



# NARF Legal Review

Native American Rights Fund

## NARF continues to seek mediation in settlement of Indian trust case

*Editors Note: Over the last year, the government has begun a misinformation "divide and conquer" campaign in Indian Country regarding the Cobell case. In an effort to turn tribal leaders against the case, they have made false claims about positions that NARF has taken and the impact of the case on Indian Country. Almost all tribal leaders have seen through the charade and overwhelmingly support this litigation. The government is desperate at this point since they know they are being soundly defeated in litigation. The Department of the Interior sees their only salvation in Congress and they have increased their efforts to have Congress take away what we have won in the Courts, as evidenced by the controversial appropriations bill rider discussed later in this report (see Case Updates). For these reasons, although S.1770 has stalled, we feel it is imperative that we include NARF's complete testimony before the Senate Indian Affairs Committee. This testimony recites a history of the case and the positions that NARF has taken regarding mediation and settlement.*

On October 29, 2003, the Senate Committee on Indian Affairs held a hearing on S.1770, the "Indian Money Account Claim Satisfaction Act of

2003" introduced by Senator Ben Nighthorse Campbell. The bill provides for an "enhanced mediation team" known as the "IMACS Task Force" which would be comprised of experts in forensic accounting, federal Indian law, commercial trusts, mineral resources, economic modeling and econometrics, and complex civil litigation. The IMACS Task Force would conduct an analysis of the records, data, and other historical information with regard to an historical accounting for a period of one year, then meet with the parties and develop appropriate methodologies to conduct the accounting.

NARF believes that S.1770, as drafted, will result in fundamental and pervasive unfairness to hundreds of thousands of individual Indian trust beneficiaries, cause more undue delays to the resolution of this case

because of the creation of a separate forum with undefined rules of procedure, would undermine the integrity of the judicial process, vitiate hard won rights of individual Indians, and violate constitutional due process safeguards. On behalf of the Cobell class members, NARF Executive Director John Echohawk provided the following testimony before the Senate Committee on Indian Affairs as to why S.1770 should not go forward:

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## Testimony of John E. Echohawk, Executive Director, Native American Rights Fund Hearing on S.1770, the Indian Money Account Claims Satisfaction Act of 2003



John E. Echohawk

Good morning, Chairman Campbell, Vice-Chairman Inouye, Members of the Committee. Thank you for inviting me here today to further discuss with you and your colleagues ways to resolve the on going individual Indian trust funds lawsuit, *Cobell v. Norton*, Civ. No. 96-1285 (RCL).

I am here once again today on behalf of 500,000 individual Indian trust beneficiaries, as counsel to the plaintiff class in the *Cobell* suit, which is before the United States District Court for the District of Columbia. First and foremost, on behalf of our clients – the trust beneficiaries who are the owners of all the assets managed in this trust, we want to thank you for your sincere interest and effort to exploring ways to achieve a fair and expedient resolution of the *Cobell* litigation.

### What Happened to Mediation?

Mr. Chairman, I testified before you on July 30, 2003 at a "Hearing on Methodologies for Settling the *Cobell v. Norton* Class Action Lawsuit." As you know, that hearing was a follow up to correspondence that you and the Vice-chairman sent to the *Cobell* parties and tribal leaders. Your initial letter of April 8, 2003 sent to both parties "strongly urge[d] all parties to the litigation to pursue a mediated resolution to this case." I, on behalf of Dennis Gingold and Keith Harper – counsel for the plaintiffs – responded to you by letter dated May 23, 2003. While I expressed concern about Interior's readiness to enter discussions in good faith because of their past conduct, I agreed to participate in a mediation process that you urged:

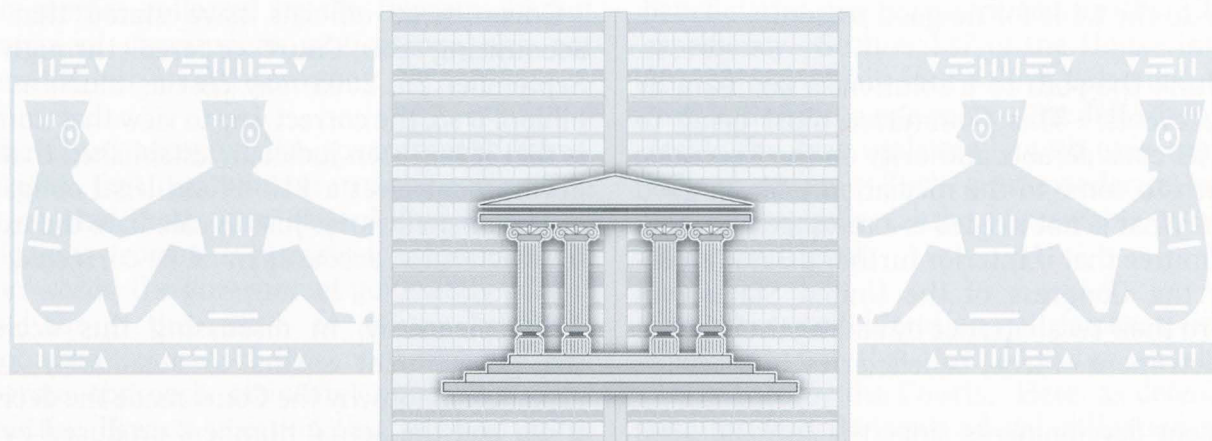
Given the disturbing history [of government delay and bad faith], plaintiffs are skeptical that Interior and Justice

are prepared to resolve the *Cobell* case in good faith and in a fair manner. Nevertheless, with your involvement, we hope that is possible. As to a firm commitment to resolve this case as soon as possible, we hereby pledge to you that we are now – and we always have been – open to a resolution that ensures our clients are treated fairly and justly. For this reason, we welcome your efforts to begin a resolution process before the close of the year.

On July 30, 2003, I testified before this Committee and reiterated our commitment to resolution through mediation: "Be assured that the *Cobell* plaintiffs are now, and always have been, willing to engage in frank and honest discussions for a fair resolution of this case." This merely restated plaintiffs' long stated position that we are prepared to participate in a settlement process. In fact, lead plaintiff Elouise Cobell testified at a hearing before the House Resources Committee entitled "*Can a process be developed to settle matters relating to the Indian Trust Fund Lawsuit?*," stated without reservation: "The *Cobell* plaintiffs believe that the answer to this question is self-evident: Of course, such a process can be developed." However, she further stated:

It is important to note that this case has been in litigation over seven years. It is a matter of record that time and time again the case has been unconscionably delayed as a result of government litigation misconduct. We, the IIM beneficiaries, on the other hand have pursued expedited resolution of this case. We have vigorously contested each and every government-sponsored delay tactic. That is the record of this case. We want resolution (more than anyone) because each and every day trust beneficiaries are dying without receiving justice.





In short, plaintiffs' good faith has been repeatedly demonstrated and evidenced by our full and express acceptance of this Committee's invitation to participate in mediation, despite our reservations regarding the government's good faith and despite the fact that we continue to prevail in the litigation.

On June 13, 2003, this Committee wrote to tribal leaders seeking their views on "explor[ing] creative, equitable and expedient ways to settle the *Cobell v. Norton* lawsuit." In response, the majority of tribal leaders supported exploring mediation. For example, Tex Hall, President of the National Congress of American Indians (NCAI) set forth specific "Guiding Principles of the Settlement Process," stressing, among other things, that a settlement process must be acceptable by the *Cobell* plaintiffs and must "provide for judicial review and fairness."

To the best of our knowledge, the government, by contrast, did not reply to your letter, in writing, and did not accept mediation as a viable alternative to litigation. Strikingly, they have seemingly made no commitment at all to mediate – even when directly asked by members of this committee and the Resources Committee during these same hearings. What is particularly note-

worthy is that the government is on the losing side of this litigation. Plaintiffs have prevailed on the merits at both the trial court and the Court of Appeals. Normally, the party that is victorious through litigation is the one resistant to mediation. Here, the victors are at the table and, inexplicably, the losing party – with what they themselves admit is a multi-billion dollar legal obligation to the other party – is recalcitrant.

In July, I made the statement to you supported by a wealth of evidence that "the executive branch – with the exception of Treasury – has been steadfast in its unwillingness to negotiate such a resolution." Accordingly, we continue to believe as we stated in July that "[w]ithout your direct and active participation in the settlement process, we have no hope that the Administration will discuss these matters in good faith." You know as well as we do that they have taken no action in the ensuing three months to change that conclusion in any respect.

The record could not be more clear. In good faith, Mr. Chairman, we, the *Cobell* plaintiffs, have accepted your invitation to mediate a resolution. Tribal leaders believe in mediation. The appropriations committee has pushed for a mediated settlement in successive years. We,



with your express encouragement, are at the table. Indian Country is at the table. But the government, despite your urging has refused to come to the table for no good reason.

I think the path to a solution is laid bare by these events. This Committee must bring to bear its considerable authority on the Executive Branch to come to the mediation table in good faith. What is not needed is a message from this Committee that if Interior further delays resolution, the Congress of the United States will reward their recalcitrance by bailing them out at the detriment of trust beneficiaries' interests.

Recent developments since the July 30, 2003 hearing underscore why this committee must act now and must not send a signal to the Administration that their continuing pattern and practice of unconscionable delay will be rewarded by a congressional bailout.

#### Developments Since the July 30, 2003 Hearing

Mr. Chairman, as you know, since the last time I testified before you, plaintiffs have achieved yet another significant victory in the courts. On September 25, 2003, Judge Lamberth rejected the Interior Department's attempt to place arbitrary limits on the historical accounting that, by law, the government owes individual Indian trust beneficiaries. The Court confirmed, in essence, that the Department must account for each dollar and all assets of the IIM Trust back to the trust's inception in 1887. The Court further held that the use of statistical sampling – an unheard of methodology for a trust accounting as the government's own witnesses admitted – could not be used.

Plaintiffs believe that this decision has set an appropriate foundation for constructive discussions for resolution of this matter. With this ruling, we have judicial clarity – based on the well-settled principles applicable to all trusts – setting forth the specific nature and scope of the equitable accounting to which individual Indian beneficiaries have a right. Obviously, with more issues judicially resolved, there

should be fewer areas of disagreement if the parties were to embark on settlement discussions.

Government officials have stated that the accounting the Court ordered through its September 25, 2003 may cost as much as \$10 billion. If so, the correct way to view that number is that it has been judicially established that the government owes a \$10 billion legal obligation to trust beneficiaries just to calculate the extent to which these accounts must be corrected.

Conspicuously, in discussing this decision the government seems to steadfastly avoid explanation for why the Court made the decision it did and the actual numbers produced by the parties. During Trial 1.5 – the trial that led to the September 25, 2003 decision, plaintiffs put forth a plan that acknowledged reality – the government cannot do a complete and accurate accounting of all trust funds and other assets in the IIM Trust, because of the rampant destruction of trust documents over the life of the trust. That being said, we proposed an approach that would determine the revenues from individual Indian trust land for each type of resource for each year to the inception of the trust in 1887. Interestingly, the aggregate number that we derived was \$13.9 billion dollars exclusive of interest. Parenthetically, the government doing a similar aggregate approach determined that approximately \$13 billion dollars was produced from these lands (exclusive of, among other things, proceeds for direct pay). Plaintiffs believe the similarity of these numbers are compelling and offer an important starting point for any proposed mediation.

The Interior Department urged the Court to reject plaintiffs approach on the ground the government could perform a complete and accurate historical accounting of the IIM Trust. Of course, they wanted to place a plethora of arbitrary limits on which monies they would account for and which they would not. For example, despite a clear ruling in a 1960 memorandum from then Solicitor of the Department of Interior Ted Stevens that the Department must account for direct pay monies, the govern-

ment argued they had no such obligation. They contended, as well, that they had no duty to account for any account closed prior to 1994 or even monies collected by the Department but because of government malfeasance was not deposited into an IIM account.

The Court accepted the government's representation that it could perform the accounting but rejected these often absurd limitations and exclusions from the historical accounting. In other words, the government got exactly what it asked for in the case – to do the historical accounting instead of the more efficient and accurate approach plaintiffs urged. With the Executive Branch insisting that it could fulfill its duty to account, the Court believed that it had to give the trustee-delegate one last opportunity to do so based on their representations.

Cynically, while telling the Court one thing, government officials have taken a different position before the Congress. They want this body to pass legislation to negate the Court ruling that they asked for – the opportunity to do the accounting.

It is our view that this attempt by Interior to play the Court off of Congress should not be tolerated. This Committee has an obligation to use its authority to reject that cynical approach and tell Interior in no uncertain terms that it must come to the table to mediate.

Since that ruling, this Committee and the appropriators both have pushed proposals to force a resolution of this case. We suspect that there will continue to be efforts to determine a sound approach to case resolution. In order to properly evaluate these proposals, we would like to suggest non-controversial criteria to evaluate the appropriateness of these and any future proposal.

#### Goals of the Resolution Process

A resolution of the *Cobell* case, if it is to be effective must achieve certain goals. We believe that to properly evaluate any resolution plan the following criteria must be met.

#### I. The Proposal Must Be Fair

Any proposal must ensure that the rights of beneficiaries are not sacrificed on the altar of expediency. Section 137 of the House Interior Appropriations bill for FY 2004 failed because it gave authority to one party – the defendants – to decide the case unilaterally with only minimal judicial review. Such gerrymandering of the judicial system is plainly unacceptable, as well as unconstitutional.

Another consideration of fairness is the obligations of the United States as already determined by the Courts. Here, as defendants readily admit they owe a legal obligation to the plaintiff class which will cost multi-billions of dollars to fulfill. If a settlement proposal relieves the defendants of this legal obligation, the beneficiaries should be compensated appropriately over and above the correction of account balances.

There are other considerations of fairness. In a class action, the beneficiaries are protected by due process, rules of procedure and defined rules of ethics. There must be assurance that these protections exist in any alternative process. Moreover, if the consent of beneficiaries is necessary, any legitimate and constitutionally permissible process must ensure that the consent was knowing and voluntary.

Fairness and the protection of beneficiary rights must form the basis of any sound proposal. After all, these are the victims of a century of government mismanagement and should not be victimized again through an unfair resolution process.

#### II. The Proposal Must Expedite Rather than Delay Resolution

Solely because of government delays and obstinance, *Cobell* has not been resolved. To have an expedient resolution of this case, the structure of the resolution must ensure that the *Cobell* claims are resolved as a whole. Piecemeal resolution will not be expeditious and will make



it difficult for beneficiaries to make fully informed and knowledgeable decisions regarding their rights. Moreover, to the extent that any provision is unconstitutional, the length of litigation may be increased rather than decreased. Due process protection must accordingly be essential to any acceptable proposal.

### III. The Proposal Must Not Be a Forum to Re-litigate Settled Issues

Any resolution must not reopen or reconsider issues already resolved through the litigation. Over the last seven years the District Court and Court of Appeals have decided numerous issues and defined the nature and scope of the obligations owed to beneficiaries. The only appropriate approach is to use the Court's decisions to govern which methodologies are appropriate and consistent with law and the rights of beneficiaries as judicially established and confirmed.

### IV. The Proposal Must Be Consistent with Trust Law

Any resolution must be grounded in the basic and elementary principles of trust law including, without limitation, that all inferences are against the trustee and for the beneficiary. For example, if the trustee does not have documentation, then trust law says that one presumes whatever is best for the beneficiary (e.g. if the trustee has inadequate records to support a disbursement, then it is presumed the disbursement was not received by the beneficiary and should be credited to the account). Any proposal or proposed methodology must have this principle at its core or by definition it will violate the well-settled rights of beneficiaries.

### V. The Proposal Must Be Constitutional

It should go without saying that any proposal to resolve this case must pass constitutional muster. With on-going litigation, particularly where the Courts have already made final unappealable decisions about the rights of a party, as here, any resolution that does not achieve full participation by the parties and informed

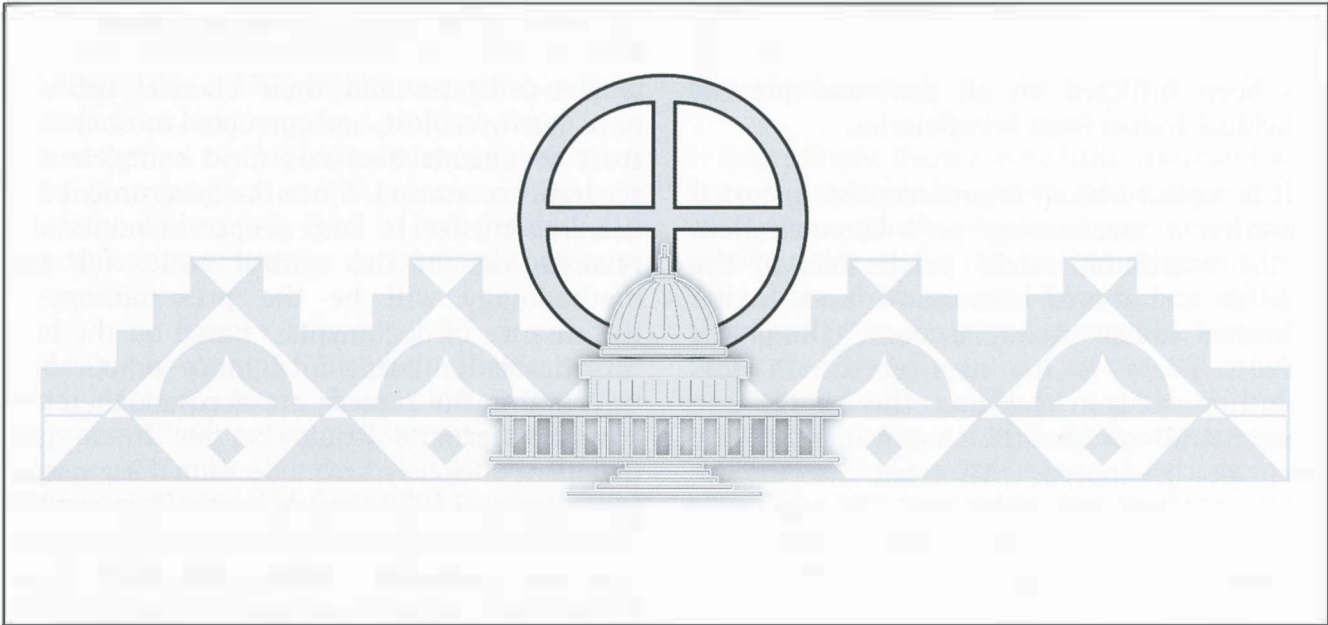
consent to the settlement process is fraught with material constitutional infirmities. The interests that Individual Indian Trust beneficiaries have in their trust assets is protected by the Fifth Amendment Due Process and Takings Clauses. Indeed, not only the actual "interest" in the asset but also any cognizable claim (i.e. the accounting) is a 5th Amendment protected property interest. In short, any legislatively imposed resolution which alters the claim in order to limit the United States' liability for the breaches of trust would necessarily violate the Constitution.

Based on these elements of an effective resolution – fairness, expediency, constitutional permissibility, consistency with judicial determinations and consistency with trust law – we can now evaluate the various resolution proposals including S.1770.

### *S.1770, The Indian Money Account Claim Satisfaction Act of 2003 Will Not Provide a Fair and Expeditious Resolution to the Cobell Case*

One proposal, Mr. Chairman, is Senate Bill 1770, "The Indian Money Account Claim Satisfaction Act of 2003" that you have recently introduced. While we appreciate and understand that the stated intention of the bill is to bring about a fair and expedient resolution of the *Cobell* case, as currently drafted, it, unfortunately, will result in fundamental and pervasive unfairness to hundreds of thousands of individual Indian trust beneficiaries, more undue delays to the resolution of this case because of the creation of a separate forum with undefined rules of procedure, would undermine the integrity of the judicial process, vitiate hard won rights of individual Indians, and violate constitutional due process safeguards.

Since this bill was introduced only last week, we have not had a full opportunity to evaluate in necessary detail all the constitutional implications of the proposed legislation and therefore our comments here should not be considered complete. But we have seen enough to know that this proposal is deeply flawed. As we read it,



S.1770 would commence, from scratch, a new process using unknown and unidentified “experts” picked without plaintiffs’ or the Court’s consent – to determine how to perform an accounting. The proposal would have the perhaps unintended consequence of unsettling settled aspects of this case and reverse judgments already rendered by the Federal District Court and the United States Court of Appeals. Below, we set forth some obvious examples of the disabling problems associated with this proposed legislation.

To begin with, we believe that certain provisions of the Findings section of the bill are just plain wrong. For example, § 2(a)(3) states in pertinent part that “the court ordered historical accounting... will not result in significant benefits to the members of the class.” In fact, the seven and one-half year record of the case categorically rebuts this statement. An accounting action is universally recognized as the principal method for a trust beneficiary, in equity, to compel a trustee to account for his or her conduct in the administration and management of the trust as well as all items of the trust. Here, as in all other trust cases, plaintiffs have asked the Court to force the trustee-delegates to account, restate, and correct account balances in conformity with that accounting. To the extent that the trustee-

delegates cannot prove what has happened to the trust assets or any particular transaction, they are presumed to owe that amount. This is a restatement of more than 500 years of trust law. Thus, at the completion of the accounting, plaintiffs will have secured a multi-billion dollar correction and restatement of the Individual Indian Trust balances. Contrary to the erroneous assertion in S.1770, such a correction and restatement are obviously of “significant benefit” to the *Cobell* plaintiffs who have had to endure generations of malfeasance and irreparable harm in the management of their trust assets.

Perhaps the most deeply flawed aspect of S.1770 is the attempt to re-define an accounting, as if it needs definition and does not have settled meaning in the law. Section 3(1) of the bill makes the determinate and objective term “accounting,” indeterminate and wholly subjective. The United States Court of Appeals has held that the nature and scope of an accounting is “black letter law;” the standard is clear and unequivocal and it applies to all trusts, including the Individual Indian Trust. When there is a dispute between a trustee and a beneficiary, the Courts know which side prevails because of the clarity of governing fiduciary duties and concomitant standards. Sadly, S.1770 purports to turn trust law on its head and retroactively

reverse a final judgement of the U.S. Court of Appeals, exacerbating the irreparable harm that has been inflicted on all past and present individual Indian trust beneficiaries.

It is replaced by an unprecedented, distorted definition of “accounting” as “a demonstration, to the maximum extent practicable, of the monthly and annual balances of funds in the individual Indian money account.” (Emphasis added). There is no requirement in this definition that in deciding the appropriate “demonstration,” that the chosen methodology must be in accord with trust law or the judgments rendered in this case. This failure is a monumental one and would result in an unconstitutional taking of the property rights of beneficiaries.

Take one example, although most surely not the only one. In trust law, it is well-settled that in performing an accounting, all inferences are against the trustee and for the beneficiary. The reason is that the trustee has possession of all the records and has a duty to keep proper accounts. Thus, as explained by the leading trust law treatise:

If the trustee fails to keep proper accounts, all doubts will be resolved against him and not in his favor. The trustee is in the position to know all the facts concerning the administration of the trust, and obviously he cannot be permitted to gain any possible advantage from his failure to keep proper records. Such expenses and costs as may be incurred because of the failure of the trustee to keep proper accounts are not chargeable against the trust estate but are chargeable against the trustee personally. (IIA Scott on Trusts, § 173)

Rather than be faithful to this rule of law, S.1770 dismisses it. And instead of the necessary presumption that is, for all the right reasons, protective of trust beneficiaries, S.1770, provides a standard that is decidedly hostile to the victims of the malfeasance – directing that the

methodology be one that is merely “practicable.” It is a matter of record in this case that the trustee-delegates and their counsel willfully have destroyed, lost, and corrupted most critical trust documents necessary for a complete and accurate accounting. Since the government has failed as trustee to keep proper accounts and records, one of the central issues for any methodology will be the presumption in the absence of documents. Based on the best “practicable” language if it is more “practicable” to presume the records are accurate then the appointed experts would be free to do just that. But obviously such a decision – seemingly permitted by S.1770 – would be wholly in conflict with the governing legal standard that presumptions are against the trustee, particularly where as here the trustee has engaged in the spoliation of trust records.

By failing to ensure that trust law governs – including the axiomatic principle that all presumptions are against the trustee and for the beneficiary – S.1770 may be construed to allow a methodology that further victimizes individual Indian trust beneficiaries. It is not for Congress to retroactively change the definition of an accounting in an attempt to tilt the scales of justice to the detriment of 500,000 individual Indian trust beneficiaries.

Moreover, opening up the term accounting to re-definition will merely incite the parties to re-litigate issues already decided by the Court. For over seven years, questions as to the nature and scope of the accounting to be provided have been at the heart of this case. Those issues are now fully resolved. To the extent that Interior is unhappy with those judicial determinations, they will obviously re-try them before this newly created forum unmoored from legal norms and dictates of law. In this way, S.1770 rewards Interior for its practice and policy of delay and document destruction over the last seven years and will result in the elimination of some of the most crucial rights of the beneficiary class.

The second provision of the accounting definition goes from bad to worse. The *Cobell*



Court has rejected Interior's argument that they need not account for pre-1938 dollars in the IIM accounts. But S.1770 would purport to reverse that decision and require only that there be a determination of "probable balances" – a term alien to trust law and the basic concept of fiduciary duties; one that is indisputably and directly contrary to prior decisions of the Court of Appeals.

A simple example may help illustrate the issue. If Interior has a account ledger that says there was \$2000 prior to 1938 that was derived from a particular allotment and all the money was paid out to the beneficiary, but no supporting documents were located, is the "probable balance" as of 1938 zero dollars? Arguably, yes since no documents exists to disprove that clearly erroneous "probable" balance. If so, by simply destroying incriminating evidence, the trustee-delegate would be rewarded by this Congress for its breach of trust duties that the United States government owes to the *Cobell* plaintiffs. Under these circumstances, the greater the destruction – the more liability the trustee-delegate would evade. In essence, based on the language of S.1770, for pre-1938 dollars, the rule imposed seems to be that presumptions are against the beneficiary and for the trustee – the opposite of the rule of law for non-Indian trust beneficiaries in this country.

Furthermore, this legislation will do nothing but cause more delay. Mr. Chairman, in your letter to us of April 8th of this year, you mentioned the protracted nature of this case. Indeed, we have been in litigation for over seven years. And the record is unmistakably clear as to which party is responsible for the delay – it is the government. The government has destroyed documents, intimidated witnesses, violated court orders, lied to a United States District Court judge and this Congress, and repeatedly breached its trust duties. Indeed, the government argued for nearly five years that it did not even have a duty to account even though Congress reconfirmed in 1994 that they must account for "all funds." For four years we were forced to address – repeatedly – that untenable

claim while the trustee-delegates hoped that this Congress would bail them out of the mess they alone created.

Accordingly, there can be little argument who is responsible for the protracted nature of this case. Importantly, the perhaps unintended consequence of S.1770 is that it would both reward the government's delay tactics and give them incentive to delay further. The reward is that after the long hard battle to confirm unequivocally the right of individual Indian trust beneficiaries to a "full and fair accounting," S.1770 would purport to relieve Interior of that obligation and encourage the government to re-litigate that issue before the IMACS. Not only that, the issue before IMACS will not be governed by trust law, but rather a clearly inferior standard that is susceptible to cynical manipulation – that which is "practicable." In addition, the legislation will allow direct communications to members of the class without due process protection, creating grave risks of further deceptions and harm.

Even though the provision as presently written is "voluntary," that does not mean that it is constitutional. To pass constitutional muster, the provision would have to, among other things, ensure due process protections such that decisions made by beneficiaries are based on knowing and fully informed consent. In effect, these beneficiaries would be consenting to the forfeiture of their vested property rights that are protected by the Fifth Amendment to the Constitution.

Also, it is not clear how S.1770 would expedite resolution. Because the alternative process does not offer adequate protection of beneficiary interests, we suspect that the vast majority of beneficiaries would eschew this woeful alternative. In any case, we can all agree that out of a class of more than 500,000 trust beneficiaries – a few thousand may choose the legislated process and others will remain in the litigation where their rights are fully and fairly protected. The end result will be that instead of a streamlined all-in-one adjudication through the class



action, you will have separate individualized adjudication – perhaps 2,000 or 3,000 individuals who will never be fully informed about the nature and scope of their trust assets – and also the on-going class action.

Moreover, the transaction expense for this costly approach will be borne by the beneficiary-victims of the mismanagement, because they could no longer rely on class counsel to protect their interests. They will need their own individual counsel and pursuant to the bill will have to pay such counsel out of the sorry judgment they would likely get. By contrast, in the class action, the government as malfeasant trustee must bear the cost because the beneficiaries are “prevailing parties” pursuant to the Equal Access to Justice Act and otherwise.

If instead, Congress decided that they would then make this separate model delineated in S.1770 mandatory, that would make the situation worse still. First, such a mandatory settlement would be unconstitutional on its face as it would violate both the Due Process and Takings clauses of the Fifth Amendment, not to mention Separation of Powers Doctrine.

## CONCLUSION

The bottom line, Mr. Chairman, is that S.1770 as currently drafted is deeply hostile to the interests of Indian Country generally and individual Indian trust beneficiaries specifically. It will not lead to a fair resolution. It will not expedite a resolution. The only thing it will do is lead to more protracted litigation and undermine the rights that it has taken us seven years to secure through the Courts. S.1770 is divide and conquer through legislative fiat.

By contrast, mediation offers the possibility to resolve this case fairly and expeditiously consistent with equitable considerations, due process and the Constitution. We support it. Tribes support it and this Committee has previously voiced support for it. Only the Secretary of Interior – who has lost every phase of this case in Court is refusing to come to the settlement table. It is incumbent on this Committee to require the Secretary to participate in settlement discussions and bring this dispute to a just conclusion in the interests of the beneficiaries and the taxpayers. ☼

## NARF helps launch "TEDNA," a new national organization for tribal education departments

"What about 'T-E-D-N-A,'" asked Monica Martens, the assistant librarian for the National Indian Law Library (NILL), one day in September, 2003. "That would stand for 'Tribal Education Departments National Association.'" Monica was speaking to those present around the round wooden table in NILL's conference room in Boulder, Colorado: Melody McCoy, NARF Staff Attorney; David Selden, NILL Head Librarian; Chris Pereira, NARF Systems Administrator; and Lisa Yellow Eagle, NARF Legal Assistant, as well as three people participating in the discussion by telephone conference call: Jerome Jainga, Director, Education Department, Suquamish Tribe in Washington; Quinton Roman Nose, Director, Education Department, Cheyenne-Arapaho Tribes of Oklahoma; and Joyce Silverthorne, Director, Education Department, Confederated Salish and Kootenai Tribes of the Flathead Reservation in Montana.

There was a pause. Then a soft echo. "TEDNA," said Jerome. Then, louder, he said, "I like that!" "Me, too," said Joyce. "Sounds good," said Quinton. "It's better than anything that I've come up with," said Melody. And, so, TEDNA it was. But what is TEDNA?

TEDNA is a new, non-profit, national membership organization for Tribal Education Departments (TEDs). It was founded largely by a grant of \$20,000 from the U.S. Department of Education to NARF. In many ways, the grant acknowledges NARF's fifteen years of helping establish and advocating for the TEDs of American Indian and Alaska Native tribes. It also marks a new era for TEDs at the national level, and at the local level it promises access to needed information and new resources to aid tribal students.

### Indian Education today

There are about 500,000 American Indian and Alaska Native elementary and secondary students

in the United States. About 450,000 of them attend state public schools, even on or near Indian reservations. About 50,000 tribal students attend schools that are operated either by the U.S. Bureau of Indian Affairs (BIA), or by tribes under contracts with or grants from the BIA.

Reports and data show that many of these tribal students suffer from disproportionately low achievement scores, graduation rates, and educational attainment levels. In some places, drop out rates for tribal secondary students are at sixty per cent, or higher. Of those that stay in school, about eighty per cent nationwide are testing below proficiency in math and reading.

### How Federal policy has affected governance of Indian education

It was not always this way. Before contact with non-Indians, tribes alone governed the education of their members. Tribal education processes, content, and goals were effective as evidenced by thriving tribal cultures and economies. Since the founding of the United States, however, ill-advised federal laws and policies have stripped tribes of their control over education.

In hundreds of treaties with Indian nations, the federal government promised to provide education as part of its payment for the lands ceded by tribes. These treaty provisions, and similar promises made to non-treaty tribes, led to the establishment of federal Indian schools and federal Indian education programs.

While perhaps initially well-intended and even actively sought by some tribal leaders, the federal takeover of governance of Indian education has ended up costing tribes dearly. After the American Civil War, the federal government sought to eliminate tribes and assimilate Indians into the mainstream American society. The federal Indian schools were an important means of effectuating assimilation. In addition,





*Presentation at NCAI Conference November 2003.*

tribal land bases were reduced and tribal governments were disallowed. Tribal control over many aspects of their societies, including education, was lost.

By the late nineteenth century and continuing into the twentieth century, the assimilation policy was criticized harshly. At least with respect to education, the criticism was justified. The conditions at many of the federal Indian boarding and day schools of that period were physically and emotionally damaging to the students.

The federal government responded by transferring governance of Indian education to the states. Throughout most of the twentieth century, American Indian and Alaska Native children were expected to be welcomed by and integrated into the public schools. This was despite the original promises of the federal government to tribes, already eroded by land cessions and assimilation, that tribes would be self-governing – meaning that their homelands would be under federal protection and not subject to state governments.

In the 1960s, largely due to the interest of then-Senator Robert Kennedy, the progress and treatment of Indians in the state public schools was reviewed by the U.S. Senate. The Senate

Subcommittee on Indian Education reported that state public schools were failing to educate Indians, just as their predecessor federal Indian schools had done.

This prompted yet another shift in federal Indian policy. Since about 1970, federal policy has emphasized Indian self-determination and tribal self-government. These policies are reflected in many modern federal Indian laws, including the Indian Education Act of 1972; the Indian Self-Determination and Education Assistance Act of 1975; and, the Tribally Controlled School Grants Act of 1988.

The modern laws generally allow tribes to operate schools and education programs formerly run by the federal government. And, the original treaty provisions and promises are still valid – they have been construed by the federal and state courts as continuing to impose a duty on the federal government to provide educational funding and services for Indians. But only ten per cent of tribal elementary and secondary students today attend tribal or the remaining federal Indian schools.

Ninety percent of tribal students attend state public schools. Public school education standards, curriculum, and goals are set by the states.

Even under the modern laws, meaningful tribal input into – let alone governance of – these schools is extremely limited. It has been manifested primarily by Indian parent committees, not tribal governments. Indeed, by any standard, primary governance of the formal education of most Native Americans at this point in time is vested in the states.

### Tribal Sovereignty and Indian Education

Tribal sovereignty – political authority and autonomy – is grounded in the U.S. Constitution and other federal laws. Under any definition, the exercise of tribal sovereignty in the past thirty years, supported by the federal policies of Indian self-determination and tribal self-government, has increased phenomenally. Tribes today regulate and otherwise control their land and natural resources; they have instituted taxation and economic development; and, they provide many services such as roads, housing, and health care to their members.

Yet the historical stripping of tribal control over education was so effective that the majority of tribal governments have been slow to take on education as one of their sovereign responsibilities. A few tribes have begun the process to once again govern education. Given their sovereign status, this fact is not remarkable. What is remarkable is that many tribes are regaining governance of education, even without direct federal funding, and even when the education still is being provided primarily by non-tribal governments. They are doing this largely through TEDs.

### What are TEDs and What do they do?

Of the over 330 federally recognized tribes in the “Lower 48” states, about 110 have a TED. TED roles and responsibilities vary widely. Most provide leadership and advocate for education generally within their tribes and with non-tribal governments. They do these activities in coordination with local Indian and public school boards, educators, and parents. Many TEDs administer or oversee learning

programs ranging from early childhood to adult education. Some TEDs develop native language, curriculum, and teacher training programs. Many more TEDs would like to be involved in the development of and accountability for education standards, testing and assessment, and school accreditation. They care deeply about tribal students.

Because tribal populations differ, the number of students served by any one TED ranges from under fifty to over 100,000. TEDs may serve only tribal members who attend schools located on or near reservations, or they may include off-reservation and urban students within their service population. TED staff numbers also vary, from a single Director to over one hundred employees.

TEDs truly are in a unique position to make effective improvements in Indian education. Consider the tribal students who, over the course of their formal education years, are served by a number of different schools and programs offered by tribes, states, and the federal government. Typically, each school’s (or school district’s) and program’s “authority” is limited to its students. One public school district cannot govern – or may not even have information about – the students of another district. A tribal contract or grant school, or a BIA school, cannot govern the public school students, and vice versa. Only tribes have authority over their members regardless of who provides the education. They can monitor the progress and needs of their students as they journey through formal education. They can coordinate tribal, state, and federal resources for tribal students. They can do these things and others with TEDs.

### NARF’s work with TEDs

NARF began representing the Rosebud Sioux Tribe (RST) in South Dakota in developing its TED in 1987. At that time, few tribes had TEDs. NARF and the RST drafted a pioneering Education Code which the RST enacted in 1991. The Code regulates education entities on the RST Reservation, including the public schools.



It targets areas such as curriculum, education standards, teacher certification, and parental involvement. These are areas where the RST believes that tribal law, policy, and programs must supplement existing non-tribal law, policy, and programs for tribal students to succeed in education.

The RST Education Code directs the TED to track and report on tribal students' progress and needs. With data from various schools and programs, the TED publishes a comprehensive annual "State of Reservation Education Report." The RST also has developed a Truancy Intervention Program (TIP). Under the TIP, two Truancy Intervention Officers of the RST work to increase attendance in both the tribal school and the public schools. The TIP is an award-winning program that has been independently evaluated as an effective means of reducing truancy.

Under its Education Code, the RST has developed curriculum and standards in Lakota Studies for grades K-12, and the requisite teaching certification and recertification requirements. These developments occurred through a collaborative process among the TED, the tribal college, Sinte Gleska University, and the schools. In 1998, the main public school district serving the RST began integrating the standards into its regular curriculum.

NARF is currently working on developing an early child education code for the RST. The early childhood education code will coordinate the various pre-school programs operated by and serving the RST, including Head Start and Infants and Toddlers with Disabilities. It will also align the content of the early childhood education programs – including any tribal language and culture curricula – with the screening requirements of the schools into which the pre-schoolers matriculate.

At this time NARF also represents the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation in Montana, the Three Affiliated Tribes of the Fort Berthold Indian



*Presentation of \$20,000 check to NARF. (left to right) Victoria Vasques, Director OIE; Quiton Roman Nose, Director, Education Department, Cheyenne-Arapahoe Tribes of Oklahoma; Joyce Silverthorne, Director, Education Department, Confederated Salish & Kootenai Tribes of the Flathead Reservation in Montana; Jerome Jainga, Director, Education Department, Suquamish Tribe in Washington; and Melody McCoy, NARF Attorney.*

Reservation in North Dakota, the Jicarilla Apache Tribe in New Mexico, the Native Village of Nulato in Alaska, and the Kiana Village in Alaska on developing their TEDs. The TEDs of these other tribes are at various stages of development. The process by which they are proceeding is based largely on the model developed by NARF's work with the RST.

### **Sustaining TEDs – the Need for Congressional Appropriations**

Funding for NARF's TED work over the years has come primarily from private foundations including the Northwest Area Foundation, the Bush Foundation, the Carnegie Corporation, and the W. K. Kellogg Foundation. But what about the TEDs themselves? Once tribes develop them, how will they be sustained?

While Congress has expressly recognized TEDs for over twenty years, it has yet to appropriate any direct funding for TEDs. Thanks to the hard work of tribes and Indian organizations, the statutory provisions authorizing congressional appropriations are retained in the most recent federal elementary and secondary education act,



known as the “No Child Left Behind Act of 2001,” Public Law No. 107-110.

In these important appropriations authorizations, Congress articulates its view of the roles of TEDs. The authorization for appropriations for TEDs through the U.S. Department of the Interior, first enacted in 1988, provides in relevant part that, “the Secretary shall make grants and provide technical assistance to tribes for the development and operation of tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the tribe.” 25 U.S.C. Sec. 2020(a). Tribes that receive the grants shall use them “to facilitate tribal control in all matters relating to the education of Indian children...” 25 U.S.C. Sec. 2020(d).

The authorization for appropriations for TEDs through the U.S. Department of Education, enacted in 1994, provides in relevant part that, “the Secretary may make grants to Indian tribes... to plan and develop a centralized tribal administrative entity to coordinate all education programs operated by the tribe or within the territorial jurisdiction of the tribe...” 20 U.S.C. Sec. 7455(a).

These laws are extremely strong support by Congress for tribal governance in education. However, although annual overall congressional appropriations for Indian education are over \$3 billion, to date no appropriations have been made under either of these TED funding authorizations. This is primarily because the agencies – the Interior and Education Departments – do not ask for such appropriations in the President’s annual budget request. This is despite repeated requests by tribes and Indian organizations for TED appropriations.

The result is that many tribes today are in a difficult position. They may chose to fund their TEDs from the small amount of “discretionary” (that is, not allocated for a specific program) federal funding they receive. With that decision, of course, other programs will suffer. A small but growing number of tribes have sufficient non-



*Honor Song for U.S. Department of Education Office of Indian Education.*

federal revenues from which they can fund their TEDs. Even for those tribes, however, direct federal appropriations for TEDs would enable them to do much more to help tribal students.

### TEDs Gain Recognition

As tribes regain their governance of education, TEDs have gained respect from many. National organizations such as the National Indian Education Association (NIEA), the National Congress of American Indians (NCAI), and the National Indian School Board Association (NISBA), continually have supported TEDs, and have helped promote their roles and visibility.

Perhaps even more significant is the fact that in the last eight years, three state legislatures – without federal mandate – have recognized the important role of TEDs in their laws. In 1995 Wisconsin became the first state to statutorily mention TEDs, in its American Indian Language and Culture Education Program. This program encourages school districts with tribal students to include tribal language and culture in the regular curriculum. TEDs are among the entities or persons that must advise the public school boards on such programs.

In 1999 Montana became the second state to mention TEDs. Under its constitutional and statutory American Indian studies program,

Montana includes TEDs as an entity that can provide in-service teacher training. Montana also includes TEDs among the entities with whom the State must collaborate in data collection and strategic planning to improve Indian education.

New Mexico became the third state to statutorily mention TEDs in 2002. Its pathmarking state Indian education act lists TEDs as among the stakeholders and collaborators who can improve education for tribal students.

This recognition of TEDs at the state level must be credited to the hard work of tribes, TEDs, Indian educators and their counterparts at the state level, all of whom are willing to accept and even encourage a return to tribal governance of education on an equal footing with the non-tribal governments.

#### TED National Activities – The Origins of TEDNA

Since 1994, NARF and the RST, along with NIEA and NCAI, have sponsored National TED Forums at least once a year. The National TED Fora typically are held in conjunction with a meeting of NIEA or NCAI. The purpose of the Fora is to bring together TED directors, staff, and policy makers so that they can hear presentations, share information, and strategize or “problem solve” on common issues of education governance, policy and advocacy at the tribal, regional, and national levels.

A National TED Forum was held in March 2003 in Washington DC, as part of NIEA's annual Legislative Summit. At that Forum, the TED directors met with Victoria Vasques, the Director of the U.S. Department of Education's Office of Indian Education (OIE). The OIE is the federal agency with authority over the principal grant programs for which public schools serving tribal students are eligible. At that time, Ms. Vasques had only been in office for six months. The TED directors had met with her once before, on the subject of direct federal appropriations for TEDs.

At the March 2003 meeting, the TED directors discussed with Director Vasques their paramount and immediate need for a national TED web site and list serve, so that they could enhance TED communications between national TED meetings on a more regular basis. They asked for these specific TED needs to be included in any national activities grants from the OIE to organizations like NIEA or NCAI. Ms. Vasques agreed to seek a response to this matter from the Secretary of Education, Roderick Paige.

At the next National TED Forum in June 2003, in Gila River Arizona at NCAI's Mid-Year Session, Ms. Vasques announced that the OIE would be able to make a small seed grant to NARF to help the TEDs form their own national organization. With a national organization, she explained, they would be eligible for other federal grants that would help the TEDs to have more of a presence at the national level, as well as helping each TED to have more of a voice in the education of tribal students, particularly their education by the public schools.

The TED directors at the Forum in Gila River listened to and agreed with this plan. Although the idea of a separate, national organization for TEDs had been mentioned before, until this meeting there was little support for it. But things had changed; at the Gila River Forum, it was clear that the time for a national TED organization had come.

With Secretary Paige's support, OIE Director Vasques then worked with NARF to arrange for a one-time grant of \$20,000 to NARF for the purpose of establishing a new national organization for TEDs. The grant would be for one year, from October 1, 2003 through September 30, 2004.

NARF worked quickly to make the best use of the grant funds. NARF was able to secure the *pro bono* (no cost) legal services of the Portland, Maine law firm of Drummond, Woodsum, and MacMahon to prepare and file the organization's certificate of incorporation and to begin work on the organization's by-laws. It was determined that NARF's systems administrator and NILL





*TEDNA presentation at NCAI conference November 2003.*

could develop the new organization's web site in-house. NARF would host the web site for one year.

To file the certificate of incorporation, the organization needed to have a name. Hence the meeting in September, 2003 between NARF and NILL occurred with three TED directors participating by telephone. Thanks to Monica's suggestion, by the end of the meeting, it was agreed that the organization would be named the "Tribal Education Departments National Association," with the nice acronym "TEDNA." Remarkably, the web site domain name – [www.tedna.org](http://www.tedna.org) – was available and secured. And that remained unaffected when, a week or so later, the organization's name was changed to the "Tribal Education Departments National Assembly," to better reflect the sovereign status of its soon-to-be-members.

To file the certificate of incorporation, the organization also needed directors. The three TED directors who had spearheaded the effort to initiate the national organization agreed to serve as the original directors. They are Jerome Jainga, Education Director of the Suquamish Tribe; Quinton Roman Nose, Education Director of the Cheyenne-Arapaho Tribes; and, Joyce Silverthorne, Education Director of the Confederated Salish and Kootenai Tribes.

Thus, after only three months, TEDNA had a name, directors, and lawyers, and it had a web site under construction. All it needed was money.

## TEDNA Incorporates and Debuts

On October 18, 2003, OIE Director Vasques arrived at NARF in Boulder with the \$20,000 check. Members of NARF staff and NARF's National Support Committee were on hand to receive the check at a presentation ceremony which was open to the public. The three original TEDNA directors attended the ceremony and then quickly went in to a working session to draft the organization's Mission Statement and to plan the process of drafting the organization's by-laws.

On October 27, 2003, TEDNA's certificate of incorporation was officially filed in Delaware. The certificate provides that TEDNA is a non-profit membership organization for TEDs.

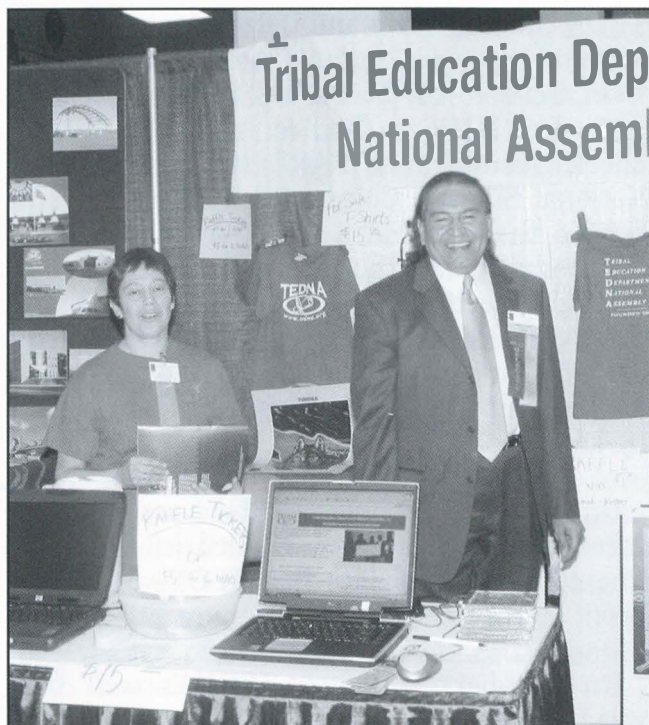
On October 30, 2003, TEDNA's web site, [www.tedna.org](http://www.tedna.org), went live.

In November, 2003, TEDNA joined the other sponsors for two National TED Forums, one on November 2nd in Greensboro, North Carolina at NIEA's Annual Convention, and one on November 16th in Albuquerque, New Mexico at NCAI's Annual Session. At both Forums, the origins and progress of TEDNA were explained, the web site was shown, and the draft Mission Statement and the by-laws' drafting process were discussed. Responses of the Forum participants to TEDNA were overwhelmingly favorable.

The general memberships of both NIEA and NCAI passed resolutions at these annual meetings in support of TEDNA and pledged to work in partnership with TEDNA to improve conditions for tribal students. TEDNA also hosted Exhibit Booths at both NIEA and NCAI, where information about the organization, including the ability to view the web site, was available, and fundraising raffles were held.

TEDNA's draft Mission Statement, including comments received at the Greensboro and Albuquerque meetings, currently reads as follows:





NARF Attorney Melody McCoy and Wallace Coffey at TEDNA booth.

It is the mission of TEDNA to

- Assemble and collectively represent indigenous sovereign nations' departments of education and associated tribal education agencies;
- Respect and honor each nation's distinct spiritual, cultural, linguistic, and economic identities;
- Foster effective relationships with other governmental and educational organizations and entities;
- Facilitate communication and cultivate consensus amongst members by, among other things, providing current, accurate, and pertinent information to members; and,
- Support and encourage each member nation's right to define and reach its own education goals for its students, families, and communities.

This Mission Statement is a draft. TEDNA plans to accept comments on it at least through December 31, 2003, and to finalize it by February, 2004.

With respect to its by-laws, TEDNA is seeking input from TEDs and interested parties on the important questions of *what* is a TED for TEDNA membership purposes. The original TEDNA directors feel strongly that this and other critical questions need to be answered through an inclusive and in-depth discussion process in Indian Country. The OIE has indicated that the organization indeed should take the time it needs to reach consensus on these fundamental points. At this time, TEDNA intends to have its by-laws finalized and ready for adoption by November 2004. At that time, there will then be an official election for TEDNA's first elected Board of Directors.

We invite you to visit TEDNA's web site, [www.tedna.org](http://www.tedna.org). It is still evolving but it contains photographs, information, and many articles of interest about TEDNA.

The web site is a top priority for TEDNA, but TEDNA is eager to join the efforts of NARF, NIEA, and NCAI in seeking direct federal funding for TEDs. TEDNA is also very interested in exploring the opportunities for funding to help TEDs set up cutting-edge student data collection and tracking systems. TEDNA would like to work with its non-Indian counterpart, the Council for Chief State School Officers on implementing the No Child Left Behind Act and other policies in a manner that will improve education for tribal students. And, TEDNA would like to help tribes that do not have TEDs develop them if they so desire.

With these ambitions, TEDNA and NARF currently are working with the OIE for a follow-up grant for fiscal year 2005 to help sustain TEDNA. Tribal governance in education and improvements for tribal students are still the overriding ultimate goals. But, at least for now, it's all about TEDNA. ☸

## CASE UPDATES

### Government efforts to thwart Indian trust funds case continue Last minute ambush by Congress blocks Indian trust accounting



The government's continuing efforts to undermine the rights of individual Indian trust beneficiaries established in the watershed *Cobell v. Norton* class action has taken a faithful turn. Congressional allies of Secretary Gale Norton have secretly slipped a rider on this year's Fiscal Year 2004 Interior Appropriations Bill that purports to delay for at least a year and a half the accounting which is legally due individual Indian trust beneficiaries.

Dubbed the "midnight rider" because it was never considered by either the House or Senate during the Appropriations process, but snuck into the Interior appropriations bill during "conference" (when the Senate and House reconcile the differences in bills they pass) breaking the established rules of both chambers. The rider rewards the pattern and practice of government delay and bad faith throughout this litigation to the detriment of the Indian trust beneficiaries' interests. Members of the House Appropriations Subcommittee on the Interior inserted this last minute language for the sole purpose of thwarting the accounting of at least \$13 billion in Indian trust funds rightfully

belonging to Indian individuals. The rider was attached to the "fire fighters bill" funding the federal government's forest fire fighting programs – making it difficult for members to vote against since the Midnight rider was not severable from the larger bill. The language was inserted without the knowledge of the House Resources Committee, which oversees the Department of the Interior. House Resources Committee Chairman Richard W. Pombo (R-CA), strongly opposed this move stating this language will "delay the resolution of the Indian trust fund accounting problem and the court case for years. It removes any incentive for the Department of Interior to go forward with an accounting or settlement while Native Americans will wait years more for their monies."

The language in the conference report states:

*That nothing in the American Indian Trust Management Reform Act of 1994, Public Law 103-412, or in any other statute, and no principle of common law, shall be construed or applied to require the Department of the Interior*



*to commence or continue historical accounting activities with respect to the Individual Indian Money Trust until the earlier of the following shall have occurred: (a) Congress shall have amended the American Indian Trust Management Reform Act of 1994 to delineate the specific historical accounting obligations of the Department of the Interior with respect to the Individual Indian Money Trust; or (b) December 31, 2004.*

On October 30, 2003, by a vote of 216-205, the House narrowly passed the \$20 billion spending bill for the Department of the Interior, which included the Midnight Rider. The plaintiffs received wide support from Democrats and were able to attract over 50 Republicans to vote against the Appropriations bill solely because of their opposition to the Midnight Rider.

The unseemly procurement of the midnight rider by both the White House and Congress moved Senate Minority Leader Tom Daschle – as well as other Senators and Members of Congress from both parties – to stand on the floor of the Senate and the House, respectively, and denounce this action as a violation of the Separation of Powers Clause and Due Process. In that regard, Senator Daschle stated that: “[T]his rider is unconstitutional. By telling the court on how it must construe existing law, Congress would be violating the constitutional separation of powers. In addition, by denying account holders a full accounting of their trust fund monies and other assets, this rider constitutes a taking of property without just compensation or due process of law.”

Speaking on the floor of the Senate, Senator Daschle noted that:

“The trust fund language inserted into this conference report – behind closed doors – would stay Judge Lamberth’s decision. It would effectively halt the *Cobell v. Norton* lawsuit and further delay justice for 300,000 to as many as a

half-million Indian trust fund account holders. This provision is unconstitutional and, I believe, unconscionable.

Partly because so many American Indians live on remote reservations, not many Americans understand what the Indian trust fund dispute is about. This dispute stretches back to the 1880s, when the U.S. government broke up large tracts of Indian land into small parcels of 80 and 160 acres, which it allotted to individual Indians. The government, acting as a “trustee,” then took control of these lands and established individual accounts for the land owners. The government was supposed to manage the lands. Any revenues generated from oil drilling, mining, grazing, timber harvesting or any other use of the land was to be distributed to the account holders and their heirs.

The government has never – never – lived up to its trust fund responsibilities. The Indian trust fund has been so badly mismanaged, for so long, by administrations of both political parties, that today, no one knows how much money the trust fund should contain. Estimates of how much is owed to individual account holders range from a low of \$10 billion to more than \$100 billion. As Tex Hall, president of the National Congress of American Indians has said, “this is the Enron of Indian Country.” In fact, it may well be bigger than Enron.

The people who are being denied justice in this case include some of the most impoverished people in all of America. More than 68,000 are enrolled members of South Dakota, North Dakota and Nebraska tribes. Some live in homes that are little more than shacks, with no electricity and no running water. They are being denied money that is rightfully theirs – money they need, in many cases, to pay for basic necessities.



The court has ordered an accounting. This rider will undermine that order. It will delay resolution and delay justice. What other group of Americans would we dare to treat this way? I don't know of one, Mr. President. Why target American Indians? Many account holders are older people, "elders" who have suffered extreme economic deprivation their entire lives. If this rider staying Judge Lamberth's ruling becomes law, as I expect it will, many of them may not live long enough to see justice. This is shameful."

As a result of the passage of this appropriations bill, the government who had previously appealed the court's ruling filed a motion for a stay on November 10, 2003, arguing that the new law, signed by President Bush on the same day, shields the Department of the Interior from the court's orders. On November 13, 2003, the U.S. Court of Appeals for the District of Columbia issued an "administrative stay" giving the parties time to file briefs as to the effect of the congressional action and whether or not a "stay pending appeal" is justified. Legal counsel for the Senate and House have both stated that the provisions of the law delaying the trust accounting are likely unconstitutional because the administration cannot dictate to the courts how to interpret existing law.

Plaintiffs will continue to challenge the Midnight Rider's effect in the Courts because it is patently unconstitutional.

Previous District Court ruling – historical accounting must go forward

The Midnight Rider was intended to prevent the Court from enforcing the "structural injunction" entered by the Honorable Royce C. Lamberth on September 25, 2003. That decision is the result of a 44-day trial that commenced on May 1, 2003 in the *Cobell v Norton* case. Plaintiffs and defendants provided expert testimony in relation to their accounting and trust reform plans submitted to the Court on January 6, 2003.

On September 25, 2003, Judge Lamberth issued a two-part opinion and an order imposing a structural injunction which further clarified the nature and scope of the historical accounting of the IIM Trust that Interior must conduct and also dictated the specific affirmative steps that Interior must take to bring themselves into compliance with their trust duties.

The Court rejected Interior's arguments that it is only required to account for funds deposited in IIM accounts open as of 1994 and that it is not required to include predecessor accounts. In a major victory for plaintiffs, the Court directed Interior to account for all funds deposited or invested in and for all assets (*i.e. lands*) held by the Indian Trust since the passage of the General Allotment Act of 1887. Further, the historical accounting must include funds paid to beneficiaries in conjunction with direct pay leases or contracts and must include funds administered by Indian tribes under self-determination contracts or self-governance compacts. Finally, although the Court largely accepts Interior's accounting methodology, it forbade the use of statistical sampling, appointed a judicial monitor to ensure compliance with the order and established a timetable which requires a full final accounting to all IIM account holders by 2007.

In a landmark ruling for IIM trust beneficiaries, as well as for all of Indian country, the Court rejected Interior's contention that common law fiduciary duties do not govern IIM trust administration. The Court held that "Congress intended to impose upon Interior the traditional fiduciary duties of a trustee, and that the scope and nature of those duties are coextensive with the duties imposed upon trustees at common law." For the first time, a federal court specifically enumerated the duties the trustee owed to IIM trust beneficiaries.

In the 18-page order issuing a structural injunction, Judge Lamberth established a timetable for Interior to meet for performing the historical accounting and fixing the system. Interior must complete the accounting for per capita and judgment accounts by September 30,

2004; the accounting of all transactions for land-based accounts in the electronic era (1985-present) by September 30, 2005; the accounting of all transactions for land-based accounts in the paper era (1887-1985) by September 30, 2006; and the cleanup of all special deposit accounts by September 30, 2007.

Two other significant rulings have occurred in recent times.

**Government Trustee cannot hide information from IIM beneficiaries**

As a general matter, all communications between attorneys and their clients are protected under the attorney-client privilege. However, communications between a trustee and its attorneys concerning the administration of a trust falls within the "fiduciary exception" to the privilege. On November 5, 2002, defendants filed a motion for a protective order seeking a broad ruling regarding the application of the attorney-client privilege and the work-product doctrine to the IIM Trust. Defendants argued that as long as the trustee-attorney communications concerned the litigation – even if the communications may touch on IIM Trust administration – the fiduciary exception to the attorney-client privilege does not apply.

On December 23, 2002, Judge Lamberth issued an opinion and order rejecting defendants' arguments and holding that the fiduciary exception to the attorney-client privilege and the work-product doctrine apply to the IIM trust administration. Defendants appealed, but citing changed circumstances, subsequently filed a motion for voluntary dismissal without prejudice. In response, plaintiffs asked the appellate court to either dismiss with prejudice or apply the law of the case doctrine as a bar to any future challenge by the defendants.

By order dated September 9, 2003, the U.S. Court of Appeals for the District of Columbia Circuit granted the defendants' motion, but dismissed the appeal with prejudice. This action by the appellate court is significant because it

affirms the district court's application of the fiduciary exception to the attorney-client privilege and the attorney work product doctrine to the IIM Trust. It is now the law of the case that under the fiduciary exception Interior, as trustee, cannot hide behind lawyers to keep information from the individual Indian trust beneficiaries.

During the course of this litigation, Interior has consistently argued that plaintiffs' claims are barred by the statute of limitations. On April 28, 2003, the Court issued an order denying defendants' motion for partial summary judgment based on the statute of limitations, or alternatively, the laches doctrine. (The laches doctrine is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as a bar in a court of equity.) In short, the Court held that the traditional rule in trust cases, that the statute of limitations does not begin to run until the trustee repudiates the trust, is applicable to the IIM Trust.

The Court rejected defendants' arguments that plaintiffs' claims for an accounting of any IIM Trust balances prior to October 1, 1984 are time-barred. The Court stated:

[T]he principle that the statute of limitations does not begin to run for a beneficiary's claim in equity to enforce the obligations of the trustee until the trustee has repudiated the beneficiary's right to the benefits of the trust is well-established in recognized treatises on trust law. The leading treatise on the law of trusts states that "the beneficiaries of an express trust are not barred by laches or by the statute of limitations from enforcing the trust merely because of the lapse of time; and it is only where the trustee has repudiated the trust to the knowledge of the beneficiaries that they may become barred from enforcing the trust."



The Court found that “the defendants have neither repudiated the existence of the IIM Trust nor repudiated plaintiffs’ right to enjoy the benefits of the trust. Instead, defendants have consistently chosen the coward’s route by failing to provide the IIM beneficiaries with the information that the beneficiaries were entitled to by law, while simultaneously insisting that they were fully complying with their fiduciary obligations to the beneficiaries.”

### Renewed Emphasis on Mediation

By letter to class counsel dated April 8, 2003, Senators Campbell and Inouye, Chairman and Vice-Chairman of the Senate Committee on Indian Affairs, stated their strongly held belief that the parties to the *Cobell v. Norton* lawsuit should pursue a mediated resolution rather than a course of continued litigation. They stated their belief that the most effective and equitable way to resolve this matter is to engage in some type of settlement process that includes a mediator or mediation team.

By letter dated May 23, 2003, NARF Executive Director John Echohawk, on behalf of plaintiffs’ class, responded affirmatively to the Senators’ proposal, stating:

First and foremost, on behalf of the 500,000 individual Indian trust beneficiaries we express our gratitude for your sincere interest in the *Cobell* litigation and your willingness and desire to see that it is resolved fairly and expeditiously. Be assured that the *Cobell* plaintiffs are now, and always have been, willing to engage in frank and honest discussions for a fair resolution of this case. However the executive branch – with the exception of Treasury – has been

steadfast in its unwillingness to negotiate such a resolution. Without your direct and active participation in the settlement process, we have no hope that the Administration will discuss these matters in good faith.

On five previous occasions, we have engaged the executive branch in fruitless settlement discussions. Each time, government officials broke promises they had made to the *Cobell* plaintiffs and rejected settlement of matters that the negotiators had resolved. And, they have never made a good faith offer to resolve the accounting matter.

[P]laintiffs are skeptical that Interior and Justice are prepared to resolve the *Cobell* case in good faith and in a fair manner. Nevertheless, with your involvement, we hope that it is possible. As a firm commitment to resolve this case as soon as possible, we hereby pledge to you that we are now – and we have always been – open to a resolution that ensures our clients are treated fairly and justly. For this reason, we welcome your efforts to begin a resolution process before the close of this year.

On November 18, 2003, almost eight months after the Senate Indian Affairs Committee requested a response to their mediation proposal, Interior Secretary Gale Norton notified the Senate Indian Affairs Committee that her department is “committed to engaging in a bipartisan effort with members of Congress and with Indian Country to resolve the issues in this litigation in a fair and honorable way for all Americans.” It remains to be seen whether or not this new commitment is one of good faith. ☼



## NEW BOARD MEMBERS



Chief Justice Elbridge Coochise, a member of the Hopi Tribe in Arizona, was elected to the Native American Rights Fund Board of Directors replacing Mary Wynne who completed three terms on the Board. After serving twenty-six years on the bench, Justice Coochise semi-retired in

July 1997, and is now owner and operator of Coochise Consulting, which provides services to tribes and tribal organizations. These services include lobbying, training, pro-tem judge, judicial services, administrative services and court evaluations. In senior judge status, he sits on the Inter-tribal Court of Appeals of Nevada, the Cabazon Court of Appeals, Mohegan Tribal Court and San Carlos Apache Tribal Court. Prior to retirement, he served as the Chief Justice of the Northwest Regional Tribal Supreme Court 1988-1997, and served as Administrator/Chief Judge of the Northwest Intertribal Court System (a circuit court system) in western Washington State 1981-

1997. He was Associate Judge in the Hopi Tribal Court 1976-1981.

Justice Coochise served three terms as President of the Northwest Tribal Court Judges Association 1988-1994. He serves on the Board of Directors of the National Indian Justice Center, Santa Rosa, California. He is an alumnus and joined the faculty of the National Judicial College, Reno, Nevada in 1993. He was Chairman of the Tribal Governance Committee of the Affiliated Tribes of Northwest Indians (a regional tribal governments organization), 1987-1997. A recognized leader in his field, Justice Coochise received the "Who's Who Worldwide Award" for Leadership and Achievement in his profession, received the "Who's Who Global Business Leader" award, and received the "Who's Who Among Outstanding Americans" award. He served as a member of the National Indian Policy Center's task force on Law and Administration of Justice and is currently a member of the BIA/Tribal Budget Advisory Committee's Judicial Subgroup. The NARF Board of Directors and staff look forward to working with Chief Justice Coochise. ☉



James Roan Gray, Principal Chief of the Osage Nation in Oklahoma, was elected to the Native American Rights Fund Board of Directors replacing Wallace Coffey who completed three terms on the Board. He is the youngest Chief in the history of the Osage Tribe of Indians.

Today he is one of the leading voices in Native America. He serves as a member of the Inter-Tribal Monitoring Association deliberating on the Federal Government's mismanagement of Native American trust funds, the National

Congress of American Indians, Council of Energy Resource Tribes, and a member of the American Indian Chamber of Commerce.

Chief Gray is also a distinguished journalist and co-publisher of the largest independently owned Indian Newspaper in America, the *Native American Times*. With his wife Liz, they have watched their newspaper grow over the years to become the leading Native American media group in Oklahoma. During his time at the *Native American Times*, Jim helped pace public debate on issues important to Native Americans in Oklahoma and across the Nation. Chief Gray's work has been recognized over the years by numerous organizations like the Native



American Business Development Center who awarded him the MED Week Award for Native Advocates of the Year along with his wife Elizabeth Gray. The Greater Tulsa Area Indian Affairs Commission also awarded him the Lewis B. Ketchum Award for Excellence in Business.

Chief Gray is much sought out speaker in Indian Country and in Washington D.C., as the leading spokesperson on Native American Issues throughout the United States. As well as testifying

in Washington D.C, he has been the keynote speaker at the annual convention of the American Indian Science and Engineering Society, the National Tribal Membership Coordinators Meeting in Las Vegas, NV and a panelist at the Oklahoma University's Native Journalism Symposium and the National Intertribal Tax Alliance. The NARF Board of Directors and staff look forward to working with Chief Gray. ☼

Billy Frank, Jr. of the Nisqually Tribe and Chairman of the Northwest Indian Fisheries Commission (NWIFC), was elected to the Native American Rights Fund Board of Directors replacing Sue Shaffer who did not seek re-election to the Board. In his capacity as Director, Mr. Frank "speaks for the salmon" on behalf of nineteen Treaty Indian Tribes in western Washington. Under his leadership, the tribal role over the past thirty years has evolved from that of activists, fighting the state to secure fishing rights reserved in treaties with the United States government, to managers of the resource. Supported by the NWIFC, the tribes are unsurpassed in their abilities as natural resource managers.

In the 1960s and early 1970s, Mr. Frank was a grass roots political activist who was frequently jailed for his role in civil disobedience, which involved taking part in numerous "fish-ins" in opposition to state authority over the tribes. Years of resistance finally paid off when the federal court ruled in favor of the tribes in *U.S. v. Washington*, know as the "Boldt Decision" of 1974. The ruling, supported by the Supreme Court in 1979, reaffirmed the treaty-protected fishing rights of the tribes. Among other things, the ruling stated that the tribes have a right to

catch up to fifty percent of the harvestable resource, and that the state and the tribes must manage the resource as co-managers.

NWIFC was formed in 1975 to support tribal fisheries management activities and to enable the tribes to speak with a united voice. In addition to helping the tribes develop cooperative fisheries plans, the NWIFC board of commissioners and the commission staff help coordinate such programs as enhancement and habitat management. This example of state/tribal cooperation has had its challenges, but it has been fundamentally successful and has inspired similar efforts in other parts of the U.S. and the world. With Frank's leadership, the NWIFC and the tribes it serves are working to protect and restore the salmon resource for Indians and non-Indians alike.

Celebrated regionally, nationally and internationally as an outstanding Native American leader, Billy Frank has been the recipient of numerous recognition awards, one of which was the 1991 Albert Schweitzer Prize for Humanitarianism. The NARF Board of Directors and staff look forward to working with Chairman Billy Frank, Jr. ☼

Lawrence "Woody" Widmark, Jr., Chairman of the Sitka Tribe of Alaska, was elected to the Native American Rights Fund Board of Directors replacing Kenny Johns who did not seek re-election to the Board. Mr. Widmark has served on the Sitka Tribal Council since 1989, and as Chairman since 1992. Over the course of his chairmanship, Mr. Widmark has sought to build and maintain stability within the Tribe and views his role as acting as a liason between tribal citizens and city/state/federal agencies and the tribal council and tribal staff. Mr. Widmark works to ensure the health, safety, welfare, and cultural preservation of more than 3,100 enrolled members of the Sitka Tribe.

In addition to his tenure on the tribal council, Mr. Widmark has served on the Baranof Island Housing Authority (BIHA) since 1989. During this time, BIHA constructed or purchased over

100 housing units for purchase or rental by eligible Native American families. Mr. Widmark also played a role in the organization and support of Alaska's tribal governments, serving on the Executive Council of the Alaska Intertribal Council since 1995. A mentor and a "Big Brother" for the past two years, Mr. Widmark is a member and the Sitka representative for the Southeast Alaska Board of Directors of the Big Brothers/Big Sisters program. In 2001, Mr. Widmark was selected by the National Education Association – Alaska as Alaska's Educational Support Person of the Year. The NARF Board of Directors and staff look forward to working with Chairman Lawrence "Woody" Widmark, Jr. ☉

Mark Brown, Chairman of the Mohegan Tribe of Indians of Connecticut, was elected to the Native American Rights Fund Board of Directors replacing Billy Cypress who did not seek re-election to the Board. Mr. Brown is a direct descendent of the powerful Mohegan Chief Matahga. He left his career in law enforcement to devote himself full-time to the Mohegan people after being elected to the Mohegan Tribal Council in 1995. During his first term, Mark focused on the development of a strong and professional public safety department to serve the soon to be Mohegan Sun. He was then elected to Chair the Justice Committee of the United South and Eastern Tribes, which represents over twenty-two tribes east of the Mississippi River.

Upon his election to the role of Chairman of the Tribal Council in October 2000, Mr. Brown immediately began the daunting task of completing the largest construction project on

the East Coast, known as Sunburst. Project Sunburst, at the cost of over one billion dollars, expanded the existing Mohegan Sun into one of the world's largest destination resorts. Under his leadership, the expanded Mohegan Sun opened with over 1,200 hotel rooms, 30 restaurants, a 10,000-seat arena, New England's largest ballroom, the world's largest planetarium, a retail mall, 6,000 slot machines, and over 10,000 employees.

Mark currently serves on the Board of Trustees for the Smithsonian's National Museum of the American Indian and the Board of the National Indian Gaming Association. He has received numerous honors throughout his career. The NARF Board of Directors and staff look forward to working with Chairman Mark Brown. ☉





The Honorable Anthony R. Pico, Chairman of the Viejas Band of the Kumeyaay Nation of California, was elected to the Native American Rights Fund Board of Directors replacing Clinton Pattea who did not seek re-election to the Board. Pico is nationally recognized among Native

Americans for his spiritual, government and business leadership. Under his tutelage as tribal chairman for 18 years, re-elected for 9 consecutive terms, and coming out of retirement to begin a new term as chairman in December 2003, the Viejas Band has become one of the most respected gaming tribes, not only for its entrepreneurial success and political advocacy of economic sovereignty, but for the example it has set for tribal government businesses in California and throughout the nation. Pico credits Viejas Band elders for their vision of economic self-sufficiency and Council Members and the General Membership for the personal and collective courage they have demonstrated in pursuit of economic sovereignty and the wise counsel they provide.

As former chairman of the California Nations Indian Gaming Association, he revived an organization, which has become the leading

advocate on behalf of tribal government gaming, representing the interests of gaming and non-gaming tribes alike. An active member of the National Indian Gaming Association's Executive Committee and the National Congress of American Indians/National Indian Gaming Association Tribal Leader Task Force on Indian Gaming, Pico founded and served as chairman of the National Inter-Tribal Relations Network, providing public relations support for the National Indian Gaming Association and the National Congress of American Indians and tribal leader groups protecting tribal sovereignty.

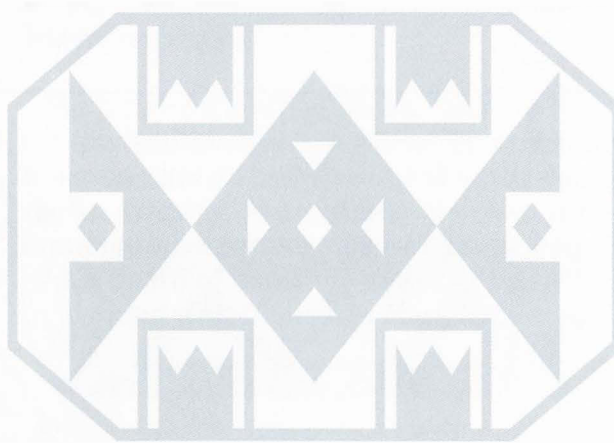
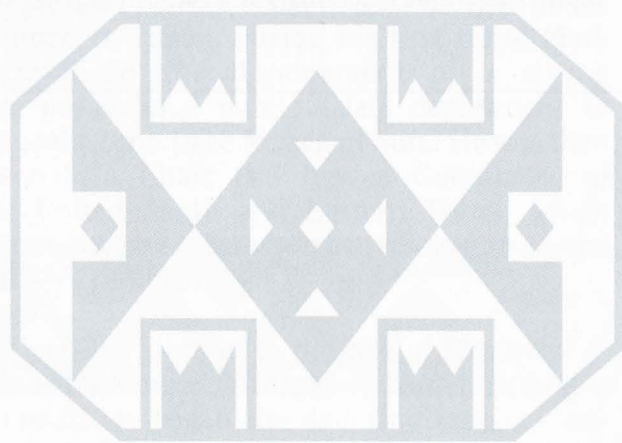
Pico has an associate degree from Grossmont College, El Cajon, Ca., and an honorary Doctorate of Humane Letters from Long Island University, New York, awarded May 14, 2000. In 2000, he was given the first John Johnson Award, by the San Diego Urban League. The Alpine Chamber of Commerce honored him with its 2000 Leadership Award and the Alpine Sun Newsmaker Award. He was the recipient of the prestigious Jay Silverheels Achievement Award from the National Center for American Enterprise Development for outstanding leadership and contributions, which improve the quality of life of Native Americans. These are but a few of the numerous honors he has received throughout his career. The NARF Board of Directors and staff look forward to working with Chairman Anthony Pico. ☉

## NEW NARF ATTORNEY



Natalie Landreth is from the Chickasaw Nation in Oklahoma (the Imatobby family). She was raised on Adak in the Aleutian Islands and in Los Angeles, California. She graduated *magna cum laude* from Harvard College in 1996 and was awarded a Radcliffe Fellowship. Immediately after graduation, she authored a *Let's Go* guide to California and Hawaii and then joined the first Office of Tribal Justice in the United States Department of Justice. She returned to Cambridge and graduated from Harvard Law School in 2001. While in law school, she served as Vice-President of the Native American Law Students Association and as Associate Editor for the *Harvard Environmental Law Review*, and clerked for the Navajo Nation Supreme Court. After graduation, Natalie served as clerk to the Honorable Dana Fabe, Chief Justice of the Alaska Supreme Court. Natalie then joined Irell & Manella in Los Angeles, California where she mainly practiced copyright law.

Natalie joined NARF in July 2003 and is currently developing tribal education departments and tribal codes for two Alaska Native villages. When completed, they will be the first of their kind in Alaska. She is also involved in lobbying against the regionalization of Alaska tribes and equal protection litigation. ☼





## NEW NARF ATTORNEY



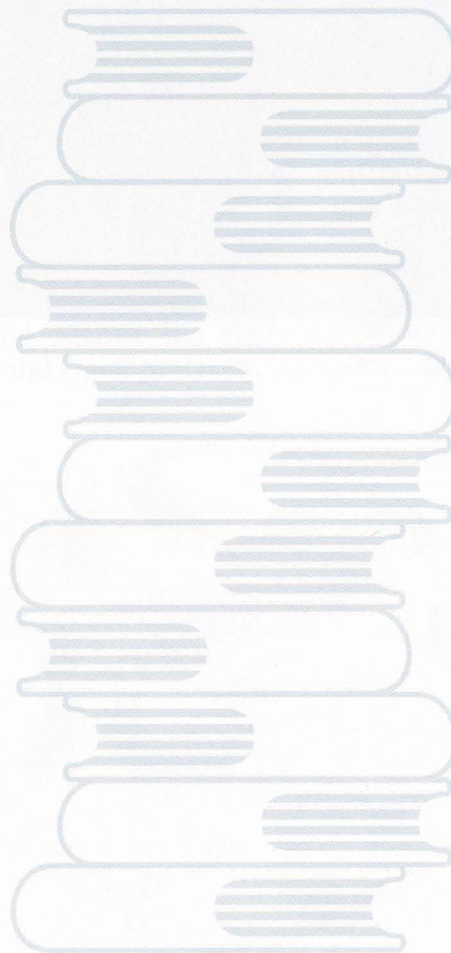
Richard A. Guest is a Staff Attorney in our Washington, D.C. office. Prior to joining the Native American Rights Fund, Mr. Guest was a Senior Associate with Troutman Sanders LLP in their Indian law practice, focusing on environmental issues, energy projects, economic development, financial institutions and telecommunications services in Indian country. Prior to coming to Washington, D.C., he served as the on-reservation tribal attorney for the Skokomish Indian Tribe and worked as an associate attorney for the law firm now known as Morisset, Schlosser, Jozwiak and McGaw, located in Seattle, Washington. Mr. Guest has represented Indian tribes on a broad range of issues in federal, state and tribal forums. He has provided legal counsel to tribal leaders and administrative staff in government-to-government proceedings, including co-management of fish, timber and wildlife, as well as the development of intergovernmental agreements on jurisdiction over natural resources, law enforcement, taxation and social services.

Mr. Guest obtained his juris doctorate from the University of Arizona-College of Law in 1994, receiving the Roger C. Henderson Award for Distinguished Graduating Senior. His thesis, *Intellectual Property Rights and Native American Tribes* was published in 1995 in the American Indian Law Review. Mr. Guest a member of the State Bar of Arizona, the Washington State Bar Association and the District of Columbia Bar. He is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Ninth Circuit, the United States Tax Court and the United States District Courts for the Western District of Washington, the District of Arizona and the District of Colombia. ☼



## National Indian Law Library

The National Indian Law Library (NILL) located at the Native American Rights Fund in Boulder, Colorado is a national public library serving people across the United States. Over the past thirty years NILL has collected nearly 10,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions in the United States; 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](http://www.narf.org). Once relevant materials are identified, library patrons can then choose to 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/nill\\_index.html](http://www.narf.org/nill/nill_index.html) or contact Law Librarian David Selden at 303-447-8760 or [dselden@narf.org](mailto:dselden@narf.org). Local patrons can visit the library at 1522 Broadway, Boulder, Colorado. ☼





# THE NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund (NARF) was founded in 1970 to address the need for legal assistance on the major issues facing Indian country. The critical Indian issues of survival of the tribes and Native American people are not new, but are the same issues of survival that have merely evolved over the centuries. As NARF is in its thirty-third year of existence, it can be acknowledged that many of the gains achieved in Indian country over those years are directly attributable to the efforts and commitment of the present and past clients and members of NARF's Board and staff. However, no matter how many gains have been achieved, NARF is still addressing the same basic issues that caused NARF to be founded originally. Since the inception of this Nation, there has been a systematic attack on tribal rights that continues to this day. For every victory, a new challenge to tribal sovereignty arises from state and local governments, Congress, or the courts. The continuing lack of understanding, and in some cases lack of respect, for the sovereign attributes of Indian nations has made it necessary for NARF to continue fighting.

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 and educating the public about Indian rights, laws, and issues. 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. ☼



**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](mailto:ramirez@narf.org).

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**Tax Status.** The Native American Rights Fund is a nonprofit, charitable organization incorporated in 1971 under the laws of the District of Columbia. NARF is exempt from federal income tax under the provisions of Section 501 C (3) of the Internal Revenue Code, and contributions to NARF are tax deductible.

The Internal Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.

**Main Office:** Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302 (303-447-8760) (FAX 303-443-7776). <http://www.narf.org>

**Washington, D.C. Office:** Native American Rights Fund, 1712 N Street, NW, Washington, D.C. 20036 (202-785-4166) (FAX 202-822 0068).

**Alaska Office:** Native American Rights Fund, 420 L Street, Suite 505, Anchorage, Alaska 99501 (907-276-0680) (FAX 907-276-2466).



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