April 21, 2015

From: Judge Silver Cloud Musafir (Navin-Chandra Naidu)
Chief Justice, Native American Association of Nations (Guale, Yamasee, Seminole, Creek, Washitaw, Shushuni, Comanche, et al); Member, National American Indian Court Judges Association; Member # 01798766, American Bar Association
Email: judgenaidu@unseen.is

To:

Chair,
Senate Indian Affairs Committee,
United States Senate
838 Hart Office Building
Washington, DC 20510

And to the

Director,
U.S. Department of Justice
Office of Tribal Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

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cc: R. Lee Fleming,
Director, Office of Federal Acknowledgement,
United States Department of the Interior,
1849 C Street NW, Washington D.C. 20240

COMPLAINT AGAINT R LEE FLEMING IN HIS CAPACITY AS DIRECTOR, OFFICE OF FEDERAL ACKNOWLEDGMENT, UNITED STATES DEPARTMENT OF THE INTERIOR

Ladies and Gentlemen,

Lee Fleming called our Tribal Office on or about April 19, 2015, asking for Jaguar Paw, one of our tribal lawyers. During the course of that conversation, Lee Fleming became infuriated, combative, and aggressive; insisted that we cease and desist what we are doing because we are not a "***federally recognized tribe***," and that he would report us to the Federal Bureau of Investigation (FBI).

Jaguar Paw called Lee Fleming on or about April 21, 2015, and adeptly answered most of the complaints and allegations that Lee Fleming hurled while he continued with his threats that we are "scamming" people by "charging them money" for filing lawsuits and tribal memberships. Again, he threatened reporting to the FBI.

Lee Fleming is obviously not aware that "A tribe's right to define it's own membership for tribal purpose has long been recognized as central to it's existence as an independent political community. A tribe is free to maintain or establish its own form of government. This power is the first element of sovereignty. Tribal government need not mirror the U.S. government but, rather, may reflect the tribe's determination as to what form best fits its needs based on practical, cultural, historical or religious considerations." *Smith v. Babbitt, 875 F.Supp. 1353,1360 (D. Minn. 1995); Santa Clara Pueblo v. Martinez 436 U.S. 49, 72, n.32 (1978); United States v. Wheeler, 435 U.S. 313, 322 n. 18 (1978); Roff v. Burney, 168 U.S. 218 (1897); Cherokee Intermarriage Cases, 203 U.S. 76 (1906); Native American Church v. Navajo Tribal Council, 272 F. 2nd 131 (10th Cir. 1959); Chapoose v. Clark, 607 F. Supp 1027 d. Utah 1985 aff'd 831, Fed 931 (10th Cir. 1987).*

Fleming also mentioned that the Yamassee was not a "***federally recognized tribe***." This seems to be the government's mantra whenever they encounter a tribe of Indians asserting their treaty rights.

I would like to submit as follows:

1. Lee Fleming had represented to your Committee on July 26, 2006, and inter alia, said that:

"The recognition of the continued existence *of another sovereign* is one of the *most solemn* and important responsibilities delegated to the Secretary of the Interior, which the Department administers through its acknowledgment

regulations at 25 C.F.R. Part 83. Federal acknowledgment, or recognition, of tribal status enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe. Acknowledgment carries with it certain immunities and privileges, which may include exemptions from state and local jurisdiction and the ability of newly acknowledged Indian tribes to undertake unique economic opportunities." (emphasis added)

I would imagine that he was referring to Tribes that had a ***treaty*** relationship. Treaties are usually concluded between two *sovereigns*. The U.S. government must have recognized Indians and Tribes as sovereigns under international law, ergo the necessity of concluding treaties. Lee Fleming is probably unaware of this imperative.

Nowhere in this statement does Lee Fleming mention "*federal recognition*" which is a political game played by the Administration to intimidate some half-educated tribal member. He probably decided not to use this offensive phrase because law and politics make strange bedfellows. Be that as it may, Indian tribes are **recognized** in the U.S. Constitution under Art. 1, sec. 2, cl. 3 (Indians not taxed); the Indian Commerce Clause (Art. 1, sec. 8, cl. 3); and sec. 2 of the 14th Amendment (Indians not taxed). A vast corpus of federal Indian law is available in Felix S. Cohen's *Handbook of Federal Indian Law*, case law, and scholarly articles. It is apparent that Lee Fleming is not a person learned in the law. The Indian Commerce Clause, it must be observed, does not give any allowance for "federal recognition" as evident in the bully arsenal of Lee Fleming.

2. Lee Fleming further represented to your Committee on July 26, 2006, that:

"Under the Department's acknowledgment regulations, petitioning groups must demonstrate that they meet each of the *seven* mandatory criteria. The petitioner must:

(1) demonstrate that it has been identified as an American *Indian entity* on a substantially continuous basis *since 1900;*

(2) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from *historical times* until the present;

(3) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from *historical times* until the present;

(4) provide a copy of the group's present governing document including its membership criteria;

(5) demonstrate that its membership consists of individuals who descend from an *historical* Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list;

(6) show that the membership of the petitioning group is composed principally of persons who are not members of any *acknowledged* North American Indian tribe; and

(7) demonstrate that neither the petitioner nor its members are the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship." (emphasis added)

Please note that Lee Fleming never once uses the phrase or term ***"federal recognition"*** in the seven criteria that he postulates.

The Yamassee, like other tribes, concluded treaties way before 1900, but Lee Fleming seems to juxtapose his idea of the past with the phrase "*historical times*" while quickly defanging history in preference for tribes that have continuously been American Indian entities *after* 1900 in his 2nd, 3rd and 5th criteria. Lee Fleming insists on being a one-man legislature where his ideas of what constitutes an American Indian need not go through the usual reading, debating, and the passage of a Bill in the legislature before it becomes law after senatorial and presidential seals of approval.

Lee Fleming uses the word "acknowledged" instead of "recognized" in his 6th criterion to advance his spurious arguments. "Acknowledge," according to most dictionaries means accept, grant, allow, concede, accede, confess, own and "recognize." The word "recognize" means to acknowledge, accept, admit, realize, be aware of, be conscious of, perceive, discern, appreciate, be cognizant of. I am of the opinion that these exercises in linguistics, semantics and rhetoric are being played, employed and deployed to confound and confuse the uneducated. It's unbecoming of a government servant, like Lee Fleming, to play these word games. But he is not fooling people learned in the law.

3. When Lee Fleming told Jaguar Paw that the Yamassee were not a "federally recognized tribe," he was patently displaying and venting his ignorance of the **Treaty of Camp Holmes of 1835 codified as 7 Stat. 474** that was concluded with severeal Indian tribes including the Yamassee (Muscogee). The Yamassee War of 175-1717 is part of our history. What Lee Fleming was not aware of is the fact that the Yamassee are of the Muscogee stock mentioned in the Federally Recognized Indian Tribes List Act of 1994 (Public Law 103-454).

4. Section 102(2) of the Act states that "The term 'Indian tribe' means any Indian or Alaska native tribe, band, nation, pueblo, village or community that the Secretary of the Interior *acknowledges to exist as an Indian tribe*" (emphasis added). This is constitutionally awkward, if not statutorily absurd, because it posits the Secretary of Interior as a subjective overseer, an interpreter of the Constitution's Indian Commerce Clause. Congress should be cautious passing laws that are inconsistent with the Indian Commerce Clause which requires constitutional amendment if Congress intends to control Indian affairs other than commerce. It is settled law that inherent Indian sovereignty predates the U.S. Constitution.

5. Lee Fleming must be sanctioned for telling us that we have no right to litigate cases in tribal courts against errant banks that are practicing mortgage fraud in broad daylight. This tribal court has made it a point to send a copy of its litigation effort to this Committee and to the Department of Justice including the Department of the Interior. Using Lee Fleming's disingenuous argument, how could we be "running a scam" while informing all three agencies of our litigation effort, or "taking money from people" as Lee Fleming put it? Lee Fleming's accusations that we have "no right to charge our clients" fees for our litigation effort is an affront to our right to a livelihood as contemplated under the 9th Amendment, an un-enumerated right that cannot be denied or disparaged to the people IF we Native Americans/American Indians are considered "people."

6. In another part of the testimony that Lee Fleming delivered to this Committee of July 26, 2006, he states that:

"The Department recognizes that under the United States Constitution Indian Commerce Clause, Congress has the authority to recognize a "*distinctly Indian community*" as an Indian tribe." (emphasis added) Here, Lee Fleming assumes the role of a law professor, constitutional interpreter, and a litigation lawyer. Lee Fleming has imported his own version of what

constitutes an Indian tribe when he says Congress has the authority to recognize a *distinctly Indian community*. But, the Indian Commerce Clause says this:

"The United States Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

"Distinct Indian community" is not even implied, contemplated, suggested, or insinuated. The Indian Commerce Clause unambiguously, literally, plainly, and simply states that Congress has the power to regulate commerce with foreign countries, among the several states and with Indian tribes. It does not even suggest, imply or insinuate that Congress can tell us Indians how to manage and run our tribal affairs. So, the larger question is: where did Lee Fleming get the notion that Congress has to "*recognize a distinct Indian community"?* If the Constitution had said words like "Congress shall have power to determine a tribe's right to aboriginal status from archaeological, anthropological, geological, and historical data . . . " the issue will be on fours with Lee Fleming's take on the subject. But that is not the case here based on Lee Fleming's theory. Where does Lee Fleming get the authority to interpret the U.S. Constitution? Is it in his job description?

I submit that Lee Fleming was hallucinating under color of law while representing the Department of the Interior when he rendered an unnecessary and unlawful spin to congressional power. This is tantamount to duping the Senate Indian Affairs Committee.

Lee Fleming must be cautioned, warned, and sanctioned to cease and desist from employing his own private bend and spin of the existing constitutional provisions relating to Indians and tribes. Lee Fleming should not be allowed to embark on a quixotic and cavalier quest like a knight errant to unleash his version of the law. Our jurisprudence has long recognized the right to be let alone. Justice Louis Brandeis did not mince his words when he warned and cautioned government of breaking the laws of privacy and decency:

"They: The makers of the Constitution: conferred, as against the government, the right to be let alone --
the most comprehensive of rights and the right most valued by civilized men**."** *Olmstead v. United States*, 277 U.S. 438 (1928).

We sincerely and respectfully ask the Senate Indian Affairs Committee to see to it that we are let alone. This incessant and unnecessary harassment by the Department of Interior must cease. We are attempting to live and earn a livelihood without asking the state, municipal or federal governments for anything. We simply ask that we be let alone.

Respectfully submitted this 23rd day of April 2015.

Judge Silver Cloud Musafir (Navin-Chandra Naidu)

- Chief Justice, Mund-Barefaan Yamassee; Washitaw de Dougdamoundyah; Seminole, Creek, Creek, Shushini, Comanche, et al (Treaty of Camp Holmes, 1835; 7 Stat. 474)
- Judge Member #01798766, American Bar Association
- Member #1040751, International Bar Association
- Permanent Representative, Native American Association of Nations, United Nations
- Member, National American Indian Court Judges Association