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Too Long, Too Silent: The Threat to Cedar and the Sacred Ways of the Skokomish

**D. MICHAEL PAVEL, GERALD B. MILLER,
AND MARY J. PAVEL**

Five hundred years after the discovery of Columbus, the sunset of 1993 will probably be followed by another sad day of natural resources being unceremoniously manipulated without regard to their critical role in our survival. To American Indian and Alaska Native peoples determined to maintain their traditional cultures, all natural resources are essential living entities.

Here the authors first share with the reader why our tribe, the Skokomish of Washington State, have a concern for the Cedar's fate. The next section of this article describes, in a traditional voice, the importance of Cedar and why a sacred bond exists between the Skokomish and the Cedar. The third section addresses some of the legal issues surrounding efforts to protect Cedar and concludes with strategies on how to continue approaching this issue in the court system. The fourth section describes how the disappearance of Cedar is adversely affecting the survival of our traditional culture. In closing, the discussion turns to how Cedar's quiet disappearance affects traditional education practices among

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the current generation of Skokomish and what the tribe is doing to maintain their culture.

Three voices (traditional, legal, educational) are brought together to articulate the thoughts and ideas presented in this article. The voices represent the traditional training we received while growing up on the Skokomish Indian Reservation and the mainstream training we received while pursuing professional degrees in several of America's fine universities. The Skokomish tribe's efforts to confront contemporary social issues from a culturally appropriate perspective has motivated us to pursue postsecondary degrees without forgetting our ancestral heritage. Thus, what we offer here is more than a scholarly or intellectual product; it is a manifestation of oral history in written text that we will transmit to younger members of the tribe and contribute to the tribe's effort to document their own history. So let us begin.

A PERPETUAL CONCERN

Natural resources such as water, clay, native plants, and indigenous wildlife form the basis for the ceremonies, rituals, history, and everyday activities that characterize the Skokomish tribe's traditional culture. Our concern is that the destruction of these precious resources will jeopardize the instructional process we use to pass on traditional knowledge to younger generations and to help maintain the order of existence. For example, traditional elders educate younger tribal members about their culture by seeking a guardian spirit in the vast expanse of an old-growth forest, gathering plants and preparing medicine, and explaining the role of such entities as water and animals in our life. These practices are threatened because the forest is dwindling, the plants are dying, and few people respect our beliefs about such entities as water and animals.

Of special concern is the fate of the Cedar beings whom we recognize as living entities of vast spiritual and material value. Cedars are the earthly vessels that contain the knowledge to help us maintain the spiritual and pragmatic bond between humanity and all other entities in the world. Sadly, the Cedar that we once thought would live forever is disappearing because of exploitation by logging companies and mismanaged reforestation practices.

No mere statistics can convey the destruction that has taken place. The forests are dying. Great expanses of old-growth Cedar

forests have been logged away and not replenished. The slow-growing Cedar does not fit in the mono-culture agrarian schemes that give preference to other trees that can be cultivated much quicker for commercial harvesting. These agrarian schemes are part of the economic and mainstream ideologies that ignore (1) the spiritual importance of the natural environment to native people and (2) the practical importance of diversity that allows harmony to prevail in nature. The Euro-American view makes profit the all-consuming philosophy governing the wholesale massacre of the natural resources we consider to be sacred and dismisses the value of different life forms cohabiting within the same ecosystem. In contrast, the Skokomish do not believe in the wanton genocide of other beings and do not feel humanity is more important than other life forms; instead, we see our role in life as protecting other species from extinction.

A crucial concern of the Skokomish has always been how to protect sacred entities like Cedar and other life forms in the natural environment. Protecting the environment is essential, because the Skokomish spiritual philosophy focuses not on events but on relationships with entities like the earth, water, air, animals, and plant people. Maintaining this symbolic connection is important to the survival of our traditional culture, because a spiritual relationship with other life forms pervades all aspects of our life. Those trained in the traditional way cannot easily distinguish between how Cedars conduct their affairs and how humans conduct theirs. Therefore, protecting Cedar and other natural resources in the environment has been and will continue to be at the forefront of discussions concerning the tribe's survival.

In other words, our understanding of the environment allows us to negotiate the order of day-to-day existence and develop shared meaning with other nonhuman life forces. Our comprehension of humanity's place in the sacred circle of life has grown out of our respect for other species. These encounters, in turn, stimulate greater understanding of why we need to care for the environment. The traditional educational system—involving the observance and contemplation of all entities in the environment—provides human beings an opportunity to hypothesize that if another life form is in danger, then human beings also are in danger. If danger to another species is disregarded, this behavior could be manifested within the tribe and could lead to warring of the people against one another. Protecting other life forms from extinction, particularly Cedar, then becomes the principle means

to protect humanity. As the next section explains, this has been a prime directive of the Skokomish since their creation.

OUR GRANDMOTHER

What we are about to share is knowledge maintained in ancient rites and ceremonies since the dawn of our humanity; much of the knowledge is meant only for tribal members who join the spiritual societies of the Pacific Northwest Coast Salish. Because the fate of Cedar is so precarious, we believe it is necessary for us to explain Cedar's importance to us and its relation to our survival. However, although we have been too silent, too long, we are not entirely ready to violate the vow of secrecy by providing specific and highly sacred knowledge. We appeal to the good nature of society by explaining in a general way what Cedar means to us and by describing the sacred bond between the natural environment and humanity.

In the Beginning

Among our people, the traditional Skokomish elders teach the young that first there were earth's inanimate substances—elements like earth, water, and air that gave the plant tribes life. The plant tribes were followed by the animal people. All are known as beings and each is believed to possess a life force. During their infancy, the Great Spirit gave the life forms knowledge to be shared with each other, as well as with the first human beings who would follow in the line of creation. The knowledge possessed by each life force would inspire the human beings to learn how to build homes, obtain songs of power, and dance in the ceremonial way. In return, the human beings would contribute to the stability necessary for harmony by respecting and protecting all life forms.

Prior to the arrival of the first human beings, the Great Spirit called upon an entity we refer to as the Transformer to prepare the world for their arrival. While we cannot describe the form in which the Transformer wandered the earth, we can say that the Transformer oriented each life force to how its knowledge was going to help human beings survive. When the Transformer had completed its spiritual charge, the Great Spirit ushered in a time when everything turned upside down. Human beings came into

existence as a life force that would play an important role in protecting all other beings from extinction. The Great Spirit initiated this period by molding the earth's red clay into images of the first humans; then, while breathing life into these forms, the Great Spirit gave them the means of creation and the power of birth to women. We call this historical event the "breath of our ancestors" to signify that remembering everything ancient in our culture is essential to surviving today.

The Source of Knowledge

The Great Spirit chose Cedar to guide human beings beyond their infancy, to become the earthly repository for the knowledge humans needed to commune with the corporeal realm and the supernatural world. The Great Spirit bestowed this sacred honor on the Cedar people because they possessed the gift of long memory. Their unwavering obedience to the Great Spirit was rewarded with the gift of near eternal life. A spiritual and material relationship was forged between the plant tribes and the first humans when the Great Spirit used Cedar to give human beings fire, medicine, and the notion of harmony to ensure their survival.

The first humans listened carefully while Sequial of the Cedar people, who was to become their grandmother, instructed them to observe all life forces to see how each contributed to the existence of the others. During their infancy, the first human beings spent their time contemplating the meaning and purpose of each life form. It was through observation and insightful analysis that the first humans began to understand that their salvation would depend on coexisting with other life forces.

To sustain this spiritual guidance, Sequial sought to convey the Great Spirit's sacred laws and the directive to protect other life forms against extinction. The Great Spirit's laws were never to let jealousy rule the heart, to resist the temptation for greed to possess the soul, to prevent any seed of lust to inspire action, and to abstain from nurturing anger that would destroy the ability to reason. The humans were also told to remember that air, water, earth, plants, and animals practice traditions in the form of knowledge to help all beings persevere forever. In return for their observance of the Great Spirit's wishes, the living essence of Cedar indemnified humans with wisdom that formed the epistemological base of their culture, with symbolism, intellectual

pursuits, individual and collective spirituality, and circular or interrelated logic.

For example, Cedar rewarded a young girl who prayed and fasted for a way to comfort her people during harsh weather. The young girl sought protection for them from the elements because they were naked while other beings had fur, feathers, scales, or bark. In a vision, the young girl was instructed to take part of Sequialal's skirt (inner bark) and fabricate clothing, head covering, diapers, and many other articles that provide for a comfortable existence. To show her appreciation, she wove a symbolic design into each object to represent and show respect for the many life forms that would influence humans.

In yet another example, Cedar provided the inspiration for a young man who yearned to be like the winged creatures, the four-leggeds, and those who swam, because they possessed the ability to travel great distances with apparent ease. The young man dreamt that the Cedar could be used to create dugout canoes. In this way, the human beings expanded their awareness of the world and developed the inclination to wander in the spirit of inquiry by traveling great distances using the canoe.

Cedar also served the needs of another, who observed that other beings, such as birds, beavers, and squirrels, had homes in which to raise their children and places to store their food. This individual noticed that other life forces found security by having these comforts and sought a way to bring such comforts to the first human beings. As a result, the Cedar people sacrificed their lives so that the first humans could construct homes as well as boxes and baskets in which to store their belongings. This knowledge gave birth to spiritual sanctuaries during the winter and allowed humanity to create domains with a sense of community.

On other occasions, Cedar remembers that the Great Spirit gave humans the first huckleberry feast to honor all the plant tribes. The humans were also told how to conduct the first root ceremony to honor beings living below the earth's surface. The importance of performing the first elk ceremony was to honor all the four-legged beings. Then there was the first Salmon ceremony, which gave respect to the Salmon people—who represent life's eternal cycle—and all the life forces in the water. Cedar plays a role in all these and other sacred ceremonies. This knowledge led to reasoning about interrelatedness that serves as the foundation for envisioning existence from a circular rather than a linear mindset.

Important Lessons and the Creation of the Skokomish

Those who were able to obey the Great Spirit's laws and hold true to the vow of their ancestors continued to possess the knowledge of how to raise their own children according to the sacred teachings or traditional way. As long as their children and their children's children followed these sacred teachings and protected Cedar, humans would be able to communicate and live in harmony with other life forms. It was this communication and harmony that enabled human beings to receive the knowledge necessary for survival in their infancy.

Adherence to the ancestral ways was crucial, because the sacred teachings showed humans that the world is fragile and requires great care if it is to survive the momentous periods of instability when one life force ignores the spiritual value of another. Moreover, the sacred teachings that derived from communication with other life forms gave humans the ability to sense danger and develop strategies to protect themselves and others. As human beings matured, Cedar encouraged them to explore the world and conduct their own affairs. According to our oral history, humans knew only harmony and peace while they maintained the sacred teachings of the Great Spirit.

However, traditions based on the sacred teachings did wane during at least one period in our history and resulted in disaster for the first humans. We tell of a time when a young girl was mocked by others in her village when she tried to tell them that her spiritual guardian sensed a great catastrophe that was about to sweep over the village. Too many human beings were consumed by jealousy, greed, lust, and anger to be attentive of their own premonitions, and they had little time to listen to the many creatures that were trying to warn them of the impending doom. Nevertheless, the young girl obeyed her spiritual guardian and begged her father to dig a deep hole in the middle of the Cedar longhouse she lived in, to store provisions for survival. Her father did so but failed to heed his daughter's other advice. The disaster came in the form of a great fire that swept over the village; it destroyed everything and everybody except the young girl, who had diligently obeyed the teachings of her ancestors.

As the only survivor, she wandered in loneliness toward the river. The son of the Chum Salmon leader sensed her sadness and used his power to transform her into a salmon so that she could travel with him to his village underwater. Their union brought

forth children. When it was time for the woman and her half-breed children to leave the village of the Chum Salmon people, it was Cedar who gave the children and their mother the song that transformed them back into human form to become the Skokomish. That is one of the many reasons why we want to protect the Cedar today.

PROTECTING THE CEDAR

Legal attempts by the Skokomish to protect Cedar and the natural environment have spanned the last 137 years. This period begins with the signing of the Point-No-Point Treaty (12 Stats., 933, 1855), which created a binding legal agreement between two sovereigns, the United States and the Skokomish tribe. In the early part of this century, and again in the last decade, tribal members turned to the courts to enforce the treaty agreements. Unfortunately, throughout this period our rights to sacred properties like Cedar have been violated, and relatively little relief has been obtained in the court system.

Signing the Treaties

In 1855, our ancestors signed the Point-No-Point Treaty with the federal government to exchange lands and resources they owned by aboriginal claim. In return, the tribe would have access to and opportunity to protect those natural resources necessary to maintain the traditional way of life. Documentation of tribal members at that time provides testimony of the tribe's intentions in signing the Treaty of Point-No-Point. The concerns of many elders can be found in excerpts of depositions taken on the Skokomish Indian Reservation and submitted in the United States Court of Claims, Seattle, Washington:¹

I will state everything as nearly as I can remember as I heard it at that time (signing of the Point-No-Point Treaty in 1855). Now, the Indians at that treaty wished to reserve the streams and fish and all shellfish, deer, elk, bear, ducks, and all game and Governor Stevens said that "They will be yours. All games of all description and fish will be yours, and also Cedar. . ." (Dick Lewis, p. 608).

Well, if you want it, I will tell it just as it is, as the chiefs said. They wanted their clams, they wanted their salmon, they wanted their game of all kinds in the woods; they wanted that Cedar . . . Governor Stevens told them all right, it is yours (Frank Allen, p. 620).

The reserves that they had reserved at the treaty were the fishing, hunting, clams, tidelands, the rivers and all the streams, the Cedar, the roots and birds of the sea, and the wild woods were reserved by the Indians, and it was sanctioned by Governor Stevens that they should have it as long as an Indian lived, the sun rose, or the rivers flowed (Charles Miller, p. 623).

Action was instituted because the Skokomish tribe and other Northwest Coast tribes claimed that under the Oregon Donation Act of September 27, 1850, the act of March 2, 1853 (10 Stat. 172), and finally the act of July 17, 1854 (10 Stat. 305), the government took tribal lands illegally. Unfortunately, the court declared that there was no exact evidence of a taking and found for the government.

The tribe also claimed damages for the destruction of all their Cedar longhouses. Tribal members had to leave their Cedar longhouses as part of a grand plan to assimilate tribal members into the American mainstream. All the traditional homes of Cedar were then either burned, torn down, or allowed to decay. Most of this destruction came at the hands of farmers who took over land set aside for the Skokomish; highway road crews for the fledgling state of Washington who built roads over the sites where villages once stood; and logging companies encroaching on the reservation and surrounding land to clearcut what little old growth of Cedar remained so that no new homes could be built.

Under article 7 of the Point-No-Point Treaty, the tribes were to be compensated for the traditional longhouses they were forced to abandon. The court found evidence of fifteen Cedar longhouses destroyed on the Skokomish Reservation for which the tribe was not compensated. The size of these longhouses ranged from 100 to 200 hundred feet long and 60 to 140 feet wide. They were huge structures that housed as many as a dozen families and also served as spiritual sanctuaries. The court decided in favor of the tribe in this claim, but the victory was hollow. Despite the tribe's valuation of these homes at \$900 each, the court valued them at only \$250.

Recent Legal Efforts to Protect the Cedar

Tribal members are still trying to protect Cedar and other natural resources to this day. Additional evidence of efforts to protect Cedar is found in a statement prepared by the Twana Seowin Society, a traditional spiritual society representing the Skokomish tribe and of which we authors are members:

The once abundant old-growth forests of the South Fork Skokomish River water shed are rapidly disappearing as a result of the extensive clear-cutting and road-building activities of Simpson Timber Company; there are no old-growth forests on the Skokomish Indian Reservation; the Timber Resource Management Plan provides for increased harvest and resulting disturbance of old-growth acreage in the South Fork Skokomish River Shed. (*Skokomish Indian Tribe et al. v. Richard D. Beaubien et al.*, No. C80-199T, U.S. Dist. Court [W.D. Wash., Seattle, p. 9, 1981]).

This statement was part of a cause of action against the United States Forest Service based on the National Environmental Policy Act (NEPA) 42 U.S.C. §4321-et seq; the Multiple Use Sustained Yield Act of 1960 16 U.S.C. §528-531; the Fish and Wildlife Coordination Act 16 U.S.C. §§661-et seq; the American Indian Religious Freedom Act 42 U.S.C. §1996; the National Forest Management Act 16 U.S.C. 16 §§1600-1614; the Treaty of Point-No-Point treaty right to fish and wildlife; and the Forest Services Trust responsibility.

The Simpson Timber Company planned to clearcut whole forest lands governed by the Forest Service under the Multiple Use Sustained Yield Act in areas considered sacred to the Skokomish and essential to maintaining what could be considered our traditional religious practices. For any major federal action that takes place, the agency in charge must conduct an environmental assessment (EA). This assessment evaluates the environmental damage that the action (logging, in this instance) would cause. After the EA, the agency determines if the damage is significant or not. If it is significant, the agency must conduct a complete Environmental Impact Statement (EIS). This entails studies to examine impacts to the environment and to the nearby societies and requires the actor (in this case Simpson) to proceed in the least damaging way possible; if they cannot do this, then they cannot act at all. However, in the Reagan-Bush presidential

era (1980 to 1992), rarely were complete EISs ever done on any major logging projects; instead, an agency often would declare a Finding of Non-Significance (FONSI). The actor would then be free to continue with the planned action.

Judge Walter E. Craig dismissed the Skokomish case on a motion for summary judgment in favor of the Forest Service (Order, *Skokomish Indian Tribe et al. v. Richard D. Beaubien et al.*, Case No. C80-199T [W.D. Wa. 1981]). This is a procedural way of dismissing a case before it reaches the stage of litigation. Essentially, the judge decides that there is no factual issue that needs to be decided by a trier of fact and that he himself can decide the legal issues. Judge Craig ruled that the Forest Service took the necessary legal steps and that there was nothing in the facts that could substantiate the tribe's treaty or religious infringement claim.

Craig based his decision on a test created in three previous cases where tribes had invoked the First Amendment to protect sacred properties. These cases laid out four components needed to establish a sacred property case in the courts. First, plaintiffs must establish that their beliefs are sincere (*Sequoyah v. Tennessee Valley Authority*, 620 F. 2d 1159, [6th Cir. 1980] cert. den., 449 U.S. 953, 1981). Second, plaintiffs must show that the beliefs are religiously based. Third, the plaintiffs must show that the land in question is central and indispensable to the practice of their religion and that the practice cannot be conducted elsewhere (*Wilson v. Block*, 708 F. 2d 172, [10th Cir. 1980], cert. den., 452 U.S. 954, 1981). Finally, the fourth component of a plaintiff's case is to show that the government action significantly burdens their ability to practice their religion (*Bandoni v. Higginson*, 638 F. 2d 172 [10th Cir. 1980], cert. den., 452 U.S. 954, 1981).

While none of these cases ruled in favor of the traditional practitioners, they did articulate a test by which other cases could be decided. The Skokomish claim was different from these other cases in two ways. First, the Skokomish currently have a need for and a cultural tie to the Cedar. This was not a claim that simply dated to a historical account; Cedar is part of the Skokomish's modern existence. Secondly, the Skokomish's religious claim was intertwined with a claim based on the treaty-protected right to fish. Logging threatened not only the existence of the Cedar but also the continuing existence of viable fisheries. These two issues make the protection of the Cedar both a First Amendment and a treaty right.

Judge Craig's ruling essentially meant that the facts were clear, and that, based on these facts, the Forest Service did not have a

legal duty to protect the Cedar. In reality, the facts and the law in this case were far from clear. Judge Craig should have allowed the entire case to be presented at a full trial, so that the ruling could be based on a complete record.

Craig's decision was confusing, especially considering the evidence describing such sites as sacred and irreplaceable to the Skokomish. The facts clearly met the test laid out in the earlier cases. However, the statements of importance (excerpts provided below) and the factual evidence were not entirely articulated in the summary judgment brief, and we believe Craig never even saw the material because of poor preparation by the legal counsel.

The forest land was always of prime importance to the aboriginal Twana (Skokomish). It still is to those of us who are trained in, and follow the ways of our ancestors. A major concern was, and still is, the fate of the precious Cedar tree. Cedar is the Grandmother of the traditional Twana and all of us trained in the old way revere her. The old-growth Cedars are our holy shrines, just as the Church of the Dome of the Rock is held to be the birthplace of Christ. The old-growth Cedar is equally holy to us [B]ecause many of the old-growth Cedar predate the coming of the white man, they are our link to more pure times before the land was desecrated and razed. Now in modern times, many ancestral ways are disappearing. The Cedar root basketry, the bark clothing, the ceremonial dance uniforms, the bark baskets and carvings, are dwindling away except in memory or museums. Why? Because many of the traditional people have no access to the Cedar. Someone else owns it all. The promises of the Treaty of Point-No-Point have not been fulfilled. Now what is left of the Cedar may soon be gone We need a place where old-growth trees, especially the Red Cedar, live along with young trees; where we know our shrines will be unmolested; where we can obtain Cedar for ceremonial purposes; where we can go for retreat and meditation with our Grandmother, the Cedar; and where we can take our spiritual baths unmolested.²

It was also puzzling to the Skokomish because the Forest Service, as an arm of the federal government, has a trustee's responsibility to protect and preserve the treaty rights of Indian people. This requires every agency of the federal government to carry out this trust responsibility with the utmost care and recognition of the political and cultural integrity of the tribe.

By allowing the massive clearcutting of Cedar, the Forest Service showed once again the federal government's refusal to acknowledge the existence of tribes as distinct sovereign nations, whose holy places deserve protection. In wartime, the United States and other nations take a great deal of care not to destroy the holy places of enemy sovereign powers. Yet here in America, the federal government permits and even sanctions the destruction of tribal holy places on a regular basis and has done so for quite some time. Senator Inouye (1992) notes that tribal "religions have been historically suppressed by the United States government in ways unprecedented for other religions . . . [and] the issue of religious intolerance and discrimination has been a serious human rights problem for indigenous peoples since Christopher Columbus . . ."³

In later media coverage on *Skokomish v. Beaubien*, Pryne quoted the attorney for the Simpson Timber Company as stating that he would attempt to persuade Craig to include some safeguards in the dismissal order "so the Tribe will not pull this kind of thing again . . ."⁴ In 1988, *Time Magazine* published an article outlining the Simpson Timber Company's rationale for wanting those safeguards and the lengths to which the company would go for personal profit. The article suggests that the tribal members' worst fears had become a reality. As a result of the Craig decision, the sustained-yield areas of Cedar needed by Skokomish tribal members are almost gone. A portion of the article reads,

Michael Stewart and Forestry Consultant Peter Morrison, working with the Wilderness Society, have just nailed down what is either a very large bureaucratic fraud or a conveniently jumbled process of long-term fudging . . . [T]hey found that only 33 percent to 50 percent of the sample tracts listed as old-growth were still forested. In some areas, the remaining old forest, that continent of trees that colonists began cutting in the 17th century, will last only about 20 more years at present rates of logging . . . In the Olympic National Forest . . . only 106,000 remain of the 217,000 acres claimed by the Forest Service.⁵

Currently, the Skokomish tribe is negotiating protection of sacred property within the context of a Federal Energy Regulatory Commission (FERC) hydroelectric power project licensing proceeding. This is yet another government project that threatens the tribe's rights to practice their religion and culture. In 1924, the city of Tacoma obtained a fifty-year license under the Federal

Power Act (FPA) to construct the Cushman Hydro-electric project (now known as the Cushman Dam) on the North Fork of the Skokomish River. This region of the Olympic Peninsula is important for traditional Skokomish activities; it includes the slope of the Olympic Mountain Range, where old-growth Cedar still exists, and it is a key location for the Skokomish story of creation.

At the time of licensing, the federal government did not require its licensees to evaluate the impact of their projects on the indigenous people. It has been over fifty years now, and experts can document clearly the devastating cultural and economic impact that this project has had on the Skokomish. On 15 August 1974, Tacoma filed an application for relicensing with the FERC; the application is pending the outcome of an administrative hearing.

The tribe intervened in the proceeding both to stop the destruction of existing sacred properties and to mitigate the already existing harms (Motion to Intervene in the Licensing of Project No. 460, FERC, November 4, 1975). The Federal Power Act now requires the FERC to consider the recommendations of tribes and other agencies (16 U.S.C. §791-et seq.). The regulations promulgated thereunder specifically require the applicants to consult with tribes with respect to cultural resources in the project impact area (16 U.S.C. Section 10[a] §803 [a][2]). The FERC cannot renew Tacoma's license to operate the Cushman project unless it satisfies these regulations.

In 1988, after reviewing Tacoma's application for relicensing, the FERC submitted a request for additional information to Tacoma (FERC Request for Additional Information, Project No. 460, July 22, 1988). This request required Tacoma to complete a two-stage cultural resource survey of the entire project, including identification of all culturally significant properties within the project area. In addition to the identification requirement, the response was to include a record of consultations with the tribe and other agencies. Finally, Tacoma was required to include a plan to mitigate all damages to significant properties as well as a memorandum of agreement with the tribe as to how to protect these properties.

Tacoma failed to do a cultural survey of the project area and to examine the rich ethnological data concerning the Skokomish. Tacoma even failed to consult the tribe or any of the other required agencies with regard to the FERC's request. Because Tacoma failed to prepare an adequate response to the FERC request for additional information, they have been ordered again to provide the agency with the information it requested in July 1988 (FERC,

Notice of Deficiencies of the June 29 Answer in Response for Additional Information, January 30, 1991).

The Skokomish tribe is attempting to negotiate with Tacoma to ensure that the relicensing of the Cushman Hydro-electric power project is not inconsistent with the tribe's cultural uses of the land within the project area. Specifically, the tribe is asking that access be granted to existing sacred sites, that public access to these sites be limited, and that monies be allotted to educate children about the rich Skokomish culture. The traditional people know that the hands of time cannot be turned back. They merely want Tacoma to recognize their existing culture and to take no further steps to destroy it. The FERC has an obligation under the Federal Power Act to insure that Tacoma recognizes the tribe's culture and the significance of the natural resources necessary to maintain that culture. If, however, in the Relicensing Order, the FERC disregards this duty, the tribe will have to seek redress in the courts.

Future Strategies

First Amendment protection of sacred objects in the environment was weakened by the United States Supreme Court in *Lyng v. Northwest Cemetery Protective Association*, 485 U.S. 439, 448 (1988). Although protecting sacred property from destructive government activity would appear to come within the free exercise clause of the United States Constitution, the Supreme Court has decided otherwise. The Court has held that so long as a government activity neither coerces nor penalizes a tribal member's religious beliefs, there is no violation of the Constitution. The known destruction of sacred property at the hands of a federal agency is a merely incidental effect of an otherwise legal activity.

The plaintiffs in *Lyng*, the Yurok, Karok, and Tolowa Indians of California, claimed that the government's plan to construct a paved highway and permit timber harvesting within the Blue Creek unit of the Six Rivers National Forest unconstitutionally infringed on the tribes' free exercise rights to practice their traditional religion on a site they considered sacred. The case was heard by the Ninth Circuit Federal District Court (*Northwest Cemetery Protective Association v. Peterson*, 565 F. Supp. 586 [N.D. Cal. 1982], *aff'd* 795 F. 2d 688 [9th Cir. 1986], *rev'd sub nom*, *Lyng v. Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439, 1988) which found in favor of the plaintiffs, using the test created in the

previous sacred property cases. The Supreme Court then reversed this decision, citing another religious freedom case, *Bowen v. Roy*, 476 U.S. 693, 695 (1986).

In *Roy*, the Court had denied the free exercise claims of an Abenaki couple that a federal statute was inconsistent with the tenets of their religious beliefs. The challenge statute required that, in administering federal aid programs, state welfare agencies assign and use a separate social security number for each member of a family. The Abenaki plaintiff objected to his daughter's being assigned a social security number because he believed that technology robs the individual of his or her spirit. To prepare his daughter for greater spiritual power, he must keep her person and spirit unique. The use of the social security number as an identifier, coupled with the other uses of the number over which she would have no control, would serve to rob his daughter of her the spirit and prevent her from attaining greater spiritual power.

The *Roy* Court refused to follow the compelling interest/less restrictive means analysis it had followed in earlier free exercise cases (see, for example, *Sherbert v. Verner*, 374 U.S. 398, 1963; *Wisconsin v. Yoder*, 406 U.S. 205, 1972), asserting that this analysis was inappropriate because the burden on the Indian's religious freedom was merely indirect and incidental. The Court commented that virtually every government action could be susceptible to a free exercise objection.⁶ The Court emphasized that the government's social security number requirement was an internal matter promoting the legitimate and important interest of preventing fraud and therefore was not subject to free exercise scrutiny. The Court denied the Roys' claim, holding that while the First Amendment affords an individual protection from certain forms of governmental compulsion, it does not afford an individual a right to dictate the conduct of the government's internal procedures.

The Court began its analysis of *Lyng* by finding that the Indians' alleged infringement was similar to the claim in *Roy*. The Court stated in *Lyng* that the two cases could not be meaningfully distinguished, even though the two cases can and should be distinguished. *Roy* focused on the internal nature of a governmental procedure used to administer an insurance program. In *Lyng*, the proposed action was an external manifestation of the government's effort to improve access to timber and recreational areas of a forest for economic purposes. The action involved significant intrusion into the sacred property of the Indians, making it virtually impossible for them to practice their religion.

The Court reasoned that, although in both cases the government action significantly interfered with religion, in neither case did the government coerce individuals to violate their beliefs nor did it penalize them for practicing their religion. In other words, the only injuries the Court considers to be breaches of the Constitution are those in which the government either coerces violation of beliefs or causes forbearance of the receipt of certain beliefs. Thus the Court implies that the government can indirectly prevent people from practicing their religion without even raising a constitutional issue. Using *Roy* as a precedent, the Court tried to make a *Lyng* "square peg" fit into a *Roy* "round hole."

The Court did not dispute that the logging and road-building projects would have a devastating effect on the Indians' traditional practices but opined that the adverse impact on the religion was not a proper measure of whether the government had abridged the Indians' free exercise rights. The Court did not reveal what, if not adverse impact on religion, would be a proper measure of the government's interference. Instead, the Court asserted that, regardless of the impact on the Indians' religion, the Constitution provided no reasonable principle to justify upholding their claims. Moreover, the Court held that, so long as the government does not explicitly prohibit religious activity, either on the law's face or as the law is applied, the government is not required to bring forward a compelling justification for its actions, regardless of the law's incidental effects.

The Supreme Court articulated a concern that the plaintiffs' beliefs could require de facto beneficial ownership of some rather spacious tracts of public property, which could lead to a government subsidy of a religious activity. This concern implied that if the government recognized the rights of the Indians by halting the lumber and road-building operations, it would be in danger of establishing a religion.

The Court's interpretation of the establishment clause as it applied to the plaintiffs in *Lyng* is objectionable for two reasons. First, the Court did not take into account the widespread practice of administrative accommodation of American Indian religion.⁷ Congress has passed legislation exempting Indian religious practitioners from conservation requirements, such as the exception to the crime of possessing eagle feathers (16 U.S.C. §668 [a][Supp. V 1981]). Congress has even gone so far as to reconvey public land of religious significance to Indians, thereby permanently sacrificing public rights in the land for the benefit of Indian religion. For

example, in 1970, Public Law 91-550, 84 Stat. 1437, returned the sacred Blue Lake and surrounding area to Taos Pueblo for religious purposes.

Second, the Court failed to take into account the distinctive character and history of relations between the federal government and Indian nations. The government impinges on every facet of Indian life; failure to protect sacred properties associated with the environment will often result in the destruction of a culture. In *Lyng*, the government was not merely entangled; it had infringed on the plaintiffs' free exercise of religion. It should be logical to the Court that when the government itself created the injury to religion or spiritual life, moderation of the injury would be the religiously neutral course.

The Supreme Court's interpretation of the free exercise clause has taken a valuable negotiating stance away from the Skokomish and has left the tribe with few options by which to protect Cedar and other natural resources essential to the continuation of their traditional culture. This interpretation has given federal agencies carte blanche concerning the use of sacred properties like Cedar. The agencies do not have a duty to protect and preserve sites like old-growth forests; they merely have a duty to identify what they may destroy.

There is a surrealistic quality about the whole episode involving sacred site or spiritual bond claims on public land. It challenges the imagination. Most Americans do not readily associate religion with a particular piece of land or entities within the environment. If they do, the place is likely to be designated as the holy land or recognized with similar reverence. For the most part, the Euro-American concept of natural resources is governed by economic or material importance and not by spiritual importance. As Vine Deloria explains, such a concept prohibits any real change in perceiving the environment as a sacred entity:

The truly ironic aspect of modern land use is that during the past three decades, Congress has passed many laws which purport to protect certain kinds of lands and resources from the very developers who now seek to exclude Indian religious people from using public lands . . . [and] preserve the environment in a manner more reminiscent of traditional Native American religion than that of uncontrolled capitalism or the domination of land expounded by the world's religions. No real progress can be made in environmental law unless some of the insights into the sacredness of land

derived from traditional tribal religions become basic attitudes of the larger society.⁸

Nevertheless, incorporating a native viewpoint into the larger society might be impossible. When Columbus and other Europeans arrived in what we now call America, their ethnocentric ideals led them to believe that the indigenous people were savages who did not use the land and its resources wisely. What the Euro-Americans saw was a vast spread of land that could be confiscated and put to economic use.⁹ What most failed to see was that the land was being used, but not exploited. Again, the fundamental difference between Euro-American and indigenous cultural perceptions of natural resources was one of use. Leaving land in its undisturbed, natural state is completely antithetical to everything that the United States was founded upon. To the Skokomish, however, leaving the environment and all of its beings relatively undisturbed is not only beneficial to them but downright necessary to maintain a balanced life for all concerned.¹⁰

Since the Skokomish people's spiritual view of the environment does not conform with Euro-American visions of land use and religious freedom, the Constitution does not appear to protect the Indians' religious rights. However, the Skokomish do possess a federal legal basis by which they can defend the Cedar. We now turn to examining the Point-No-Point treaty, in which the Skokomish implicitly reserved access to and protected their sacred properties such as Cedar.

Usual and Accustomed Prayer Sites

The theory that tribal access to natural resources is reserved by treaty may prove to be a viable argument for the Skokomish in the courts. This argument is analogous to those used by other tribes to assert their water, hunting, gathering, and fishing rights outside the bounds of their reservations. The Supreme Court has developed three special canons of construction for lower courts to follow when interpreting treaties:¹¹ first, that treaties be liberally construed to favor Indians; second, that ambiguities be resolved in favor of the Indians; third, that treaties be construed as the Indians would have understood them (*Worcester v. Georgia*, 30 U.S. [5 pet.] 1831).

Research can provide an accurate interpretation of the ambiguities created by differences in language and worldview at the time of the treaty (*U.S. v. Washington*, 384 F. Supp. 213 [W.D. Wash., 1974], *aff'd* 520 F. 2d 676 [9th Cir. 1975], *cert. den.*, 423 U.S. 1086, 1976). The tribe believed, logically, that by reserving access to fishing and hunting sites, it was reserving access to prayer sites. Until this ambiguity is resolved against the Skokomish, hope remains of using the treaties to protect Cedar.

In *Washington v. Fishing Vessel Association*, 443 U.S. 658 (1979), the Court held that the Point-No-Point Treaty was intended to reserve fishing as an economic and cultural way of life. A relevant portion of the treaty reads,

The right of taking fish at usual and accustomed grounds and stations is further secured to said Indians, in common with all citizens of the United States and erections temporary for the purpose of curing; together with the privilege of hunting and gathering roots and berries on open and unclaimed lands.

In this passage, the Skokomish did not explicitly reserve the "religious right" to have access to natural resources on public land. The omission does not, however, support the view that there was no belief that such rights would be reserved. The Chinook jargon, a trade language used to negotiate the treaty, is a crude method of communication, limited in both vocabulary and complex meaning. Moreover, there is no word in the Twana language spoken by the Skokomish comparable in meaning to the English word *religion*.¹²

The traditional Skokomish view of life is that every activity is sacred, spiritual, or religious in nature. Thus, when the Skokomish reserved the right to fish, gather, and hunt, they implicitly reserved the right to have access to the land where they customarily conducted religious activities. Someone unaware of Skokomish traditional life might argue that the tribe intended only to reserve the resources that provided them subsistence (i.e., economic use). In actuality, the traditional Skokomish life does not separate the things that sustain the body from those that sustain the spirit; one could not exist without the other.

During the treaty times, the Skokomish had no mastery of the English language and no understanding of the Euro-American belief system that would have allowed them to state explicitly their intent to use the land for traditional religious purposes. Nevertheless, in reserving access to their accustomed fishing,

gathering, and hunting sites, the Skokomish were simultaneously reserving access to these sites for all traditional activities. As sovereigns, Indian tribes signed treaties to rescue their people from further encroachment by the dominant society. In signing the Point-No-Point Treaty, our ancestors believed they were preserving the quality of life that their people had known since the Great Spirit created the first humans to live in spiritual harmony with all that existed. This quality of life includes all the traditional beliefs and practices handed down by the Great Spirit's children: air, water, earth, plants, animals, and humans.

In several cases, courts have been amenable to recognizing implicit treaty rights where those rights are entangled with the existence and maintenance of a tribe's traditional culture. In *United States v. Winans*, 198 U.S. 371 (1905), the court recognized that the Indians signed the treaties to preserve their traditional way of life. In *Winans*, the court held that the treat[ies] [were] not a grant of rights to the Indians, but a grant of rights from them:

[T]he right to hunt and fish was part of the large rights possessed by the Indians in the lands used and occupied by them. Such right which was not much less necessary to the existence of Indians than the atmosphere they breathed, [and] remained in them unless granted away (p. 200).

In *Menominee v. United States*, 391 U.S. 406 (1963), the Supreme Court recognized implicit treaty rights because they were a part of Menominee traditional life. Interpreting the Wolf Treaty (10 Stat. 1064) signed between the Menominee and the United States, the Court held that it did include the right to fish and hunt, even though the treaty referred to neither right specifically. The Court reasoned that Indian culture and existence include hunting and fishing (Comment, 1989). In *United States v. White*, 508 F. 2d 453 (1974), the eighth circuit court held that the right to hunt had been implicitly recognized in the treaties with the Red Lake band of Chippewa. Again, the court relied on the Chippewa culture to find these fundamental rights to the necessities of life. The right to preserve culture and spiritual beliefs is as fundamental to the Skokomish as is the right to fish and hunt.

Access to sacred sites (i.e., where Cedar grows in a natural state) can be interpreted as a treaty right by the Skokomish. The federal government is under an obligation as trustee of Indian rights to secure and protect these rights from encroachment. Since Chief Justice Marshall's now-famous statement that Indian tribes "may

more correctly, perhaps, be denominated domestic dependent Nations in a state of pupillage and their relation to the United States resembles that of a ward to this guardian" (*Worcester v. Georgia*, 30 U.S. [5 pet.] 1831), the United States has had a trust responsibility toward Indian people. This trust responsibility extends to protection of the powers of tribal self-government or rights shown to exist by treaty or otherwise found (Cohen, 1982).

Historically, the trust doctrine secured the essential material needs of Indian tribes.¹³ Courts generally protected the Indians' rights to their land and to hunt and fish, even where these rights were not explicitly reserved in a treaty. In doing so, courts have construed the terms of treaties broadly to include rights that constitute an integral part of Indian culture and survival. As Chief Justice Marshall explained, the underlying purpose of the trust responsibility is to protect the tribes' existence as distinct political societies. Therefore, it appears that government action that adversely affects Indians' basic needs as a distinct society violates the government's fiduciary duty owed to Indian tribes.¹⁴ The Skokomish maintain their distinct political status because of their distinct traditional culture. The foundation of this culture is based on religious principles that require humans to understand the environment from a spiritual and not simply a material or economic perspective; therefore, religion is a basic need of the Skokomish and should be encompassed by the trust doctrine. Protection of these treaty rights may have broad implications for all of society.

A CRISIS FOR ALL

Our concern should not be construed as an emotional appeal exclusively serving the interests of the Skokomish tribe. It is timely to address this issue, since Congress is now recognizing infringements by federal policy and decisions on the religious freedom of not only American Indians and Alaska Natives but all Americans. The Senate Committee on Indian Affairs and the House Subcommittee on Native American Affairs is currently drafting amendments to the American Indian Religious Freedom Act. These amendments will provide judicial protection to stop the destruction of sacred sites and suppression of religious freedom. Senator Kennedy and Senator Hatch (139 Cong. Rec. s. 2820-2822, March 11, 1993) have introduced a widely supported Reli-

gious Freedom Restoration Act to overturn *Oregon v. Smith*, 494 U.S. 872 (1990), which sanctioned the criminalization of peyote use in traditional Indian religious ceremonies. President Clinton supports the Religious Freedom Restoration Act in the name of all Americans, adding,

Few issues are more fundamental to our country. America was founded as a land of religious freedom and a haven from religious persecution. Two centuries later, that founding principle has been endangered. Religious liberty is damaged each day the *Smith* decision stands. Since *Smith*, more than 50 cases have been decided against religious claimants, and harmful rulings are likely to continue.¹⁵

Just as important is the Skokomish tribe's concern for Cedar and the environment because of what lies in store for our world if we fail to respect other life forms. Traditional Skokomish spiritual elders sense a geological instability as well as a social fragility because humans are not considering the welfare of the water, air, earth, plants, and animals. The Skokomish prophesy that the consequence of disharmony is certain destruction for many life forms on earth, because the fabric of space separating the corporeal and supernatural worlds would decay and allow the two realms to mix. Since the supernatural world is much older and more powerful than the corporeal realm, the nature of all existence would undergo a rapid catastrophic mutation. These changes would create a cosmic displacement by tearing into everything with unrelenting fury: earth, plants, animals, and humans. This prophecy is supported by the depletion of the earth's ozone layer, which is due, in part, to logging and farming operations that cut down whole forests throughout the world.¹⁶

However, the importance of maintaining Cedar extends beyond the physical issue. The wholesale slaughter of Cedar and other trees also signals a loss of the instructional processes that are vital to maintaining Skokomish ancestral life. If such a time comes when Cedar is completely inaccessible to the Skokomish, then the songs and dances that prevail now at every ceremony, expressing reverence for the spiritual essence of all living things, will disappear. Put more simply, the Cedar's demise means that future generations may not inherit the knowledge needed to ensure a harmonious balance in all that exists.

The living Cedar represents the life force of the spiritual and material culture of the Skokomish, which knew long periods

devoid of widespread hunger and death until contact with non-Indians. The perpetual energy that maintains our traditional culture manifests itself in such physical entities as the Cedar and a balanced ecosystem. If there were no more forests of both old-growth and young Cedar, many other life forms would perish, and the traditional people would die inside from despair. Flesh and blood might still procreate, but the spiritual essence of their being would slowly dissipate. No longer would there be the voice of Cedar, soft as the unborn child's whisper in the mother's womb, conveying the meaning of life to all who desire to listen. When the ancient voices have been silenced, the fire of hope will be extinguished by our unbearable sorrow in knowing we failed in our responsibility to protect the beings who gave their lives so unselfishly and guided humanity beyond its infancy.

It is not difficult for us as Skokomish to assume multiple realities to understand the existence of other beings. Our traditional training allows us to empathize with the Cedar people, even though their sorrow is not readily apparent because they do not pity themselves. Still, kneeling before an ancient Cedar that has lived for over a millennium, one can hear a subtle cry in the wind. It is a cry so tender that it defies the imagination. The sound is Cedar expressing its pain at the affect its death is having on the Skokomish people, voicing its fear that the world is falling into irreversible disarray. Throughout the Pacific Northwest, one can see where Cedar has already disappeared and other places where it is rapidly diminishing. In these locations, the native people's aspirations are also vanquished, and their visions no longer possess hope. Their existence seems to be enveloped by destitution rather than the power of Cedar.

For the Skokomish, Cedar provides songs of healing that are powerful forms of medicine. Our ancestral knowledge of how to keep the environment in harmony is maintained in the form of sacred teachings and spiritual life represented by the physical presence of Cedar. Cedar gives us the ability to see the situations of other life forms as similar to our own and to draw on the wisdom of these beings. Thus we can be responsive not only to our own crises but to theirs as well. In the same manner that Cedar took care of our ancestors, we take care of the great forests of Cedar and regularly plant saplings when larger trees are cut down to make longhouses and canoes. In this way, we try to show the Great Spirit we understand that changes in one being's life cause changes in all life.

Where the ancient and young Cedar forests stand and the ceremonial life still resonates, one can see the sacred teachings of the Great Spirit and the traditional culture being maintained. In these locations, the people's souls are fed by the knowledge of their ancestors and the diverse life that abounds. This knowledge gives human beings the capacities to dream, to hope, and to stand strong against adversity.

KEEPING THE SPIRIT ALIVE

Members of the Skokomish tribe are maintaining their traditional culture by educating tribal members to become practiced at learning from other life forces in the environment. One of our instructional approaches entails teaching young people to observe the social world from the perspective of all entities that comprise the environment and then to envision the spiritual energy and knowledge these entities possess. The purpose of education is not to help students accomplish self-prescribed aims but rather to teach them, beyond an intellectual framework that advances a world according to human behavior, to understand the dynamic processes of reality that are constructed from nonhuman vantage points. Young and old alike develop their cognitive-structural abilities while studying the empirical world without imposing a preconceived order upon it.

A universal supposition is that all life is interrelated and that nothing can exist alone. The traditional method of instruction uses an analytic induction technique within the daily routine of life, leading to comprehension not only of the causal relationships between humans and humans but of the relationships between everything. What one entity experiences can affect everything else in like manner. For example, death is death, no matter if it is a tree, an animal, or a human being; suffering is the same. Emotions such as happiness and sadness are not the exclusive expressions of humans; birds sing, bears can be melancholic, Cedars cry.

In the words of a tribal elder, the areas where Cedar still lives constitute

sacred places [where] we take the new initiates of our ancient secret society for purposes of isolation, meditation, spiritual cleansing, ritual bathing and schooling. [These sites are] our

church, our school, our drug store, and our monastery. The things that dwell in these sites are the teachers of our people.¹⁷

To nurture the relationship between Cedar and human beings, the guardian spirit dancers of our winter ceremonies are initiated in homes made of Cedar. We fast and meditate for spiritual power in an area whose four directions are honored by Cedar to celebrate that our lives are always surrounded by a spiritual being. Those following the traditions of their ancestors spiritually cleanse themselves with Cedar bows in cold mountain rivers. Our sacred ceremonies are cleansed with the purifying essence of burning Cedar so that we will understand the abstractness of thought. We honor the fact that Cedar and other trees clean the air and hold the water back that could destroy the spawning areas of the Salmon people.

Young dancers make a nest of Cedar bark to house their spiritual song, demonstrating that all supernatural beings need an earthly resting place and that their own essence will need a spiritual domain to rest in as well. Cedar is involved in the end of a new dancer's fast, signaling new charges in life in line with the Great Spirit's laws. Some dancers possess the right to fashion spiritual paraphernalia—such as the spirit house post, spiritual boards, spiritual hand gear, and spiritual poles—out of Cedar, because they have made the sacrifices to live the life of healers. Similarly, ceremonial regalia is made of inner Cedar bark for those who sing the oldest of songs and dance the oldest of dances originally passed down to humans by Cedar.

Those following the ancient way seek the counsel of old-growth Cedar to spiritually wash away troubles, worries, and depression. They know that plant people are medicine and can teach them how to live in harmony with themselves and others. Cedar root is used to make watertight cooking baskets. Traditional names among the Skokomish women end with the native name of Cedar root, denoting that our roots are linked to the Cedar people. The young are taught that certain parts of Cedar can be used for medicinal purposes and also can be eaten in times of great famine. They learn, through Cedar, that each of us has a multitude of talents that can be offered to others when existence is threatened.

Ceremonial fires are started with shavings of Cedar, because the relationship between Cedar and humans was forged when Cedar gave fire to the first humans. Rope made from young

Cedar boughs ties down Cedar bentwood boxes used to store ceremonial objects and regalia. Cedar scratchers are used to prevent infection. Cedar planks are used to make the walls and roofs of ceremonial homes. Headbands made of Cedar are worn in ceremonies to signify that what is being done is linked to our ancestors.

Cedar participates in all aspects of our traditional life. Cedar is used in teaching young tribal members about their ancestors—how they learned to build homes, make clothing, fashion utility objects, create art, prepare ceremonial gear, and so on. Tribal members need Cedar. They also want Cedar to be around for future generations to enjoy and relish. Clearly, if Skokomish tribal members are denied access to Cedar and the environment is continually ravaged, much of their traditional spiritual and material culture will die, along with the rest of humanity. The tragic destruction of Cedar and our environment must stop. Steps must be taken to ensure that whatever harm has been done will be rectified, or we will not survive another fifty years, much less another five hundred.

NOTES

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