license for this dam that would de-water this waterfall. The waterfall happened to be a sacred site of the Kootenai people. There are several bands of Kootenais in Montana, Idaho, and British Columbia. This waterfall was the home of certain of their spirits and a vision-questing site. We represented them to oppose the FERC license. We were able to win because we had the opportunity to have a full-blown trial, to put on witnesses, to introduce evidence of our religious practitioners, religious leaders, and anthropologists, to fully cross-examine power company witnesses. The legal test under the Federal Power Act is the "public interest test" or, in this case, whether a license to de-water this area is "in the public interest." FERC weighed all of the evidence and determined that it was not in the public interest to license this particular dam because, among other reasons, the dam would have very harmful effects on the Kootenai religion. Unfortunately, this case has limited value as a precedent. Kootenai people are similar to Pueblo tribes in that their religion is secret. They can't talk about their religious practices to nonpractitioners, and it was very painful for Kootenais to have to testify about their religion under oath. One of the ways we were able to mitigate these problems in the white man's process was to request a confidentiality order. That order sealed the proceedings so they were not open to the public, and that order even applied to the decision rendered in the case. FERC issued a separate ninety-page opinion on the religious issues, but that opinion remains sealed even to this day in order to protect the confidentiality requirements of the Kootenai people.

Many other cases in this area have been unsuccessful, including ones that I have worked on, because of the *Lyng* decision. *Lyng* reflects the judiciary's inability to apply the First Amendment to protect land that has sacred attributes. Today, we need legislation—a specific statute—to be passed by Congress with teeth in it that provides a legal cause of action so Native Americans can have their day in court and draw on a full case of facts. As in the Kootenai case and in prison litigation, I'm convinced that when Native litigants can get into court and stay in court to put on a full factual case, we can usually win.

Let me quickly discuss the area of peyote litigation. I was involved in both of the *Smith* cases, *Smith I* and *Smith II*, before the Supreme Court. I did not argue those cases; I filed an amicus brief on behalf of the Native American Church of North America and was a member of the argument team, helping the attorneys who did argue. The Court issued a devastating opinion in *Smith* that not only stripped the Native American Church of its legal protection to practice that ancient religion but also weakened American religious liberty for all religions. The opinion generally took courts out of the business of protecting religious liberty and referred that task to Congress.

After *Smith*, if anyone needs their religion protected, they must obtain an act of Congress. And that's what the Native American Church did in 1994; we represented the Native American Church and went to Congress. Congress passed the American Indian Religious Freedom Act amendments of 1994. This law overturned the *Smith* decision. It legalizes the religious use of peyote by Indians and prohibits discrimination against Indians on the basis of that religious practice. Today, most litigation in this area is devoted to defending the constitutionality of that legislation. The peyote legislation was passed under Congress's power to legislate for Indians under the Indian Trust Doctrine. That's what the legislative history says in committee reports. This is one of the few statutes in the country that protect a religion or a set of religious practices.

The law has been under assault in the courts by non-Indians who want to practice peyote like Indians, who are unhappy that Indians have this legal protection, or who—for whatever reason—want to be treated just like Indians. For example, one criminal case in Utah involves a non-Indian who is being prosecuted for bringing non-Indians into the tipi and charging them a couple of hundred dollars to participate in some kind of peyote ceremony. His defense was, "Well, you've got a law for Indians, and if I'm not protected by that for my practices, then that's discrimination against me, and the Indian law also violates the Establishment Clause because it favors Indian religion and not my own." Another case raising similar attacks is in New Mexico, where wealthy non-Indians who want to drink some kind of tea from Brazil that happens to be illegal sued the government saying, "We want the

same exemption as the Indians, and if we don't get it, the Indian legislation is unconstitutional because we want to be treated just like Indians." Those kinds of challenges continue but have been unsuccessful to date.

This concludes my snapshot of some of the litigation that has been brought in the area of religious freedom and the American Indian Religious Freedom Act.

### LENNY FOSTER

First, I'd like to thank you for the invitation to speak at this American Indian Religious Freedom Act 25th Anniversary Conference. I'm honored and privileged to be among such distinguished Native spiritual leaders, scholars, activists, and tribal leaders. I am Ki'yaa'anni' (Towering House), born for Dzilti'ahnii (Mountain Cove); my grandpa is Ta'baaha (Water's Edge); and my paternal grandpa is Hona'ghaa'hni (One Who Walks Around). I'm currently the program supervisor of the Navajo Nation Corrections Project, where I have been since July 1983. I'm also a spiritual adviser for over two thousand Native American inmates in the ninety-six state and federal prisons that I visit. I have been requested to share some of my experiences regarding the issues around religious freedom for Native prisoners in the American Indian Religious Freedom Act. I'd like to state that for many years, as Walter Echo-Hawk—a colleague and in my opinion and my mind the premier Indian rights attorney for Native American rights—has stated, the paramount human rights struggle of the Native American has been against the restriction on consistently practicing traditional religious and spiritual beliefs. These long-standing faults within the American criminal justice system have denied our people their federally protected religious rights, and it's been documented in many hearings and congressional hearings, as early as 1978 during the passage of the American Indian Religious Freedom Act.

My first visit to a federal prison was at the Englewood, Colorado, facility in October 1971. I made this visit with the Denver chapter of the American Indian Movement, and we took a drum into that facility and spent some time and sang some songs, and that was the first time such a request was approved. Imagine that—a drum! We take that for granted in a lot of ways now, but it was very significant. The Native American inmates were being denied their dignity. I made another visit in May 1972 at the Minnesota State Prison in Stillwater. I went with a delegation of the American Indian Movement that included Dennis Banks, Clyde Bellecourt, Eddie Benton-Benae, Vernon Bellecourt, and Leonard Crow Dog, who took a pipe into that facility and had a pipe ceremony with the Native prisoners. These two visits into the prison system made a very profound impression on me. I was twenty-three years old at the time and a senior at Colorado State University.

In October 1972, we were part of group called the Trail of Broken Treaties Caravan. Many, many people participated in these workshops, and Hank Adams of Nisqually, Washington, compiled information with input from the workshops and finalized a document that eventually became our "Twenty-Point Position Paper," the manifesto for the Trail of Broken Treaties—this became one of the important documents in the development of the American Indian Religious Freedom Act of 1978. Point 13 of that position paper was to resume federal protective jurisdiction for offenses against Indians, which basically meant to assume jurisdiction over rehabilitation, and a review commission would be developed to conduct surveys and recommend ways to accelerate treatment and rehabilitation and reduce recidivism. Point 18 of that position paper is "Protection of Indian Religious Freedom and Cultural Integrity." This section proclaims that the religious freedom and the cultural integrity of Indian people must be respected and protected. These two sections predate the American Indian Religious Freedom Act and advocate for the protection and preservation of American Indian religious practices and beliefs. I'd like to add that the first sweat lodges that were constructed in a prison in the United States were at the Nebraska State Prison—Wallace Black Elk and Walter Echo-Hawk negotiated that in 1977. Another instance that I'm familiar with was in 1979, as a result of *Bear Ribs v. Grossman*, where Grossman was the warden of the Federal Correctional Institution at Lompoc, and Archie Fire was the spiritual leader that constructed the sweat lodge in Lompoc, California.

From 1980 to 2003, I have devoted my time and energy to the implementation of sweat lodges and counseling programs within the Arizona, New Mexico, Colorado, and Utah prison systems as well as in the Federal Bureau of Prisons. I quickly learned that the infringement on the free exercise of traditional Native religious practices and beliefs was extensive due to discrimination and racism and ignorance. The American Indian Religious Freedom Act of 1978 had raised our hopes and expectations that religious freedom would be guaranteed, but that was not accomplished. These hopes proved to be very elusive with no or little compliance or enforcement. We need to understand that our Indian people are incarcerated in very, very disproportionate numbers due to alcoholism, poverty, and substance abuse. The Native American Rights Fund of Boulder, Colorado, did a survey that identified over seven thousand Native Americans as being incarcerated—that estimate is probably ten or twelve years old—and since that time, I believe that number has doubled. That's a lot of young Native Americans who are incarcerated. It's a vested interest of the Indian people, the Indian nations, and the Indian tribes to be involved in the conditions and treatment of their people while they are incarcerated. It's become a serious human rights and civil rights problem for all

Indian tribes—approximately 95 to 98 percent of our people in prisons are there because of alcohol-related crimes. This is 30 to 50 percent higher than other nationalities, and I found that many of our young people have a lot of rage, anger, shame, resentment, and a lot of pain as a result of the dysfunctional environment and addictive behaviors. Our communities have been invaded by alcohol, and our spiritual values are being undermined by alcohol. This has to be addressed. Spirituality is the key to addressing that issue. Reclaiming spirituality and our spiritual values are the basis for restoring dignity and our humanity.

The U.S. prison system has become a place where relearning the songs and prayers, participating in the ceremonies, and visiting with spiritual leaders have become very important. The opportunity for recovering spiritual healing is enhanced by allowing our people to become dignified human beings through the rekindling of these ancient ceremonial practices. It has been our experience for the past twenty-three years that self-esteem and dignity can be restored and revived if we are allowed to teach our own people through ceremonies and counseling. We recognized that what was expressed here was a very serious problem, and after the *Smith* decision, the American Indian Religious Freedom Coalition was formed in 1991 under the leadership of the Native American Rights Fund, the Native American Church of North America, the Navajo Nation, and the National Congress of American Indians. I was invited by John Echo-Hawk, Walter Echo-Hawk, Peterson Zah, Rueben Snake, and other individuals who were involved: Pat Left Hand, Suzan Harjo, James Botsford, Jack Trope, and others. We met several times in Boulder, Colorado, to discuss the proposed federal legislative amendments to the American Indian Religious Freedom Act. I assisted in drafting the prisoner's rights language along with Walter Echo-Hawk. There were four very important provisions that included Native American religious freedom for prisoners: the sweat lodge for cleansing and purification, spiritual leaders coming into the prisons to teach, allowing long hair or a ban on cutting long hair, and having access to sacred items.

We had an opportunity to present congressional testimony, and there were six hearings throughout the country, five of them in Indian Country: Portland, Los Angeles, Scottsdale, Albuquerque, Minneapolis, and one in Washington, DC. We had numerous individuals provide very strong testimony but to no avail. That section of the religious freedom for Native prisoners didn't pass, so we realized that perhaps we could introduce legislation at the state level, and that's what we did in New Mexico, Arizona, Colorado, and Utah. That strategy continues to this day. In fact, right here in Arizona we have a bill introduced in the last two years—"Native American Religious Practices" for our Native inmates in the state prison system—but due to the political cli-

mate here in Arizona, it has become very tough to pass. It was tabled, but we have plans to reintroduce it, and we've also taken these concerns into the international arena. We testified on this issue several times in the UN Human Rights Commission in Geneva, Switzerland, and we will continue to do that—to put our testimony on the record—until the U.S. Justice Department investigates the civil and human rights complaints.

I'm going to close here with the recommendation that all the complaints of American Indian prisoners be thoroughly investigated and rectified. The inherent spiritual and cultural rights of Indian nations and their citizens must be protected and preserved. We recommend the following: that all American Indian prisoners in the U.S. prison system be provided equal access to the sweat lodge on a consistent basis for cleansing and purification; that they have equal access to sacred items such as the pipe, tobacco, sage, cedar, eagle feather; that they have equal access to spiritual leaders who teach and counsel and conduct the ceremonies; that American Indian prisoners be permitted to wear their hair long according to their religious and spiritual customs; and that prisons provide equal access to cultural and traditional foods. If our brothers say that fry bread is important, then we want to include it in the ceremonial meal. Native peoples should not be transferred to facilities where their religious practices and beliefs are prohibited. One example is that some of our people are being shipped to Texas, and the Texas Department of Corrections does not permit any sweat lodges.

American Indians on death row should be permitted to visit with their Native spiritual leaders, have equal access to the sweat lodge and the pipe for worship, and have their last rite accommodated. There has been only one case in this country where such a request was honored, here in Arizona four years ago before a brother, Darick Gerlaugh, was executed. We were allowed to have a sweat lodge ceremony and smoke the pipe for his last rite request. A more recent case in San Quentin, California, was denied because the warden said the sweat lodge would be used as a means of escape, and within the two-hour time the Indian inmate, Darrell "Young Elk" Rich, would use his hands to escape. That is a very absurd and racist statement.

We want an executive order for the protection of American Indian religious practices for prisoners in the U.S. prison system to be granted. We would request that such an executive order be honored. A national commission of American Indian spiritual leaders, activists, former prisoners, and tribal leaders must be formed to study all of the problems, issues, and concerns and provide solutions and recommendations and report to Congress and the president on the complete findings. We think that's important, and we request that the Senate Committee on Indian Affairs convene a congressional hearing on American

Indian religious and spiritual practices in the U.S. prison system. With that, the work will continue, the human rights struggle will continue.

## INTRODUCTION BY WALLACE COFFEY

I'd like to say, first of all, I went to a presentation that Alan made in Washington, DC. I really felt good about this presentation because it was at the National Press Club. It really made me feel good because he talked about Columbus arriving on the shores of North America, and that the Mashantucket Pequots were there to welcome him. Then he said, "The Mashantucket Pequots are still here, but where is Columbus?" Alan Parker has a history in legislation and advocacy for Indian people.

## ALAN PARKER

I am a citizen of the Chippewa Cree Tribal Nation, located in Rocky Boy Reservation, Montana. That's my father's people, and we're from the Cree side of that tribe; our people originally lived in Northern Alberta. We escaped Canada in the 1890s with the Canadian Mounties hot on our heels. My ancestors were involved in what the Canadians called the Frog Lake Massacre—you know how every time you kill some white people, it's called a massacre—anyway, we consider ourselves political refugees from Canada, even though we live in Montana. On my mother's side of the family, my mother is Hunkpapa Sioux, and her father, my grandfather, made sure every member of our family all knew his mother was Sitting Bull's second daughter. So we're descended from Sitting Bull on my mother's side of the family. I introduce myself by talking about my ancestry because that is the custom. I had the opportunity recently to travel to other parts of the indigenous world: to New Zealand where I spent time meeting with native scholars, the Maori, and also to Australia to meet with Aborigines and native people who are scholars and political leaders. I think it really makes an impression when you go there and find that Native people share a common view of the world, and I want to connect this to the work we have done over the years on protecting Indian religious freedom and to what needs to be done in the future.

For starters, for example, I think all Native people share a sense of relationship. We really do feel like we are related, not only to each other but to all living things, and that we are connected to a particular place that gives us our sense of identity, that gives us a sense of who we are, that directs us in terms of our ceremony—our tradition and our spiritual beliefs are related to the place that we're from. And of course, we live in a larger society that has mostly abandoned that sense of place, where mobility is the standard practice and there is a spiritual

belief that what is really important in life is to accumulate as much money as we can, and then when we die we will go on to our reward, so there is a sense of not being connected to this world. The spiritual leaders in the Western European world teach that it is the spirit that is important, the soul that will go on to its reward. So there is this disassociation, this disconnection, with the rest of the world.

I think Native people also share a sense of sacredness, of respect, that sacred things and sacred places are infused with the power of the spirit, and that it is our responsibility to know that, to respect it, and to honor the sacred. Of course, in the larger world, there is an absence of the sense of sacredness. And then, finally, that we have a responsibility as Native people to pass on to each new generation these beliefs, these truths, this commitment to a way of life. Our tradition and the way in which we exercise these beliefs are through ceremonies and protocols that are handed down. When you can see the larger indigenous world, and see how we are part of that indigenous world, I think it increases our own commitment to what we are doing with our lives.

Twenty-five years ago Congress adopted a law called the American Indian Religious Freedom Act. This law was the result of advocacy by Native people. Those of you who are students and scholars of history know that every significant development in federal law and policy as it pertains to Native people has been the result of advocacy by Native people. There are no wise people in Congress or in the White House who dream up these laws and say, "Why, this is good for the Native people. Let's adopt this law." That is absolutely not the way things work. Twenty-five years ago, I had the opportunity to serve as a chief counsel to what was then the Temporary Select Committee on Indian Affairs. My boss was Jim Abourezk, a liberal senator from South Dakota, which, of course, is an oxymoron. Anyway, Jim was an unusual individual, and he really had a sense of wanting to do something for the Native people. So, as a person who served on his staff, I was approached by Native leaders, people like Suzan Harjo and others, who said: "This is an important proposal here. We have got to see if we can develop a law that will protect our sacred places, that will protect the Native American Church and the exercise of its practices, protect people who possess things like eagle feathers." We developed bill language, and when we passed this law in the Senate, it did have a right-to-sue clause. There was a provision in the bill that provided for enforcement of these rights by being able to go to court if you needed to protect the rights that were then articulated in the first part of the bill. That right-to-sue clause was taken out at the insistence of the champions of the interests of development—the Forest Service and the clients that the Forest Service serves, which are largely timber companies, the large agribusiness enterprises, and mining interests, and so on. Nonetheless, it was worth pushing a law through Congress that recognized

Native religions and articulated a policy that it is the responsibility of this government to support and protect Native people in the exercise of their traditional practices.

As other speakers have noted, we have a lot of unfinished business. Some years ago, sometime in the mid-1990s, I had moved out of working in Congress and was practicing law and doing a number of other things representing my tribe and a couple of other tribes. We came together—Walter Echo-Hawk was part of that group, and Mario Gonzalez—and created a coalition to try to push through Congress a provision that would provide what had been left out of the AIRFA in 1978. What we had drafted was called the "Sacred Sites Protection Act," as I remember. We spent a lot of time developing language and trying to work out a compromise with the people who would oppose a bill that would protect sacred sites. We discovered that compromise was not possible. I can remember meetings with the representatives of the Senate Energy Committee, sitting around a table, and they made it very clear that they worked for some very powerful senators, collectively more powerful than the senators who were supporting our cause, and that no bill of this nature would be passed in Congress. Essentially, they represented the mining interests, the timber companies, electrical/utility companies, power companies, oil and gas industries. These are the people who have an interest in making sure that public lands are open for exploration, development, and commercial use. And they're concerned about being able to continue to essentially rip off the taxpayer in the good old tradition that they have grown so accustomed to. They have more guns than we do. They have more political influence. That continues to be the status quo. Assuming even that we could get such a bill introduced into Congress today, things have not changed. We would not be able to pass such a bill in this Congress. Certainly, the Bush administration would not support such a bill. If we were even lucky enough to get it through Congress, Bush would probably veto it.

So we have our work cut out for us, which I find a little bit ironic considering the so-called political gains that we have made as a result of success in the gaming industry. Most of you are probably aware that most people estimate that gross revenue from Indian gaming in 2002 was in excess of twelve billion dollars. If you figure that the profit margin in that industry is about 25 percent—that's net after expenses, after paying out winnings, after paying off white lawyers—you're still left with 25 percent of that. So somewhere there's about 3 to 4 billion dollars floating around Indian Country, and I hope that Native people will tell their tribal leaders to put that political influence to work on behalf of these most fundamental of causes. As Walter Coffey pointed out, and other speakers have also emphasized, if we lose the ability to exercise our rights as Native people, to exercise our traditional and spiritual practices to protect those sites that are sacred and that are essential

to the ability to exercise those practices, we will have lost everything, and the ability to operate a successful casino won't mean anything. The white man will have won. We will have become just like everybody else, and there will be no need to wage the struggle any more. I don't think it's going to come to that; I think that we will succeed, that we will continue. We have survived far worse conditions and circumstances than what we face today, but we have to continue to be vigilant, we have to continue the struggle. I think it's a long-term struggle, but it's one that's worthy of our best efforts.