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## NATIVE AMERICAN TRACEY MEASE'S STORY

By Ronald A. Zumbrun\*

Tracey Mease was a member of the Robinson Rancheria Tribe in Lake County, California. On December 5, 2008, the leaders of the tribe disenrolled her and other selected members of the tribe.

Throughout California, the advent of Indian casinos and their wealth have created new problems for Native Americans. Since tribal members can be disenrolled from the tribe, the remaining tribal members receive an increased share of the tribal benefits. Also, if tribe leaders disenroll members who do not support them or their policies, they will be better able to remain in power.

The Robinson Rancheria Tribe's Constitution contains a Bill of Rights, including section 2, which provides, "This Constitution shall not in any way alter, abridge, or otherwise jeopardize the right and privileges of the members of the rancheria as citizens of the State of California or the United States." Another section provides, "The individual property rights of any member of the Robinson Rancheria shall not be altered, abridged or otherwise affected by the provisions of this constitution."

Section 5 states, "In accordance with Title II of the Indian Civil Rights Act of 1968 (82 Stat. 77), the Robinson Rancheria

in exercising its powers of self-government shall not: (a) Make or enforce any law prohibiting . . . the right of the people . . . to petition for a redress of grievances; . . . (e) Take any private property for a public use without just compensation; . . . (h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of laws."

Sounds good? Well, first we must recognize that Indian tribes are sovereign nations. Their members, living and working on the reservation, do not pay taxes to the United States government and are basically governed by the tribe to which they belong. The tribe has sovereign immunity as a nation, which means they cannot be sued by tribal members or others. Thus the rights of individual Indians under the above tribal constitutional provisions are diluted.

In the United States Department of the Interior, there is a Bureau of Indian Affairs, which has certain responsibilities relating to Indian tribes and their members. This includes overseeing the election practices and leadership elections for each tribe as well as the disenfranchisement of members. Conflict can arise when officials of two sovereign nations interact. A big issue is

whether individual Indians with complaints are limited to the Indian courts for redress.

Tracey Mease is a Native American and true lineal Robinson Rancheria member as well as a citizen of the United States. Her great-grandfather Luman Boggs and great-great-grandfather Joe Boggs are true lineal Robinson Rancheria members based on the intent of Congress. Congress's intent was for the Robinson Rancheria to be inhabited by the Pomo and Eastern Lake Indians listed in the 1905-1906 Kelsey census. Joe lived on Lake County lands and Luman at Scott Valley near the original Robinson Rancheria property. Her grandmother, Red Rose Boggs (Quitquit), was forcefully taken at the age of 7 years from her tribe by the United States government to be placed in the Sherman Institute in Riverside to be "Americanized." As a result, Tracey was not born on the reservation.

In 1965, the Department of the Interior terminated the Robinson Rancheria and so notified those members and their heirs whose names were listed in the 1965 Federal Register. In 1977 the Department of the Interior reversed itself, and the land was given back to the Robinson Rancheria Tribe.

The Rancheria is governed by its Robinson Rancheria Citizens Business Council. By 1997, the records were very mixed up. The Citizens Business Council created one classification for those recognized as full blood descendents and another for those "adopted" into the tribe by the Department of the Interior. Its legal counsel, George Forman (Escondido, California), was present at the meeting where the two classes were created. According to the Council meeting minutes, Forman asked, "First question: Is it appropriate or is it legal to treat one class of members different than others, who are in effect, or are you creating two classes of members, those on the 1940 Census and are recognized as members, and those that are

recognized as members through other criteria? And the second larger question is: Are those who are members by virtue of being on the 1940 Census, members at all? ... And it would seem horribly unfair and inappropriate to suddenly disenroll people, who for the last 15 to 17 years, who have operated under the assumption that they are members."

While Tracey met both categories, she was adopted into the tribe but did not get credit as a full blood descendent. (She and five of the six present Citizens Business Council members share the same lineal ancestor, Joe Boggs.)

On December 5, 2008, the Business Council disenrolled adopted members, including Tracey Mease, without timely notice to Tracey. She did not receive such notice until December 8, 2008. The earlier November 20, 2008 notice stated: "Re: Consideration of Tribal Member Disenrollment. The Enrollment Ordinance, Section 8 Article 3 – Adoption, refers to the adoption of the 1940 census, this is in conflict with Robinson Rancheria's Constitution. Robinson Rancheria Citizens Business Council by resolution has corrected this conflict by striking Section 8 Article 3 – Adoption, from the Enrollment Ordinance. As a Tribal Member being considered for disenrollment, you have a right to a hearing. You may respond to this consideration of disenrollment in writing to request a hearing within five business days of receipt of this notice to the Robinson Rancheria Citizens Business Council. At which time an appointment will be made to address this issue. At the time of this hearing you are requested to bring any and all information, documents and records that you feel is necessary in contesting your disenrollment. You as the individual will only be allowed in the hearing."

Thus, Tracey was disenrolled without due process, equal protection, any hearing,

or right to representation. She experienced a violation of her rights normally protected under the United States Constitution, laws of the State of California, and the Constitution of the Robinson Rancheria and other areas of law. The Citizens Business Council proceeded with disenrolling adoptees, including Tracey's entire family. The family's correct genealogy had been ignored at the scheduled hearing of Tracey's cousin.

Next, per capita payments were dispensed to all tribal members, except to those disenrolled. Those payments involved a larger than usual amount. All tribal and federal benefits and rights to tribal properties, both real and personal, and all revenues from the casino, hotel and restaurant were denied to disenrollees, even though disenrollment was in a "pending status" and had not been approved by the Department of the Interior. Not having any affiliation with the tribe also denies Native Americans access to federal funding for housing, education, medical care and financial assistance.

A slew of disenrollment disputes among wealthy California tribes have generated significant media coverage, but so far members of Congress have not been willing to get involved. Officials at the Department of the Interior have shied away too. It is reported that California tribes have removed at least 1,500 members in recent years.

The question that arises is whether the Department of the Interior and its Bureau of Indian Affairs, acting for Congress as trustees with fiduciary responsibilities, including responsibilities to the disenrolled, will take appropriate action. Both Congress and the Department of the Interior have been reluctant to step into such disputes out of respect for tribal sovereignty. Tribes retain the right to determine their membership and their leaders.

The sovereign immunity of the tribal nation prevents Tracey from having any

redress in the tribal, state or federal courts as against the tribe. As a dual citizen, she should have some rights in the federal courts against those acting as trustees with fiduciary responsibilities, including responsibilities to the disenrolled. The question remains whether the United States federal courts, backed by the United States Constitution, will step in and protect Tracey's rights. This would be a precedent-setting issue.

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