

NARF Legal Review

Native American Rights Fund

COURT RULES THAT THE FEDERAL GOVERNMENT FAILED TO PROTECT 2.85 MILLION ACRES OF ALABAMA-COUSHATTA LAND IN EAST TEXAS

The Alabama-Coushatta Tribe occupies a reservation of approximately 4,200 acres in Polk County, Texas. The Tribe is composed of approximately 1,000 members, 500 of whom reside on the reservation. In 1954, Congress terminated the trust relationship between the Tribe and the United States. In 1980, the Tribe asked the Native American Rights Fund to represent it in securing Congressional legislation to restore the federal trust relationship. NARF, which had successfully represented the first terminated tribe to be restored by Congress, the Menominee of Wisconsin, agreed. On August 18, 1987, President Reagan signed Public Law 100-89, restoring federal recognition and the federal trust relationship between the Tribe and the United States. In 1981, while representing the Tribe in its restoration effort, the Tribe asked NARF for assistance in resolving its historic land claim.

A three-judge appellate panel of the United States Court of Federal Claims in Washington, D.C. ruled on June 19, 2000 that the federal government is responsible for the Alabama-Coushatta Tribe's loss of use of over 2.85 million acres. The ruling ends the first phase of a case filed by the Alabama-

Coushatta Tribe of Texas in 1984 and means that the United States will have to pay money damages to the Tribe for trespasses on tribal land occurring during a 109-year period. The court said that the federal government had completely failed in its legal duty to protect the Tribe's lands against encroachment by non-Indian settlers during the period from 1845, when Texas became a state, to 1954, when Congress terminated the United States' trust responsibility for the Tribe by transferring it to the State of Texas. The Tribe and the United States have 90 days from June 19 to agree on an amount of damages or inform the court that a trial on damages will be necessary. The amount of damages will prob-

ably be determined in large part by the royalty payments that would have been due the Tribe on the timber and oil removed from the Tribe's land during the 109 year period, together with the fair market rental value of some of the lands.

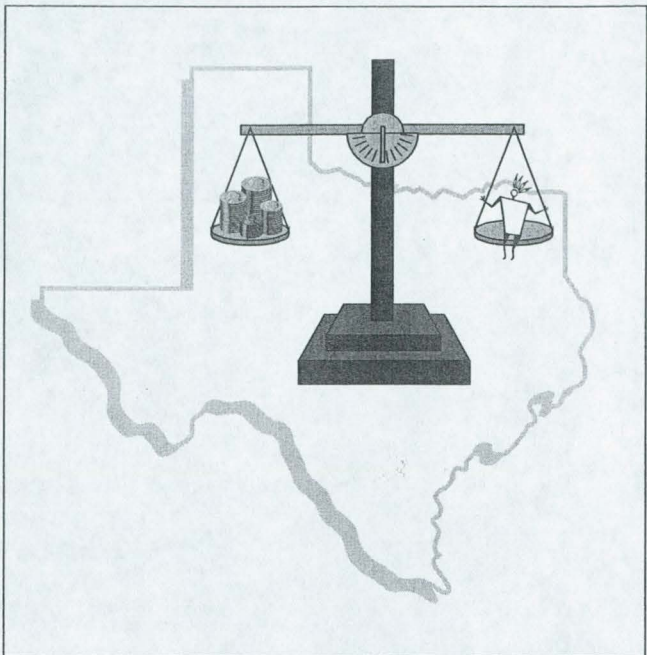
Morris Bullock, Chairman of the 500-member Tribe located on a small reservation 17 miles east of Livingston, Texas, applauded the court's decision, saying that it opens the possibility of a consensual settlement instead of another decade or more of expensive litigation. "Now that the court has clarified that the

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United States is liable for trespass damages rather than an out-and-out extinguishment of title to our aboriginal lands, we don't see any reason why we can't negotiate a settlement of this case. It's gone on too long already."

The appellate panel's decision replaced an earlier decision issued by the same panel in 1996. The earlier opinion unanimously ruled that the Alabama-Coushatta Tribe had proved aboriginal title to 6.4 million acres in eleven east-Texas counties (Polk, Tyler, Angelina, Trinity, San Jacinto, Walker, Liberty, Montgomery, Hardin, Jasper, Newton, and part of Orange), but was unclear about whether the Tribe's aboriginal title had been extinguished by Congress. The Tribe had asked the Panel to clarify that matter in August of 1996. The replacement opinion makes clear that the Tribe's aboriginal title has never been extinguished. However, with one Judge strongly objecting to any reduction in the Tribe's aboriginal title and the federal liability areas below the acreages in the Panel's 1996 opinion, the replacement ruling reduced the area of aboriginal title from 6.4 to 5.5 million acres and the area of United States' liability from 3.5 to 2.85 million acres. The United States is not liable for trespass damages on the full 5.5 million acres, because white settlers had dispossessed the Tribe of 2.7 million of those acres before Texas became a State and the United States thereby assumed the legal duty of protecting the Tribe's land. Thus, the federal government could not be held liable for the Tribe's loss of use and possession during the reign of earlier sovereigns. This was so despite the fact that the pre-statehood occupation of the Tribe's land was also illegal under the law of the prior sovereigns (Spain, Mexico, and the Republic of Texas), each of which recognized the Tribe's aboriginal title and did nothing to lawfully extinguish it.

Since Congress did not extinguish the Tribe's aboriginal title between 1845, when the United States assumed the duty of protecting the Tribe's lands, and 1954, when it transferred that duty to Texas, the appellate panel recommended "that the United States Government pay full monetary compensation to the Tribe for 2,850,028 acres of the Tribe's aboriginal lands illegally occupied by non-Indian settlers after 1845. Damages accrued until 1954, when

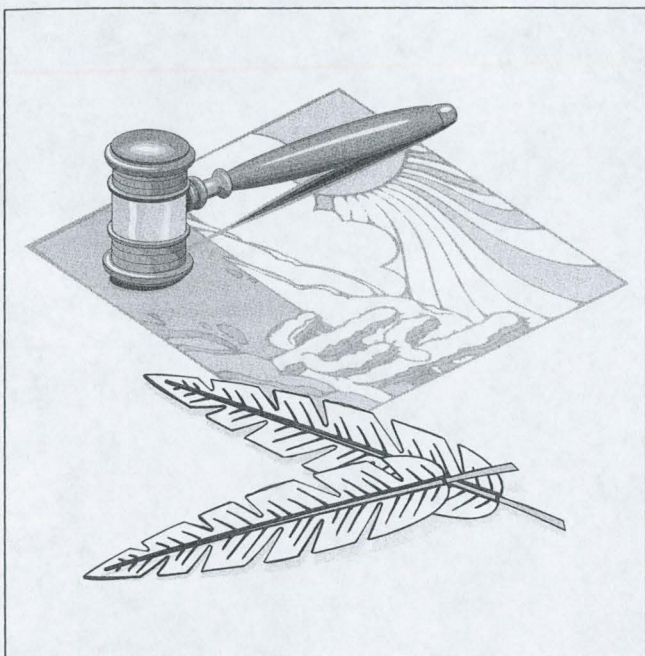


the United States extinguished its special relationship with the Tribe."

"This ruling is important for two reasons," said Native American Rights Fund attorney Don Miller, who has been lead counsel in the case since it was filed. "First, it clarifies some confusion created by the earlier opinion. It makes plain that the Tribe's title can only be extinguished by Congress and that Congress did not extinguish the Tribe's aboriginal title between 1845 and 1954." Miller noted that while the issue of whether the Tribe's aboriginal title was legally extinguished after 1954 has not been ruled on by any court, it is certain that Congress has taken no action to extinguish the Tribe's title, ever. This leads, he said to the second reason this ruling is important: "it will give Congress the opportunity to resolve with finality all questions related to the validity of land titles in eleven east-Texas counties." Noting that Congress has been active over the last two decades in resolving potentially disruptive Indian claims to possession of lands long thought to legally belong to non-Indians, Miller said "I can't believe that Congress would act to resolve only the Federal Government's liability while leaving state and local governments and innocent private landholders to bear the burden of so many clouded land titles in east-Texas."

Key Rulings in the June 19 Opinion

This most recent decision responded to the Tribe's and government's motions for rehearing filed in August 1996. It vacates its previous opinion of July 22, 1996, and substitutes the current opinion in its place. The government's 1996 motion for rehearing had urged the Review Panel to reverse virtually all of the major factual findings and legal conclusions in its 1996 opinion. In contrast, the Tribe had sought only minor clarifications. The Panel's new opinion made



the corrections the Tribe sought, but it also ruled that the Tribe did not ever have aboriginal title in Angelina and part of Jasper counties because of use and occupancy by other tribes in the early 1800s. Therefore, the amount of land in East Texas for which the U.S. must compensate the Tribe for trespass damages was reduced from almost 3.5 million in the '96 opinion to 2.85 million in the new opinion. However, the new ruling makes it clear that the basis for the Government's liability is the fact that the Tribe's aboriginal title to 5.5 million acres has never been extinguished. Judge Gibson dissented, strongly arguing that it was improper for the Panel to reduce the Tribe's acres. Otherwise, he agreed with the majority.

Some of the Review Panel's key rulings follow:

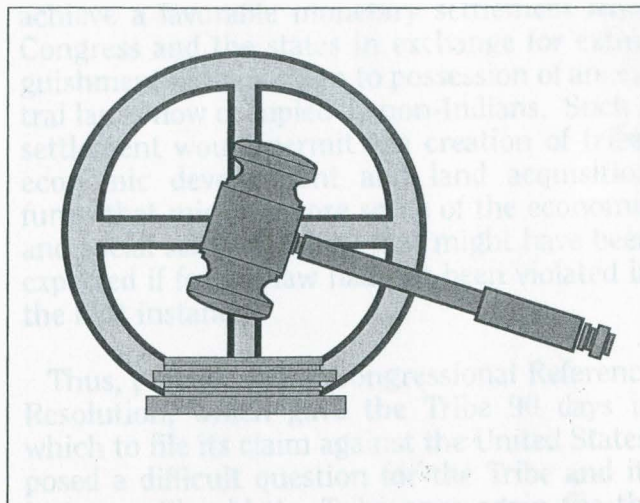
- "The Tribe established aboriginal title to 5,528,570 acres in 1830."
- "The Original Hearing Officer (OHO) erred in failing to recognize that land grants and subsequent settlement do not, without more, extinguish a tribe's aboriginal title."
- "The Panel holds that Mexico ... did not extinguish the Tribe's aboriginal title...."
- "This Panel reverses the Original Hearing Officer's finding that the Republic of Texas extinguished the Tribe's aboriginal title."
- "The Panel holds that the Tribe's aboriginal title was not extinguished when the U.S. annexed Texas on Dec. 29, 1845."
- "This Panel has held that, as a matter of law, the State of Texas lacked the authority to extinguish the Indians' aboriginal title As a result, absent the federal government's extinguishment of the Indians' aboriginal title ... all original land grants issued by the State of Texas ... could convey only the fee interest subject to the Indians' continued right of occupancy."
- "We have already held that there is no evidence of congressional intent to extinguish the Tribe's title in this case. Therefore, the Tribe's involuntary and forceful dispossession of its aboriginal lands in Texas did not constitute voluntary abandonment or lawful extinguishment of its land claims."
- "[However,] this Panel holds that the Tribe lost possession of 2,677,432 acres before [Texas became a state]. [Therefore] the U.S. cannot be held liable [for trespass on those lands]." "Therefore, the Tribe is entitled to damages on 2,850,028 ... acres of aboriginal lands which the federal government was obligated to protect."
- "Accordingly, we recommend ... that the U.S. government pay full monetary compensation to the Tribe for 2.85 million of the Tribe's aboriginal lands illegally ▶

occupied by non-Indian settlers after 1845. Damages accrued until 1954, when the U.S. extinguished its 'special relationship' with the Tribe."

- "When the Tribe sought a declaration of its rights under the Termination Act in *Alabama-Coushatta Tribe v. Mattox* in 1986... the [federal] court noted that the Act clearly transfers to the State those trust duties assumed by the U.S. prior to the ... 1954 Act. The source of those duties [is] the Nonintercourse Act." And "the State of Texas fully and completely assumed [those] duties and responsibilities"
- "The Panel notes that the government has taken strenuous objection to the Panel's findings of fact in this case. The Panel has repeatedly considered those objections, and is satisfied with its findings."
- "Within 60 days of the filing of this report (June 19), the parties shall fully brief the issue of damages and, within 90 days of the filing of this report, the parties shall submit a joint memorandum recommending either (1) a full-scale evidentiary hearing on the issue of damages; or (2) entry of judgment approving a joint stipulation of a settlement."

History of the Claim

This case was brought under a special procedure known as a Congressional Reference, wherein one house of Congress, acting on the petition of a particular claimant, refers a claim against the United States to the Court of Federal Claims. The claim must be one which seems to have merit but cannot be pursued in court because the United States has sovereign immunity from suit. After a claim is referred, the Court of Federal Claims must make findings of fact and conclusions of law and recommend to Congress whether the claim should be paid by the United States. If the court recommends payment, both houses of Congress must then pass legislation, to be signed by the President, authorizing the payment. In this kind of case, the court is acting as an arm of the legislative branch of government, rather than the judicial branch, and gives Congress an advisory opinion,



something which an article III federal court cannot do. Payment in satisfaction of the claim is therefore up to Congress, although to date Congress has never failed to follow the recommendation of the Claims Court in a Congressional Reference case.

The House of Representatives referred the Alabama-Coushatta claim to the Claims Court as a result of an earlier effort by the Tribe to resolve its land claim. In 1969, the Tribe intervened in the Caddo Tribe's claim against the United States in the Indian Claims Commission — a temporary judicial commission created by Congress in 1946 to hear Indian claims against the United States for wrongs committed by the United States before 1946. The law creating the ICC required Indian tribes to file their claims within five years, by 1951. The BIA was required to notify all tribes that they had five years to file claims, but it failed to notify the Alabama-Coushatta Tribe. As a result, Alabama-Coushatta did not file its claim until 1969.

In that case, as in most cases under the Indian Claims Commission Act, the Tribe asked for payment for the taking of its lands by the United States (loss of Indian title). To prove it had aboriginal title, the Tribe relied heavily on the extensive historical collection and expert testimony of Howard Martin and was represented by Texas attorneys Alan Minter of Austin and Tom Diamond of El Paso. The Commission heard the Tribe's evidence of aboriginal title in a trial, but shortly thereafter dismissed the claim because it had not been filed within five years of 1946. But

later, in ruling on the Caddo Tribe's claim to the same east Texas lands that were the subject of the Alabama-Coushatta Tribe's dismissed suit, the Commission found that the Caddo claim failed because the Alabama-Coushatta Tribe had plainly established its aboriginal title to those lands. Thus, the Alabama-Coushatta claim in the Indian Claims Commission had failed not because aboriginal title had not been proven, but because the claim had been filed too late and the Commission therefore had no jurisdiction to hear it (The Indian Claims Commission Act had waived the United States' sovereign immunity from suit for only five years). Thereafter, in six successive Congresses over a period of more than 12 years, the Tribe sought passage of a resolution in the House of Representatives referring the case to the Court of Federal Claims. The Congressional Reference Resolution, sponsored principally by Congressman, now Senator, John Breau, finally passed the House in November, 1983.

Beginning in about 1981, however, with the prospects for passage of the Congressional Reference Resolution apparently dim, the Tribe, through NARF attorney Don Miller, who already represented the Tribe in its restoration effort, began exploring the possibilities of pursuing a claim similar to those that were being successfully pushed by several Eastern Indian tribes. In 1974, the United States Supreme Court had issued the landmark ruling in the Oneida Indian land claim. *Oneida* held that a tribal claim to evict current occupants of lands long possessed by non-Indians, based on an Indian title that had never been unambiguously extinguished by Congress, was justiciable in a federal court. And in 1980, the Passamaquoddy Tribe's lawsuit to actually evict non-Indians and regain possession of 12 million acres of its aboriginal territory was settled by Congress for \$81 million. Other Eastern Indian tribes, including the Cayuga, Seneca, Mohawk, Narragansett, Mashantucket Pequot, Mohegan, Catawba, and Seminole, also appeared to be making significant legal and political progress toward judicial recognition of the legitimacy of their possessory claims. If their ancestral lands could not be recovered in their entirety, a goal that most realized was probably unachievable, their goal would be to

achieve a favorable monetary settlement from Congress and the states in exchange for extinguishment of their claim to possession of ancestral lands now occupied by non-Indians. Such a settlement would permit the creation of tribal economic development and land acquisition funds that might restore some of the economic and social self-sufficiency that might have been expected if federal law had not been violated in the first instance.

Thus, passage of the Congressional Reference Resolution, which gave the Tribe 90 days in which to file its claim against the United States, posed a difficult question for the Tribe and its lawyers. Should the Tribe once again file the same claim against the United States, which, like most other Indian claims filed in the Indian Claims Commission, admitted or assumed that *the United States* itself had taken the Tribe's aboriginal territory and thereby extinguished the Tribe's right to possess and use the land (that interest in land is called "Indian title" or "aboriginal title")? Or, following the lead of the Eastern tribes and the very favorable body of Federal Indian law that was developing out of those cases, should the Tribe instead pursue its much more valuable claim against the occupants of the land and try to get either the land itself back or, in lieu of that, achieve a favorable Congressional settlement?

After much research and deliberation, the Tribe decided to pursue a middle course. That is, file a claim against the United States in the Congressional Reference that would not admit the loss of Indian title and preserve the possessory land claim. In February, 1984, the Tribe filed its claim against the United States as authorized in the Congressional Reference Resolution. This time, however, rather than seeking compensation for loss of the land itself, *i.e.*, suing the United States for taking the Tribe's land and extinguishing its Indian title, the Tribe's new lawsuit assumed, consistently with historical fact, that legally the Tribe still owned the aboriginal lands. Based on that continuing ownership, the Tribe claimed compensation from the Government for failure to fulfill its trustee's duties to protect the Tribe in its possession and occupancy of the lands.

The historical evidence strongly supported such a claim. In the 1800's, the United States, although it was aware that the Tribe was being driven off its lands, did nothing to stop Texas and non-Indian settlers from illegally occupying and settling millions of acres of East Texas. Federal law required *both* that the Government protect the Tribe's lands *and* prohibited Texas and non-Indians from occupying and settling Indian lands. The Government's failure to protect the Tribe and the trespass of Texas and the settlers were two separate and distinct wrongs against the Tribe. Because Texas and the settlers violated the federal law stating that no state or individual may interfere with Indian land possession without Congressional approval, their actions did not have the legal effect of extinguishing the Tribe's aboriginal title. Therefore, the Tribe had two separate claims: 1) an equitable or moral claim under the Indian Claims Commission Act against the United States for not keeping Texas and the non-Indians off of tribal land; and, 2) a legal claim against Texas and the settlers' successors in interest to get the land itself back. The Tribe would pursue the claim against the United States first.

After a 1986 trial, Judge Mastin White ruled against the Tribe shortly before he died. He ruled that the Tribe had lost all its lands due to actions of prior sovereigns (before Texas became a state) and therefore the United States could not be held responsible for the Tribe's loss of possession of its lands. The Tribe appealed to a Review Panel (the only appellate court in a Congressional Reference), and in 1990 Judge White's opinion was thrown out by the Review Panel. The case was re-assigned to a substitute judge (Turner) who was instructed by the Review Panel to virtually start the case's decision-making process over again. Judge Turner, however, wanted to follow Judge White's ruling and refused to follow the Review Panel's directions. He quickly ruled against the Tribe, the Tribe appealed again, and Judge Turner received new, more detailed instructions from the Review Panel. After several rounds of briefing and oral argument, Judge Turner again failed to follow instructions and again ruled against the Tribe, this time by simply recycling Judge White's erroneous reasoning, together with some addi-

tional findings of his own. The Tribe appealed again, and in 1996, the Review Panel reversed Judges White and Turner and found in favor of the Tribe on virtually all disputed facts and issues of law.

The Panel's July 22, 1996 Opinion held that the United States was liable to the Tribe for trespass damages up to 1954, when Congress enacted the Tribe's termination act, thereby ending federal trust responsibilities for the Tribe. The Panel based that ruling on its finding that the Tribe's aboriginal title had never been extinguished by explicit Congressional act, as required by federal law.

The Tribe's Other Claim: Actual Return of the Land Itself

As discussed above, because Texas and the non-Indians occupied the Tribe's aboriginal lands in violation of federal law, the Tribe's right to actually possess and use those lands (aboriginal title) has never been lawfully extinguished. So the Tribe also has a legal claim for actual, present possession and eviction of the trespassers who now occupy 5.5 million acres in east Texas. This claim, however, is a completely different lawsuit from the one against the United States. It would have to be brought in a different federal court against the parties who are in present possession of the land.

The Tribe has not yet filed that claim. It would prefer not to actually file it in court, because such a lawsuit would be so disruptive to the regional economy and the Tribe's neighbors. The Tribe strongly favors resolution of its claim through Congressional enactment of a consensual settlement agreement. However, it has resolved that while it certainly seeks no harm or disruption for its non-Indian neighbors, it will require a fair and honorable settlement. Therefore, the Tribe has stated that it will file a possessory land claim only as a last resort, that is, if there are absolutely no other avenues for the Tribe to pursue in order to receive a fair settlement. ☉

Honoring NARF's 30th Anniversary Pawnee Nation of Oklahoma

The Pawnee Nation of Oklahoma, in appreciation of the three decades of service to the Pawnee People, to North American Indigenous Nations, and to the People of the United States, awarded NARF a plaque and the following letter:



Nawa Sireritawi:

Our Pawnee ancestors-the leaders of the Pawnee Nation-looked forward in time to foresee the burdens of their descendants in America, and they labored greatly to pass on a living world to us. We honor them by sustaining our sovereign place in the universe, and we honor the aspirations and doings of our ancestors when we, too, think of the burdens that our descendants will confront. For this reason, we always hope that our works will not only fulfill the dreams that our ancestors cherished, but will also give us the means to exist and succeed in our contemporary world, so that our own dreams will inspire future generations of Pawnee people.

We are hampered in carrying out these responsibilities when we are arbitrarily excluded from fair participation in American legislative, judicial, and social forums. The quest for justice presents a great challenge for all Americans who contemplate the status of Indian people and indigenous nations in the United States.

For three decades, the staff of the Native American Rights Fund (NARF) has assisted the leaders of the Pawnee Nation in meeting the challenges and responsibilities of serving the needs of the Pawnee people. We recall how NARF stepped forward to help when local school authorities refused to honor our life-ways during the early 1970's and we will not forget the more recent commitment of NARF attorneys to represent the Pawnee Nation in our national efforts to find peace for the restless spirits of our ancestors.

Our realm in the universe is a gift from the Creator, and as we contemplate the future, please know that NARF has made a difference. On behalf of the Pawnee People, we extend our best wishes and deepest gratitude to the NARF Board and staff as you consider your contribution to our living world.

Sincerely,

Robert L. Chapman, President
Pawnee Business Council



Native American Rights Fund: Three Decades of "Standing Firm for Justice"

On May 4-6, 2000 the Native American Rights Fund Board of Directors, funders, supporters, and staff came together to celebrate its 30th Anniversary. In looking back over the last thirty years NARF can embrace a sense of pride in the many significant milestones that have been achieved in the area of Indian law and policy. But this is hardly a time for celebration because Indian people still have not obtained equal justice under the law. Today, we still find ourselves having to address many of the most basic issues that were at the forefront when NARF was first established in 1970. Stated simply, there is much work to be done.

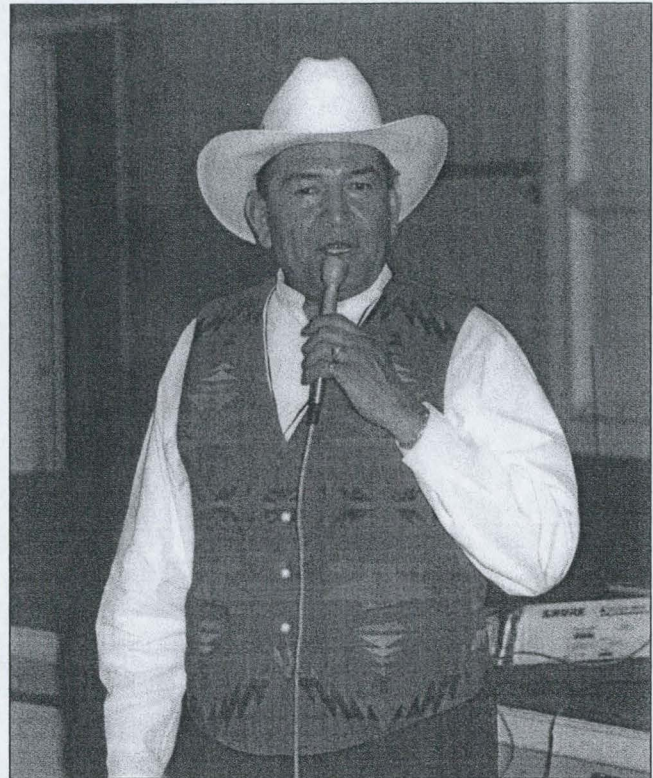
With the election of each new Administration, state and Congressional representatives, and the appointment of new court justices, tribal sovereignty becomes more at risk of being diminished and eventually eradicated. As a result, we must continue to safeguard the rights of Tribes by re-educating and working closely with our legislative, executive and judicial leaders who are in charge of determining federal Indian policy.

The Foundation of NARF's Work

To better understand Indian law and policy and the unique political and legal status that differentiates Indian people from other minority groups, one must examine the history between the U.S. government and Indian Tribes. This relationship is based on three fundamental principles: sovereignty, treaty rights and trust responsibility.

To most Americans, tribal sovereignty is either an unknown concept or it is grossly misunderstood. It is often perceived as a threat to the republic state of America, and is labeled as a separatist movement.

Sovereignty, however, is an inherent right that gives Tribes the authority and power to govern themselves. It is derived from international law, thus making Tribes sovereign nations long



*NARF Board Member Wallace Coffey
Photo Credit: Gary Hacking, Photography G*

before the formation of the United States and continuing to remain sovereign today. The framers of the U.S. Constitution acknowledged tribal sovereignty and over the decades, the courts and Congress have affirmed it through court decisions and legislation. Tribal sovereignty empowers Indian Tribes to form governments, determine tribal membership, regulate property, tax, maintain law and order, regulate domestic relations, and regulate commerce and trade.

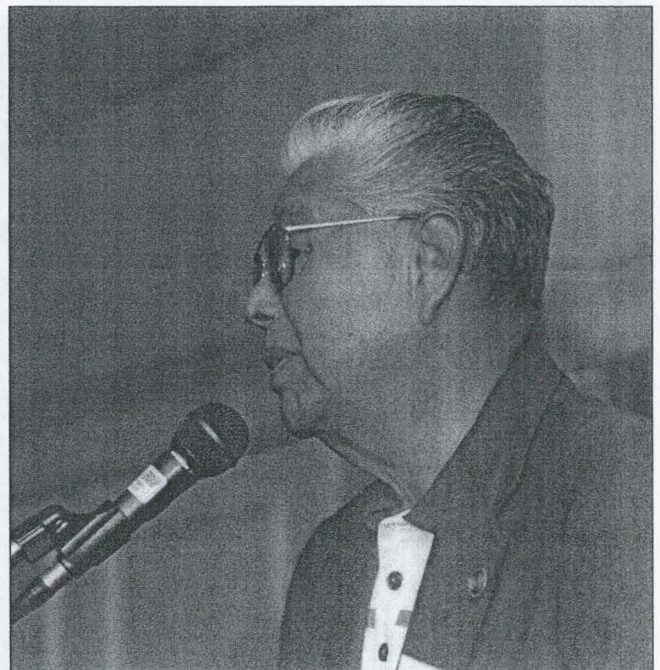
Treaties formalize the nation-to-nation relationship between sovereign entities — Indian Tribes and the U.S. government. A common misconception is that treaties grant special rights to Tribes. However, these are not special rights. Rather, they are federal obligations that Tribes secured in return for ceding land over to the federal government. These obligations

include protecting and enhancing Indian lands and resources, ensuring the power to self-govern, and providing economic, social and educational services which are necessary to raise the standard of living and social well-being of Indian people.

Trust responsibility is the U.S. government's obligation to live up to the responsibilities they agreed to in treaties. When the U.S. government or state governments do not live up to those obligations, that is when NARF becomes involved.

The Challenges Ahead

Over the past thirty years, there has been more Indian litigation than in the previous two-hundred years ... and the Native American Rights Fund has been involved in most of the major cases during this time. If it were simply a matter of a misunderstanding of the treaties and laws that fueled all these cases, the task of NARF would be a relatively simple one: Explain the laws and treaties as they were written and find ways to reach agreements based on the realities of today. But, clearly, these cases have been fueled by much more than misunderstanding. Racial prejudice and a continuing desire on the part of powerful members of society to destroy everything that is Native American — our cultures, our religions, our sovereignty — are the incendiary forces that we must constantly battle. These have not gone away, no matter how many cases we have won. So we must continue to fight for the rights of Native peoples, wherever and whenever we are needed. It is the right thing to do, the only thing to do. With your help, in the near future, NARF will be able to celebrate its accomplishments because we will have finally won justice for our people. ☼



TOP PHOTO
NARF's 30th Anniversary Pow Wow
Photo Credit: Gary Hacking, Photography G

BOTTOM PHOTO
Clinton Pattea, President Fort McDowell Mohave-Apache Tribe
Photo Credit: Gary Hacking, Photography G



TOP LEFT PHOTO
NARF Board Member Ernie Stevens, Jr.
Photo Credit: Harvey Dennenberg



TOP RIGHT PHOTO
NARF's 30th Anniversary Pow Wow
Photo Credit: Gary Hacking,
Photography G

BOTTOM PHOTO
Drum Group: Cante Akicita
Photo Credit: Gary Hacking,
Photography G





TOP PHOTO
NARF's 30th Anniversary Pow Wow
Photo Credit: Harvey Dennenberg

BOTTOM PHOTO
Left to Right: NARF Attorney Keith Harper; NARF Board Member Rebecca Tsosie;
National Support Committee Member Richard Dysart; NARF Board Member E. "Ho'oipo Pa" Martin
Photo Credit: Harvey Dennenberg

The National Tribal Justice Resource Center to be Located at NARF

NARF is pleased to announce the arrival of the newly-developed National Tribal Justice Resource Center. Established by the National American Indian Court Judges Association (NAICJA), and funded by a grant from the U.S. Department of Justice, Bureau of Justice Assistance, the Resource Center has been a project several years in the making, and one that has been eagerly anticipated.

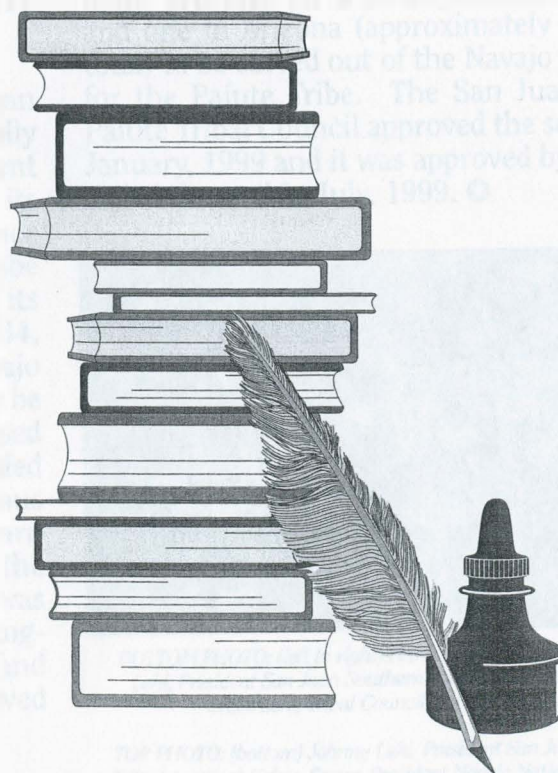
The NTJRC and its staff will be housed in the National Indian Law Library, and will provide legal resources to tribal court personnel and assist with legal inquiries from American Indian and Alaska Native justice systems. NAICJA has long been aware of the vital need for tribal legal support as Native American tribal courts deal daily with a wide range and swiftly increasing number of challenging criminal and civil justice problems. Tribal court systems are woefully underfunded to deal with this growing caseload. Funding promised by the Indian Tribal Justice Act of 1993 has yet to be realized, and BIA funding for tribal courts has actually decreased. In addition, the majority of tribal court systems are located in isolated, rural areas and face problems unique to Indian country. A lack of legal resources, legal assistance, and access to law libraries is compounded by complex relationships with federal and state criminal justice systems.

The National Tribal Justice Resource Center will work to meet the expanding needs of tribal justice systems. With the guidance and expertise of Executive Director Judge Jill E. Shibbes, tribal member of the Penobscot Nation of Maine, and current First Vice President of NAICJA, the Resource Center will offer an impressive list of services, including plans to create a clearinghouse of existing judicial resource materials, and provide training and technical assistance; publish an on-line newsletter informing tribal justice systems of their resources & services; establish a 800# Helpline; provide a free, internet-searchable database of tribal justice system

opinions; offer on-line reference & research assistance services through the Resource Center's website; and set up a mentoring system.

Not only will the Resource Center enjoy easy access to the National Indian Law Library's extensive collection of tribal documents and electronic resources, but the staff of both institutions will be working closely together to develop the online tribal court opinion database. This partnership combined with the collaborative support of powerful organizations such as the National Congress of American Indians, the American Indian Law Center, the Alaska Inter-Tribal Council, and the North West Tribal Court Judges Association, promises that the National Tribal Justice Resource Center will be a proactive resource for all tribal court systems.

Operations at the National Tribal Justice Resource Center will get underway in September 2000. ☼



CASE UPDATES

San Juan Southern Paiute Tribe Signs Historic Treaty



The San Juan Southern Paiute Tribe is the easternmost of the constituent bands of the former Southern Paiute Nation. Their aboriginal homeland was in northern Arizona and southern Utah. Their aboriginal lands are now part of the Navajo Reservation, having been added to that Reservation due to a steady increase in Navajo population. Up to

the middle of the nineteenth century, the Paiute Tribe lived in one contiguous community, but with increased military pressure against the Navajo Tribe in the 1860s, the Paiute community was divided into a northern and a southern community. The northern community is centered around Navajo Mountain, Utah, and the southern community is north and west of Tuba City, Arizona. There are approximately 211 Tribal members.

Throughout most of its history, the San Juan Southern Paiute Tribe had not been federally recognized and, in fact, the federal government had been largely unaware of the Tribe and its needs. For that reason, no explicit allowance was made for a Paiute reservation and the Tribe had, over the years, lost the use of much of its lands due to Navajo expansion. In 1934, Congress set aside certain land for the Navajo Tribe and such other Indians as may already be located thereon. This land included areas used by the Paiute Tribe. In 1974, Congress provided for the determination of the rights of the various tribes to the land. The Paiute Tribe did not learn of this until 1982, at which time it joined in the process so as to protect its land. The Tribe was excluded because it was not federally recognized. After more than ten years of effort and with the assistance of NARF, the Tribe achieved federal recognition in 1990.

NARF represented the San Juan Southern Paiute Tribe in the consolidated cases of *Masayesva v. Zah v. James*, a case involving the Navajo and Hopi Tribes in a dispute over an area of land in northern Arizona claimed by all three tribes. The Court found that the San Juan Southern Paiute Tribe had a joint interest along with the Navajo Tribe in a portion of the Navajo Reservation but refused to partition San Juan Southern Paiute land. The San Juan Southern Paiute Tribe appealed the decision relative to the amount of land awarded and the failure to set aside land specifically for the Tribe. The appeal was stayed while settlement negotiations began in earnest.

On March 18, 2000, in an historic ceremony, the San Juan Southern Paiute and the Navajo Nation formally signed a settlement treaty to San Juan Southern Paiute lands located within the Navajo Nation Reservation. The settlement now must be approved by Congress. The settlement provides for a small reservation in Utah and one in Arizona (approximately 5,400 acres total) to be carved out of the Navajo Reservation for the Paiute Tribe. The San Juan Southern Paiute Tribal Council approved the settlement in January, 1999 and it was approved by the Navajo Tribal Council in July, 1999. ☉

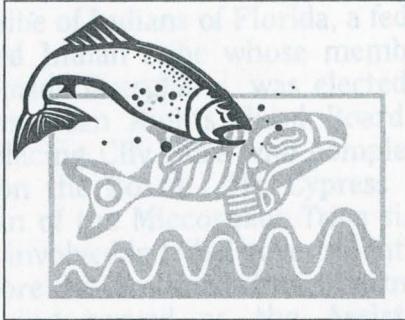


BOTTOM PHOTO: (left to right) NARF Attorney Kim Gottschalk; Johnny Lehi, President San Juan Southern Paiute; Pam Bunte, Anthropologist; Grace Lehi, Tribal Council Member San Juan Southern Paiute

TOP PHOTO: (bottom) Johnny Lehi, President San Juan Southern Paiute Tribe (standing) Kelsey Begay, President Navajo Nation; Signing of Treaty

Kenaitze Indian Tribe Successful in Subsistence Fight

The Kenaitze Indian Tribe has occupied the Kenai Peninsula region for centuries and subsisted by harvesting and gathering the resources



offered by the land and the sea with salmon as the primary subsistence resource. Under the federal subsistence priority law, residents of rural areas are given a subsistence priority over sport and commercial hunters and fishermen. In 1991, the Federal Subsistence Board declared large portions of the Kenai Peninsula to be non-rural, including the entire Kenai area, which comprises the primary hunting and fishing grounds for members of the Kenaitze Indian Tribe. In May 1998, the Tribe with NARF's assistance, was successful in obtaining a unanimous recommendation from the South-central Alaska Subsistence Regional Advisory Council that the Kenai area be designated as rural. In May 1999, the Federal Subsistence Board voted to reconsider by April, 2000 its earlier decision that large portions of the Kenai Peninsula be declared non-rural. On March 1, 2000 the Federal Subsistence Board held a public hearing on the request of the Kenaitze Tribe to declare the entire Kenai Peninsula rural for purposes of the subsistence priority of the Alaska National Interest Lands Conservation Act. NARF assisted the Tribe in preparing testimony, testified on behalf of the Tribe, and submitted a memorandum in support of the Tribe's request.

On May 3, 2000 the Board ruled in favor of the Kenaitze Tribe and declared the entire Kenai Peninsula to be rural, which means the Kenaitze's subsistence hunting and fishing rights will be protected. However, NARF expects that the State of Alaska will likely ask the Board to reconsider its decision and failing that, will probably seek to reverse the Board's ruling in federal court.

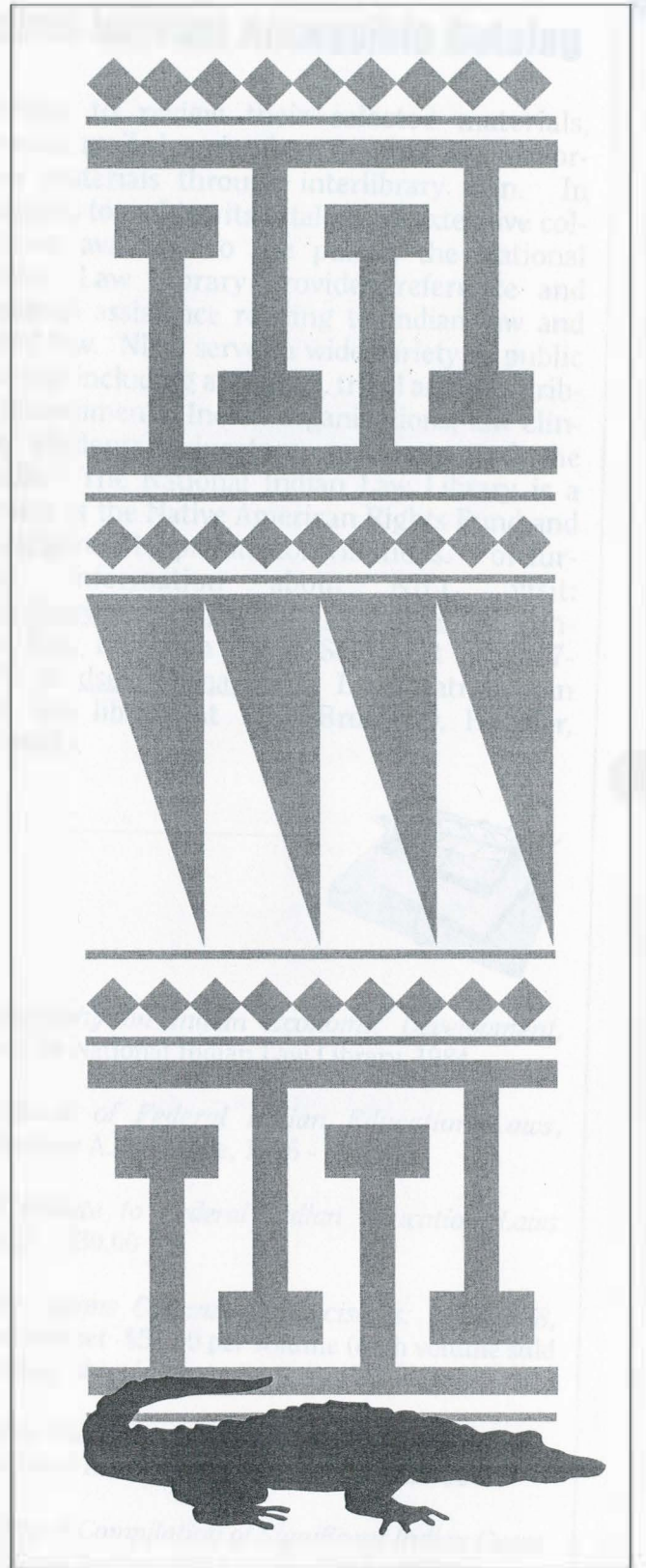
The Kenaitze Indian Tribe is a federally recognized tribe whose members are direct descendants of Tanaina (Dena'ina) Athabaskan Indians. First named the "Kenaitze" during the Russian-American Trading Company period, tribal members have occupied the Cook Inlet region for centuries. In early times, the Kenaitze lived in small groups of extended family units and subsisted by harvesting and gathering the resources offered by the land and the sea. They harvested seal, beluga whale, caribou, moose, smaller mammals, birds, and numerous species of fish and plants. Salmon was the primary subsistence resource then, as it is now. As evidenced by their name, the Kenaitze live primarily on the Kenai Peninsula, a land mass of more than 9000 square miles abutting the south-central coast of Alaska. Tribal members and lineal descendants number more than 900. ☉

Summation, Inc., a leading provider of litigation organizational software has donated approximately \$8,000 worth of its summation gold software wrap to NARF. The software provides a mechanism to organize, categorize and easily access litigation files including discovery material, depositions, trial testimony and pleadings. The software will be instrumental in aiding NARF to better organize and prepare for Trial II in the IIM case, *Cobell v. Babbitt*. NARF extends its deepest appreciation to Summation, Inc. for their most generous donation.

NEW BOARD MEMBER

Billy Cypress, is the Chairman of the Miccosukee Tribe of Indians of Florida, a federally recognized Indian tribe whose members live in the Florida Everglades, was elected to the Native American Rights Fund Board of Directors, replacing Cliv Dore who completed three terms on the Board. Mr. Cypress has been Chairman of the Miccosukee Tribe since 1987. He was involved in tribal government for 14 years before he assumed the Chairman position, having served as the Assistant Chairman of the Tribe from 1973 through 1987. As Chairman, Billy Cypress serves as an officer of the Tribe's General Council. The Chairman and other members of the General Council and Business Council have the responsibility for the development and management of resources as well as the day-to-day business activities of the Tribe.

Chairman Billy Cypress has also served in leadership role in other organizations that deal with Native American issues. Chairman Cypress has served as a member of the Board of Directors of the United States South and Eastern Tribes since 1972. He has also served as the Co-Chairman of the Florida Governor's Council on Indian Affairs since 1973. Additionally, the Miccosukee Tribe is very involved in the efforts to protect and restore their homeland and are represented on both the Governor's Commission for a Sustainable South Florida and the South Florida Ecosystem Restoration Task Force. As the spokesperson for the Miccosukee Tribe, Chairman Cypress works with other tribal and community leaders in the continuous pursuit of economic self-sufficiency and self-determination and to protect and preserve the resources of the Tribe, especially their Everglades homeland and their cultural identity. ☼



NARF RESOURCES AND PUBLICATIONS

The National Indian Law Library Launches Internet Accessible Catalog

The National Indian Law Library (NILL) located at the Native American Rights Fund in Boulder, Colorado has announced that its library catalog is now available on the Internet. Over the past twenty-seven years NILL has collected nearly 12,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include tribal codes, ordinances and constitutions; legal pleadings from major American Indian cases; law review articles on Indian law topics; handbooks; conference materials; and government documents. Library users can access the searchable catalog which includes bibliographic descriptions of the library holdings by going directly to: <http://wanderer.aescon.com/webpubs/webcat.htm> or by accessing it through the National Indian Law Library link on the Native American Rights Fund website at www.narf.org. Once relevant materials are identified, library patrons can then

choose to review their selected materials, request mailed copies for a nominal fee, or borrow materials through interlibrary loan. In addition to making its catalog and extensive collection available to the public, the National Indian Law Library provides reference and research assistance relating to Indian law and tribal law. NILL serves a wide variety of public patrons including attorneys, tribal and non-tribal governments, Indian organizations, law clinics, students, educators, prisoners and the media. The National Indian Law Library is a project of the Native American Rights Fund and is supported by private contributions. For further information about NILL, visit: <http://www.narf.org/nill/nillindex.html> or contact Law Librarian David Selden at 303-447-8760 or dselden@narf.org. Local patrons can visit the library at 1522 Broadway, Boulder, Colorado.

NARF/NILL Publications For Sale

The National Indian Law Library is offering a variety of NARF/NILL publications valuable to Indian law practitioners and tribal governments. We are currently offering the following:

A Manual for Protecting Indian Natural Resources, by Allen Sanders, 1982 - \$25.00

1988 Update to the Manual for Protecting Indian Natural Resources - \$30.00

A Manual on the Indian Child Welfare Act and Laws Affecting Indian Juveniles, by Craig Dorsay, 1984. \$70.00 (includes 1992 supplement)

A Manual on Tribal Regulatory Systems, by Yvonne Knight, 1982 - \$25.00

Self-Help Manual for Indian Economic Development, by Steven Haberfield, 1982 - \$35.00

Bibliography on Indian Economic Development, 2d ed., by National Indian Law Library, 1984

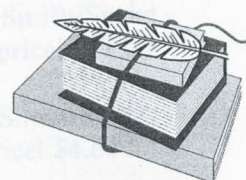
Handbook of Federal Indian Education Laws, by Timothy A. LaFrance, 1986 - \$25.00

1986 Update to Federal Indian Education Laws Manual - \$30.00

Indian Claims Commission Decisions: 1946-1978, 43 Volume set - \$55.00 per volume (each volume sold separately, shipping extra)

Index to the Indian Claims Commission Decisions, by National Indian Law Library, 1973 - \$27.00

Top Fifty: A Compilation of Significant Indian Cases, by National Indian Law Library, 1990 - \$47.00



Tribalizing Indian Education, compilation of State Indian Education Laws, prepared by Melody McCoy, October 1997 - \$10.00 (hardcopy) \$3.00 (diskette)

Tribalizing Indian Education, Cooperative Agreements in Indian Education, prepared by Melody McCoy, October 1998 - \$10.00 (hardcopy) \$3.00 (diskette)

Tribalizing Indian Education, Draft Materials for Tribal Governance in Education, prepared by Melody McCoy, October 1994 - \$5.00 (hardcopy) \$3.00 (diskette)

Tribalizing Indian Education, Presentation/Workshop Materials, prepared by Melody McCoy, October 1993, updated October 1997 - \$5.00 (hardcopy) \$3.00 (diskette)



Book Sale

In the past, NILL has offered a variety of books for sale including non-legal books. Since we can no longer offer competitive prices and prompt service without losing money, we will no longer be offering non-NARF publications for sale. Instead, we will publish an annotated list of recommended Indian law books on the National Indian Law Library Internet page under "resources." This recommended list will include information on how to order from various book vendors. Until our stock is depleted, you may order the books below at discounted prices. Quantities are limited, so please call NILL at (303) 447-8760 to find out what we have in stock.

American Indian Law, Cases and Materials, 3rd Ed., by Robert Clinton - was \$55.00 - sale price! \$38.50

Between Two Fires by Laurence M. Hauptman - was \$25.00 - sale price! \$17.50

Book of Hopi by Frank Waters - was \$12.00 - sale price! \$8.40

Cases and Materials on Federal Indian Law by David Getches - was \$70.00 - sale price! \$45.50

Dawn Land by Joseph Bruchac - was \$9.95 - sale price! \$6.95

Encyclopedia of American Indian Civil Rights, edited by James S. Olson - was \$65.00 - sale price! \$45.50

Four Ancestors by Joseph Bruchac - was \$18.95 - sale price! \$13.25

Gift of Changing Woman by Tryntje Van Ness Seymour - was \$16.95 - sale price! \$11.85

Gifts of the Buffalo Nation, an educational coloring book - was \$3.00 - sale price! \$2.10

The Girl Who Married the Moon by Ross - was \$13.95 - sale price! \$9.75

Indian Givers: how the Indians of the Americas transformed the world by Jack Weatherford - was \$9.00 - sale price! \$6.30

Keepers of the Night by Michael J. Caduto and Joseph Bruchac - was \$14.95 - sale price! \$10.45

The Last Comanche Chief by Neeley - was \$16.95 - sale price! \$11.85

North American Indian Landmarks by Cantor - was \$19.95 - sale price! \$13.95

One Nation Under God by Smith/Snake - was \$24.95 - sale price! \$17.50

People Shall Continue by Simon Ortiz - was \$6.95 - sale price! \$4.85

Peyote Religion: A History by Omer C. Stewart - was \$15.95 - sale price! \$11.15

Pow Wow Country by Chris Roberts - was \$17.95 - sale price! \$12.55

Pueblo Life: the postcard Archive Series - was \$9.95 - sale price! \$6.95

Red Earth, White Lies: Native Americans and the Myth of Scientific Fact, by Vine Deloria Jr. - was \$23.00 - sale price! \$16.10

Soldiers Falling into Camp: The Battle at the Rosebud and the Little Big Horn by Kammen, Lefthand, and Marshall - was \$19.95 - sale price! \$13.95

The Spirit of Native America by Walters -
was \$18.95 - sale price! \$13.25

Spirit of the White Bison by Cullevon -
was \$5.95 - sale price! \$4.15

*Sun Dance: The 50th Anniversary Crow Indian Sun
Dance* by Michael Crummett -
was \$14.95 - sale price! \$10.45

Through the Eye of the Feather by Touchman -
was \$29.95 - sale price! \$20.95

*Truth of a Hopi: Stories relating to the origin,
myths, and clan histories of the Hopi* by Edmund
Nequatewa - was \$12.95 - sale price! \$9.05

Water Law in a Nutshell 2nd Ed., by David Getches -
was \$20.00 - sale price! \$5.00

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was \$23.00 - sale price! \$16.10

We Dance Because We Can: People of the Powwow
by Bernstein - was \$29.95 - sale price! \$20.95

Wokini by Billy Mills - was \$17.50 - sale price! \$12.25

Wounded Knee and the Ghost Dance' Tragedy;
Memorial Edition compiled by Jack Utter -
was \$3.95 - sale price! \$2.75

*Book abstracts available for most titles at the Book
Sale page on the National Indian Law Library section
of the NARF website at www.narf.org



NARF Annual Report. This is NARF's major report on its programs and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request. Editor, Ray Ramirez (ramirez@narf.org).

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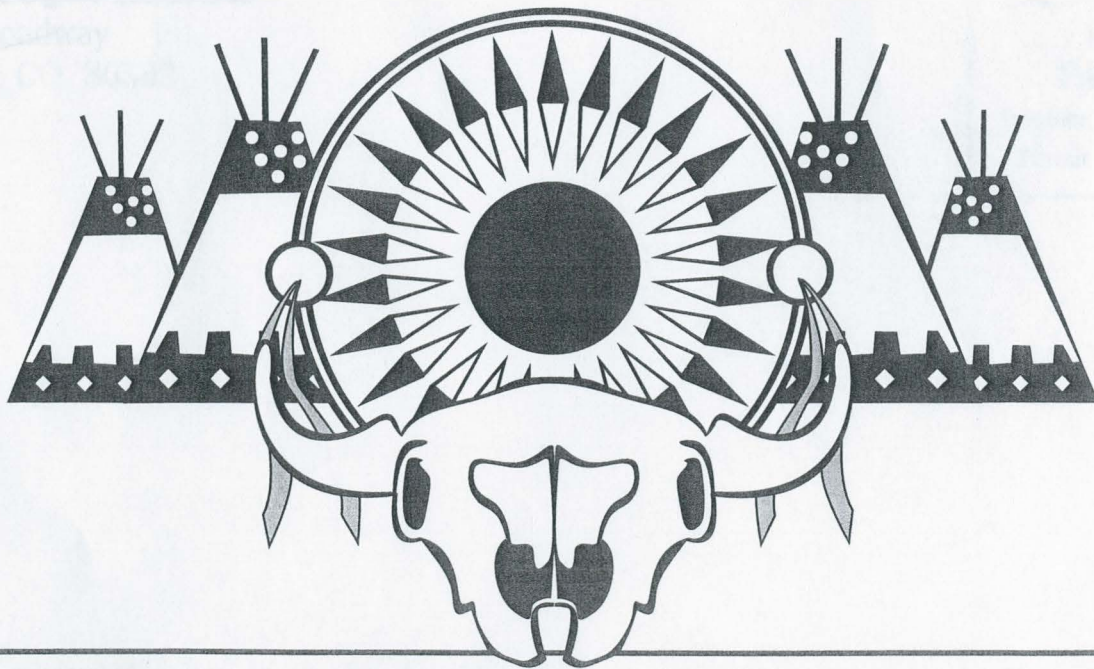
THE NATIVE AMERICAN RIGHTS FUND

The year 2000 marks 30 years that the attorneys, support staff and Board of Directors of NARF have provided legal assistance to Native Americans across the country in such areas as tribal restoration and recognition, tribal jurisdiction, land claims, hunting and fishing rights, the protection of Indian religious freedom, and many others. In addition to the great strides made in achieving justice on behalf of Native American people, perhaps NARF's greatest distinguishing attribute has been its availability to bring excellent, highly ethical legal representation to dispossessed Tribes. The survival and strengthened sovereignty of the nation's 557 federally recognized tribes of 1.8 million Native Americans are due, in no small measure, to the battles waged and won by NARF.

NARF strives to protect the most important rights of Indian people within the limit of available resources. To achieve this goal,

NARF's Board of Directors defined five priority areas for NARF's work: (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. Requests for legal assistance should be addressed to NARF's main office at 1506 Broadway, Boulder, Colorado 80302. NARF's clients are expected to pay whatever they can toward the costs of legal representation.

NARF's success could not have been achieved without the financial support that we have received from throughout the nation. 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.



Visit NARF's newly improved website at www.narf.org



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