



# CERF/CERA REPORT

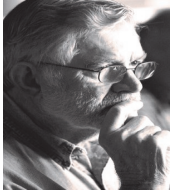


MEMBER UPDATE

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## A Message from the Chair of CERF by Clare Fitz, MN

### A Snippet of History to Ponder on Independence Day

In Washington, the federal government under President James Madison, was becoming increasingly disturbed by the continued meddling by the British in the affairs of the new republic. On June 8, 1812, war was declared by the United States against the British. The first two battles of the war were disastrous for the fledgling United States. The United States decided that attacking Canada, which was part of the British Empire, would be their method of attack. Three attempts were made at a victory against Canada, but all three failed.

Soon fifty British warships were spotted off the Chesapeake Bay shore, but what they were up to remained elusive. It soon became evident however, as the British marched troops into Washington, overwhelming the American troops, and burning the President's mansion, the United States capitol and a newspaper office that had not been kind to the British in print. Only a violent rainstorm prevented further burning.

The British were still not ready to accept the fact that they had lost the Revolutionary War and that the United States was now an independent nation. They continued funneling arms and ammunition to the Indians in an effort to stir up trouble and with their wins in the Canadian attacks and with Washington burned, they moved on to a naval bombardment of Fort McHenry near Baltimore, Maryland. On September 13, 1814, the British ships anchored in the Chesapeake Bay, lobbed shell after shell at the fort.

Francis Scott Key had been sent to negotiate the release of a prisoner being held on one of the British ships. He watched shell after shell being fired at the Fort through the nighttime sky but couldn't see until the morning mist had lifted that the stars and stripes still flew over the Fort and it had not fallen. Key jotted down a poem that described his delight: *"'tis the star spangled banner, O! long may it wave, O'er the land of the free, and the home of the brave."* Later his poem was set to music and became the national anthem of the United States of America.

### Changing Ideals and Transferring Local Responsibility To the National Government by Darrel Smith, SD

Our culture is changing the meaning of "equality" and "justice." These new definitions are similar to the redefinition described by George Orwell's book *Nineteen Eighty-Four*. Orwell talked about a future society that controlled information, changed the meanings of accepted words and history, while it used these changes to help control its citizens. This control of words, history, information and citizens that he feared would happen in the future is increasingly happening in societies around the world. Our government and social institutions have changed our understanding of America's history, our understanding of current events and our understanding of fundamental principles, more than we realize.

Historically in our country, "equality and justice" meant that the government tried to provide citizens a free, equal and just chance to succeed in life. I like to express this concept using a normal foot race analogy. The government served as the race track manager of the footrace. They didn't concern themselves with the capabilities of race participants or

who won or lost the race or by how much. In fact, that was the point of the race. Some participants were more qualified, talented, ambitious or fortunate and they often greatly exceeded other racers. Our country was designed to focus on making the race track as equal for each participant as possible. They thought that this equality was the best option for society.

This definition of equality and justice results in different outcomes and provides a tremendous encouragement for both individual and team incentives. Human effort, accountability, liberty, free enterprise and advancement are encouraged. It is inevitable that human achievement produces tremendous inequality in outcomes.

Imagine the ambition and efforts that motivate sports participants and teams to accomplish triumph. In other realms, how many classical musicians do we still remember? We only enjoy a small percent of their music. How many of the total number of modern musicians do people appreciate? How many total blogs are now available and how many of this total are very popular? Every area of human achievement demonstrates similar differences in achievement with some participants being much more successful than others and these dramatic differences are also true in our economic activities. Most people don't resent many of the inequalities of life if they believe the "game" is fair. Unfortunately, many are no longer convinced the "game" continues to be fair.

When the terms "equality and justice" are used today, they generally focus on a different meaning. They focus on results or outcomes. These definitions of equality and justice aren't just different—they are mutually exclusive. You can't have a footrace that focuses on equal opportunity and also ensuring that all participants reach the finish line at the same time. Neither can we have a country that focuses on equal opportunity and equal results. One definition excludes the other. Race track managers, or governments, that are trying to obtain equal results will need to be much more complicated, active and controlling than managers, or governments, that are seeking equal opportunity.

This redefinition not only changes what we think of as equal and just, it also moralizes these fundamental changes in the focus of our country. It rearranges our understanding of our society's morality. We all believe in equality and justice but how do we define equality and justice? Is it moral for our society to focus on equal processes and experience very different human outcomes or is it moral to have society adjust those processes to equalize human outcomes?

Focusing on equalizing outcomes raises an endless number of questions. It is impossible for any government to agree on these questions which will leave the society open to continuous moral disagreement. What outcomes should be equalized? What characteristics should require special benefits? Should society benefit some people because of natural differences between individuals and groups or focus on individuals that claim to have been damaged by society? Differences in intelligence and inherent physical attractiveness have huge impacts on life. Should people with different levels of incentives, ambitions and goals be treated differently? Should people from different family backgrounds be treated differently? Should certain minorities and women get special benefits? If minorities should get benefits, should Blacks, Latins, American Indians and Asians be treated the same way or differently? Why or why not? Should some people with different sexual interests be given preference?

How should people with several of these differences be treated? Suppose there are two females, one is Black and one is Latino. Suppose both of them are lesbian. Also suppose one of them is a university professor and the other struggles with harmful addictions. How should they be treated by society? If we separate people in enough different ways, we have individuals, which is a great historical understanding of Western Civilization.

What ways should society benefit certain individuals or groups? Should society seek to equalize annual income or peoples' total accumulated wealth or should it supplement these to a basic level? Should it provide food, housing, utilities, clothing, transportation, communication, and medical support? Should society provide these to meet basic human

needs or should it aggressively equalize total wealth? What other characteristics should be equalized? Is it possible for the government to ever attempt to equalize people's lives?

Would equal outcomes benefit us individually and as a society? What impact would equalizing sporting outcomes have on individual and team incentives? How important are incentives to achievement? Is it moral to forcefully take resources from some people to personally benefit other people? How do these transfers impact both groups? The new definition of equality and justice discourages, and often reverses incentives and individual effort. Promoting equal outcomes promotes an incentive to convince decision makers that certain individuals or groups need special favors. This is especially true if the individual or group can convince society that they are victims of the society or its members.

The political and bureaucratic effort to accomplish equal results will be massive, intrusive and dedicated. **Author and speaker Jordan Peterson thinks it would require a bureaucratic inquisition to enforce equal results. Equalizing outcomes encourages tyranny. Who is going to measure equal outcomes?** Do we trust these people to transform our lives, our society and our country? Who will check both the providers and the people receiving the benefits for honesty and accountability?

In early America, social decisions were mostly made at the local level. Over time, power, control and money have moved to the state and the national level. Meanwhile, polls show that people trust their local governments more than the state, and especially more than the national government. The transfer of many of these duties and power from the local to the national government is a huge violation of the federal design of how our government was supposed to work. The national government has taken these responsibilities because it greatly increases their political power. There is neither historical nor Constitutional authority for this transfer of power away from the people.

Many politicians want to move more authority and responsibilities to global entities that are not restrained by our democracy, Constitution or values. National and especially global institutions are

distant and unaccountable to individual citizens who correspondingly eventually lose their loyalty to these institutions. Jordan Peterson comments about institutions that are said to be too big to fail. He contends that they are so big that eventually they will lose so much contact with people that they must fail. He believes that focusing on equal results is so destructive and pathological that we should shun promoting it just as we resist promoting Nazism/Fascism.

At least since the Civil War, Indian reservations don't experience either equal opportunity or equal results. They are controlled by the plenary (total, complete) power of the national government. The national government has given sovereignty to tribal governments instead of creating equal opportunity for individual Indian citizens. Individual Indian citizens are controlled by two government sovereigns without normal citizenship rights. Reservations are designed to encourage communal control over assets. They are influenced by national Federal Indian Policy which is supposedly designed to benefit these reservations. The fruit of these choices is that reservations continue to suffer severe economic and social destruction. The 1930s designers of the modern reservation system, who were avowed Socialists, expected then to be a model for the rest of us to emulate. Their visionary dreams have turned into the opposite actual reality.

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While massive income inequality is a serious social concern, we haven't learned how to successfully understand and moderate this problem. Common forms of government benefits are often very destructive. Meaningful creativity and production are some of the most beneficial aspects of human life. Benefits to people should be provided in a way that encourages them to improve their lives while it also benefits society. We have spent trillions of dollars that could have increased our national prosperity. Meanwhile, the "war on poverty" hasn't been successful at reducing poverty in our society and it often destroys the people's lives and the communities it was designed to benefit.

Many of the ideas for this article came from *A Conflict of Visions-Ideological Origins of Political Struggles* by Thomas Sowell and You Tube videos by Jordan Peterson like *The fatal flaw lurking in American leftist politics* | Big Think Top Ten 2018.

## **A Casino For A One Member Tribe???**

*by Butch Cranford, CA*

Would the Bureau of Indian Affairs (BIA) and the National Indian Gaming Commission (NIGC), approve a large Las Vegas style casino for a "tribe" with one adult member? A "tribe" that as a non-gaming tribe in California receives a minimum of \$1.1 million annually from gaming tribes? A "tribe" that has never had a reservation and has never had land in trust as required by the Indian Gaming Regulatory Act? Then would such an improbable approval be defended by federal attorneys in federal courts? Would federal judges believe such a story? Unbelievable, sounds impossible – right? Wrong, the approval of an illegal casino for the one member Buena Vista "tribe" by the BIA and NIGC was defended by unethical federal attorneys and then the unlawful approval was upheld by inept federal judges. This Indian casino just opened in April 2019 in the tiny rural hamlet of Buena Vista, California. This is not a joke! The corruption and ineptitude at work at the (BIA), the (NIGC), among federal

Attorneys, and in some Federal Courts is serious and beyond belief.

To understand how this happened, a review of the land at issue and the "tribe" in question is necessary. This incredible story begins quietly in 1926 when the United States purchases a 67 acre rancheria (small ranch) in fee at Buena Vista (BV), Amador County for homeless California Indians. There is no evidence of any Indians living on the BV rancheria until 1935 when Louie, Annie, & Johnnie Oliver and Josie Ray occupy the property. By 1941 the property is home to only the family (5) of Louie and Annie Oliver and the Oliver family are the only residents until 1959.

In 1959 pursuant to the Termination Act and at the Oliver's request, the Department of the Interior (DOI) executed a deed conveying the property in unrestricted fee to Louis and Annie Oliver as joint tenants. The United States no longer had any interest in the property and the Oliver's and their descendants were no longer recognized as Indians eligible for benefits or programs as Indians. The BV fee property owned in fee by Louie and Annie Oliver was subject to the jurisdiction of Amador County.

There is no evidence the 67 acre BV rancheria was ever held in trust by the United States or designated a federal Indian reservation by Congress or the Secretary of the Interior. Nor is there any evidence that a "tribal government" or "tribe" ever existed at BV.

From 1959 to 1973 the Olivers lived on the property until Annie's death in 1972 and Louie's death in 1973. In 1975, probate of the estate of Louie Oliver was settled in Amador Superior Court. Ownership of the BV property was assigned to Enos Oliver and Lucy (Oliver) Lucero in undivided one-half interests after Jesse Morningstar Pope (Louie's nephew) declined an undivided interest in the property. Enos died intestate in 1978 and his estate including his undivided one-half interest in the property was not settled in Amador Superior Court until 1996.

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In 1979, the sole living owner of the property, Lucy Lucero, joined her one-half interest with sixteen other plaintiff rancherias in a class action suit against the United States known as Tillie Hardwick. The estate of Enos Oliver did not join suit. The suit was settled via a stipulated agreement in 1983 and the Court certified class of persons for BV included only Lucy Lucero. Lucy's status as an individual Indian was restored pursuant to language in paragraph three of the agreement.

Paragraph four of the agreement provided a process for the plaintiffs to be federally recognized and is included below:

**4. The Secretary of the Interior shall recognize the Indian Tribes, Bands, Communities groups of the seventeen rancherias listed in paragraph 1 as Indian entities with the same status as they possessed prior to distribution of the assets of these Rancherias under the California Rancheria Act, and said Tribes, Bands, Communities and groups shall be included on the Bureau of Indian Affairs Federal Register list of recognized tribal entities pursuant to 25 CFR, Section 83.6(b) which states: (b) The documented petition must include a certification, signed and dated by members of the group's governing body, stating that it is the group's official documented petition. (emphasis added)**

BV plaintiff Lucy Lucero never filed a petition for federal recognition and there is no record of federal recognition of the one Tillie Hardwick plaintiff (Lucy) from the BV property as a tribe.

On May 27, 1986 Lucy Lucero, sold her undivided one-half interest in the property to a woman from Yuba City named Donna Marie Potts. Potts was not a Miwok Indian and was not related to Lucy or the Olivers.

On May 14, 1987, the federal court entered a second stipulation with Amador County and an unidentified BV plaintiff pursuant to the 1983 Tillie Hardwick agreement. The agreement dealt exclusively with the assessment/collection of property taxes for the BV property. Amador County agreed to exempt the property from property taxes after an exemption form was developed with the co-operation of an unidentified BV plaintiff with the exemption form to be

filed annually. Pursuant to these actions being completed the County agreed to "treat" the BV rancheria like an Indian reservation. Remember Lucy was the only Tillie Hardwick plaintiff from BV and no longer owns an interest so there could not have been a BV plaintiff in 1987.

Amador County does not have authority to exempt any property from property tax as that authority in California resides exclusively with the California legislature. No BV plaintiff ever met with County personnel to develop the exemption form and no request to exempt the BV property from property tax was ever received. Without any request to exempt the BV property Amador County was not obligated to treat BV like any Indian reservation and they did not. The 1987 agreement is a nullity on its face.

On May 1, 1996 the probate of Enos Oliver's estate is concluded in Amador Superior Court with Potts receiving one-half of Enos's one-half interest in compliance with Lucy's will. Potts purchases the remaining interest from Enos's adopted son John Fielder. Donna Marie Potts, a private citizen, not a Buena Vista Miwok Indian, and not a plaintiff in Tillie Hardwick becomes the sole owner of the property in fee simple.

It is evident a non-existent BV "tribe" or the BIA had no jurisdiction, control, or ownership of the property from 1959 to 1996. It was never a reservation and the Olivers, Lucy, Enos, and Potts were successive owners in fee. Tribal trust land and federal Indian reservations are not subject to probate in County Superior Courts but instead are subject to probate by the BIA. No objection to this treatment of the property as fee non reservation land was ever raised by any BV plaintiff or the BIA or DOI or by Potts or any other person.

On August 1, 1996 Potts transferred her non-Indian/non-tribal/non-reservation private fee property to the nonexistent Buena Vista Rancheria of Mewuk Indians and records the deed at the Amador County Records Office. Then within a minute, Pott elected herself the BV "tribal" spokesperson and filed a second deed purporting to, as the spokesperson for the BV rancheria, transfer the 67 acre

BV rancheria to “the United States Department of Interior, Bureau of Indian Affairs.”

On September 6, 1996 Potts amends the August 1<sup>st</sup> deed to read; ...”to: The United States of America in Trust for the Buena Vista Rancheria of Me-Wuk Indians, their interest in the following described property” (the 67 acres). In 1996 there were zero Miwok/Mewuk Indians at BV. Based on this fraudulent deed the County Assessor improperly removes the property from the tax rolls. On November 18, 1996 the Amador County Recorder receives a letter from the DOI informing him that the September 6<sup>th</sup> deed was not a valid conveyance to the U.S., but the assessor failed to return the BV rancheria to the tax rolls.

Between 1996 and 2002 Potts fraudulently misrepresented herself as Lucy’s niece and as the BV “tribal” spokesperson to local, County, State, and Federal officials in order to build a casino on the property. She obtained approval for gaming ordinances in 1996 and 2001 by misrepresenting herself as the legitimate spokesperson of the nonexistent BV “tribe” to the National Indian Gaming Commission. Then she misrepresented herself as the legitimate spokesperson of the nonexistent BV “tribe” to then Governor Davis and obtained a Gaming Compact in 1999. In testimony before the Senate Indian Affairs Committee in September 2002 Potts misrepresented herself as Lucy’s niece, as a BV Miwok Indian and as the legitimate BV tribal spokesperson. She was none of those things.

In 2002 Rhonda Morningstar Pope (Jesse Morningstar Pope’s daughter) absent for years suddenly appears and challenges Potts’ claims that Potts is Lucy’s niece, that Potts is a BV Miwok, and that Potts is the legitimate tribal spokesperson in Federal Court. Pope informs the Court she is opposed to Potts efforts to build a casino at BV on the bones of her ancestors.

Evidence provided by Pope proved conclusively that Potts was not Lucy’s niece, not a BV Miwok and not the legitimate spokesperson and the Federal Court enjoins Potts from taking any action as spokesperson for BV while the suit continues.

In 2004 Pope and Potts reach an out of court settlement. This settlement was documented in an agreement between Potts, Pope, and Pope’s casino investor (New York millionaire Tom Wilmott), in which the investor agreed to pay a total of \$25 million to Potts to purchase Pope’s interest in the 67 acres and Pope’s title as “tribal” spokesperson. Pope will build a casino on the bones of her ancestors.

In 2004 the Amador County assessor placed the fee BV rancheria back on the tax rolls based on a letter he received from the BIA stating the BV property was not held in trust by the United States. The County Tax Collector refused to collect any taxes to the present and the Board of Supervisors took no action to assert their jurisdiction over the fee non-reservation property when wells were drilled and buildings built without required County permits despite repeated requests from local citizens to stop the unlawful actions taking place on the BV property.

June 30, 2005, NIGC Acting General Counsel, Penny Coleman, delivered a lands opinion wherein she claimed that Amador County created an Indian reservation by virtue of the 1987 Tillie Hardwick property tax exemption agreement and opined that the BV Rancheria was eligible for a casino pursuant to the Indian Gaming Regulatory Act because the fee land at BV was a reservation. The Solicitor’s Office concurred in the determination.

All the false and misleading pieces are now in place for the BIA and NIGC to approve a casino for BV and with unethical federal attorneys to successfully defend the approval in federal court for a “tribe” with one adult voting member; Rhonda Morningstar Pope and no land eligible for Indian gaming.

The approval is based solely on the fictitious lands opinion delivered by NIGC Acting General Counsel Penny Coleman. Let’s examine what precisely is wrong with that opinion which is available on the NIGC website. In July 2009 I advised the Secretary of the Interior, Ken Salazar, and other federal officials about the serious deficiencies and the many false and misleading statements made by

Ms. Coleman in the 2005 lands opinion and requested the immediate withdrawal of the NIGC lands opinion for BV. I received no reply to my detailed request.

The 2005 BV lands opinion is severely deficient, is not accurate as to the facts, grossly misrepresents the history of the land, misuses the Tillie Hardwick Stipulated Judgements, and is not supported by documents and records currently available from the BIA, DOI, Amador County, and the National Archives. Several Formal Opinions from the Office of the Solicitor related to the unsupported claims and illogical conclusions by the BV lands opinion were requested.

First, a request for an opinion as to whether Amador County has the authority to create a Federal Indian Reservation whose lands would be eligible for gaming pursuant to the IGRA as opined by Ms. Coleman in the BV opinion. Second, whether Amador County has the authority to bind the United States to treat the land at Buena Vista like any Indian reservation as claimed by Ms. Coleman in the opinion for BV. The obvious answer to both questions in NO. Amador County was never delegated such authority and has no such authority.

Because the land at BV had been probated in Amador Superior Court as late as 1996; a full 10 years after the alleged creation of an Indian reservation by Amador County I ask for an opinion as to whether "Indian Reservations" are subject to probate in the Courts of California as well as an opinion as to whether title to "Indian Reservations" can be sold or transferred without consent and approval of the United States, the Department of the Interior, or the Bureau of Indian Affairs. Title to the BV property was transferred several times between 1959 and 1997 without any consent or approval by the U.S., the DOI, or the BIA.

Finally requests for opinions related to the Tillie Hardwick agreements were made. An opinion as to whether the 1983 Tillie Hardwick stipulated judgement restored any plaintiffs or plaintiff rancherias to Federal Recognition without further action by plaintiffs or plaintiff rancherias as prescribed at paragraph 4 of the 1983 Tillie Hardwick stipulated judgement. A request for recognition from BV was

made and no petition has been provided.

Lastly, a request for an opinion as to whether the 1983 Tillie Hardwick stipulated judgement restored any plaintiffs' lands or plaintiff rancheria lands to status as a reservation or to trust status without further action by plaintiffs or plaintiff rancherias as prescribed at paragraph 6 and/or 7 of the 1983 Tillie Hardwick stipulated judgement. A request for copies of any fee to trust application or requests for restoration to status as a reservation were requested. None have been provided.

As unbelievable as it may sound, there is a Las Vegas style casino in rural Buena Vista, unlawfully approved by the BIA and NIGC, defended by unethical federal attorneys, and upheld by inept federal judges, that is located on fee land that has never been held in trust, is not a federal Indian reservation (unless of course you believe Amador County can create such) for a tribe that at its zenith consisted of one small family, with no evidence of any tribal government, and with one adult voting member when the casino was approved. And that one adult member "tribe" was receiving a minimum of \$1.1 million annually as a non-gaming "tribe" in California.

My friend, Attorney Jim Marino, often said when hearing similar stories about the manner in which the BIA and NIGC "creatively" administer fee to trust and Indian gaming in violation of the law and their own regulations; *"If you made this stuff up, no one would believe it."*

This you can believe; that unless and until we citizens stand together and challenge the unlawful unconstitutional decisions and approvals coming forth from the BIA and NIGC, these unethical illegal behaviors from corrupt bureaucrats will continue. CERA is dedicated to seeing that our Constitution and the law is followed in the administration of Federal Indian Policy. It is up to no one else but us!

***Federal Indian Policy is unaccountable, destructive, racist, and unconstitutional. It is, therefore CERF and CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States.***

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