

# NARF

# Legal Review

Native American Rights Fund

## NATIONAL INDIAN LAW LIBRARY CELEBRATES ITS 20TH ANNIVERSARY

by deana harragarra waters

The National Indian Law Library's first twenty years have generated an awareness of its importance. The unique development and exceptional success of the National Indian Law Library throughout two decades is the product of many talented minds, and earnest hard work. Of equal importance is the work that lies ahead which compels a permanent commitment by the National Indian Law Library, and its supporters, to the mission on which it has embarked.

### The Need - a National Indian Law Program

The late 1960's saw the establishment of federally funded legal service programs as part of the national War on Poverty. The goal of these programs was to provide representation to poor and disadvantaged

people. Through the work of these legal service programs, the special needs of Indian people became apparent. The consequent necessity for a national program to coordinate

and provide this assistance emerged, for legal services programs could not possibly handle all the issues affecting Indian people. The nation needed a program dedicated to



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erving the legal needs of Indians, and in the Fall of 1970, the Native American Rights Fund became that program.

The accomplishments of the Native American Rights Fund since 1970 have confirmed the necessity for national legal representation for Indians. The Native American Rights Fund strives to protect the most important rights of Indian people, within the limits of available resources. To achieve this, its first Steering Committee (later called the NARF Board of Directors) defined five priority areas for the Native American Rights Fund's work: the preservation of Tribal existence; the protection of Tribal natural resources; the promotion of human rights; the accountability of governments to Native Americans; and the development of Indian law. To secure the fulfillment of the fifth priority, the systematic development of Indian law, the Native American Rights Fund began a special project, the National Indian Law Library.

#### **The Vision - a library devoted exclusively to Indian Law**

The Native American Rights Fund was looking for a way to unite the field of Indian legal advocacy. It did this by making the initial decision to provide the highest quality representation in the most critical areas. During the first months of the Native American Rights Fund's work, its attorneys and supporters spoke often of the

critical need for a central clearinghouse on Indian law.

The Native American Rights Fund staff discovered that in the past, no single person or institution had been aware of all the lawsuits filed affecting Indians. There had been no concerted effort in communicating the existence of such lawsuits, or other significant developments in Indian law, and this had been detrimental to the restoration of Indian rights. The efforts of those few attorneys who had been involved were uncoordinated, and the results of their litigation had not been known to others working in the field. Many attorneys had been unable to represent Indians due to the difficulty of researching Indian law and tracking current developments. The task had either proven too great for the attorney, or it was cost prohibitive for the Indian client.

There were also dozens of legal cases being filed by Indian legal service programs on reservations from California to Maine. These Indian legal service programs were funded by the Office of Economic Opportunity. The attorneys working for these programs were primarily young, inexperienced, and overworked. To complicate their situation, they had inadequate time to research issues and communicate with each other. The consequence was a three-fold increase in the number of Indian law cases being litigated. After

more than two hundred years of sporadic involvement with the white man's judicial system, this increase happened in less than five years.

At this time the standard commercial reporting system for Indian case law was archaic. To have less than forty subject headings in a field of law that is a quagmire of treaties, statutes, judicial, and administrative rulings was an impediment. Consequently, even published or reported court decisions were relatively inaccessible to lawyers practicing Indian law. What further complicated the situation for legal service programs was their inaccessibility to large law libraries. They simply could not afford to subscribe to the expensive court reporters and digests that needed to be scanned for relevant Indian law decisions.

Early in its existence, the Native American Rights Fund began to develop the concept of a central clearinghouse for Indian legal materials. The need for such a project was brought into sharp focus by the Native American Rights Fund attorneys who corresponded and met with Native American law students, law professors, legal services attorneys, and members of the private bar who represented Indian Tribes. What resulted was the Native American Rights Fund's desire to join with others working in the field of Indian law, to insure its orderly development. Appropriately, the idea of a Na-

tional Indian Law Library to coordinate these efforts was born.

### **The Action - The National Indian Law Library**

The Steering Committee and staff of the Native American Rights Fund felt that some development of a library, national in scope, had to proceed, despite the lack of specific financial support for such an endeavor. In June 1971, Peter J. Aschenbrenner joined the Native American Rights Fund attorney staff. He previously held a teaching assistantship for an Indian law course at Boalt School of Law, University of California at Berkeley. In this capacity, he had prepared a casebook of Indian law materials for use by law students taking the course. As an attorney, Mr. Aschenbrenner was spending his time developing what was soon to become the Native American Rights Fund's general index to Indian law. Due to the vast quantity of laws affecting the lives of Indians, the *Index* required a large number of subject headings to provide sufficient access points to anyone using it. The objective was quick access to those cases which readily related to the problem area confronting the Indian legal practitioner. The result was *The General Index to Indian Law*, encompassing more than 380 legal subject headings. It was the key to what would become the National Indian Law Library collection. The cost of

the considerable staff time used in its development was supported by the Ford Foundation.

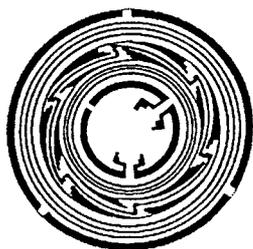
As work on the Native American Rights Fund's *The General Index to Indian Law* took shape, a simultaneous effort was made to establish a method of collecting, classifying and filing those legal materials the Native American Rights Fund already possessed. In August of 1971 Melody MacKenzie, a Hawaiian Native, was hired as the first librarian to assist attorneys in building a research collection. Working alone and surrounded by stacks of legal paperwork, a newly printed batch of National Indian Law Library stationery was ordered. The stationery helped to keep morale up at a time when there were no real guarantees that the rapidly evolving library would someday become an official entity. Once again, the Ford Foundation's generous support and encouragement permitted the staff to begin laying vital groundwork for what was to be the National Indian Law Library.

Throughout 1971, David Getches, the Native American Rights Fund's Founding Director, met with a representative of the Carnegie Corporation of New York about the Native American Rights Fund's need for assistance. On May 23, 1972, the Carnegie Corporation of New York announced that it had made a three-year

grant to the Native American Rights Fund for the development of the National Indian Law Library. Alan Pifer, President of Carnegie Corporation, when announcing the \$119,000 grant, said, "The National Indian Law Library is already well on its way to being the best source of documents on Indian law in the country. We are pleased to help it develop into a research and information center with a nation-wide reach. We hope its expanded services will encourage more lawyers to represent Indian clients and thereby secure justice for Native Americans now inadequately served."

As one of the first steps toward establishing a law library, Native American Rights Fund staff members visited the National Clearinghouse for Legal Services in Chicago, Illinois. This National Clearinghouse is widely known for providing comprehensive services to lawyers practicing poverty law, and in this capacity had developed a collection of Indian related cases. In June, 1972, the National Indian Law Library, with the assistance and support of the Office of Economic Opportunity, officially assumed the Indian law functions of the National Clearinghouse for Legal Services with the transfer to Boulder of all Indian law documents in their collection.

In the Summer of 1972, the Native American Rights Fund contacted the staff of the Indian



Claims Commission. Up to this point, the decisions of the Indian Claims Commission were largely inaccessible to attorneys and Tribes. A few incomplete collections had been assembled but were never catalogued nor printed for distribution. An agreement was reached whereby the Indian Claims Commission would provide a complete set of decisions to the Native American Rights Fund. In exchange, the Native American Rights Fund would assume the responsibility for cataloging, indexing, printing and distributing the *Indian Claims Commission Decisions*. Peter Hrobsky was the first National Indian Law Library staff member hired to work on the Indian Claims Commission project.

Joseph Membrino joined the National Indian Law Library staff in 1972 as its first legal advisor. He filled the duties left by the departure of Peter J. Aschenbrenner from the Native American Rights Fund's attorney staff. By the end of Summer 1972, the National Indian Law Library had a staff of three. They were Melody MacKenzie, Peter Hrobsky, and

Joseph Membrino. They assumed the responsibility for filling the increasing number of requests for materials and research from the library patrons.

Since the National Indian Law Library's inception, one of its objectives had been the publication of a catalogue of all holdings, which would serve as an effective litigation tool when in the hands of attorneys. Thus any attorney who could not visit the National Indian Law Library, but wanted to know what was available in any particular area of Indian law, would be able to request library materials.

Volume one of the *National Indian Law Library Subject and Document Catalogue* was printed in July 1973. The *Catalogue* was divided into three sections. The first section listed the National Indian Law Library holdings by subject matter headings. The second section listed each holding by its classification number (later known as NILL number), a list of all pleadings in each law case, the state in which the action arose, the court, the Tribe, the date of the first pleading, and a description of the law case. The third section listed the National Indian Law Library's holdings in alphabetical order.

In 1974, volume two of the *National Indian Law Library Subject and Document Catalogue* was printed. *The Native American Rights Fund*

*Announcements* (later known as *The NARF Legal Review*) listed the National Indian Law Library's holdings in its volume 1, number 1, 1972 issue through its volume 3, number 2, part 2, 1975 issue. This practice was discontinued with the Fall 1975 publication of the first cumulative edition of the *National Indian Law Library Catalogue*. It sold for \$20.00.

### **The Responsibility - meeting the information needs**

A major part of meeting the Native American Rights Fund's commitment to Indian law development has been the continued operation of the National Indian Law Library, a repository and clearinghouse for materials on Native American law. Today the National Indian Law Library is twenty years old. Its history has demonstrated a desire to meet the information needs of those involved in researching and litigating Indian law.

Perhaps the most important aspect of the National Indian Law Library, as far as its patrons are concerned, is the reference service. Included in the reference service are subject matter searches through the National Indian Law Library collection, compilations of bibliographies, computer databases for document retrieval, legislative histories, referrals, and legal research. The National Indian Law Library staff performs other traditional library tasks. These

include acquiring new items for addition to the National Indian Law Library collection and the original cataloging of special items collected.

The National Indian Law Library also performs a non-traditional library function. In September, 1972, the Native American Rights Fund purchased a printing press, primarily for publishing the *Indian Claims Commission Decisions*, the *NARF Announcements*, and *The National Indian Law Library Catalogue*. These items were sold through the National Indian Law Library. The Native American Rights Fund no longer has the printing operations; however, the National Indian Law Library has continued to sell Indian law books from various publishers.

The responsibility for providing information in a timely fashion is the shared responsibility of each National Indian Law Library staff member. The National Indian Law Library has developed a patron base, which highlights the library's reliability. The majority of this patron base is located outside Boulder, Colorado, thus the telephone provides a convenient method for reference, referral and research in Indian Law. The National Indian Law Library isn't so much about storing information as it is about finding it for its patrons.

The people who use the National Indian Law Library's collection are a diverse group. The most obvious patrons belong to the Native American Rights Fund itself. Included in this group are the Native American Rights Fund Board of Directors, the attorneys, professional staff, and support staff from all three offices. Other patrons include former Native American Rights Fund staff, Indian Legal Service attorneys, attorneys in private practice, Tribal court personnel, Tribal governments, state governments, Indian organizations, members of the news media, politicians, prisoners, libraries, and scholars of all ages. It is this last group of patrons, with their written requests for "everything you have on Indians," that give the National Indian Law Library staff a much needed smile.

#### **The Significance - collection and accomplishments**

The National Indian Law Library is the only law library specializing in legal practice materials which are essential for practitioners of Indian law. Active collection of ephemeral type material is totally unique. The National Indian Law Library therefore surpasses other law libraries with outstanding Indian legal collections. The reason for this can be found in the National Indian Law Library's mission, "To be a national repository for Indian legal materials and resources." Other law libraries do not have

the same rationale for collecting this type of legal information. Within the National Indian Law Library collection, there are over 16,000 legal pleadings and opinions in virtually every major Indian case since the 1950's.

The National Indian Law Library is the only comprehensive lending collection of past and present Tribal government documents. This lending collection began in 1988 and now consists of Tribal constitutions, codes, ordinances, and resolutions numbering in excess of 700. It has established an invaluable communications network for those involved in the drafting and updating of Tribal government documents. The National Indian Law Library now has working documents on almost every conceivable subject, from declarations of self-determination to sewage disposal, adoptions of a Uniform Commercial Code, off-reservation regulations, conservation and pow-wow ordinances. Requests for samples of Tribal government documents are made as frequently as three times a day. The National Indian Law Library has filled an urgent need as the single repository where Tribal governments routinely send all documents.

The National Indian Law Library is the only clearinghouse actively collecting Indian law related documents. There are well over 4,000 of these documents in the collec-

tion. The National Indian Law Library widely collects all Indian law-related material including books, pamphlets, federal government documents, state government documents, scholarly reports, journal articles, newspaper articles, student reports, and law reviews. The National Indian Law Library is unique because it is able to provide numerous access points for all these Indian law related materials through the subject matter index of the *National Indian Law Library Catalogue*.

The National Indian Law Library is an invaluable resource for attorneys associated with Indian legal service programs, and Tribal attorneys. Due to the geographic isolation of most Indian legal service programs and Tribal governments, many would be without access to adequate law libraries if it were not for the existence of the National Indian Law Library. Since Indian legal service programs receive inadequate funding, all of the National Indian Law Library services, including photocopy and postage costs, are fee-waived to them.

The twenty year history of the National Indian Law Library has demonstrated its ability to meet the information needs of those involved in litigating Indian law. Since its inception, the National Indian Law Library remains at the heart of Indian legal practice.

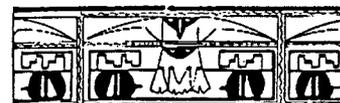
### The Future - the 21st Century

The continued existence of the National Indian Law Library is a realization that lasting achievements are impossible without a vision, and dreams do not become real without action and responsibility. A critical need for the future is the continued reassessment and restatement of the role the National Indian Law Library will have in the development of Indian law. Change complicates things, yet it is inevitable. Cherokee humorist Will Rogers once said, "even if you're on the right track, you'll get run over if you just sit there."

The 21st century will be the best for those who learn to balance vision, action, and responsibility. The future belongs to those working in Indian law, who embrace the potential of their vision and recognize the realities of constrained resources, and who find new solutions that permit doing more with less. The National Indian Law Library has been finding solutions for doing more with less for quite a while.

After twenty years of official existence, special thanks to many people are in order. The concept of a national law library was cultivated by a few talented minds. The creation and development of the National Indian Law Library was accomplished by the work of many highly motivated and

dedicated individuals. Finally, warmest appreciation goes to the excellent staff of library workers who are now here. (*deana harragarra waters is the Law Librarian for the National Indian Law Library*)



## Catawba Tribe Prepares To Sue Thousands In South Carolina

NARF, on behalf of the Catawba Tribe of South Carolina, and in seeking compensation for the loss of 144,000 acres of the Tribe's ancestral land in South Carolina, is now preparing to file lawsuits against 30,000 individual property owners unless a settlement is reached with the State or unless the Fourth U.S. Circuit Court of Appeals reverses a District Court ruling and allows the Catawba suit to be a class action proceeding. With the statute of limitations deadline fast approaching on October 19, 1992, NARF attorneys will have the paperwork for the suits completed by mid-August. Once filed, it is believed that these suits will be unprecedented in U.S. history as the largest mass of suits to be filed at the same time.

Reaching a settlement may be difficult if not impossible. Crawford Clarkson, South Carolina Tax Commissioner and chairman of the governor's advisory committee on the Catawba claim, stated that more than money, the problems of Indian jurisdiction on the reservation remain the biggest roadblock to achieving the settlement. The State is insistent that it have law and order and regulatory jurisdiction on the reservation, contrary to the practice of Tribal sovereignty.

Catawba Chief Gilbert Blue stated that the Tribe has no intention of stripping landowners of their property if the Tribe wins their 12-year-old land claim suit. The Tribe is seeking a monetary settlement to expand its reservation to carry on economic enterprises and provide residential opportunities for its citizens, to educate Catawba children and to make investment decisions for the Tribe's long term survival.

In 1975, encouraged by legal victories of other Eastern Indian tribes, the Catawba Tribe requested the Native American Rights Fund to evaluate its claim to 225 square miles in and around Rock Hill, South Carolina. NARF attorneys conducted legal and historical research for more than a year and in 1976 concluded that the Tribe possessed a strong claim. But because of the potentially disruptive effect of a lawsuit, as well as the probability that a

claim of this magnitude would ultimately be settled by Congress, the Tribe determined that it would first explore whether a satisfactory settlement of its claim could be achieved.

The Catawba Claim is based on 1760 and 1763 Treaties with the King of England, which established the Catawba Reservation. In 1840, the State of South Carolina, in violation of long-standing federal law that prohibited states from acquiring any interest in Indian land without the express consent of Congress, swindled the Catawba Tribe out of its reservation. In return for promises by the State to purchase a new reservation for the Tribe either close to the Cherokees in North Carolina or in an unpopulated area of South Carolina, the Tribe agreed to sell its lands to the State. But the State did not honor its bargain and failed to purchase a new reservation for the Tribe. Instead, in 1843, it purchased a one-square mile tract of land located squarely in the middle of the 1763 Treaty Reservation that the Tribe had ceded almost three years earlier. By the 1880's, the Tribe had begun its efforts to resolve its claim and since that time had continually appealed to the State and Federal Governments for a just settlement.

After NARF's initial research to establish the legal validity of the claim, the Tribe submitted a litigation request to the Department of the Interior in

1976 asking the United States to undertake legal action to recover the lands to the 1763 Treaty Reservation. In the fall of 1977, the Interior Department Solicitor asked the Justice Department to institute litigation on the Tribe's behalf, but not before settlement options had been exhausted.

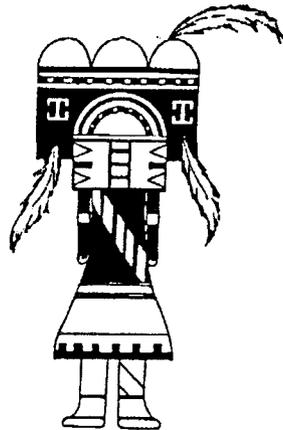
Settlement talks began in 1977, but the State was unwilling to agree to a modest settlement proposal. The impasse continued through 1979 and in 1980, the Tribe filed suit in Federal District Court seeking to recover possession of its 1763 Treaty Reservation, as well as historic trespass damages. The complaint named 79 defendants, including the State of South Carolina and a number of corporate and large private landowners, as representatives of a defendant class comprising roughly 30,000 people who claim title to the Reservation lands. In June of 1982, the Federal District Court dismissed all the Tribe's claims agreeing with the State's motion that state law statutes of limitations applied to the Tribe's claim. The Tribe appealed to the Fourth Circuit Court of Appeals and in October of 1983, the Circuit Court reversed the District Court, holding that the Tribe's Claim was not barred. In 1986, the United States Supreme Court reversed the Court of Appeals, holding that State statutes of limitations did apply to the Tribe's claim. The Supreme Court remanded the case to the

Court of Appeals to determine what effect their application would have on the Tribe's claim. In January, 1989, the Court of Appeals ruled that under South Carolina law, the Tribe's claim was barred only as to those parcels which had been adversely possessed for 10 continuous years during the 18 year period. For those lands that had not been adversely possessed for 10 full years by the same person during the 18-year period, the Tribe's claim remained valid. The Court of Appeals then sent the case back to the District Court.

The District Court dismissed the Tribe's claim against 29 of the 79 named defendants in July of 1990, and released about 75% of the land they claimed from the suit on the grounds that those lands had been adversely possessed for 10 years by the same person. The Tribe again appealed to the Fourth Circuit. In February 1991, the District Court denied the Tribe's motion to certify a defendant class, ruling that the Tribe's claim against the 30,000 or so defendants was barred by the State statute of limitations. The Tribe also asked the Court of Appeals to reverse that decision and on February 4, 1992, the Court of Appeals heard oral arguments on both cases. No decision has yet been issued.

In the case of *Catawba Tribe v. the United States*, the Tribe sued the United States to recover the value of those lands

to which the Tribe's claim is barred by the rulings in *Catawba v. South Carolina*. In August, 1991, the U.S. Claims Court granted the Government's motion to dismiss the Tribe's case based on the expiration, in 1951, of the statute of limitations in the Indian Claims Commission Act. In May of 1992, NARF attorneys presented oral argument in the U.S. Court of Appeals for the Federal Circuit, appealing the lower court's dismissal of the Tribe's claim. No decision has yet been issued.



## Native American Religious Freedom Legislation Update

### Birth of an Historic Native American Human Rights Movement

War clouds are gathering in Indian country over the lack of legal protection for the free exercise of religion by traditional Native people under the American Constitution and laws. This growing human rights crisis -- presently seen in the bulldozing of tribal holy places by federal agencies and in a felony prosecution of an elderly member of the Native American Church in Oklahoma -- was created by recent Supreme Court decisions denying First Amendment protection for tribal religious practices. NARF and other concerned Native groups, Indian tribes and traditional leaders issued a call in 1991 for a new federal law to protect Native American religious freedom.

In response, Senator Inouye, Chairman of the Senate Select Committee, circulated draft amendments to the American Indian Religious Freedom Act in August, 1991, to tribal leaders for their review and comment. NARF assisted in bringing this legislative proposal, still under review by NARF and other proponents, to the attention of Indian country, NARF clients, Native groups and the Tribal Leaders' Forum. Much public education work and coalition build-

ing was undertaken by NARF and other members of the Religious Freedom Coalition founded by NARF, the National Congress of American Indians and the Association on American Indian Affairs.

By the end of 1991, Indian country was poised to begin a major legislative effort to restore Native American religious freedom to the Bill of Rights. A tribal "Religious Freedom Summit" was held in Albuquerque, N. M., under the co-sponsorship of President Peterson Zah of the Navajo Nation and Patrick Lefthand of the Confederated Salish and Kootenai Tribes, which was attended by over 500 spiritual and traditional leaders. The issue was placed on the "Legislative Agenda of the 1990s" established by the Tribal Leaders' Forum as a major legislative item. Likewise, religious freedom legislation was declared by the National Congress of American Indians to be its number one legislative priority for 1992, with over 80 Tribes and Native organizations calling on Congress to hold hearings on this human rights problem. Supporting the Tribes is a growing coalition of major environmental, human rights, church and entertainment groups:

**Coalition Members**

American Civil Liberties Union  
 Americans for Indian Opportunity  
 Apache Survival Coalition

Association on American Indian Affairs  
 Confederated Salish and Kootenai Tribes  
 Crow Indian Peyote Ceremonies  
 Cultural Conservancy  
 Friends of the Earth  
 Heart of the Earth Survival School  
 Hollywood Policy Center Foundation  
 HONOR  
 Keepers of the Treasures Learning Circle  
 Medicine Wheel Coalition  
 National Audubon Society  
 National Conference of Christians and Jews  
 Minnesota/Dakota Region  
 National Congress of American Indians  
 National Indian Education Association  
 Native American Church of Navajoland  
 Native American Church of North America  
 Native American Church of South Dakota  
 Native American Church of Wyoming  
 Native American Religious Project of the Native American Church  
 Native American Rights Fund  
 Native Lands Institute  
 Natural Resources Defense Council  
 Navajo Nation Corrections Project  
 Navajo Nation (In Principle)  
 Sealaska Corporation  
 Seventh Generation Fund  
 Sierra Club  
 Student Environmental Action Coalition

United Methodist Church,  
 General Board  
 Wilderness Society  
 Winds of Life

In March of 1992, the Senate Select Committee on Indian Affairs held a field oversight hearing in Portland, Oregon, to receive testimony on barriers to the free exercise of religion by Native witnesses. This highly publicized hearing, attended by over 500 Native Americans and concerned supporters, began the historic Indian human rights movement. Other hearings in California, Arizona and New Mexico will be held in November, followed by additional hearings in other parts of the country in December and January, 1993.

At this stage, it is expected that comprehensive legislation will be introduced in January, 1993. Much work remains to be done prior to introduction of the legislation in Congress. NARF and other coalition members are focusing efforts on public education and coalition building necessary to bring about fundamental social changes in attitudes toward Native Americans and the land itself that will reverse 500 years of religious intolerance and discrimination against America's indigenous religions.

*For further information about the Native American human rights movement for national religious freedom legislation, contact: NARF Staff Attorney, Walter Echo-Hawk.*

## Freedom of Worship Protection Needed For American Indian Prisoners

Native Americans are confined in federal and state prisons in highly disproportionate numbers due to factors such as alcoholism, poverty, discrimination and the social anomie of living in two worlds. Over 7,000 Native Americans are incarcerated in 23 states with significant Native populations.

The primary human rights problem of these prisoners is the lack of freedom to practice tribal religions on a basis comparable to that afforded prisoners of other, more widely known religions. All prisons provide inmates of Judeo-Christian religions with chaplains, chapels, religious objects and a full array of religious services, but typically deny similar worship by American Indian prisoners.

Traditional religions are critical to the cultural survival of Indian tribes, because -- similar to the Amish -- religion is the glue that holds Native communities together and the underpinning for Indian culture itself. For Native prisoners, tribal religions give renewed self-identity and the pride necessary to return from prison

as contributing members of society.

Since 1972 more than 40 lawsuits have been filed by Native prisoners seeking freedom of worship in such areas as: a) right to wear traditional hairstyles for religious reasons; b) access to Indian spiritual leaders; c) right to possession of sacred objects such as feathers, medicine pouches, cedar, sweetgrass and sage; and d) access to Indian sweat lodges for worship purposes.

Prior to 1986, most suits protected First and Fourteenth Amendment rights of Native prisoners under existing American legal standards. However, beginning in 1987, the Supreme Court changed the law, seriously weakening First Amendment rights of prisoners in general [*O'Lone v. Shabazz* (1987)] and eliminating First Amendment protections for Native religious practices in particular [*Lyng v. Northwest Indian Cemetery* (1988) and *Employment Div. of Oregon v. Smith* (1990)]. Hence, widespread denials of freedom of worship for Native American prisoners exist today without any legal protections whatsoever under American law.

There is a need for a new federal law to protect religious rights of Native American prisoners -- similar to the legislation recently passed in Colorado. The new Colorado law grants American Indian in-

mates, who practice an American Indian religion, access to spiritual leaders, religious objects, and religious facilities on a basis comparable to access afforded inmates who practice Judeo-Christian religions. NARF and the Native American Religious Freedom Coalition are working to support passage of amendments to the American Indian Religious Freedom Act that would, among other things, protect the religious rights of Native American prisoners.

**FOR FURTHER INFORMATION CONTACT:** *Walter Echo-Hawk, Native American Rights Fund, 1506 Broadway, Boulder, CO 80302, (303) 447-8760; Lenny Foster, Navajo Nation Corrections Project, P.O. Drawer 709, Window Rock, AZ 86515, (602) 871-6244; Donald Ragona, Attorney, Colorado Indian Prisoner Support Group, 19605 Flint Lane, Morrison, CO 80462, (303) 447-8760.*



## Cheyenne Arapaho Tribe Wins Suit Against the BIA

In *Cheyenne-Arapaho Tribe v. United States*, NARF represents the Cheyenne-Arapaho Tribe in a suit against oil companies and the Bureau of Indian Affairs to overturn the action of the BIA extending the terms of tribal oil and gas leases without tribal consent. The BIA, contrary to its trust obligations to the Tribe, improperly exercised its discretion and extended the terms of four oil and gas leases at below market value rates. The Tribe seeks the right to renegotiate these leases at fair competitive rates, or perhaps to operate the wells as a tribal economic development project. In May, 1989, a federal district court ruled in the Tribe's favor on three of the four disputed leases involved in the suit. The district court rejected the Tribe's argument as to the fourth lease. NARF requested and a federal court of appeals granted an early date for oral argument. Oral argument was heard in September, 1990.

In its decision dated June 5, 1992, the United States Court of Appeals for the Tenth Circuit affirmed and upheld the federal district court's decision of May, 1989, as to three of the four disputed leases. The three judges who made up the Panel for the Court of Appeals held that, in extending the leases,

the BIA had breached its federal trust duties by failing to consider and take advantage of the increased market value of the leases at the time of expiration. These leases were therefore held to have expired as of May 10, 1981, and the Tribe was declared the owner of both the royalty and working interest in those wells. The panel decision is unclear as to the disposition of the fourth lease.



## Laying Pawnee Spirits to Rest

The Nebraska State Historical Society (NSHS) sued the Pawnee Tribe of Oklahoma in state court in January of 1990 over a dispute regarding the Tribe's request to seek NSHS records. The Tribe sought the records in order to ascertain the agency's interpretation of the scope of the Tribe's repatriation claim and to rebury the skeletal remains and burial goods of Pawnee ancestors unearthed and held by NSHS. NSHS refused disclosure contending that it was not a state agency and that the records sought were not subject to disclosure under the public records law. The Tribe counter-claimed, contending

that NSHS is a state agency and that it had violated the law by not disclosing the requested documents.

On May 31, 1991, after a five day trial, the court ruled in favor of the Pawnee Tribe on all issues. The court held that NSHS is a state agency subject to the public records law, and that it violated the law by not disclosing the requested documents. In September, 1991, after a hearing on the Tribe's request for attorneys fees, the court ruled in favor of the Tribe and awarded \$61,000.00 in attorneys fees and costs.

In November of 1991, the NSHS appealed all twelve issues, including the attorneys fee matter. In early 1992, the appeal was moved from the Court of Appeals to the Nebraska Supreme Court. Briefing was completed in May 1992, and a decision is expected in late 1992 or early 1993.

With respect to the repatriation of Pawnee skeletal remains and burial goods under the Nebraska Reburial Act of 1989, the Pawnee Tribe reburied over 400 ancestral remains and associated burial goods in September, 1990. In mid-1991, the NSHS returned the remains of an additional 300 individuals and their burial goods, which were buried in southwestern Nebraska. This latter repatriation was accomplished after the Tribe prevailed in a formal grievance filed under the Reburial Act.

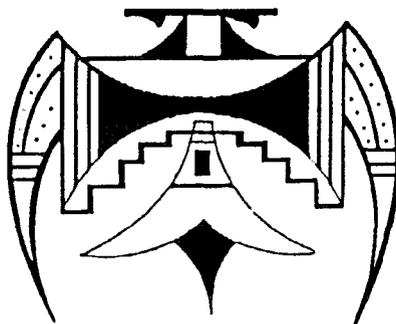
These repatriations were the first ever under a general repatriation statute.

The NSHS, in September, 1991, also returned the coveted and controversial George III Peace Medal to the Tribe for reburial. This medal was buried with a Pawnee tribal leader in the 18th or 19th century, and was unearthed by the NSHS in the 1920's. It was coveted by the agency as an object bearing great importance in Nebraska history. This medal has been the focal point of a controversy between the NSHS and the Pawnee Tribe for four years. The medal formed the primary basis for the vociferous and well-organized opposition of the NSHS to the precedent-setting Reburial Act of 1989.

The NSHS still retains the remains of up to 500 individuals and their burial goods, claiming that these remains are unidentifiable to any specific tribe. However, the Pawnee Tribe maintains that 200 to 300 of these remains are identifiable to the Pawnee, Wichita and Arikara, the so-called Northern Caddoan Tribes. The NSHS has decided to return all of the human remains and burial offerings in its "collection" to the Nebraska Indian Commission. Therefore, instead of filing a grievance under the 1989 Reburial Act, the Pawnee Tribe is working in cooperation with the Indian Commission for the return and reburial of the identifiable

Northern Caddoan remains. It is anticipated that this process will take one year.

During the Spring of 1992, the *Arizona State Law Journal* published a compilation of scholarly articles on the repatriation issue. It is entitled "Symposium: *The Native American Graves Protection and Repatriation Act of 1990 and State Repatriation - Related Legislation*" (Vol. 24, No. 1, Spring 1992). Included in the publication was an article entitled, "The Legal Basis, Legislative History, and Implementation of Nebraska's Landmark Reburial Legislation," by NARF Attorney Robert Peregoy, who serves as lead counsel and lobbyist for the Pawnee Tribe in the Nebraska burial matter.



## Indian Languages and the Federal Voting Rights Act

In August of 1992, Section 203 of the Voting Rights Act will expire. Section 203 requires that certain jurisdictions provide language assistance in the electoral process to members of Indian and other language minority groups. Today, 15 counties in eight states must provide assistance in Native American languages. If Section 203 is not reauthorized by Congress before August 6, 1992, these counties will no longer be required by federal law to assist Indian language speakers. Consequently, many Indian people will be denied their constitutional right to vote simply because they cannot understand the ballots or registration materials. Section 203 must be reauthorized and amended to protect the fundamental right of Indian people to participate in the democratic process.

The purpose of Section 203 is to prevent discrimination based on language ability by prohibiting covered counties from conducting elections, voter education and registration solely in the English language. Covered counties are defined as those where the number of limited-English proficient Native Americans of voting age exceed five percent of the total voting age population of the county.

Section 203's coverage formula is not effective as it fails to identify many Indian language speakers who might benefit from language assistance because it uses the county voting age population rather than the reservation Indian voting age population as its standard comparison. Most Indian language speakers live on reservations and are relatively few in number compared to other language minorities. Many reservations are split by county and even state lines. Section 203 requires the Indian language speakers in each reservation county to be tallied separately from those in adjoining counties on the same reservation, making it nearly impossible for them to exceed the five percent requirement.

Section 203 must be reauthorized and amended to provide an alternate standard of comparison for Native Americans. S. 2236 and H.R. 4312 amend Section 203 to require counties to provide assistance where the limited English-proficient Indian voting age population of a reservation exceeds five percent of the total reservation Indian voting age population.

***ACTION NEEDED--Congress must pass a bill reauthorizing Section 203 and amending its coverage formula before August 6. Please ask your congressional delegations now to support S. 2236 or H.R. 4312 and to oppose any attempts to weaken them. Call Peg Rogers at the Native***

*American Rights Fund,  
Washington, D.C. office, (202)  
785-4166, for more information.*



## **NARF RESOURCES AND PUBLICATIONS**

### **THE NATIONAL INDIAN LAW LIBRARY**

The National Indian Law Library (NILL) has developed a rich and unique collection of legal materials relating to Federal Indian law and the Native American. Since its founding in 1972, NILL continues to meet the needs of NARF attorneys and other practitioners of Indian law. The NILL collection consists of standard law library materials, such as law review materials, court opinions, and legal treaties, that are available in well-stocked law libraries. The uniqueness and irreplaceable core of the NILL collection is comprised of trial holdings and appellate materials of important cases relating to the development of Indian law. Those materials in the

public domain, that are non-copyrighted, are available from NILL on a per-page-cost plus postage. Through NILL's dissemination of information to its patrons, NARF continues to meet its commitment to the development of Indian law.

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### **Bibliography on Indian Economic Development**

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This 47-volume set reports all of the Indian Claims Commission decisions. An index through volume 38 is also available. The index contains subject, tribal and docket number listing. (47 volumes. Price \$1,175). (Index priced separately at \$25). (Available from the National Indian Law Library).

*Prices subject to change*

## AVAILABLE FROM THE INDIAN LAW SUPPORT CENTER

**A Manual for Protecting Indian Natural Resources.** Designed for lawyers who represent Indian tribes or tribal members in natural resource protection matters, the focus of this manual is on the protection of fish, game, water, timber, minerals, grazing lands, and archaeological and religious sites. Part I discusses the application of federal and common law to protect Indian natural resources. Part II consists of practice pointers: questions to ask when analyzing resource protection issues; strategy considerations; and the effective use of law advocates in resource protection. (151 pgs. Price \$25).

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how to identify opportunities, and how to organize the internal tribal structure to best plan and pursue economic development of the reservation. Other chapters deal with more specific issues that relate to the development of businesses undertaken by tribal government, tribal members, and by these groups with outsiders. (Approx. 300 pgs. Price \$35).

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## NOTICE

**THE NARF LEGAL REVIEW IS NOW BEING PUBLISHED BIANNUALLY UNTIL FURTHER NOTICE**

**BACK COVER PHOTOGRAPH --** Walter R. Echo-Hawk, Jr., a staff attorney in the Boulder office, is a Pawnee from Oklahoma. Walter's legal experience includes cases involving religious freedom, prisoner rights, treaty rights, water rights, and repatriation rights. He has served as Co-Director of NARF's American Indian Religious Freedom Project and Director of the Indian Corrections Project. Mr. Echo-Hawk has a B.A. from Oklahoma State University (1970); J.D., University of New Mexico (1973); and has worked for NARF from 1973 to the present. *(Photo credit-Thorney Lieberman)*

# Native American Rights Fund

The Native American Rights Fund is a nonprofit organization specializing in the protection of Indian rights. The priorities of NARF are: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law.

Our work on behalf of thousands of America's Indians throughout the country is supported in large part by your generous contributions. Your participation makes a big difference in our ability to continue to meet ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance. Requests for legal assistance, contributions, or other inquiries regarding NARF's services may be addressed to NARF's main office: 1506 Broadway, Boulder, Colorado 80302. Telephone (303) 447-8760.

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