



A blast from the past

1868 Treaty could mean payback for child molestor's victims

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Cocopah Health Officer Michael Fila conducts outreach to tribal youth. Nationwide, one in 33 youth per year receives an aggressive sexual solicitation, according to federal records. Photo Credit COURTESY / National Indian Health Board

RAPID CITY – A lot of people around here know that the 1868 Ft. Laramie Treaty means the members of the Great Sioux Nation are due return of the Black Hills and surrounding area or compensation for its illegal 19th Century takeover.

Yet, who would think that the treaty could mean payback for local

survivors of childhood sex abuse? Attorney James D. Leach, that's who, — and if anyone would know, he's the one.

Leach, while pursuing a lawsuit on behalf of some Oglala Lakota tribal clients, won the first-ever case to prove an Indian treaty can work to prosecute any alleged “bad men among the whites.”

He believes an untold number of childhood sex-abuse sufferers could claim monetary reparations from the federal government, as a result of the precedent his case set.

The Rapid City barrister is considering making a treaty-based argument to obtain relief for the victims of former Pine Ridge Indian Health Service pediatrician Stanley Patrick Weber.

A jury has found Weber guilty and a judge has set sentencing for Dec. 13 on the federal crimes of attempted aggravated sexual abuse of a child, abusive sexual contact of a minor and aggravated sexual abuse of a child.

The crimes stem from his engaging in sexual acts with two boys going back to 1992, when he was working for Indian Health Service in Browning, Montana, on the Blackfeet Indian Reservation. The acts include groping and trying to have oral and anal intercourse.

Weber is in custody pending sentencing, when his penalty could be as high as life in prison.

After the sentencing, the South Dakota U.S. District Attorney’s Office expects to prosecute him on 12 more federal grand jury charges of aggravated sexual abuse, sexual abuse, and sexual abuse of a minor.

The charges relate to his alleged criminal misconduct with minors between 1995 and 2011 while employed as a physician with Indian Health Service at Pine Ridge.

Legally, Weber is presumed innocent on the South Dakota charges “until and unless proven guilty,” according to prosecutors. The grand jury handed down the indictments in 2017 and 2018.

Meanwhile, Leach told the Native Sun News Today, “Any person, including a child who was abused sexually by Dr. Weber, may have a substantial claim against the federal government for monetary compensation under the 1868 treaty.”

Leach established that the “Bad Men Among the Whites” clause in the 1868 Ft. Laramie Treaty between the U.S. government and signatories of the Great Sioux Nation applies to not only authorities but also private citizens.

The clause, found in Art. 1 of the treaty, states: “If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also reimburse the injured person for the loss sustained.”

In his 2012 argument on behalf of the families the late Oglala Sioux tribal members Robert Whirlwind Horse and Calonnie Randall, Leach convinced the U.S. Circuit Court in Washington, D.C. that a tribal member who suffers a crime at the hands of a non-tribal member on an Indian reservation is eligible for federal reimbursement.

Up to that time, the few cases that had invoked the clause had pertained only to federal employees.

In this case, a drunken non-Indian driver ran down Whirlwind Horse and Randall as they were walking along a reservation road, killing them. The perpetrator pled guilty to involuntary manslaughter and was sentenced to 51 months in federal prison.

Following the ruling in the families' suit, the government settled with the survivors rather than going to trial over damage compensation.

This ruling also applies for other tribes that have "Bad Men Among the Whites" language in their treaties: the Navajo, Kiowa, Comanche, Cheyenne, Arapahoe, Ute, Crow, Northern Cheyenne, Northern Arapahoe, Shoshone, Bannock, and Apache.

Lt. Gen. William Tecumseh Sherman, who was a principal U.S. negotiator of those treaties, as well as the Sioux treaty, likely was responsible for enshrining the phrase "bad men among the whites," as he used it in co-authoring an 1868 Indian Peace Commission report to then- President Andrew Johnson, Leach notes.

The commission's report declared, "Many bad men are found among the whites; they commit outrages despite all social restraints; they frequently, too, escape punishment."

The Indian Peace Commission identified treaty-making as a way to redress Indian grievances and ultimately establish peace, Leach observes. "Providing a system of redress for wrongs was believed essential to preserving the lives of United States citizens."

The main considerations for success in applying the clause to claim compensation are that the plaintiffs must first follow all the steps necessary to satisfy administrative rules and must bring the case within six years of the wrongdoer's conviction.

Survivors of childhood sex-abuse may be leery of seeking treaty-based compensation, Leach admits. "The biggest impediment is that people just don't want to talk about it because it's humiliating," he says.

On the other hand, he notes, "The reason that people might want to bring a claim is because if the federal government has to pay money, it will be less likely to send out someone like Dr. Weber in the future."

The abused party or a parent or guardian can discuss a potential case with the lawyer in absolute confidentiality before deciding whether to proceed with a claim. “Unless they choose to go forward with it, I am bound by law to say nothing to anyone,” Leach asserts.

The Weber investigations have been conducted by the Health and Human Services Office of Inspector General, the Bureau of Indian Affairs Office of Justice Services, the Internet Crimes Against Children Taskforce, the Rapid City Police Department, the Spearfish Police Department, and Montana authorities.

Assistant U.S. Attorney Sarah Collins is prosecuting the South Dakota portion of the case. According to her office, one in 33 children per year receives an aggressive sexual solicitation. At any given time, 50,000 predators are on the Internet actively seeking out children.

The office’s Project Safe Childhood is part of a national initiative looking to build on partnerships with law enforcement to better prosecute child exploitation matters, while identifying, rescuing and assisting child-victims. It is also focusing on training of law enforcement and on community education to improve the willingness to report these incidents.

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