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# Bitter Fight to Determine Who Is an American Indian Turns to DNA Testing

By Kevin Taylor October 13, 2011

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The onset of casino gaming brought great change in Indian country, but it also created unexpected—and frequently heated—arguments over Indian identity: What makes somebody a member of a tribe, and how it is measured?

Traditional metrics include tracing lineage from flawed base-membership rolls and the sometimes-complicated math of blood quantum. Over the past decade, some tribes have turned to DNA testing

to make sure tribal members, and potential enrollees, are who they say they are—at least when it comes to parentage.

This trend has come to just a small number of tribes, perhaps 40 or 50 out of the 265 with gaming, one consultant on tribal government estimates, and just a sliver of the Indian nations overall. But the joined issues of Indian identity and the sharing of lucrative casino profits have had an outsized impact. Through DNA tests or other methods, thousands of Indian people have found themselves disenrolled in recent years for failing to meet tribal criteria.

In August, the Cherokee Nation appears to have won a long and bitter fight to disenroll nearly 3,000 freedmen, the descendants of black slaves owned by Cherokee, who had briefly tried to use DNA to show their “Indianness.”

A small tribe in California, the Picayune Rancheria of the Chukchansi Indians, which has been embroiled in enrollment fights for 30 years, in September adopted a DNA-testing ordinance that tribal leaders say will bring stability at long last.

And in Wisconsin, a young Indian woman, Daria Powless, had the fruits of her sweet basketball season turn to vinegar when the apparently jealous family of a teammate unearthed a painful secret to challenge her qualifications as a member of the Ho-Chunk Nation. On September 17, the Ho-Chunk Nation General Council voted to disenroll her. The Ho-Chunk began using DNA about 10 years ago, making the tribe one of the earliest to use the technique, but it has only been formalized into the tribal constitution since June 2009. It is only used to augment earlier methods of determining enrollment. “It’s still blood-quantum based,” says Sheila Corbine, attorney general for the Ho-Chunk Nation. “But as with many tribes there is rumor and innuendo about who is a tribal member or not. All the DNA testing is designed for, in our instance anyway, is to prove parentage. And that is to arrive at what the blood quantum is.”

“I have been living with my grandmother since I was two days old,” says Powless, who turns 21 this month. She was born to a mother who left immediately, and a father who came around rarely. “They weren’t married, they just had a kid, and I was going to be up for adoption and my grandmother decided to take me.”

She was raised in a Ho-Chunk house and culture, which included pow wows, regalia, fancy dancing and later a more-modern expression of Indianness—playing basketball. Powless, a six-foot-two power forward and center, was one of three talented players for a Wisconsin Dells high school team that won their conference two years in a row. Powless then enrolled at Division I Texas Southern University and made the basketball team as a freshman walk-on.

~~It is too common, she says, to see young people blow through tribal funds in a matter of months, spending them on shiny things. For Powless, her future—as a player and an aspiring athletic trainer—was the shining thing, paid for with a scholarship from the tribe. And she feels it has been stripped from her. She says the grandmother of one of her high school teammates called one night while she was home from college on a holiday break to reveal a dirty secret Powless says she had never heard: that the man she’d always believed was her father wasn’t.~~

“She kept saying she was doing this for [the teammate]. It was really confusing,” Powless says. The DNA results showed Powless to have a zero percent chance of being related to the man she thought was her father, which made her blood quantum too low for membership. Powless says her scholarship money never arrived, and she had to leave Texas Southern owing a year’s tuition. ~~The school is holding her transcripts until she pays up.~~

~~“Instead of being a Division I athlete and going to college, I’m a waitress now,” she says. “I haven’t really sat down and cried...but coming home after work is hard. It was over something really~~

small—high school basketball that nobody will remember in 10 years. But what they did to me, they affected my entire life.”



Alexie predicts nasty surprises.

DNA results that reveal unpleasant surprises about parentage are a frequent occurrence in Indian country, where grandmothers or aunts often care for infants born into bad domestic situations. “That’s one of the things about DNA testing—it is letting all of the skeletons out of the closet,” says James Mills, president of Creating Stronger Nations, a consulting firm that works with tribes to create policy documents on a range of governance issues, including enrollment. “The moment you draw a line in the sand on enrollment, the moment you have rules, there is going to be some unfairness. There is no perfect system. There just isn’t one.”

There is no perfect system, in part because the methods used to determine Indianness are not Indian. “It was white people who determined how we measure this,” says Sherman Alexie, the Spokane/Coeur d’Alene poet and novelist. “The thing about DNA testing is that if you are going to do it for potential members, you should do it for everybody. I think people in favor of DNA wouldn’t like their results. Depending on the studies [of U.S.

populations], between 10 and 20 percent of kids are being raised by fathers who aren’t biological.

“And,” he jokes, “considering the hair on my chest, one of my grandmas had to lie.”

People interviewed for this story, whether they are for or against the use of DNA testing, agree there is already a litmus test—for you to be considered Indian any of the following statements are true:

- A) Your family/people experienced a traumatic history with disease, displacement and death;
- B) Your family/people endured generations of intense poverty and disenfranchisement;
- C) That you are alive means your family/people survived repeated attempts by various governments to exterminate them—physically, culturally, spiritually.

“Really, the measure of being Indian should be a pain index,” Alexie says. “You know, how many funerals have you gone to?”

But even that test is subjective. “It comes down to who is a tribal member,” says Mills, pointing to the authority granted by *Santa Clara Pueblo v. Martinez*, a landmark 1978 U.S. Supreme Court ruling that notes sovereign Indian nations determine their own membership. “Tribes have rules about membership and for many years, many tribes were very lax about their rules. [But now], if you are a successful per-capita tribe, people will come out of the woodwork,” clamoring to be members. “Tribes began to get stricter about the enforcement of their rules...and thus you have this disenrollment phenomenon.”

California Indian peoples have endured slaughters and displacement from waves of invaders—Spaniards, Mexicans, Americans. Some tribal groups

became so shattered (there were only an estimated 15,000 California Indians in an 1890 census) that they wound up not on reservations, but on rancherias—small plots of land for homeless Indians.

And then came termination.

By the late 1950s, when the federal government came calling, the 80-acre Picayune Rancheria of Chukchansi Indians had just a few families left—a tribal elder and two of her adult children. That made it easy to decide who was in the tribe. The fireworks started when reinstatement finally came in the 1980s.

Factions formed between the two families who had remained on the land and others who had left over the years. The Chukchansi were barely 30-strong but competing tribal constitutions were submitted to the Bureau of Indian Affairs. People were disenrolled and reenrolled depending on who was in power, and at least twice enrollment records were stolen from tribal headquarters near Coarsegold, California.

The 2003 opening of the Chukchansi Gold Resort and Casino exacerbated the already ugly enrollment fights. One-hundred-fifty-five tribal members, including the chairwoman, were kicked out in 1999 during negotiations to build the casino, and 363 more in 2006.

The upheaval "is not what this tribe created or any other tribe created," says Jennifer Stanley, tribal councilwoman. "It is what the Bureau of Indian Affairs created long ago. They created those rifts. We carry the burden."

She adds that the tribe's newly adopted DNA ordinance is "just going to ensure that anybody who's enrolled in the future will have a legitimate connection back to the allotments that are within our constitution."

Stanley and Council Chairman Reggie Lewis say enrollment mistakes were made repeatedly during the first three decades since reinstatement, including over-enrolling to attract more federal money. The tribe had more than 1,000 members in the late 1990s.

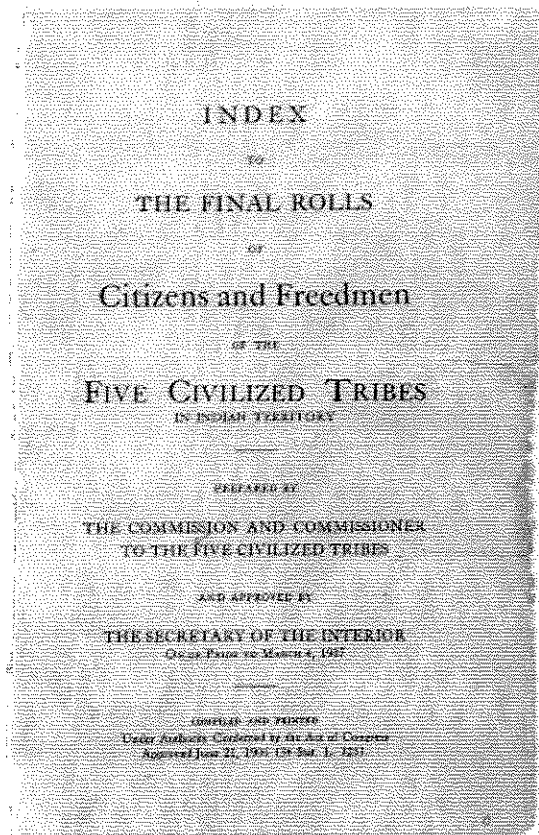
~~Cathy Cory scoffs at this claim. "It is all about the greed and the power of people in tribal government," she says. Cory and 41 members of her family were among the 363 ousted in 2006. She traces a Chukchansi ancestor to a type of allotment the council does not recognize. "It has been really difficult dealing with that emotional issue of one day you are Indian and the next day they try to tell you you're not," she says.~~

There has also been a moratorium on enrollment since 2003. Once lifted, everybody on the waiting list will be DNA tested, and Stanley and Lewis say they are bracing for inevitable surprises.

The ordinance only applies to new members, Stanley says. ~~"You run into a lot of issues if you allow it to go 50 or 60 years back," she says. "You would have people making a ton of allegations, and how would you substantiate any of those allegations?"~~

A thornier question for Cory, and for Laura Wass of the American Indian Movement, is finding due process for people facing expulsion from several central California tribes that are in casino-induced turmoil. This is a challenge when tribes, citing sovereignty, make arbitrary rulings and provide limited options for appeal. The federal government, despite lawsuits grinding through U.S. District courts, refuses to step in.

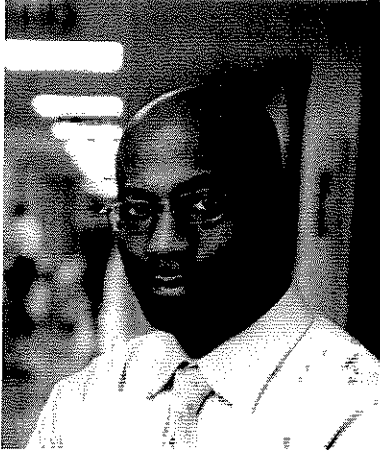
So the nice person in the lab coat just used a giant Q-tip to swab some saliva from inside your cheek. Does it go through some shiny, space-age machine that eventually spits out the answer: "Yup. Dude's Indian" or "Nope. Dude's lying"?



The Cherokee use the Dawes Rolls to determine tribal membership.

In a word: No. In a few more words: “Anybody who claims that they can find out if you are an Indian through DNA testing, that’s a fairy tale,” says Mills.

While there are different ways to use DNA to determine ancestry—even as far back as prehistoric times—tribes use a far—more specific, and less-anthropological, type of test. “The only way it’s really used is determining whether or not you are the child of the parent that you claim,” Mills explains.



Dr. Kittles has done testing for the freedmen.

This method accesses only a sliver of the 3 billion nucleotides in the human genome, says Brian Kemp, an assistant professor of molecular anthropology at Washington State University in Pullman, Washington, where he analyzes the DNA of prehistoric populations. “Blood and DNA are the same thing, because you are really talking about: What is my ancestry? Who did I inherit my blood from? And the cutoff is arbitrary,” he says. It has to be, because the further we go back, the more connections we have.

“You go back, and in time there can’t be that many people we don’t share ancestors with,” he explains. “You have two parents, four grandparents, eight great-grandparents, 16 great-great-grandparents. You keep going back and it’s 32, 64, 128, 256 relatives...and that’s only a couple hundred years ago. So we all share relatives in the recent past, even if we don’t remember [them].”

The freedmen were hoping to find such a connection to prove they belonged in the Cherokee Nation, and in 2004, Dr. Rick Kittles, a biologist and scientific director of the Washington D.C.-based genealogy company, African Ancestry, offered to provide genomic testing for them. The freedmen were profoundly disappointed when tests showed low percentages of Native ancestry markers.

But there’s a deeper story, Kittles says. The results showed an unusually high degree of European ancestry markers among the tested freedmen, far higher than among other African American groups. These match the high degree of European markers found among Eastern Seaboard tribes, such as the Cherokee, who intermingled with white Europeans for half a millennium. “That’s something I’ve been thinking about for the last couple of years,” Kittles says. “How can we prove that the high fraction of European ancestry among freedmen came through Native Americans? It would be very, very difficult to prove that.”

Even paternity testing has holes, says Mills, especially “if you have flawed records to begin with.” He cites numerous instances of error or even fraud on base rolls. “[If] I’m a member even though I shouldn’t be, and you do a DNA test on my kid, it’s going to prove that it’s my kid. The DNA test doesn’t tell you the accuracy of what you are testing other than that you are the parent. So the notion that [DNA testing] is a panacea...is just nonsense.”

There are powerful forces at play here, pitting treaty rights against sovereignty against gaming revenue against race.

The Cherokee Nation high court, in its ruling August 22 that freedmen were not Indians, narrowly reasoned that the Cherokee people accepted free blacks and former slaves as citizens to abide by the Treaty of 1866, and therefore the Cherokee people maintain the right to determine citizenship today. In other words, they have the right to change their collective minds. “That’s basically what the entire case has been about—whether the Cherokee people have the right to decide what their own criteria is for citizenship in the Cherokee Nation,” says Diane Hammons, the tribe’s attorney general.

Some identity test is needed, tribal authorities say, because the passage of the Indian Gaming Regulatory Act of 1988 hot-wired the economies of the Cherokee Nation and the other casino tribes. This has created a boom in membership: The Cherokee Nation had 50,000 enrolled members in 1980; today there are more than 300,000.

Hammons discounts charges of racism in the freedman case, pointing out that there are freedmen descendants who are enrolled Cherokee, and whose membership is not affected by the ruling. These folk can trace lineage to an ancestor on the Dawes Rolls, which is used by the Cherokee Nation to determine membership.

The Dawes lists “are race-based and are worse than biased,” says Ralph Keen II, a Stilwell, Oklahoma, attorney who represented freedmen in the nation’s courts. He is the namesake son of a revered Cherokee Nation jurist. Many blacks who may have been fully integrated members of Cherokee society for a century by the late 1800s were excluded from the rolls by the Dawes commissions, based on nothing more than racial appearance.

Marilyn Vann, president of the Descendants of Freedmen of the Five Civilized Tribes Association, can’t understand why the Cherokee Nation embraces the Dawes lists, which have been used to inflict pain and loss on Indian people for more than 100 years. “When the blood quantum was put out there by the federal government, that was more a way to further steal property and land and resources from the members of the tribe,” than it was about identity, she says. The Dawes Act stripped a shocking amount of land from Native peoples and also broke an age-old tradition of communal ownership.

“No one will admit to racism,” but the impetus to exclude freedmen comes from the shrinking percentage of Cherokee Nation full-bloods (10 percent or fewer of tribal members), says Keen.

There is, of course, another way of looking at the issue, one that includes rather than excludes. “Indians have always been multiracial and multicultural,” says Alexie, whose works often powerfully examine what it means to be Indian.

“What makes you Indian? That question is always up in the air,” says Janis Contraro, enrollment director of the Suquamish Tribe. “Most traditional Natives say it’s culture—if you live in a community, you are part of the community.”

Before the Dawes Act, Vann points out, “There were no lists. Just like right now there are no lists of American citizens [who] are a half-blood American. You’re a citizen or you’re not.”

“Tribal enrollment now is completely political and economical. Casinos have turned reservations into banana republics. DNA is an utterly white thing to do. It’s capitalism, it’s racism, it’s apartheid, it’s colonial,” Alexie says.

~~“DNA cannot tell you about your culture,” says Kemp. “Genetic tests can’t tell you who you are. They can tell you something about who you are, but they can’t tell you who you are.”~~

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