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Disenrolled Indians Find Little Support Outside of Indian Country

By Jeff Hinkle

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THE CHECKS WERE A NICE surprise. Unexpected money out of the blue. Two thousand dollars a month that Karen Hyatt never saw coming, but money she could use for her family. Money she never expected to receive, but tribal elders decided she was entitled to it.

It was her great-grandmother, after all, who helped found the Tache Santa Rosa Rancheria Reservation in central California. For her whole life, Hyatt has been told about how tightly woven her own family's history is into the story of the Tache people. Her great-aunt was a medicine woman for the tribe. Her great-grandfather was an important chief.

And even though she stopped visiting the reservation in 1982 after her grandmother died, Hyatt still stayed in touch with relatives there, and she always thought of herself as part of the Tache people. When she moved to Denver to start a family, her father, who stayed behind, kept her abreast of tribal politics.

It was her father who reminded the Tache tribal council about his children's 25 percent Santa Rosa bloodline after the tribe opened its casino in 1993. It took the council six years, but they finally added Karen and her sister to the tribe's roster in early 1999, entitling them to the same $2000-a-month dividend checks that the other Rancheria members enjoyed.

Then last summer, out of the blue, just as suddenly as the checks started coming in the mail, Hyatt and her sister, who now lives in Wisconsin, were summoned before the tribal council along with 38 other Tache members.

"The tribal council said it was an impromptu meeting," she says. "We were called into the meeting. They read off a list of 40 names and one-by-one we were asked to leave the room. When we came back in, they announced that eleven of us were no longer in the tribe."

That quickly, she says, she found her self disenrolled from her tribe.

"There's nothing you can do," she says. "It's up to the whim of the tribe. I have a cousin who was disenrolled. My sister. My brother. They were all disenrolled."

Hyatt followed the rules. The tribal charter states that she may appeal the decision within 30 days. She did — last July — and has yet to hear from the tribe. Her sister wrote a letter to the BIA in Washington, D.C. There was no response from the agency. Hyatt next contacted an attorney in Denver.

"He said there was nothing we can do. There is no legal action we can take," says Hyatt.

Officially Hyatt and her siblings were told that their membership in the tribe had always been a question mark, but she doesn't buy that.

"It goes back a long way," she says. "There's a lot of interfamily stuff. My relatives started that reservation in the 1930s. There is a lot of animosity between different families in the tribe."

Mike Sisco is the Tache tribal chairman. Last

summer when Hyatt was removed from the tribal register, he was vice chairman.

"The disenrollment last summer had only to do with disputes involving discrepancies and questionable information on tribal applications," says Sisco. "All of the people who were called before the committee last summer had to prove they were Santa Rosa to the council's satisfaction."

Apparently Hyatt came up short, says Sisco. Anything beyond that, he says, is up to the attorneys to sort out.

However powerless and blindsided Hyatt feels knowing that her Indian heritage has been pulled out from under her, she is not alone. In recent years, increasing numbers of tribal members have found themselves being asked to justify their place on the tribal roster. And for those who fail to convince tribal leaders that they belong on the list, they — like Hyatt — learn there is little they can do.

"The law relating to tribal enrollment is up to those tribes," says John Echohawk, executive director of the Native American Rights Fund in Boulder, Colo. "Tribes as sovereigns have the rights to set their own membership standards. Their actions are comported with tribal law. We're not involved in any of those."

Disenfranchised Indians will also be disappointed if they look to Washington, D.C., for assistance.

"Matters of tribal enrollment are matters for the tribes to decide. Our agency doesn't get involved in those," says Nedra Darling, spokesperson for the Bureau of Indian Affairs.

"The BIA's policy when it comes to enrollment issues is strictly 'hands off,'" says Stephan Pevar, a Denver-based Indian law scholar and representative of the ACLU. Pevar was the attorney that Hyatt called last summer when she learned the Santa Rosa Rancheria tribal council had crossed her name off their list. It was he who offered her the bleak prognosis on her legal chances, telling her that there was "nothing she could do."

That's not always the case. Excommunicated Indians can sometimes turn to their tribal court for help. But for Hyatt that was not an option.

"She found herself disenrolled from one of the tribes that does not have a tribal court to plead to," Pevar explains. "That's about the worst possible case a person can find themselves in."

Without a tribal court to turn to, most Indians are out of luck — at least when it comes to enrollment issues. As a rule, U.S. courts show the same reluctance to get involved in tribal membership disputes that the BIA does.

"The big case to decide that was in 1978 — *Santa Clara Pueblo* v. *Martinez*," says Pevar. "In that case, Martinez was a woman who was 100 percent Pueblo and she married a Navajo, so her kids were 50 percent Pueblo. But because she was a woman, the tribe would not recognize them. Tribal law dictates that if a man's children are 50 percent Pueblo, they will be recognized as true Pueblos. But they won't do that for women."

Two lower courts ruled in favor of Martinez, but the Supreme Court did not agree with those verdicts.

"In their decision, the Supreme Court ruled that membership is a uniquely tribal matter," he says. "Basically the court ruled that Indians have federal rights without federal remedies. A tribal government can deny enrollment or disenroll as they see fit. A person cannot seek any remedy outside a tribal decision."

But many have tried. Since 1978, nearly 1,000 cases are on the books citing *Santa Clara Pueblo* v. *Martinez* as a legal precedent. Pevar knows of no case that has ever successfully challenged the Supreme Court's verdict.

Still those legal challenges persist.

In recent months, lawyers have been called to the rescue in a number of enrollment disputes. Cases have made headlines involving the Santee Sioux of South Dakota, the Paiutes of Nevada, the Rincon Band of southern California, the Houlton Band of Maliseets of Maine and, perhaps the most famous, the Saginaw Chippewas of Michigan, where disenrollment was allegedly happening as a form of political retribution. That dispute became so heated that federal officials intervened to keep the peace.

In nearly every one of those instances — like Hyatt's fight with the Tache Band of Santa Rosa Rancheria — tribal gaming money figures into the equation. In such cases, the equation is simple: less Indians on the roster means more casino dividends for everyone else. Few want to say that, though.

Pevar, who has followed such enrollment problems since he was young attorney assigned to draft an amicus brief on behalf of the ACLU for *Santa Clara Pueblo* v. *Martinez*, declined to guess how many instances of gaming greed lie at the heart of disenrollment issues.

"I have heard many allegations that those things go on," he says, "but I have no idea how many enrollment disputes are questionable. But as far as gaming goes, the number of disenrollment controversies has certainly gone up since some tribes started making money.

Like the pitchman for the credit card company says, membership has its privileges.

Case in point: the Shakopee Mdewakanton Sioux of Minnesota. Situated just outside the Twin Cities, the Shakopees operate the immensely successful Mystic Lake casino, which has been in business since 1992. These days the tribe is mired in a controversy that illustrates the other side of the enrollment dispute coin.

By most tribal standards, the Shakopees are a small band, but they are growing. According to one press report, the tribe's roster of voting members — which now includes somewhere between 250 to 300 names — has increased by almost 40 percent since Mystic Lake first opened its doors. Many of the new names are "adopted" members who cannot document their roots. But everyone on the list is receiving per capita distributions of casino revenues to the tune of about $60,000 a month.

According to Winifred Feezor's estimates, at least 60 percent of the names on the roster fail to meet the tribe's constitutional requirement for membership. She says enough is enough.

For the past seven years, Feezor, who is 70 years old, has been demanding her tribe adhere to its own requirement calling for tribal members to possess at least 25 percent Shakopee blood. In other words, she would like to see her tribe consider disenrolling some questionable members just as the Taches say they are doing.

"The worst thing this tribe ever did was to send me to the BIA's enrollment school," she says. The first thing they teach you at that school is if you have a tribal constitution, then follow it. You have to abide by it."

Feezor says, following her brief introduction into tribal enrollment practices, she alerted her tribal council. They ignored her, she says.

"WE WERE CALLED INTO THE MEETING. THEY READ OFF A LIST OF 40 NAMES AND ONE-BY-ONE WE WERE ASKED TO LEAVE THE ROOM. WHEN WE CAME BACK IN, THEY ANNOUNCED THAT ELEVEN OF US WERE NO LONGER IN THE TRIBE."

"My grandfather was given this land by Ulysses S. Grant, and that land became our reservation. But ever since we've got the casino, we've got white people," she says. "We've got Mexican people. We've got black people all living on this land claiming to be Indians. They know nothing about our heritage. They know nothing about the meaning of our people. The only reason they are here is for the money."

She denies her motivations to tighten tribal rolls has anything to do with a refusal to share casino profits. "I don't care about the money," she says. "I want honesty to prevail." And she reminds those who doubt her altruistic motivations that her seven-year fight with her tribes has cost her thousands of dollars in legal fees.

Numerous attempts were made to reach Shakopee tribal officials to comment on Feezor's charges, but none of those calls were returned.

Still Feezor insists she is not alone. But some Shakopees, she says, look the other way out of fear. "Nobody else will speak out. They're afraid of loosing their money. If I haven't lost my money over this, then nobody will."

However, one attorney familiar with the case called Feezor's claims "dead wrong. Every single person on that tribe qualifies for membership."

Another Shakopee insider had this to say: "She's taken her case to tribal court. She's taken her case to federal court and everyone who has looked at it agrees that the tribe has the right to relax its own blood requirement if it wishes to — which is what the tribal constitution says and the full tribe voted in favor of that constitution."

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But Feezor remains unbending.

She and her sister have since brought the fight all the way to the U.S. Congress and the desk of House Resources Committee Chairman Don Young, R-Alaska, who fired off a 13-page letter last spring to Secretary of the Interior Bruce Babbitt requesting an investigation.

Representatives from Young's office refused to disclose what might happen next in the case. Feezor also refused to speculate on the future, saying only, "Keep watching the newspapers," with an ominous tone.

Regardless what will happen, most observers say this is a special case. Normally, Congress and the Department of the Interior would steer clear of such membership controversies, but with per capita checks exceeding $700,000 annually, it makes it hard to ignore Feezor's allegations of make-believe Shakopees.

Vanya Hogan, a Santee Sioux attorney in Minneapolis, says it should come as no surprise that the Shakopee tribal roster is growing.

"The Shakopee has a small population. It's near an urban area. As a result it has a casino that is very successful. It distributes profits, so naturally it's attractive to more members. It seems understandable that if you have an ancestor who might be a Shakopee and you hear about those per capita payments, you might want to apply," she says. "There are cases out there where Indians give up membership in one tribe for another that might pay out better per caps."

"It's called 'tribe-hopping,'" says one enrollment expert who asked not to be identified. Tribe-hopping, he says, was virtually unheard of a decade ago.

"But then gaming came along and some tribes started per capita distributions and suddenly everyone wanted in," he says. "There are individuals out there who are after the best deal. They are saying, 'Show me the money.' While gaming tribal rolls swell, other bands are being nearly depleted."

Robert Porter, a former tribal attorney for the Senecas and now a professor of law at the

A Tribal Enrollment Timeline

The agenda behind tribal enrollment is a sordid one, but one that continues. Indians are still defined as a "problem" for American progress, and manipulating tribal enrollment particularly through blood quantum is how federal and state governments have dealt with the issue. As historian Patricia Nelson Limerick summarized in *The Legacy of Conquest: The Unbroken Past of the American West*, "Set the blood quantum at one-quarter, hold to it as a rigid definition of Indians, let intermarriage proceed as it had for centuries, and eventually Indians will be defined out of existence. When that happens, the federal government will be freed of its persistent 'Indian problem.'"

1776 In exchange for more than 95 percent of the land in what is now the United States, the U.S. government signed international treaties that promised goods and services to different Indian tribes. Commonly, these included education, health care, food and annuity payments. Nearly all the goods and services were promised to continue in perpetuity. The U.S. government did not intend to abide by those treaties. But because it was a relatively new nation without much international clout, the U.S. couldn't abrogate its treaties with Indian nations without jeopardizing those with its European cousins. Federal officials began deciding on a person-by-person basis who qualified as a member of the tribe and therefore, qualified for treaty benefits. Eventually the federal government settled on the idea of blood quantum, similar to what was used to determine which African Americans could be enslaved.

1887 In 1887, under the General Allotment Act (also known as the Dawes Act), Congress adopted the blood quantum standard of one-half or more Indian blood. This meant that if an Indian could document that he (women were excluded) was one-half or more Indian blood, then he could receive 160 acres of tribal land. All other Indians were excluded regardless of their standing within the tribe. After all the "blooded" Indians were parceled out land, the rest of tribal lands were declared "surplus" and opened up for non-Indian settlement. Limiting the allotted land to 160 acres per qualified person ensured that there weren't enough Indians meeting the genetic requirements to retain the original land base of the tribe; land that was rightfully theirs by aboriginal occupancy and recognized as such by treaties with the U.S. government. In this way, the aggregate Indian land base was "legally" reduced from 138 million acres to 48 million acres in less than 50 years.

1924 U.S. citizenship was conferred in 1924, whether it was wanted or not. The resulting dual citizenship of Indians served to confuse the issue and allowed government and corporate representatives to negotiate with individual U.S. citizens and prevail with arguments about the "greater good," thereby bypassing Indian governments.

University of Kansas, dismisses innuendo that suggests Indians are enrolling and being disenrolled in accordance with casino profits. He also bristles at the suggestion that political hijinks might be behind swelling or shrinking tribal roles.

"Most of these instances are internal matters," he says. "They come from deeply rooted issues. It's callous to suggest that tribes are deciding to make more money by having fewer members. If a tribe is deciding to cut its rolls by 25 percent to increase profits, why stop there? Why not 50 percent? That seems beyond the realm of possibility."

Porter suggests that any correlation between a rise in casino profits and a drop in tribal population may mean that tribe can finally afford to clean up longstanding, but shoddy, tribal rolls.

"When people become disenrolled, it could be that the tribe is taking action on rumors that have been circulating within the tribe for three or four generations. They may be looking into issues that have been there for 75 years. Issues like, 'So-and-so doesn't really belong to this tribe.' These could be long-lingering disputes and economic issues have brought them to the forefront."

Hogan agrees. Disenrolling a tribal member is not something that is taken lightly, and rarely is it the result of political squabbles, she says.

"I haven't seen that happen. There are tribes out there that have very lengthy processes to disenroll someone. In some cases, the whole tribe is required to vote. Most tribal councils that I've worked with realize they are taking away someone's membership and that is a huge thing. They are very careful before they take it away," she says.

Even if an Indian believes he has been wronged, both Hogan and Porter believe that it is a big mistake to go knocking on doors in Washington, D.C., for help.

"In the case of the Shakopees, you have members of the House interfering with what should be the most sacred of tribal operations — deciding who is a member of the tribe," says Porter. "That is a case of a tribal matter spilling out of the tribe and being sucked up by the federal government."

Those in doubt should remember the legal mileage that has followed the Martinez case, says Hogan. "That case is cited over and over again. Tribal sovereignty has been under attack in a lot of different areas in recent years. The interpretation of sovereignty is getting narrower and narrower. But in every case involving membership, that sovereignty has been upheld.

Hogan says some circumstances do allow for federal involvement in enrollment cases.

"The Interior Department can get involved when it comes to tribal funds," she says. "If the U.S. government makes a cash settlement with a tribe, it can decide how that money is dispersed, even if it is to people no longer on tribal rolls."

The Feds can also recognize individual Indians, even in cases where they do not recognize the tribe itself, at least when it comes to entitlement programs. The BIA uses blood quantum to confirm eligibility for health, housing and other benefits. That policy has been criticized as haphazard, though, so the agency is currently tightening its blood quantum standards. Hearings on the new procedures are scheduled later this month.

One more loophole permits BIA intervention when it comes to sticky membership disputes. Tribes that operate under the 1934 Indian Reorganization Act boilerplate constitutions might want read the fine print. It allows for BIA oversight when enrollment tangles occur. The agency can get involved, although it rarely has.

"The BIA stays out of it and they should stay out of it," says Porter. "It's none of their business."

In many ways, Porter says, it was the federal government's interference into tribal matters long ago that laid the groundwork for today's enrollment disputes.

"A lot of the tribal rolls out there came about in pretty haphazard ways," he says. "The BIA pushed tribes to adopt the IRA constitutions which required tribal rolls. There are cases where the BIA put people on the rolls who should not be there and left off people who belonged on the lists."

In fact, he says, the government's interpretation of "membership" might have contributed to the many ongoing problems in Indian Country.

"I'm not sure where the term or concept of tribal 'membership' came from, but, as far as tribes are concerned membership reflects the notion of kinship that lies at the roots of tribes," says Porter. "On the other hand, the idea of 'membership' reflects the view of the colonists and the BIA that these aren't real governments and sovereign nations. They're more like social groups or clubs."

If those opposing views of affiliation sound like problems that only our forefathers failed to recognize, Porter is not so sure.

While Karen Hyatt and her siblings continue their fight to regain membership in the Santa Rosa Rancheria band, and Winifred Feezor and her sister persist with their crusade to tighten membership roles in the Shakopees, Porter points to Hawaii and watches as history unfolds.

"Right now there is a move in Congress to recognize native Hawaiians. Look at the first thing the federal government has done. They went in an established an interim government and started setting up tribal roles. They're approaching it just like they did in the 19th century." □

1934

In 1934, the federal government interposed itself one step deeper into internal tribal affairs with the Indian Reorganization Act (IRA) also known as the Howard-Wheeler Act. The ultimate goal of the IRA was to dissolve native nations and absorb Indians into the dominant culture. A committee selected by the secretary of the interior had determined that Indians comprised an unbearable financial burden for the federal government and advocated their dissolution by humane means. The IRA used a model for tribal governance based on a corporate structure with a governing council and constitutional bylaws or charters. The Bureau of Indian Affairs developed a boilerplate constitution that was distributed to all the tribes. All constitutional bylaws and all council actions were made subject to the approval of the Secretary of the Interior. The government model put forth by the BIA ignored traditional and more democratic consensus governing models already in use by tribes. With these tactics, the BIA brought nearly every Indian nation under IRA provisions. Provisions for tribal enrollment were part of the boilerplate constitutions forced on tribes. A reading of a number of tribal constitutions today will show that most have not been significantly changed since the 1930s. Enrollment provisions can usually be found under Article II or Article III and most are identical. Enrollment as laid out under the IRA constitutions, starts with a base roll for defining membership. The base roll is usually a U.S. Census roll, an allotment roll or another BIA-compiled roll, such as the Durant Roll of 1910. Because the U.S. government determined who was included on the rolls, many have argued that the process was biased from the start.

Today

Today, the BIA is still responsible for compiling and maintaining rolls. When there is a "federal election" on a reservation to deal with constitutional issues or the election of tribal officials, the BIA runs the elections and uses the rolls to determine who is eligible to vote. (The list of those eligible to vote may or may not be the same list as those enrolled in the tribe.) Many Indians would like to become enrolled with their tribes, but find the process excruciatingly difficult. Often it is difficult to obtain a copy of the tribal constitution and then to find a copy of the base roll. A significant amount of genealogical research is required even before an applicant can meet other criteria. Although constitutions provide that tribal councils can pass ordinances to govern the enrollment process and establish enrollment committees to review applications, most have not. This leaves potential tribal members without a clear starting point or explicit procedures, and opens the door for real and apparent abuse of the process. Tribal enrollment raises thorny issues in Indian communities, not the least of which is identity. Should federally-imposed blood quantum requirements be thrown out? If they are, how does one ensure that only "real" Indians are enrolled? If they aren't thrown out, how can Indians avoid fulfilling the federal government's original objective of defining themselves out of existence?