



Legal Review

NATIVE AMERICAN RIGHTS FUND

They had nothing

Charles Wilkinson

I can't tell you how privileged I feel to be making this talk. There's no doubt about it: other than my family, the pivotal moment in my life was in October 1971 when I walked through the front door of 1506 Broadway and became a staff attorney for NARF. I have no words for all the joy and beauty that tribal sovereignty—and Indian people—have brought to my life. Thank you.

In celebration of these 45 years, I'd like to pay brief honor to David Getches, Tom Fredricks, and John Echohawk, the only directors NARF has ever had. They were all forces, each in their own way, in establishing the greatness of this organization, and carried the high ideals of NARF in every part of their careers. Thanks to you three.

**"They had nothing." "They had nothing."
"They had nothing."**

I'm writing a history of the Boldt decision and last spring had the pleasure of spending several weeks in Seattle, where I could interview many of the people involved in that historic litigation. During those interviews three attorneys, two from the tribes and one from the state of Washington, independently volunteered and emphasized the words I just spoke to you. "They had nothing."

I asked each of them to explain what they meant by that phrase. They mentioned the grinding poverty—60% unemployment would be a conservative figure around 1970. They variously mentioned physical factors such as the universal lack of indoor plumbing and electricity, the absence of paved roads, and the housing, most of which qualified as shacks. They also emphasized the health problems and the very limited educa- ▶



tional opportunities. They pointed to the other factors indicating the terrible state that Indian people in Northwest Washington found themselves in. Of course, Indians all across the country were enduring similar conditions.

▶ They Had Nothing - Charles Wilkinson	page 1
▶ Case Updates	page 7
▶ NARF mourns passing of former Board member Barbara Smith	page 11
▶ NARF 45th Anniversary Photo Essay ..	page 12
▶ New NARF Board Members	page 16
▶ National Indian Law Library	page 17
▶ Calling Tribes to Action!	page 18
▶ NARF	page 19
▶ NARF Board	page 20



They had nothing. It was for exactly that reason that Vine Deloria Jr., Charles Lohah, David Risling, and a few other Indian people wanted to establish a national organization dedicated to vindicating the legal rights of Native American people.

Of course, although Indian people lacked a great many things, it was not literally true that in the late 1960s they had nothing. They still had the most important thing, their vibrant cultures, demeaned and battered to be sure, but still very much part of their minds and hearts. Nonetheless, the national government, the states, and local citizens had taken away a lot and suppressed much of what they didn't take.

They took away the indigenous economies. Even today Indian people, when asked to describe their financial well-being before the white people came, will say that "we were rich." That is an economic fact, not a romantic construct, for the original economies were much more substantial and elaborate than is commonly realized by non-Indians. In the Pacific Northwest, for example, tribes developed elaborate economic markets—reaching down to the Columbia, well up into Canada, and to the crest of the Cascades and beyond—for the trade and sale of deer and elk meat and, especially salmon and other marine specialties. Then, the new people came and, after spending decades benefiting from the vigorous native economies, overran those economies with their technologies and capitalism. In ways we can't fully comprehend, the outsiders could never get beyond the ironclad assumption that Indian people were inferior and that the God-given mission of the westward expansion was to eliminate all native institutions, regardless of how valuable they might in fact be.


They took away the land. They didn't get all of it, because the tribes retained enough military

capability at treaty time to prevent that. After the treaties many people, both political leaders and common citizens, stoutly believed—and there is far too much truth in it—that if you took away the land you would eventually erase the culture. John Wesley Powell, the great explorer, policy maker, philosopher of the West, was explicit about it. He strongly and cravenly supported allotment in the late 1880s because, if you could wrench the land away from the tribes, especially the sacred places, you could wrench away the culture as well. That would, he and others believed, hasten the moment when the vanishing Indian would become the vanished Indian which, after all, was the ultimate objective of national policy.

They outlawed many of the old dances and ceremonies. Is there a darker chapter in the story of the First Amendment than the BIA's relentless regulatory crackdown on Native dances and other customs? Some traditional practitioners carried out their ceremonies in the dark, in basements or other hard to-find locations, but for many the threat of punishment was too real and too severe. Besides, the crackdowns came in other forms, as in the Pacific Northwest where BIA employees simply torched traditional dance halls.

They suppressed the languages, the ultimate expression of culture and worldview in all societies. BIA and boarding schools prohibited native tongues, often washing out boys' and girls' mouths with yellow lye soap if they spoke them. Government officials and people in town scorned and ridiculed Native speakers.

They directly hit Native families. Parents and children were both pressured hard so that the young people would go to the boarding schools, meaning that these family members would be away from home most of the year. In the schools, they would suffer nothing less than indoctrina-



tion. The students would be told “don’t pay any attention to your grandparents. They are old fashioned. Ignore them and you have a chance to become a real American.” Inexcusably, federal officials stood idly by in the post-World War II era, when states and churches began aggressively removing—sometimes amounting to kidnapping—Indian children from their homes and obtaining state-court adoption papers in favor of non-Indian.

They took away something else. They took away hopes and dreams and optimism and individuality. They took away the right to be yourself.

And, by the late 1960s and early 70s, many policymakers were still defending and pursuing the current policy adopted by Congress in 1953: outright termination of treaties, reservations, and federal obligations to tribes.

It was into this cauldron of circumstances that NARF was created 45 years ago. Vine Deloria Jr., put it right: “We better win this one because, if we don’t, there won’t be another.”

Not that NARF was seen as the be all and end all. Many organizations would be needed, as well as building capacity in the tribes themselves. Still, tribal leaders at the time placed great emphasis on the need for lawyers and law reform. Indian people and tribes are subject to many laws and regulations, and the field is known for its complexity. The new legal services firms on or near reservations were already making their presence felt and some capable attorneys practiced Indian law in private firms. The hope, and that hope has more than borne itself out, was that NARF could play a particular role in addressing national issues, becoming a substantial firm with excellent lawyers, and representing Indian individuals and tribes who needed attorneys on

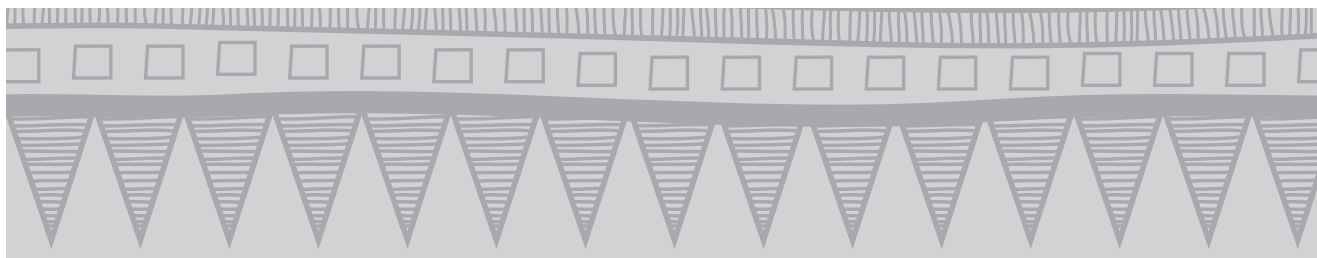
pressing matters that raised issues of national consequence but who could not afford to pay lawyers.

From the beginning, one of NARF’s strengths has been its vision in prioritizing its work, first to meet the situation just described and, over time, to gradually adjust its work to meet changing circumstances as tribes made many advances and new kinds of needs emerged. This ability to meet the particular challenges of particular times becomes ever more evident when we look at NARF’s accomplishments in the early years up through today.

NARF’s work also has been marked by what was mostly an unexpected result. For lawyers in private practice, and back in those days private practice was most of what law was, attorneys work was mostly self-contained. You worked on a single project, like a contract, will, corporate charter, or lawsuit. The results might benefit the client, maybe a lot, but they would be mostly limited to that specific project.

It turned out that NARF’s work has been much more than that. This was partly because it involves public law, partly because of the particular circumstances of Indian country. One example, though it is somewhat more diffuse than others I’ll mention, involves one of NARF’s core concerns, tribal sovereignty. We have seen, over these 45 years, how an advance in one discrete area of tribal sovereignty, whether it be education, health, water rights, jurisdiction, or other, that that this one victory will likely increase, even if slightly, the general respect of outsiders for tribal sovereignty. And, over time, increased respect for tribal sovereignty will arch toward the establishment of still broader and deeper substantive tribal sovereignty.





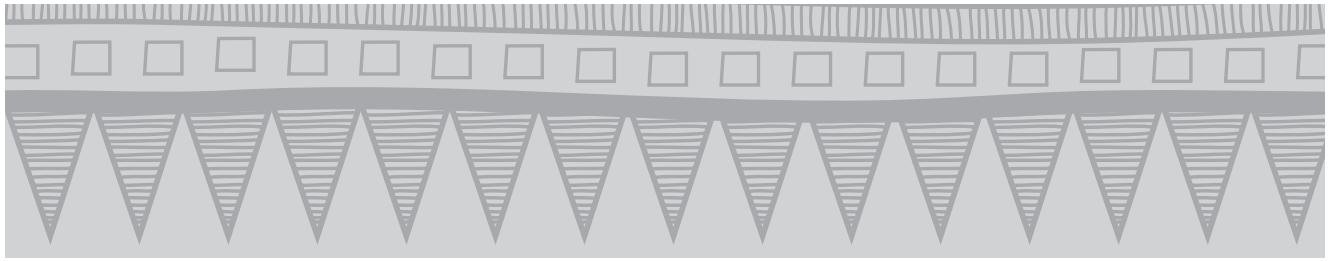
Now, from the vantage point of 45 years, we can see this dynamic in Technicolor from the way that NARF's work has played out. The extraordinary 1974 ruling by Judge George Boldt in *United States v. Washington*—which mid-19th century treaties guaranteed to tribes the right to harvest 50% of the salmon in Northwest Washington—has turned out to be even more historic than the decision seemed at the time. Judge Boldt ruled that, as sovereign governments, tribes could regulate fishing. Immediately, the tribes formed natural resource departments, drafted regulations, set up enforcement systems with officers, hired fisheries scientists, and established or upgraded existing tribal courts. These were perhaps the first modern regulatory systems in Indian country. Then, seeing how well the fisheries agencies worked, the Northwest tribes began setting up tribal agencies for education, health, land-use planning, and other purposes. They joined together to create the Northwest Indian Fisheries Commission, with deep expertise in science and policy, one of the first inter-tribals. In time, the judicial recognition of tribal management authority, coupled with these other efforts, led to the comprehensive regime in the Northwest for co-management of the marine fisheries among the United States, the tribes, and the states.

The wave of changes initiated by the Boldt decision went beyond fisheries in ways in addition to those already mentioned. Today, the Northwest tribes are elaborate and substantial sovereign governments, with most of them having more than 300 governmental employees, not counting gaming and other enterprises. Tribal leaders regularly point to the Boldt decision as the triggering point for their modern revival. To be sure, NARF has never gone it alone and virtually always has coordinated with other people and organizations. In the Northwest, Billy Frank Jr. and other

tribal leaders and activists, and Judge Boldt himself, played major roles. So did legal services attorneys and private practitioners who were willing to bill for below their normal fees. But David Getches was lead counsel, and he knocked around many ideas with attorneys back in Boulder, and to this day Northwest Indian people honor NARF's central role in that landmark lawsuit that led to a thoroughgoing reformation of tribal organizations reaching far beyond the bounds of the actual issues decided in the case.

Much the same can be said about NARF's role in other contexts, then and today, as a significant contributor to the modern tribal movement.

This dynamic was at work in *United States v. Michigan*, where NARF played a sturdy role in that case and in the tribal revival in the Upper Great Lakes area. So, too, with Menominee Restoration in 1973, which led directly to the restoration of all terminated tribes, the recognition of non-recognized tribes, and the formation by all of those tribes of active and effective sovereign tribal governments. Menominee restoration could never have happened without the energy and talent of Ada Deer, Sylvia Wilbur, and other Menominee leaders and activists, but NARF played an effective role there also. Many of the revived Eastern tribes have built their modern operations upon the Eastern land claims cases, where NARF broke new ground. At Pyramid Lake in Nevada, the Pyramid Lake Paiutes and its leaders achieved true comprehensive watershed restoration throughout the Truckee and Carson watersheds, and then put together expanded tribal governments in the fashion seen in the Northwest, but it never could have happened without the all-out commitment to the litigation by the Native American Rights Fund.



By the mid-1980s, Walter Echo-hawk, with help from Steve Moore, was hard at work fulfilling one of his life's passions, combatting the scourges of excavating and stealing of traditional cultural objects and human remains. Numerous lawsuits and negotiations finally funneled into the Native American Graves Protection and Repatriation Act of 1990, one of the most luminous accomplishments for NARF and all of Indian country. Essential to NAGPRA was the effort put in by religious practitioners, who patiently explained, often in their own languages, the horror of the problem and how deeply Indian people wanted to make inroads into it. It also was an occasion where the beauty of the law, which we do not often enough witness, can be seen in full flower due to the legal genius, traditional roots, and all-out commitment of Walter Echo-hawk, who, through NAGPRA, changed the world.

Over the past 20 years or so, NARF has both solidified its position as a main guardian and coordinator of the whole field of Indian law and, as well, has moved into new and exciting areas. From the beginning, NARF saw itself a watchdog for the whole field, yes, but the field was a lot smaller and less complicated back then. Now there are many more participants and kinds of participants. Nonetheless, NARF has continued its sacred obligation to represent tribes with limited resources and significant legal needs and, as well, maintains its centrality in the national Indian law community.

For example, NARF long had a practice of filing amicus briefs in every Supreme Court case involving Indians but since 2001 we have had the Tribal Supreme Court Project, where NARF has a lead role. No, we haven't had a lot of great results, but that is due to the Court, not us. This project, working with attorneys across Indian country, has built a solid system for putting our

cases before the Court in the best possible light. Strategies such as whether and how to handle cert are addressed in great depth. Once in the Court, briefs, including amici, are polished and the cases are argued by the best lawyers. It isn't easy—the 90-party conference calls are horrid—but the Tribal Supreme Court Project has become a necessary, effective, and permanent cornerstone of tribal advocacy.

The trust relationship has long been under fire and we must protect this foundational doctrine as best we can. NARF sees itself as the watchdog for the trust and large results followed from Elouise Cobell's call to John Echohawk to do something. In the end, the individual allottees received less than they deserved but the payments were reasonably substantial. The land buyback provisions have already returned some 1.5 million acres to tribal ownership and there is more to come. Most of the tribal cases, which were legally difficult, have settled, and the results have been highly favorable to the tribes.

NARF's consistent, long-time commitment to foundational issues in Indian Law, and in Indian country generally, can also be seen in NARF's efforts in education. The reality was and is that a majority of Indian children are educated in state schools, many of them off the reservations. Early on, recognizing the connection between sovereignty and education, NARF was a strong supporter of the movement for Indian-controlled schools, a grassroots effort to increase the number of Indian people on state school boards. Over time, the mission was expanded and for the past several years NARF, with Melody McCoy the champion, has been a leader in achieving considerable success in creating tribal education codes that apply both on the reservations and in state schools.



NARF has taken a leadership role in yet another foundational and complex area, the settlement of tribal water rights cases. From the beginning, tribes looked to NARF for leadership. In the 1980s, NARF made contact with the Western Governors Association and the Western States Water Council and they joined in an effort to set a context for settlements, in recognition of the fact that, for all water users, including tribes, settlement can often be the preferred option over litigation. A major conference has taken place every two years and the doors of water users, the state offices, and the tribes remained open. Congress has enacted 29 water settlements with NARF attorneys handling nine of them and offering advice in most of the others. There is still more work to be done, and NARF will be right in the middle of it.

Native people know their homelands and, far more than most, understand the destructive march of climate change. Tribal villages in Alaska, Northwest Washington, and elsewhere have already been affected by rising ocean waters. All across the country, Indian people are seeing and feeling the impacts on forests, rivers, rangeland, and animals. NARF is working to assure that tribes will be treated as sovereigns in state and federal assessments and planning for public land and water resources.

The climate change work dovetails with NARF's involvement in international issues where, since 1999, the organization, often representing NCAI, has been active in the adoption. Among other things, for the past six years NARF has steadfastly participated in the elaborate UN Framework Convention on Climate Change process. Progress has been painfully slow but the stakes are high and NARF will continue to press for full recognition of the special circumstances, and rights under the UN Declaration, of American Indians and other indigenous peoples.

As you know, there is much more to tell about this extraordinary organization that itself, has changed the world. But, oh, would I ever be remiss if I didn't mention one other part of NARF: the Anchorage office—NARF North. The specifics vary across Indian country but every tribe is burdened in some significant way by the weight of history. Alaska is as bad as it gets. The Alaska Native Claims Settlement Act, passed in 1971, was an abject horror and for nearly half a century state and federal officials used every part of it they could in their crusade to brutalize Native land, sovereignty, economy, and culture. Larry Aschenbrenner and Bob Anderson fought back with everything they had and, amazingly, staved off a lot and made some progress. Now we have those four wonderful lawyers up there, Heather Kendall-Miller, Natalie Landreth, Erin Doutherty, and Matthew Newman. They've taken on about every issue you can name in that big state, from voting rights to Indian Child Welfare Act to water and fishing and hunting rights to land into trust. And, somehow, ultimately, after the Supreme Court's *Venetie* decision—about as wrong-headed and devastating as court opinions get—they have, impossibly, piece by painstaking piece, made significant progress in resurrecting the sovereignty that seemed lost forever.

So, I'd like to finish off by offering a hearty toast to the attorneys, staff, and board, past and present, of NARF North, and of NARF nationally, who have carried so high the banners of Native people, their sovereignty, the human spirit, and the very best law firm there ever was.

A TOAST!!! 🍷

CASE UPDATES

National Indian Child Welfare Act Defense

In January 2015, the Bureau of Indian Affairs (BIA) published its new revisions to the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings. The new Guidelines represent major progress in addressing many of the problematic areas which have arisen since the Indian Child Welfare Act (ICWA) was enacted in 1978 – such as the Existing Indian Family exception, which the Guidelines expressly repudiate. In February 2015, the BIA announced it intended to take its reforms even further by proposing, for the first time ever, to promulgate binding federal regulations governing the implementation of ICWA. These reforms, however, have drawn the ire of ICWA opponents nationwide.

The first response from ICWA opponents came on May 27, 2015, when the National Council for Adoption (NCA) filed a suit against the BIA in federal district court for the Eastern District of Virginia. The case, *National Council for Adoption v. Jewell*, claims that the BIA exceeded its authority in publishing the updated 2015 Guidelines, that the Guidelines themselves violate the Constitutional rights of Indian children and parents, and that provisions of ICWA itself are unconstitutional under the Tenth Amendment. Days after the case was filed, NARF began working with other attorneys from the National Indian Child Welfare Association (NICWA), the National Congress of American Indians (NCAI), and the Association of American Indian Affairs (AAIA) to develop a response. Together, this informal working group has worked to develop a litigation defense strategy. The BIA filed a motion to transfer venue on July 30, 2015, which the court denied. Plaintiffs then filed for summary judgment, which the BIA opposed, and filed a motion to dismiss for lack of subject matter jurisdiction and for judgment on the pleadings. NARF representing NICWA, NCAI, and AAIA, filed an amicus brief in support of the BIA on September 18, 2015. On September 29, 2015, the court denied Plaintiff's motion for summary judgment on the



grounds that (1) Plaintiffs lacked standing to challenge the Guidelines, (2) the Guidelines are not a “final agency action” within the meaning of the APA because they do not create legal rights and obligations, and (3) the Guidelines are non-binding interpretive rules not subject to the Administrative Procedures Act’s notice-and-comment procedures. The court also noted that it would soon be issuing a memorandum opinion and order.

In Minnesota, leading members of the Academy of Adoption Attorneys filed a constitutional challenge in state court to the Minnesota Indian Family Preservation Act (MIFPA). The case, *Doe v. Jesson*, makes many of the same constitutional challenges to the MIFPA as the plaintiffs make in *National Council for Adoption v. Jewell*; specifically, that the MIFPA violates the rights of Indian children and parents by requiring them to notify the tribe of the adoptive proceeding and by allowing a tribe to intervene in the case. Plaintiffs filed for a preliminary injunction and requested expedited consideration of the case. NARF immediately reached out to the attorneys for the Tribe involved, the Mille Lacs Band of Ojibwe, and provided research and technical assistance in forming a response. The Tribe was ultimately successful in defeating the preliminary injunction, with the court finding the plaintiffs would



suffer no irreparable harm by having to notify the Tribe on the adoptive proceeding in state court. The Tribe and the State have since filed separate motions to dismiss the case. Because many states have enacted similar state-ICWAs like Minnesota's MIFPA, NARF is working in conjunction with the attorneys from the Minnesota based firm BlueDog, Paulson & Small, P.L.L.P. – principally by NARF Board member Kurt BlueDog – in developing an amicus strategy on behalf of Minnesota's other tribal governments.

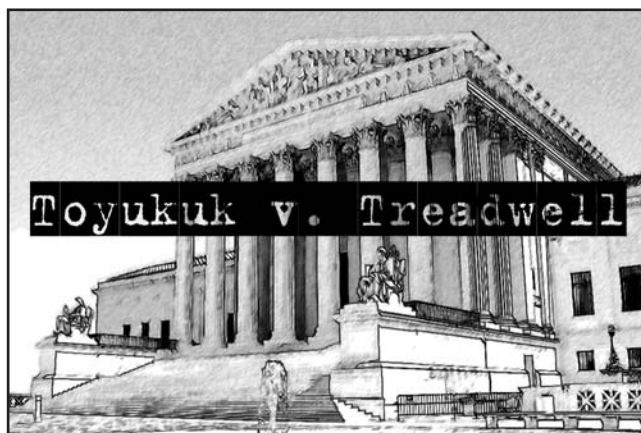
Finally, on July 7, 2015, the Goldwater Institute—a conservative think tank located in Phoenix, Arizona—filed a lawsuit challenging the constitutionality of ICWA and the revised Guidelines. The suit, filed in Arizona federal district court as *A.D. v. Washburn*, seeks declaratory and injunctive relief and specifically targets the transfer, active efforts, burdens of proof for removal and termination of parental rights, and placement preferences provisions of the ICWA, as well as corresponding sections in the Guidelines.

The complaint requests that the court declare these provisions of ICWA, and the corresponding Guidelines, unconstitutional as beyond the authority of Congress and the Department of the Interior. It further requests that the court enjoin the defendants from ensuring enforcement of the provisions. NARF, together with NICWA, NCAI, and others immediately began formulating a media and legal response to the suit. The BIA's response to the complaint is due on October 16, 2015. NARF has been coordinating with the two tribes with member children in the case—the Navajo Nation and the Gila River Indian Community. NARF also continues to coordinate with NICWA, NCAI, and AAIA and will likely file an amicus brief.

In addition to the federal cases listed above, NARF's ICWA Defense team is monitoring important cases in Michigan and Oklahoma.

Tribal Voting Rights

In *Toyukak v. Treadwell*, NARF and co-counsel Morgan, Lewis & Bockius LLP and Armstrong Teasdale LLP, acting on behalf of two tribal councils and two Alaska Native voters, filed suit in federal court charging state elections officials with ongoing violations of the federal Voting Rights Act (VRA) and the United States Constitution. The suit claimed state officials failed to provide oral language assistance to citizens whose first language is Yup'ik, the primary language of many Alaska Natives in the Dillingham and Wade Hampton regions. Trial was held from June 23 to July 3, 2014 and the court rendered an oral decision on September 3, 2014. The Court held that the Defendants had in fact violated Section 203 of the VRA in all the census areas at issue. The Court further found that the Defendants had improperly relied on what they called "outreach workers" in villages to translate the entire Official Election Pamphlet themselves, even though these workers had never been asked to do so and there was no evidence showing they could do this. The Court found that the end result was an



absence of all pre-election information such as candidate statements, ballot measures, pro and con statements for ballot measures and all other information available to English speaking voters before an election. After briefing, the Court ordered broad remedial relief including the written and audio translation of all pre-election materials distributed in English, posting of bilingual translators at all polling places, and also ordered

Defendants to report back to the Court on their progress after the November 2014 election, which was submitted shortly before Christmas 2014.

In 2015, NARF and the plaintiffs spent several months in an extended negotiation with the State of Alaska to settle the case. On September 30, 2015, the Court approved a settlement agreement with the Defendants that provides broad relief in the form of a comprehensive language assistance program, including the appointment of federal observers through the 2020 elections, translation of all pre-election information into the Yup'ik and Gwich'in languages, the creation of a new state-level position specifically devoted to language assistance, and court oversight and reporting through 2020.

In 2013, the U. S. Supreme Court in the Shelby County case invalidated Section 4 of the Voting Rights Act which required preclearance by the U.S. Justice Department of changes in state voting laws in certain states with histories of discrimination. On behalf of Bristol Bay Native Corporation and the Alaska Federation of Natives, NARF has been working on a Congressional amendment to the Voting Rights Act that would protect Alaska Natives and American Indians from the kinds of voting discrimination they have faced across the country since 2013. Senator Mark Begich introduced the NatiVRA (S.2399) in an attempt to remedy some of the longstanding issues such as the lack of language assistance, lack of polling places, and lack of early voting, but it did not pass before expiration of the 2013-2014 congressional term. Despite significant efforts, a large coalition of civil rights groups were unable to get a broader "Shelby Fix" through Congress either.

On June 24, 2015, Senator Leahy and approximately 30 co-sponsors introduced the Voting Rights Advancement Act, a broad based bill that prevents specific practices wherever they may occur in the country. That bill also includes a new Section 2 called "Voting on Indian lands" that mandates equal access to early voting, absentee voting and in-person polling locations on all Indian lands, which is very broadly defined

in the bill. NARF helped author these sections in response to comments and complaints from Indian reservations and Native villages. Senator Murkowski (AK) signed on as the first Republican co-sponsor on September 10, 2015. Additionally, in August 2015, Senator Tester introduced S 1912, a voting bill specifically directed at election problems in Indian Country. NARF submitted some comments and suggested changes to the bill to ensure that while Tribes have an opportunity to designate polling locations, states should not be permitted to shift their expenses and burdens for these matters onto the Tribes.

In January 2015, NARF proposed an ambitious new project: gathering voting rights advocates, lawyers, experts, and tribal advocates into one room to discuss current problems with voting in Indian Country and begin to develop solutions to these problems. The meeting was held May 27-28, 2015 in Washington, DC. It was convened in part because the 2016 election cycle promises to be an unusually important one at the national, state and local levels. The national elections include the selection of a new President, and with 34 Senate seats up (24 of which are currently Republican held seats), a determination of which party will control the U.S. Senate. Six of these Senate seats are in states with significant (and potentially determinative) American Indian/Alaska Native (AIAN) populations: Alaska, Arizona, California, North Dakota, Oklahoma, and South Dakota. There are also eleven gubernatorial races in 2016, three of which are in states where the Native vote may play a significant role (North Dakota, Montana and Washington).

In addition, in the wake of the U.S. Supreme Court's decision in Shelby County, numerous state legislatures have passed new election laws that impose significant barriers to AIAN voters. Currently, individuals and organizations working on AIAN voting rights issues do so independent of one-another, with no coordinated strategy in place to address voting rights issues in Indian Country. To date, this work has been generally (but not exclusively) reactive – in response to an immediate threat – rather than proactive or planned in advance of a specific election. That is what this project hopes to change. This meeting



was conceived and planned specifically to address the shifting and increasingly complex issues surrounding AIAN voting. The specific goals of the meeting were: (1) Prepare pre-session reports/memos (by participants) describing history of work on voting rights issues in Indian country, effectiveness of strategies employed, and current status of issue (e.g., resolution by settlement or consent decree, ongoing litigation); (2) Bring together in one room lawyers, advocates, and grassroots organizers involved in litigating voting rights cases in Indian Country and others who have information to share about current problems in Indian Country; (3) Conduct a series of work sessions in which the participants discuss common issues, brainstorm approaches to these challenges, and generate a strategy and litigation

plan to address the highest priority voting rights issues in Indian Country; (4) Allocate or assign issues to specific people or organizations and form collaborative partnerships to execute our strategy and litigation plan; and (5) Have an organized and prepared litigation strategy for the 2016 election cycle.

With the completion of this initial meeting, the participants have developed an ongoing project called the Native American Voting Rights Coalition (NAVRC). It meets on a monthly basis, as do its subgroups on redistricting, litigation, capacity building and data gathering. The NAVRC is actively working on its 2016 work as well as fundraising for the group itself.

Tribal Supreme Court Project update

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). The Project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected tribal sovereignty. The purpose of the Project is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Indian tribes. We encourage Indian tribes and their attorneys to contact the Project in our effort to coordinate resources, develop strategy and prepare briefs, especially at the time of the petition for a writ of certiorari, prior to the Supreme Court accepting a case for review. You can find copies of briefs and opinions on the major cases we track on the NARF website (www.narf.org/sct/index.html).

On September 28, 2015, the Court held its “long” conference at which it considered nearly 2000 petitions filed during the summer months, including five petitions in Indian law cases. In its order list of October 1, 2015, the Court granted review in 13 cases, including the petition filed by the State of Nebraska in *Nebraska v. Parker* (No. 14-1406) in which the State is challenging whether the establishments in the Village of Pender which serve alcoholic beverages are subject

to the Omaha Tribe’s liquor licensing and tax regulations. Thus, the Tribal Supreme Court Project has been and continues to prepare for a very busy October Term 2015 (“OT2105”). In June 2015, the Court granted review of two petitions in Indian law cases: *Dollar General Corporation v. Mississippi Band of Choctaw Indians* (tribal court jurisdiction over non-Indians doing business on-reservation) and *Menominee Indian Tribe of Wisconsin v. United States* (equitable tolling of statute of limitations in suits against U.S.). The latter two cases are currently being briefed by the parties. Menominee will be argued on December 1, 2015, and Dollar General will be argued on December 7, 2015.

In its order list of October 5, 2015, the Court summarily denied review of the four other petitions filed in Indian Law cases in considered during its long conference: *Oklahoma v. Hobia* (ex parte Young suit in wake of Bay Mills decision); *Sac and Fox Nation v. Borough of Jim Thorpe* (repatriation of remains of Jim Thorpe under NAGPRA); *Torres v. Santa Ynez Band of Chumash Indians* (contractor bankruptcy and sanctions involving a tribe); and *Wisconsin v. Ho Chunk* (state regulation of class II gaming). 🌟

NARF mourns passing of former Board member Barbara Smith



“Healing brings a quiet and the quiet brings the peace.”

It is with heavy hearts that NARF mourns the sudden passing of Barbara Smith (Chickasaw) who walked on November 11, 2015. Barbara had just completed her three two-year terms as a member of NARF’s Board of Directors. Barbara was an attorney and a tribal court judge and truly believed that indigenous peacemaking practices were in the best interest of all tribes in order to have healing for their respective communities. Barbara first came to know of NARF and work with us through our Indigenous Peacemaking Initiative. She shared her wisdom, grace, warmth and humor with us in many ways. We honor Barbara’s life by sharing her own words with you.

Historically, the judicial system in America is the end of the resolution process for the problems of people. However, in my journey to peace, I have come to believe that the judicial system should actually be the beginning of a healing process with the end being a peaceful resolution. As I make this journey in search of peace, I am learning and discovering who I am and why I am. I have always known my Indian heritage. I have always been proud. Until recently, I didn’t realize how thin the knowledge of my history has been. As I rediscover my own cultural base and I find that it brings to me a “quiet inside”, I realize how important a strong, positive cultural base is to every individual. I do believe strong cultural knowledge is necessary for personal healing in conflicted situations.

When I began this journey, I thought I knew who I was. But, I didn’t understand why I was.

I have come to believe that there can be no societal healing in conflicted situations without having healing for all affected parties, not just for the party

before the court. There are many people affected by a legal conflict, and they all need healing.

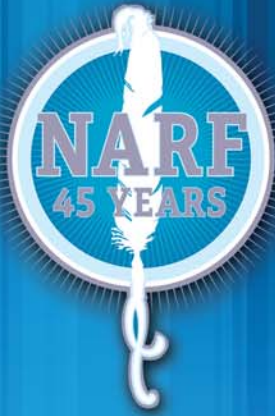
As time passes, it becomes apparent to me that healing does not come with mere passage of time. Acquiescence to a non-responsive legal system only creates an additional avenue for disappointment and anger. Healing cannot occur unless there is some degree of peace within all the people affected by the conflict. And, I don’t believe there will be healing with the perpetrators unless their victims begin a search for their own peace. The peacemaking process must address both sides of healing simultaneously.

Every person affected by the conflict needs to be involved in a circle of healing. To find peace, the hurt and anger inside must be quieted. If there is a quiet inside, the anger is gone. It appears that a search for peace is a search for each person’s quite inside.

Just imagine what it would look like if attorneys were working toward a peaceful resolution instead of for a win. Attorneys have great persuasive powers with their clients. They could and should be working to help their clients bring a hurtful situation to a peaceful resolution. They could and should be counselors of healing. It would be in the best interest of their clients. If attorneys were trained with a healing base instead of an adversarial base, they might take a roll as part of the Peacemaking process and help their clients find their way to healing and resolution. However, they would need to have a legal base founded in peace.

A Peacemaker must have a personal “quiet inside” in order to lead other people to peaceful resolutions. Perhaps the peace starts with the Peacemakers not with conflicted people.

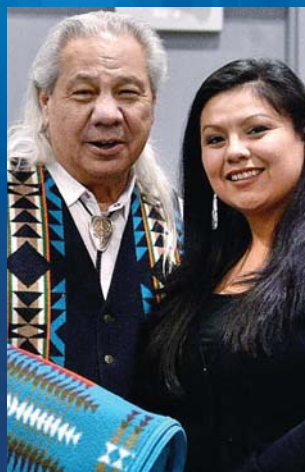
We thank Barbara for these words that she left behind for us and for her commitment to make things better of all of us. 🌸



45th Native American Rights Fund *Anniversary Gala*









NEW NARF BOARD MEMBERS

Anita Mitchell is not only the youngest person to be elected to the Muckleshoot Tribal Council in many years, but she is also the Tribe's first attorney. She credits the honor of being elected to growing up in a large family and on the reservation because as one of the oldest granddaughters you learn to take charge of a situation. She then credits and links her academic success to the strength and compassion that all her past tribal leaders have because without them the opportunity wouldn't have been there.

Anita Mitchell graduated from the University of Washington in 2010, where she double majored in American Indian Studies and Political Science and served as a Student Ambassador for the Office of Minority Affairs. She received her J.D. from Syracuse

University College of law in 2013. While in law school, Anita served as the President of the Black Law Student Association, the NEBLSA Upstate NY Sub-Regional Director, and a student attorney for the Elders Law Clinic. Anita also spent a summer in Washington D.C. working as a legal intern at the EPA's American Indian Environmental Office.

After graduating from law school, Anita moved back home and began working as a staff attorney for Muckleshoot. At Muckleshoot, Anita briefly worked in the areas of Family Law, Tribal Court jurisdiction, and administrative law before being elected to Council. She is admitted to practice law in Washington State. Anita Mitchell is currently serving as a Muckleshoot Tribal Council member.

Jefferson Keel, Lieutenant Governor of the Chickasaw Nation, is a retired U.S. Army officer with over 20 years active duty service. His combat experience included three years service in Viet Nam as an Infantryman, where he received the Bronze Star with "V" for valor, two purple hearts and numerous other awards and decorations for heroism. Lt. Governor Keel has always proven himself as an effective leader. He is a former Airborne Ranger, and served as an instructor in the elite US Army Rangers. As an Infantry platoon sergeant and platoon leader, he gained valuable and extensive leadership and management experience.

Lt. Governor Keel has a Bachelors degree from East Central University and a Master of Science degree from Troy University. He also completed post graduate studies at East Central and East Texas Universities. He has management experience in the private sector and tribal programs and operations. He is extremely proud of his Native American heritage and often assists other tribes and groups in cultural and historic preservation activities. Lt. Governor Keel is firmly committed to the service of Indian people and actively supports their desire to become self-reliant. The welfare of the Chickasaw people is his first priority. He is keenly aware of the

roles and responsibilities expected of tribal leaders and earnestly believes in the policy of "helping our people through honorable public service."

A highly respected tribal leader, Lt. Governor Keel served two terms as the President of the National Congress of American Indians, the nation's oldest and largest tribal organization. He was appointed by Senator Harry Reid to serve as a Commissioner on the Tribal Law and Order Commission. He serves as Chair for the Tribal Interior Budget Committee, serves on the Department of Health and Human Services Secretary's Tribal Advisory Committee, the Indian Health Service (IHS) Advisory committee, and the Centers for Disease Control (CDC) Tribal Consultation Advisory Committee.

Lt. Governor Keel also serves on the Board of Regents for Bacone College, East Central University the Foundation Board of Directors, the Self-Governance Advisory Committee, and the National Indian Child Welfare Association Board of Directors. He is a Master Mason, a graduate of Leadership Ada and active in his church and the community. Lt. Governor Keel and his wife, Carol, have three children and eight grandchildren. 🌟

National Indian Law Library

Justice Through Knowledge!

Free Weekly Indian Law Updates

Each week, The National Indian Law Library provides free updates on Indian law through the Indian Law Bulletins. Researchers in the library uncover the latest legal developments and information relevant to Native Americans, including recent cases, legal news and scholarship, federal legislation, and regulatory action from agencies and departments such as the Environmental Protection Agency, the Bureau of Indian Affairs and the Department of Education. The updates are distributed via email, on our blog, and on the NARF Facebook page.

To receive the Indian Law Bulletins by email, please sign up through the NILL website: <http://narf.org/nill/bulletins/index.html>

Free Searchable Database of Indian Law and News

Content from the Indian Law Bulletins is archived on the NILL website each week, effectively creating a searchable database of Native American law and news. To begin researching a topic, type your search term into the Google Search box on the right side of the Indian Law Bulletins page. Topics include Child Welfare, Education, Economic Development, Environment & Energy, Land & Water, Recognition & Enrollment, and Sovereign Immunity. Your results will be organized under nine different tabs that represent individual bulletins.



Most cases, legislation and regulatory actions are available in full-text. Many news and law review articles are also available online. If the item you would like to see is not available online, you can use the Research Help link (<http://www.narf.org/nill/asknill.html>) to request it from the library.

Support the National Indian Law Library

Your contributions help ensure that the library can continue to supply free access to Indian law resources and that it has the financial means necessary to pursue innovative and groundbreaking projects to serve you better. Please visit <http://www.narf.org/nill/donate.html> for more information on how you can support this mission. 🌟

CALLING TRIBES TO ACTION

The generosity of tribes is crucial in NARF's struggle to ensure the freedoms and rights of all Native Americans. The tribes and organizations below have made financial contributions to the Native American Rights Fund in our Fiscal Year ended September 30, 2015 or in our current fiscal year which began

October 1, 2015. We are extremely grateful for the support of tribes and Native organizations. It serves as a validation of our work and an indication that we are meeting the legal needs of Indian Country and fulfilling our mission. Thank you!

Native American Bank

Agua Caliente Band of Cahuilla Indians

Alatna Village

American Indian College Fund

American Indian Youth Running Strong, Inc.

Chickasaw Nation

Comanche Nation

Confederated Tribes of Siletz Indians

Cow Creek Band of Umpqua Tribe of Indians

First Nations Development Institute

First Nations Oweesta Corporation

Keweenaw Bay Indian Community

Klamath Tribes

Lac Du Flambeau Band of Lake Superior Chippewa

Mohegan Sun

Muckleshoot Indian Tribe

National Indian Gaming Association

Nome Eskimo Community

Pechanga Band of Luiseno Mission Indians

Sac and Fox Nation

San Manuel Band of Mission Indians

San Pasqual Band of Diegueno Mission Indians

Seminole Tribe

Seven Cedars Casino

Stillaguamish Tribe of Indians

Tanana Chiefs Conference

Tanana Native Council

Tulalip Tribes

Twenty-Nine Palms Band of Mission Indians

United South and Eastern Tribes

Confederated Tribes of the Umatilla Indian Reservation

Yavapai- Prescott Indian Tribe

Yoche Dehe Wintun Nation



THE NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund (NARF) is the oldest and largest nonprofit national Indian rights organization in the country devoting all its efforts to defending and promoting the legal rights of Indian people on issues essential to their tribal sovereignty, their natural resources and their human rights. NARF believes in empowering individuals and communities whose rights, economic self-sufficiency, and political participation have been systematically or systemically eroded or undermined.

Native Americans have been subjugated and dominated. Having been stripped of their land, resources and dignity, tribes today are controlled by a myriad of federal treaties, statutes, and case law. Yet it is within these laws that Native Americans place their hope and faith for justice and the protection of their way of life. With NARF's help, Native people can go on to provide leadership in their communities and serve as catalysts for just policies and practices towards Native peoples nationwide. From a historical standpoint Native Americans have, for numerous reasons, been targets of discriminatory practices.

Since its inception in 1970, NARF has represented over 250 Tribes in 31 states in such areas as tribal jurisdiction and recognition, land claims, hunting and fishing rights, the protection of Indian religious freedom, and many others. In addition to the great strides NARF has made in achieving justice on behalf of Native American people, perhaps NARF's greatest distinguishing attribute has been its ability to bring excellent, highly ethical legal representation to dispossessed tribes. NARF has been successful in representing Indian tribes and individuals in cases that have encompassed every area and issue in the field of Indian law. The accomplishments and growth of NARF over the years confirmed the great need for Indian legal representation on a national basis. This legal advocacy on behalf of Native Americans continues to play a vital role in the survival of tribes and their way of life. NARF strives to protect the most important rights of Indian people within the limit of available resources.

One of the initial responsibilities of NARF's first Board of Directors was to develop priorities that would guide the Native American Rights Fund in its mission to preserve and enforce the legal rights of Native Americans. The Committee developed five priorities that continue to lead NARF today:

- Preservation of tribal existence
- Protection of tribal natural resources
- Promotion of Native American human rights
- Accountability of governments to Native Americans
- Development of Indian law and educating the public about Indian rights, laws, and issues

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. Ray Ramirez Editor, ramirez@narf.org.

The NARF Legal Review is published biannually by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Ray Ramirez, Editor, ramirez@narf.org. There is no charge for subscriptions, however, contributions are appreciated.

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

Under the priority of the *preservation of tribal existence*, NARF works to construct the foundations that are necessary to empower tribes so that they can continue to live according to their Native traditions, to enforce their treaty rights, to insure their independence on reservations and to protect their sovereignty.

Throughout the process of European conquest and colonization of North America, Indian tribes experienced a steady diminishment of their land base to a mere 2.3 percent of its original size. Currently, there are approximately 55 million acres of Indian-controlled land in the continental United States and about 44 million acres of Native-owned land in Alaska. An adequate land base and control over natural resources are central components of economic self-sufficiency and self-determination, and as such, are vital to the very existence of tribes. Thus, much of NARF's work involves the *protection of tribal natural resources*.

Although basic human rights are considered a universal and inalienable entitlement, Native Americans face an ongoing threat of having their rights undermined by the United States government, states, and others who seek to limit these rights. Under the priority of the *promotion of human rights*, NARF strives to enforce and strengthen laws which are designed to protect the rights of Native Americans to practice their traditional religion, to use their own language, and to enjoy their culture.

Contained within the unique trust relationship between the United States and Indian nations is the inherent duty for all levels of government to recognize and responsibly enforce the many laws and regulations applicable to Indian peoples. Because such laws impact virtually every aspect of tribal life, NARF maintains its involvement in the legal matters pertaining to *accountability of governments* to Native Americans.

The coordinated *development of Indian law and educating the public about Indian rights, laws, and issues* is essential for the continued protection of Indian rights. This primarily involves establishing favorable court precedents, distributing information and law materials, encouraging and fostering Indian legal education, and forming alliances with Indian law practitioners and other Indian organizations.

Requests for legal assistance should be addressed to the Litigation Management Committee at NARF's main office, 1506 Broadway, Boulder, Colorado 80302. NARF's clients are expected to pay whatever they can toward the costs of legal representation. ☺



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). www.narf.org

Washington, D.C. Office: Native American Rights Fund, 1514 P Street, NW (Rear) Suite D, Washington, D.C. 20005 (202-785-4166) (FAX 202-822-0068).

Alaska Office: Native American Rights Fund, 745 W. 4th Avenue, Suite 502, Anchorage, Alaska 99501 (907-276-0680) (FAX 907-276-2466).

Workplace Campaigns: NARF is a member of America's Charities, a national workplace giving federation. Giving through your workplace is as easy as checking off NARF's box, #10350 on the Combined Federal Campaign (CFC) pledge form authorizing automatic payroll deduction.

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Boulder, CO 80302

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