

Pena (1995) that the Constitution acknowledges only one race in the United States. It is American.

Attorney General Mark J. Bennett's spirited defense of the Akaka Bill (Hawaii Reporter, December 20, 2004) ignores this wisdom. It is nonsense on stilts. He talks about Congress' power to recognize tribes, but the Akaka Bill is not about recognizing a real tribe that truly exists. Instead, it proposes to crown a racial group with sovereignty by calling it a tribe. But to paraphrase Shakespeare, a racial group by any other name is still a racial group. Congress cannot circumvent the Constitution with semantics. The United States Supreme Court in *United States v. Sandoval* (1913) expressly repudiated congressional power arbitrarily to designate a body of people as an Indian tribe, whether Native Hawaiians, Jews, Hispanics, Polish Americans, Italian Americans, Japanese Americans, or otherwise. Associate Justice Willis Van Devanter explained with regard to congressional guardianship over Indians: "[I]t is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring guardianship and protection of the United States are to be determined by Congress, and not by the courts."

Attorney General Bennett incorrectly argues that the Supreme Court has interpreted the Indian Commerce Clause to endow Congress with plenary "power to deal with those it finds to be Indian Tribes. . . ." No such interpretation has ever been forthcoming, and thus Mr. Bennett is unable to cite a single case to support his falsehood. Indeed, it is discredited by the *Sandoval* precedent.

Congress enjoys limited powers under the Constitution. They are generally enumerated in Article I, section 8, and include the power to regulate commerce "with the Indian tribes." Clause 18 also empowers Congress to make all laws "necessary and proper" for executing its enumerated authorities. Contrary to the Hawaii Attorney General, the Indian Commerce Clause has been understood by the Supreme Court as conferring a power to regulate the nation's intercourse with Indian Tribes, but not to summon a tribe into being with a statutory bugle. The Attorney General is also unable to articulate a connection between any enumerated power of Congress and the Akaka Bill's proposal to endow Native Hawaiians with the quasi-sovereignty and immunities of Indian Tribes.

He absurdly insists that the Founding Fathers intended an open-ended definition of Indian Tribe because contemporary dictionaries defined tribe as "[a] distinct body of people as divided by family or fortune or any other characteristic." But the Constitution's makers employed "Indian" to modify tribe. That modifier was understood to include only peoples with an Indian ancestry coupled with a primitive culture that necessitated federal protection from predation by States or private citizens. In *Sandoval*, for example, Congress properly treated Pueblos as an Indian tribe because "considering their Indian lineage, isolated and communal life, primitive customs and limited civilization, this assertion of guardianship over them cannot be said to be arbitrary. . . ." Chief Justice John Marshall in *The Cherokee Nation v. Georgia* (1831) likened an Indian Tribe's dependency on the United States to the relation of a ward to his guardian. The Akaka Bill, however, does not and could not find that Native Hawaiians need the tutelage of the United States because of their backwardness or child-like vulnerability to ex-

ploitation or oppression. Indeed, their political muscle has made them spoiled children of the law, as Attorney General Bennett himself underscores. Finally, the Constitution aimed to overcome, not to foster, parochial conflicts or jealousies. That goal would be shipwrecked by a congressional power to multiply semi-sovereign Indian tribes at will.

He stumbles again in attributing to a court the statement, "Indian tribes do not exist in Alaska in the same sense as in [the] continental United States." The statement was made by the Secretary of the Interior in a letter noting that Alaskan tribes occupied land which had not been designated as "reservations," in contrast to Indian tribes.

Section 2 of the Fourteenth Amendment further undermines the Attorney General's accordion conception of Indian Tribe. It apportions Representatives among the States according to population, but "excluding Indians not taxed." Mr. Bennett's argument would invite the majority in Congress to manipulate apportionment by designating entire States that generally voted for the opposition as Indian Tribes.

Finally, the Attorney General wrongly insinuates that Congress would be powerless to rectify historical wrongs to Native Hawaiians absent the Akaka Bill. Congress enjoys discretion to compensate victims or their families when the United States has caused harm by unconstitutional or immoral conduct, as was done for interned Japanese Americans in the Civil Liberties Act of 1988. Congress might alternatively establish a tribunal akin to the Indian Claims Commission to entertain allegations of dishonest or unethical treatment of Native Hawaiians. As the Supreme Court amplified in *United States v. Realty Co.* (1896): "The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based on considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of the individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition of claims against the government which are thus founded."

TRIBUTE TO DECLAN CASHMAN

Mr. DAYTON. Mr. President, I rise to pay tribute to Ms. Declan Cashman who tomorrow marks her 20th year of service in the Senate.

Declan began her career in the Senate back in 1985 as a legislative secretary for my distinguished friend, Senator Dave Durenberger of Minnesota. She was promoted to positions on the Subcommittee on Intergovernmental Relations, the Permanent Subcommittee on Investigations, and the Committee on Health, Education, Labor, and Pensions. Today, she serves as my executive assistant, where she is invaluable to me and so many others on my staff. I do not sign a letter without first asking, "Has Declan looked at this?"

Despite her busy work schedule, Declan has many creative pursuits. She is both a lover of the theater and a talented actress herself. Recently, she has performed at Washington's Studio Theater, the Chevy Chase Players, and the Silver Spring stage.

Declan is an inspiration to the young men and women who come to work in

Washington every year. Every morning, she is the first to arrive in my office, where she proceeds to scour her hometown Boston Globe, the New York Times, the Washington Post's Style section, and Page Six, over a cup of black coffee. As her coworkers arrive, she enthusiastically shares the best stories with them.

On behalf of her Senate coworkers over the past 20 years and the thousands of constituents she has assisted, I thank Declan for her dedication and excellent public service. I hope that she will grace my office with her presence for the next 2 years. Then someone else will be my fortunate successor.

RECOGNITION OF THE 80TH ANNUAL PRINCE OF PEACE EASTER PAGEANT

Mr. INHOFE. Mr. President, I rise today in recognition of the 80th Annual "The Prince of Peace" Easter Pageant that has been performed annually in the historic Holy City of the Wichitas since 1926. I am very proud of this truly outstanding Oklahoma tradition and would like to congratulate the dedicated performers and organizers both past and present who have kept it alive all these years.

The pageant was the brainchild of a young pastor, Reverend Anthony Mark Wallock, of the First Congregational Church in Lawton, OK. Eighty years ago, he gathered a few hardy souls from his church and Sunday school class on a mountain peak at Medicine Park, OK, where he conducted a short Easter morning service. That worship ceremony, which was carried out in word, song, and pantomime, eventually became the world-renowned Easter pageant, "The Prince of Peace."

Word about the pageant spread quickly, and began attracting a larger audience. As a result, the pageant was moved to the foot of Mount Roosevelt in the heart of the Wichita Mountains Wildlife Refuge. The twenty-two buildings at the new site were completed and dedicated on March 31, 1935, and the first pageant there, performed on April 21, drew a crowd of 82,000 people.

In the 1940's, the pageant even drew the attention of Hollywood and in 1948 the film, "The Lawton Story—The Prince of Peace" was produced with the participation of many local citizens in Lawton and the surrounding area. Although Reverend Wallock passed away on December 26 of that year, the story of the pageant he founded lived on in the community that he loved.

Since then, hundreds upon thousands of volunteers have carried on the annual tradition of presenting this historic production. It has become the longest continuously running outdoor Easter pageant in America. Every Easter season, on Palm Sunday Eve and Easter Eve, starting at 9:00 in the evening, 300 costumed volunteer performers bring the pageant to life.

The voices of the characters come from the reading cast. Their timed speaking gives life to the pantomiming actors. Those in charge of music, sound effects, and the all-important lighting give realism to the story. The brilliant costumes, live animals, and surprise special effects all contribute to a rich and beautiful depiction of the life of Christ.

Mr. President, as the Easter season approaches and this storied pageant enters its 80th year, I extend my gratitude for all those who have committed to keep its flame burning. The message of hope and human redemption that is at the heart of this pageant is one that we sorely need today, and I hope that Reverend Wallock's inspiring legacy will live on for 80 more years and beyond.

IN MEMORY OF JAY CUTLER

Mr. SPECTER. Mr. President, I have sought recognition to inform the Senate of the passing of Jay Cutler on March 4, 2005. Jay was a dear friend to many in Washington, a loving husband, father, and grandfather to his family, and a true asset to Capitol Hill and the field of mental health policy. Both on the Hill and in his role as the lobbyist for the American Psychiatric Association, Jay worked diligently to educate people about mental health and to alleviate the stigma attached to mental illness. I had the pleasure of working closely with Jay on a number of issues affecting millions of Americans afflicted with these maladies.

Most importantly, Jay had an overwhelming love for his family, especially his wife, children, and grandchild. They, along with me, the United States Senate and Washington, DC will miss Jay dearly because he was a true inspiration to us all. In memory of Jay Cutler, I ask unanimous consent that Rabbi Joseph B. Meszler's eulogy of Jay be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JAY CUTLER (YOSEF BEN MOISHE)
RABBI JOSEPH B. MESZLER, WASHINGTON
HEBREW CONGREGATION, MARCH 7, 2005

Sometimes, when people reach retirement, they experience what people call a second childhood. They are able to be a kid again and enjoy themselves. Jay Cutler, however, never stopped knowing how to be a kid, how to enjoy life to the utmost, and how to marvel at people and places and situations. He was always a big, wonderful, loving man whose warmth you felt almost instantly. Perhaps the pain at the injustice of his sudden death is tempered by the fact that he did not wait until his retirement to go out and enjoy life. Jay Cutler was a good man who was a wonderful husband and father, and the best grandfather. He was an extremely generous man in every sense of the word. A Hebrew proverb says, *Neir Adonai nishmat adam*; the light of God is a person's soul. Jay's soul gave a great deal of light and warmth.

We are here in this unbelievable situation, to grieve for the death of Jay, to try to ac-

cept the reality of this loss, and to feel the pain of grief. His family and friends are gathered because it feels like a huge light has gone out, and we are groping in the dark. At the same time, Jay would always find something light and even funny even in the darkest situations. And in telling stories about Jay, we are liable to laugh just as much as cry.

Jay was born the only child to Murray and Shirley Cutler in Brooklyn. He was not only the only child but also the first grandchild, and so his grandparents closed down the street and had a block party for him upon his arrival into this world. It would foreshadow a great deal of Jay's spirit in times to come.

Jay loved his parents, and they loved him dearly. He attended Tilden High School and then went to New York University as a business major. In his neighborhood, attending his same high school, was a young woman named Randy. Randy was on the cheering squad, and her friend wanted to set her up with this guy named Jay. "You'll have a great time," her friend assured her. "He makes great seal noises." They went to Jahn's Ice Cream Parlor. Jay was 19, and Randy was 16. Later, Jay would make the time to drive his car over to Randy's house so the two of them could wash it together. His car must have been very dirty because he did this almost every day. On weekends, they would go out on dates. They were married on April 5, 1952 at a synagogue in Brooklyn, and while they did not have a honeymoon, Jay and Randy said that they honeymooned for many years on many trips after that. Their marriage took place before Jay had to go overseas during the Korean War, and Randy remembers well their time in Georgia when they shared a house with other couples before Jay was shipped out.

Jay and Randy's love for each other was something to behold. They simply loved being together, and it is hard if not impossible to think of them apart. They have been married for almost 53 years, and they shared everything.

When Jay came back from the service, he went to Brooklyn Law School. In order to get by, they needed family support, and Jay clerked for his Uncle Julie and also worked at night in order to bring in some money. Soon Hollie was born, and Jay studied for the bar while Randy tried to keep her quiet.

In 1958, the family moved to Washington, DC, where Perri was born. Jay went to work for Granik & Marshall, a lobbying law firm that dealt often with public television, and Jay became especially interested in the production end of things. He worked there for ten years, but then Jay went to work for Senator Jacob Javitz of New York on Capitol Hill.

Jay loved working on the Hill. He loved writing legislation and being a part of the process. He was also unusual. He was not only competent but helpful and friendly when many other people were not. A plaque in his office read, "Mirthful Jay Cutler." Hollie was especially proud when people at work would meet her and say, "You're Jay Cutler's daughter?" And even though he was extremely modest, Jay accomplished a great deal. He would never put on airs or boast, but he was extremely good at getting people together and getting things done. A book that was written at the time called *The Dance of Legislation* which followed the development of the National Health Service Corps, and it featured Jay as one of its subjects. It became clear with regards to this major legislation that a great deal would not have happened if it weren't for Jay.

After working on Capitol Hill for ten years, Jay went to work as a lobbyist for the American Psychiatric Association. He

worked for them for some 25 years, and he made a name for himself as not only a professional but as a mentor to others. He was well-respected and well-liked, and it might not be an exaggeration to say that he mentored half of the health lobbyists working on Capitol Hill today. Jay and Randy also did a tremendous amount of traveling, going all over the world on numerous trips. It was part of their life together to go to new places. He retired just last year and was looking forward to doing more consulting.

Upon his retirement, the Congressional Record, entered on April 30, 2003 by Senator Kennedy, praises Jay for his work. It explains that Jay was part and parcel of legislation having to do with mental illness reform and substance abuse treatment, and he believed passionately in improving the government's policies, alleviating suffering, and removing the stigma that mental illness can often bring. It also makes sure to mention Randy, his ever-present companion and support. Jay was, after all, first and foremost a family man. And all know him for the giving soul that he was. He was very generous, and gave of himself and his time freely.

As a father, Jay was always incredibly loving and playful with Hollie and Perri. He could make any child smile, laugh, and play. And he was not above stealing the chocolate frosting off of someone's plate if you left the table or pouring sugar into ashtrays at restaurants and setting them on fire. His children remember how much he loved the beach and could be found there from ten in the morning until sunset, and he would have been there earlier if he didn't like sleeping in while on vacation. He always seemed to have a permanent tan.

Jay was always there for his children, present but not intrusive, and was always positive and upbeat. Hollie knows what a special father she had, and she, too, went to law school. And Perri especially remembers her trip to King's Dominion with him and how he went on the rides with her even though he was somewhat horrified at the thought. And for the whole family, for Randy's siblings and their partners, Zeldia and Arthur, Louis and Barbara, for his nieces and nephews: Sherry, Bonnie, Scott, Darrell, and Craig, and to his son-in-law Eric, bringing Rachael into his life, Jay was a source of happiness and strength.

But the center of his life was his love for his granddaughter, Mikayla. Jay's sun rose and set on this beautiful little girl who would lovingly call him "Ga." He would do anything for her, and to her, he was one big, lovable toy. Only she was allowed to mess up his hair, and only she could bring him to entirely new levels of joy. His love and his life will have an impact on her far into the future.

Someone once wrote that life and death are not in our hands. Just as we do not choose to be born, so we do not choose to die. Jay's death is profoundly unfair. But he leaves a legacy of love and life that is hard to beat. He would have us smiling. His soul is certainly one of God's lights. *Zichrono livracha*. Jay's memory will always be a blessing.

LOSS OF FEDERAL AGENT DAVID WILHELM

Mrs. DOLE. Mr. President, tragedy struck Atlanta, GA this past Friday, March 11, 2005. A quiet day in a county courthouse turned into a horrific shooting spree that took the lives of four innocent people throughout the Georgia capital. Among those who fell victim that day were U.S. Immigration