

NATIVE AMERICA AND THE RULE OF LAW

*Dr. Joe Shirley, Jr. **

Greetings! “Ya ah tae! Sha has twii, shi zahni, altah asil lhoh, shi tek ihzin nih!” That is a greeting in my language, greeting the elderly men first, then the grandmas, then elderly women, then friends from the far and near, then relatives. Greetings to all of you from the heart of Navajoland! I want to say ‘Ya ah tae’ to each and every one of you.

I want to express my appreciation for the invitation to share with you a few thoughts from the heart. I am not an attorney and I am not a judge. I understand there are many distinguished and honored judges here. Attorneys, some world-renowned, are also represented here, even some from across the big waters. I feel very honored to have been invited here to rub shoulders with the dignitaries, the judges, attorneys, and leadership. I want you to know that.

Let me shed more light on who I am. I am President of the Navajo Nation, the biggest Native American nation in North America.¹ We are a little over 300,000 strong. The number of the people living in the United States is 300 million,² so we are probably not even a drop in the bucket. But in the world of Native America, we are considered the biggest Native American nation in North America.

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1. Legends of America, <http://www.legendsofamerica.com/NA-Navajo.html> (last visited Sept. 7, 2007); The Navajo Nation: New Mexico Tourism Department, <http://www.nm.tourism.org/place/loc/travel/page/DB-place/category/300/place/204.html> (last visited Sept. 7, 2007).

2. U.S. and World Population Clocks, <http://www.census.gov/main/www/popclock.html> (last visited Sept. 7, 2007).

I was born, raised, and bred all on Navajoland in Chinle, Arizona. My family and I live on the doorsteps of the eighth wonder of the world—Canyon de Chelly in northeastern Arizona. I am married and have six children. I have a Masters in Social Work degree from the University of Arizona in Tempe, Arizona, which makes me a professional social worker. That was back in 1978. Recently in 2005, I was blessed with an Honorary Doctorate in Humane Letters from Northern Arizona University in Flagstaff, Arizona. It was given for my thirty-seven years of leadership through public office. I consider that as a degree from the University of Hard Knocks and I am very proud of it.

I have just been reelected President of the Navajo Nation. I have started my second four-year term this year. They tell me no Navajo Nation President has been reelected back-to-back in twenty-eight years. I am very proud of my reelection; it was a very sweet victory.

The Shirley Administration's focus in the past four years has been education. Education is the number one priority for the Navajo Nation as a people. The second priority is economic development. Actually, what we are trying to do is work on getting back to standing on our own two feet. We were once that, way back before the foreigners came across the big waters. We were very independent, very fierce, and very proud. And then the foreigners came and took it away and made us very dependent. We are still a very dependent people today. Not by our own choosing—we have been made that way.

Sometimes I believe that the United States government is very deliberately fostering the Navajo people's dependency, knowing full well what would bring us to par with the rest of the world. With that we have an unmet need with the Navajo Nation alone of \$600 million dollars. I know that the United States government is a super country with billions and billions and billions of dollars out there. And here we are—\$600 million dollars shy of really getting back into helping ourselves. We are trying to do everything we can to get back our independence, to getting back to standing on our own. I feel that is the way it should be in the world, as far as a nation and a people are concerned. The only real superpower and only sovereign nation that I know of is the United States government. The people of the United States have abundant money and are sharing it all the time. There are a lot of dependent nations outside the United States. Within in the

United States, the Navajo Nation, and Native Americans remain dependent.

I want to say something from the heart—something which speaks to the rule of law. I am not an attorney, I am not a judge, but I am the President of my people. I see what is going on in my world. Maybe by sharing myself and the plight of my people with you, as judges and attorneys, you could maybe look at the laws and come down with decisions that could change some of the laws out there. Maybe I can shed some light on some things, and you can use that to further deliberate on how some of these cases should be decided, especially in Native America. Forgive me, I do not want to say anything that will really offend anybody, but like I said, I want to be coming at you from the real world—my world—and tell you how it really is back in my home country. We are debating as I understand it, about the rule of law, how it is applied, what it has meant to some people, what it has meant to the United States government, to the government of England, and what it *could* mean to the world out there.

We have many wars going on out there. As far as I know, with the war in the country of Iraq, there are many Native Americans serving, including my people. We have lost seven soldiers, two with families so far. One of my soldier's arms was blown off. Hopefully, by looking at the rule of law and how it is applied here, we might somehow be able to stop some of these wars going on, if we can apply the rule of law to the world too.

You know, we have spoken about assimilation and how the mentality is still there. One of the judges, Judge Spencer,³ said something which struck me. He said first what you try to do is convince and convert people, then if that doesn't work you try something else, and if those methods do not work, you kill them. I think that is what has been happening to Native Americans in the United States. They might not be doing it with guns and bombs in Native America today, but it is still going on.

For instance, a couple of weeks ago the acting mayor of Houston came out and said why are we still catering to Native Americans out there? They are a conquered people. We need to get them

3. Chief Judge James R. Spencer, United States District Court, Eastern District of Virginia. Judge Spencer spoke at the Rule of Law Conference immediately before Mr. Shirley on April 12, 2007, at the University of Richmond School of Law.

off of welfare and assimilate them into the United States.⁴ Well, in my opinion, why the United States is still catering is because they promised that they would do that. It is incorporated into our treaties. Within those treaties is the promise of the rule of law. Now, the acting mayor of Houston is saying, forget about the rule of law—forget about our word. Let's just assimilate them into the scheme of things. Well, that is not the Native American perspective. The United States government has promised many things to Native Americans, and it is the rule of law to us, and the treaties need to be honored. The cry of one of the mayors of a great city saying “just assimilate them” is troubling. I beg to differ, that that should not be the case.

Talking about the rule of law, Native America has its own rule of law. Earlier we were talking about separation of state and church. I have a belief about that and so does Native America. We do not separate our “churches” and state; ours is holistic. That is just the way we are—that is how foreign people found us with our way of life. The earth is our mother and the sky is our father. We have a relationship with the wind, the thunder, the rain, the fowls of the air, and the four-legged beasts. Everything is related and we are a part of that. That is our law. It is that which was given to us by the holy people. It is what we are still trying to live by. Contrary to the rule of law of Native Americans, we are being told we should live by the rule of law of the civilized society, which is not the same as our rule of law. Of course, what is not really talked about or is known, well it is known but not being looked at, is what is sovereignty to the Native Americans? We have always had sovereignty. That is the way Native America was discovered, with sovereignty, with independence, living as children of the holy ones. And then somewhere in there we were made dependent.

And then there is also the relationship between Native America and Jamestown. I think this is where democracy was born. Native Americans had democracy. Native Americans had a government already in place when they were “discovered.” The foreigners borrowed from the Native Americans’ democratic form of government to draft their Constitution. They were observant. My

4. On March 27, 2007, Houston Mayor Pro Tempore Michael Berry made these statements on his morning radio show. *Radio Host Apologizes for Remarks on Indians*, WASH. POST, Apr. 6, 2007, at A7.

understanding is the foreigners were running away from a dictatorship; they were running away from religious persecution. They deserted their government, and when they came to the Americas they had no government. They observed the governments of the Native Americans which were governments by democracy. They borrowed the principles of a democratic form of government and put pen to paper to draft the U.S. Constitution. We had helped them; we helped to create the United States government by helping them draft the U.S. Constitution. That is the Native Americans' contribution. The relationship between Native America and Jamestown is that Jamestown, with the Native Americans, is where democracy was born, using democratic principles already being practiced by Native Americans.

Now let me say some things about the rule of law as applied to Native Americans. Back home, the Navajo Nation was a supply of uranium. The United States government came in to dig for the uranium and they wanted us to help dig. But we dug without being told about the dangers of the uranium ore. To me the rule of law is that you are supposed to apprise people of any danger that you subject them to. But the rule of law was not applied to Navajo people digging for uranium. As a result, we dug out the uranium ore without knowledge of the dangers associated with it. Then afterwards, we contracted cancer and thousands died because of the cancer. Today, thousands of Navajo people who helped dig for the uranium ore are still sick and dying of cancer, and are bedridden. The rule of law was not applied to them.

There is also the desecration of sacred places and the rule of law. Our rule of law is holistic, given to us by the holy people. That is what makes us living, what makes us Navajo, that is where our culture comes from. It's who we are. But then there is a rule of law that is being applied to us that tells us that is devil worship, that is idol worship—no good, heathens. Who says?

There is also the rule of law which froze some of our land for over forty years, called the Bennett Freeze.⁵ Because our land was frozen, we could not develop it, we could not build on it. People were driven from it. We lost a lot of young, many of elderly

5. 25 U.S.C. § 640d-9(f) (2000); *see* H.R. 5168, 108th Cong. (2004) (repealing the Bennett Freeze in order to end “gross treaty violation with the Navajo Nation and [to] allow [] the Navajo Nation to live in habitable dwellings and raise their living conditions . . .”).

and medicine people died, people who knew the sacred stories, who knew culture. They died because of the rule of law.

Then there is the trusteeship. The United States government agreed to be our trustee. We were determined to be a dependent people and were told that we needed a trustee and we agreed to it. Applying the rule of law, in the case of an affluent trustee, it seems we should be doing very well. As children and wards of the government, we should be doing well because our parents are affluent. They have billions. And yet going into the backyards of Native America, we still have people living without running water, no power, no wastewater disposal systems, no housing, they just live in shacks. So where is the rule of law? Where is the promise?

We do not have economic development. The crime rate is up. Drug abuse and gangs are rampant. Alcoholism is killing many of my people. Domestic violence and child abuse is a part of daily living. Cancer, diabetes, and obesity are monstrous, not only on Navajoland, but also throughout Native America.

This is the rule of law that the United States government has said they will live by. And we continue to ask the question: When?

Another thing I want to share is the culture. There is the killing of Native America, a very slow killing going on today. Like I said, guns and bombs are not used anymore, but rather legislation and the rule of law. For example, in the state of Arizona, they passed a law that says "English Only."⁶ In Arizona the Navajo language is no good, the Apache language is no good. In the state schools, the only way children will be taught is through the English language. The Navajo Nation is proving, as the biggest nation in Native America, that using the Navajo language is better than the English language. One can really teach a Navajo child in our native tongue. If you want a Navajo child to really learn, to make his or her mark, to be on par with everybody out there in the mainstream, the Navajo language works. The Navajo culture works. But we have this law in the state of Arizona that says "English Only" in the state schools, "English Only" if you work for the Arizona state government. They are slowly doing away with us, and that is not good.

6. AZ. CONST. art. XXVIII, § 2.

As the biggest nation in Native America, we are trying to get back to standing on our own two feet. The powers that be must want the independence for native people, but whether they want to help or not, we are trying to do it on our own.

I really appreciate Chief Justice McGregor⁷ coming out to Navajoland the other day. She brought her court and her judicial proceedings to Navajoland. It was history in the making. One of the reasons being because when our Navajo people break the law, like murder or grand larceny, they are tried in a foreign court. Their peers are supposed to be judging, but their peers are not part of the jury. If you bring them to Navajoland, like what Chief Justice McGregor did, we have Navajo jurors as part of the jury. Our people can be judged by their peers, that is the rule of law. And I really appreciate Chief Justice McGregor for doing that.

We have a court system, we have a judicial system, we even have what we call a Peacemaker court, which uses our own laws, Navajo laws, laws given to us by the Deities, which we use to come to conflict resolution. Whether it is a hearing on a marriage dispute or divorce, child abuse, or property, using our own ways is working. But we need the wherewithal to make it work. There are other systems that can be put in place to get at the rule of law. To get at conflict resolution, I think it behooves the world out there, the judges out there, the attorneys out there, to look at some of these other ways, these other systems. If we apply them, it might just work. I do not believe we are there. We are not just talking about the United States or English government; we are talking about the powers around the world. How many countries are out there? How many different people are out there?

I am just talking about the Navajo Nation and our Peacemaker court. We really want to apply the rule of law, but we live in a place where we do not have the wherewithal to have enough law enforcement personnel to really govern our community, to bring down our crime rate. We do not have that. This is the reason why the crime rate is up. We need police officers and detention facilities. We do not even have detention facilities to talk about. We have been crying for help and the help is not there, it is very slow

7. Chief Justice Ruth V. McGregor, Arizona Supreme Court.

in coming. To the best of our abilities, we are trying to do it ourselves.

Also helping us reinforce our sovereignty is important. Sovereignty, to me, is very simple, as an individual person. It means independence, period. You do not need to qualify it. It just means standing on one's own two feet. Life is about standing on your own two feet as a child of the holy ones. That is all it means, sovereignty. If you are a family and you want to be independent, then stand on your own as a family. If you are a community, stand on your own as a community. If you are going to be a nation, stand on your own as a nation. That is what we are trying to work on.

We need help with acknowledgment and recognition of Native American sovereignty, getting back their independence. If the United States government can do that, if they can recognize our sovereignty and help us, they might not need to dish out so much money to support us. We could do it ourselves.

Sovereignty also means dealing with other powers in the world that we used to deal with once upon a time—the governments of England, Spain, Mexico, China. We need to borrow about \$600 million dollars. I told the United States government that if they will not help us with the money, why don't they just lend it to us. To this day we still have not received word about getting any sort of loan for our unmet needs. But maybe China might help, maybe Mexico. But to do that, we need the recognition of sovereignty in Native America, and the United States needs to reinforce it.

They also need to stop trying to assimilate us. We were created as a distinct people by the Creator, by God, and we want to keep it that way. We want to keep all of our culture, our language, our way of life, and whatever can be done to make that happen, that is what we want. Yes, we want to be a part of the mainstream, but, we also still want to be a distinct people. We are who we are. That is basically what it amounts to. So if we can be recognized we would appreciate that.

In closing, what I want to say is I want to share a teaching with you. There are many wars going on in the world today. People dying, grandmas getting shot, and grandpas getting killed, children and grandchildren getting killed by bombs, limbs getting blown off. Oftentimes I think about it, and I ask why? We had a Navajo soldier whose limb was blown off, two soldiers, who had

families, were done away with, killed in the war in the country of Iraq. Thus far, Navajo people have lost eight young people in a needless war.

I was raised by my grandmother and she told me, "Grandson, I want to teach you something today. I want you to go to school and try to learn about foreign ways, the foreign language, and try to understand what they call money. But do not forget our ways. The Creator has created us as a distinct people. Do not forget our teachings. One of the teachings is, Grandson, is that that we are all on the same side. If you go to school, maybe one of these days you might get into a leadership position. When you do, I want you to apply this truth. We are all on the same side. We are all members of what is called the 'five-fingered, intelligent, earth-dweller called Homo sapiens, humankind.' We are all on the same side. It does not matter your color, whether you are white, black, Asian, Hispanic, or Native American, we are all on the same side. The real monsters, Grandson, know no creed, no color, and it does not say this is a white man, we will spare the white man and we will devour the Native American. It does not distinguish, it devours everyone. It preys on everybody. The monsters are: famine, thirst, greed, jealousy, ignorance, bigotry, racism, apathy, and all manner of diseases. These are the real monsters, and we ought to be standing side-by-side making war against these monsters. They are all alive, they are essences out there. It is just that we do not see or know them."

As soon as we come to this understanding, maybe the world might be the better for it. The sooner we come to this understanding, there might be fewer wars in the world. Because of our lack of understanding, we have all these wars going on out there. My hope is that we do come to an understanding some day. Otherwise, I see an omen and it is bad. We are going to blow ourselves up. And when we do that, it makes me wonder what will happen to the rule of law.

I think we have come a long way to come up with a body of law, thinking this is something that might work. And here today, at this conference, we are exchanging ideas, we are exchanging ideas about what is working over there, over here, maybe we can do this, do that and make it work a little better. But I have a fear because I listen to the news and it is being told that we are working on bombs over here, over there too. What if someone pushes the red button? I think it will only take one button. And then

that's it. Then where will we be? Where will the rule of law be? That is my fear. My hopes are also that somewhere in there we will get wise and come to believe that we really are all on the same side. Let us really stand together and really make war against the real monsters: famine, racism, bigotry, greed, jealousies, and all manner of diseases which are out there. We should be working together, standing side-by-side, looking for answers for the preservation of ourselves, our rule of law, and our governments.

Ladies and gentleman, again, I feel very honored to be able to share these thoughts with you. I have come at you from the heart. I have come at you from the real world. I am not an attorney, I am not a judge, but I hope something I have said at least triggers something in your mind which might help you to write better law in the future. Thank you.