

Chronological: National Congress American Indians (Cancelled), 2001-09-11

Senator Daniel K. Inouye Papers
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STATEMENT
OF
SENATOR DANIEL K. INOUE
CHAIRMAN
COMMITTEE ON INDIAN AFFAIRS
BEFORE THE
SEPTEMBER 11, 2001
MEETING
OF THE
NATIONAL CONGRESS OF AMERICAN INDIANS
ON THE
U.S. SUPREME COURT'S RULING
IN
NEVADA v. HICKS

Speech - September 11, 2001
(cancelled)
National Congress of
American Indians
Meeting

**A FEW WEEKS AGO, THE AMERICAN
INDIAN RESOURCES INSTITUTE
SPONSORED A MEETING ON THE UNITED
STATES SUPREME COURT'S RULING IN
THE CASE OF NEVADA versus HICKS.**

**PROFESSOR CHARLES WILKINSON
PROVIDED US WITH A VERY
COMPREHENSIVE REVIEW OF THE
SUPREME COURT'S RULINGS, BEGINNING
WITH CHIEF JUSTICE JOHN MARSHALL'S
RULINGS IN THE 1800'S THAT HAVE
SERVED AS THE FOUNDATION OF
FEDERAL-INDIAN LAW AS WE HAVE
COME TO KNOW IT.**

**STANDING IN STARK CONTRAST TO
THOSE EARLY RULINGS OF THE SUPREME
COURT ARE THE MORE RECENT
DECISIONS OF THE COURT, BEGINNING
WITH OLIPHANT AND PROCEEDING IN A
SYSTEMATIC WAY, I BELIEVE, TO
DISMANTLE YOUR SOVEREIGNTY.**

**WHAT MAKES THESE RULINGS EVEN
MORE ALARMING IS HOW
DRAMATICALLY THEY DEPART FROM
THE POLICY AND THE LAWS THAT THE
CONGRESS AND SEVEN PRESIDENTS HAVE
PUT IN PLACE AND CONSISTENTLY
REAFFIRMED.**

I HAVE NOT READ EVERY SUPREME COURT CASE IN INDIAN LAW, BUT I AM TOLD THAT IN MOST, IF NOT ALL OF THESE RULINGS THAT ERODE YOUR SOVEREIGNTY, THERE IS NOT EVEN A PASSING REFERENCE TO THE POLICY OF INDIAN SELF-DETERMINATION AND SELF-GOVERNANCE, NOR TO THE SCORES OF STATUTES THAT HAVE BEEN ENACTED INTO LAW TO CARRY OUT THIS POLICY.

**TO SAY THAT I SHARE YOUR ALARM
AND CONCERN IS AN UNDERSTATEMENT.**

**TO SAY THAT I BELIEVE, AS YOU
KNOW I DO, THAT THERE IS NOTHING
MORE IMPORTANT, MORE CRITICAL TO
YOUR VERY SURVIVAL AS A DISTINCT
PEOPLE THAN YOUR SOVEREIGNTY, IS
OBVIOUS.**

**IF YOU ASKED MY ADVICE, AND SOME
OF YOU HAVE, I COULD SAY THAT WE
MIGHT WAIT TO SEE HOW FAR THE
SUPREME COURT GOES – WAIT TO SEE
WHAT THE OUTCOME MIGHT BE IN A
FEW MORE CASES.**

**BUT I’LL BE HONEST WITH YOU – I
DON’T THINK YOU HAVE THAT LUXURY.**

**THE COURT'S RULING IN THE HICKS
CASE MIGHT BE CONSIDERED BY SOME
COMMENTATORS TO BE PART OF THE
NATURAL PROGRESSION IN THE COURT'S
JURISPRUDENCE, BUT I THINK INDIAN
COUNTRY SHOULD EXAMINE THE CASE
CLOSELY FOR WHAT IT SIGNALS ABOUT
WHERE THE COURT IS GOING.**

**BEFORE TOO LONG, YOU WILL BE
WHAT ONE FORMER JUSTICE SUGGESTED
THAT HE THOUGHT INDIAN TRIBES ARE –
NOT SOVEREIGN GOVERNMENTS BUT
MORE LIKE ELKS' CLUBS OR FRATERNAL
ORDERS.**

**SO I THINK THE TIME HAS COME TO
ASK YOURSELVES THE SERIOUS
QUESTIONS –**

- **DO YOU WANT TO RETAIN YOUR
SOVEREIGN AUTHORITIES TO
EXERCISE JURISDICTION OVER ALL
OF YOUR LANDS?**

- **DO YOU WANT TO ASSURE THAT YOU CAN MAINTAIN LAW AND ORDER ON YOUR LANDS WITHOUT REGARD TO THE RACE OF THE PEOPLE OVER WHOM YOU SEEK TO EXERCISE JURISDICTION?**

- **ARE YOU WILLING TO INVEST YOUR RESOURCES IN YOUR TRIBAL JUSTICE SYSTEMS, SO THAT NO ONE CAN SUGGEST THAT THEIR RIGHTS TO DUE PROCESS AREN'T GUARANTEED IN TRIBAL COURTS?**

**SOME HAVE SUGGESTED THAT THERE
MAY HAVE TO BE SOME DEGREE OF
FEDERAL COURT REVIEW IF YOU
EXERCISE THE JURISDICTION OF YOUR
TRIBAL COURTS OVER NON-INDIANS – IN
THE SAME WAY THAT STATE COURT
JUDGMENTS ARE REVIEWED BY FEDERAL
COURTS WHEN CONSTITUTIONALLY-
PROTECTED RIGHTS ARE AT STAKE.**

- **ARE YOU WILLING TO EXPOSE YOUR TRIBAL COURT RULINGS TO FEDERAL COURT REVIEW?**

- **DO YOU WANT TO CHANGE THE TEST THAT THE COURT HAS BEEN APPLYING TO DETERMINE WHETHER YOU CAN EXERCISE JURISDICTION OVER NON-INDIANS?**

**TO ME, IT SEEMS THAT THAT TEST
SAYS THAT YOU EITHER HAVE TO HAVE
A CONTRACT WITH A NON-INDIAN OR
SOMETHING THE NON-INDIAN DOES HAS
TO THREATEN TO DESTROY YOUR
TRIBAL GOVERNMENT BEFORE YOU CAN
EXERCISE JURISDICTION.**

IS THAT WHAT YOU WANT?

**I AM NOT HERE TO PROVIDE
ANSWERS TO THESE AND OTHER
QUESTIONS.**

ONLY YOU CAN DO THAT.

**IT IS YOUR SOVEREIGN PREROGATIVE
AND THESE ARE DECISIONS YOU MUST
MAKE AS THE LEADERS OF YOUR
SOVEREIGN GOVERNMENTS.**

**WHAT I CAN SAY, AND WHAT I AM
HERE THIS MORNING TO ASSURE YOU, IS
THAT IF YOU DECIDE THAT THERE NEEDS
TO BE A LEGISLATIVE RESPONSE TO THE
SUPREME COURT'S RULING, THEN DON'T
LET ANYONE DETER YOU FROM THAT
GOAL.**

**DON'T LET PEOPLE SCARE YOU WITH
FORECASTING THE POLITICAL ODDS FOR
OR AGAINST GETTING SOMETHING
PASSED.**

DECIDE WHAT YOU WANT TO DO.

**DECIDE WHETHER YOU WANT
SOMETHING COMPREHENSIVE OR MORE
NARROWLY-FOCUSED.**

**YOU HAVE GOT LAWYERS THAT WILL
DO THE DRAFTING IF YOU TELL THEM
WHAT YOU WANT.**

**YOU HAVE GOT THE INDIAN AFFAIRS
COMMITTEE IN THE SENATE AND 106
MEMBERS OF THE NATIVE AMERICAN
CAUCUS IN THE HOUSE WHO WILL WORK
WITH YOU AND YOUR LAWYERS UNTIL
WE GET A MEASURE EXACTLY THE WAY
YOU WANT IT.**

**BUT DON'T MAKE YOUR DECISIONS
BASED ON POLITICAL CONSIDERATIONS.**

**WILL YOUR SONS AND DAUGHTERS
TELL THE FUTURE GENERATIONS THAT
YOU WANTED TO PROTECT YOUR
SOVEREIGNTY, BUT AT THE TIME, IT JUST
SEEMED THAT IT WOULD BE TOO
DIFFICULT, POLITICALLY, TO DO SO?**

I DON'T THINK SO.

**IF SOMETHING IS WORTH
PRESERVING, AND IF SOMETHING IS
WORTH FIGHTING FOR, THEN YOU DO IT.**

**AND I CAN'T THINK OF ANYTHING,
NOT ANYTHING, THAT IS MORE CRITICAL
TO YOUR PAST, TO YOUR PRESENT, OR TO
YOUR FUTURE THAN YOUR
SOVEREIGNTY.**