

Native American Rights Fund

The National Indian Law Library

ANNOUNCEMENTS

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Sovereignty Redefined

A series of divergent and apparently unconnected incidents may coalesce in the Supreme Court of the United States during its coming term requiring a contemporary redefinition of the relationships between Indian tribes and the federal government.

Originally the United States represented to its citizens and to other foreign nations that it stood and intended to stand in a protectorate relationship with the aboriginal tribes of the North American continent.

Following the creation of the Northwest Territory in 1787, Congress defined federal Indian policy as one of respecting Indian life and customs and never confiscating Indian lands without first declaring a just war against them. However, the lack of a formal declaration of war did not hamper the United States government or any of its constituent states from engaging in hostilities, and the only practical effect of the Ordinance of 1787 was to provide uplifting sentiments for presidential campaign speeches.

The role of the individual states in supporting and defending the laws of the United States has been less than exemplary. In terms of Indian sovereignty the movement by state governments has been one of undercutting federal laws protecting Indian treaty and statutory rights. In the 1830's the object of state agitation was the removal of indigenous Indian tribes from the then existing states to the deserts in the West where, it was thought, none but an Indian could survive.

In the 1850's the new states of the Great Plains adopted a different ap-

proach to Indian affairs by assuming the position that there was no basic difference between Indian tribal members and the non-Indian citizens of the respective states. The purpose for making such an assertion was not an indication that a racial millenia was shortly due, but rather a cleverly disguised method of preparing the ground for state intrusion into the trust status of tribal lands and enterprises. Beginning with the **Kansas Indians** case of 1866, state governments began to assert their right to jurisdiction over domestic and self-governing functions of Indian tribes, primarily in the field of taxation and criminal law. Kansas lost in 1866 and New York lost in the same year, ostensibly foreclosing state efforts to render their taxes valid against Indian tribes and individuals so long as the political entity of the tribe was recognized by Congress.

The Power to Tax is the Power to Destroy

In the beginning, the Supreme Court's continual refusal to allow states to nullify treaties through the assertion



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of state laws was not motivated by a desire to protect Indians' rights, but rather to assist the Federal government's struggle to protect its own sovereign rights against the states. Therefore, until about 1921, Indians were protected by a series of rulings which protected federal entities under theories of intra-governmental tax immunity. However, continual failure of other federal policies preserving federal Indian trust obligations often undermined whatever tax benefits were acquired.

As the federal government grew in strength and wealth, a re-evaluation was made by the courts and in many cases states were permitted to begin the taxation of Indians as long as that tax was non-discriminatory in nature. This was especially true in those cases filed during the depression years.

Even later, as the crunch of local tax needs hit state governments, tax departments were issued orders to find the tax loopholes in state laws and to close them. It was projected that by making state laws more difficult to sidestep, additional revenues would pour into state coffers. This would fulfill the political promises of "additional services without additional taxes" which nearly every western governor had recited as prelude to winning elections.

In 1953, as part of its general policy to terminate the federal services of Indian tribes, Congress passed Public Law 280 which purported to give specific states (Oregon, Nebraska, California, Wisconsin, and Minnesota) civil and criminal jurisdiction over most Indian tribes within their boundaries. The intended purpose of Public Law 280 was to facilitate the integration of Indians into the local and state structures which surrounded them. All

enforce them or commitment by government to live by its own laws. The **Kansas Indians** case has already enunciated the basic principles preserving Indian sovereignty which

the United States government agreed to in the presence of Indian tribes. Therefore, until there is a formal extinguishment of the separate sovereignty of an Indian tribe re-

quiring Congressional authorization and Tribal consent, state governments are bound by the United States constitution to respect the special rights of Indians.



Trading with the Indians

Indian Claims Set By Statute Of Limitations

In the future, claims brought on behalf of Indians by the federal government will be subject to a six-year statute of limitations. All previous claims in the past have been subject to a statute of limitations which was scheduled to run on July 18, 1972. After much activity, in a special floor action, Congress approved a 90-day extension of the statute of limitations, which will now expire on September 17, 1972. The Fund has been attempting to alert legal services programs, private attorneys, Indian tribes and BIA area directors of the need for filing claims before this deadline. Prior to Congress making the extension on July 17, 1972, the Fund filed several actions across the country:

— A case in Idaho to recover land lost by tax sale following an improperly assessed tax several years ago.

— Cases in Iowa and Nebraska on behalf of the Winnebago Tribe relating to lands claimed by them which are occupied by private parties.

— A lawsuit on behalf of the Muckle-shoot Tribe against a power company for infringing the tribe's water rights.

— A claim on behalf of the Walker River Paiute Tribe against a railroad for trespassing on their property for decades.

— A case on behalf of two Southern California tribes against a water company which has violated their water rights for over seventy years. (See the section *California Indian Water Rights* on p. 4 of this issue).

In the Walker River and Muckle-shoot actions, the federal government was persuaded to also file cases along

with the Fund on July 17.

Pyramid Lake

A pretrial conference was recently held in the Pyramid Lake Tribe's lawsuit against the Secretary of the Interior. The case involves the Secretary of the Interior's operating criteria for the Truckee and Carson Rivers which allocate the water of these rivers between the Newlands Reclamation Project and Pyramid Lake. The tribe is contending that the Secretary of the Interior's operating criteria have allowed excessive and wasteful amounts of water to go to the Newlands Project in violation of his obligation as trustee to protect and preserve the property of the Pyramid Lake Tribe.

At the pretrial conference, the court stated that the tribe had established a

three consolidated proceedings pending before the Federal Power Commission and an action against the United States for damages in the Indian Claims Commission. A hearing in the Federal Power Commission cases is expected next fall or early winter.

Robert S. Pelcyger, of the Fund's staff, is in charge of these suits.

Eastern Indians

As previously reported in June of 1972, the Passamaquoddy Tribe of Maine filed suit in the U.S. District Court in Maine against the Interior and Justice Departments to require the federal government to act in its behalf against the state of Maine. On June 23, the United States was ordered by a federal court in Maine to file a lawsuit on behalf of the Passamaquoddy Tribe for their claims against the state before July 17, 1972. The government reluctantly filed the case and when additional pressure was brought to bear on them on behalf of the Penobscot Indians,

the government filed in that case also. The United States apparently will be appealing the order requiring it to represent the Maine Indians. It should be noted that the Passamaquoddy and Penobscot Indians along with most other remnants of Eastern Indian tribes do not have special recognition as Indians from the federal government.

Appeals Court Rejects Oneida Suit

The Oneida Indians of New York sued two counties in that state for infringement of their land rights under the Non-Intercourse Act. The Act restricts dealings with Indians related to their land and requires that negotiations for contracting be handled through the United States.

Based on this statute, Indians attempted to assert their claims in federal court. The federal court denied them jurisdiction, saying that no federal question was raised.

Based on procedural technicalities relating to jurisdiction, the Second Circuit Court of Appeals in New York upheld the district court's rejection of the lawsuit. The Fund was amicus curiae in the Appeals Court and presently consulting with the attorney for the Oneida Nation concerning what action should be taken next. The brief of amicus curiae filed by the Fund was prepared by David H. Getches and Peter Aschenbrenner.

Coordination of Indian Welfare Litigation Sought

The Secretary of the Interior has obtained a 30 day extension to file a motion for rehearing in the case Ruiz v. Morton, and the decision of the Court of Appeals has been stayed in the meantime. The Court held earlier that the plaintiffs, Papago Indians residing 15 miles outside the Papago Reservation, were entitled to BIA general assistance under the mandate of the Snyder Act (25 U.S.C. § 13) which authorized the Secretary to spend appropriations "for the benefit, care, and assistance of the Indian throughout the United States."

The BIA's denial of benefits on the basis of residency alone was unauthorized and improper. State general assistance and emergency relief were denied because plaintiff was a strike. Lawyers with similar cases are requested to contact attorney Sarah Barlow, Columbia Center on Social Welfare Policy and Law, (215) 622-1210, or Fund attorney Thomas L. Smithson before filing.

Cheyenne River Indian Country Restored

South Dakota Legal Services, Inc. of Rosebud, South Dakota, reports that the U.S. District Court for South Dakota, has decided *United States ex rel. Condon v. Erickson* favorably. The court, following *Seymour v. Superintendent and City of New Town, North Dakota v. U.S.* holds that the Act of May 29, 1906 opening a portion of the Cheyenne River Indian Reservation to homesteaders did not diminish that Reservation. As a result exclusive tribal and federal jurisdiction is restored to this area of "Indian country."

The amicus brief by Richard Smith and Art Bunce of South Dakota Legal Services is available from the Library.



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American Indian Civil Rights Handbook Available

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U.S. Commission on Civil Rights
 1121 Vermont Ave., N.W.
 Washington, D.C. 20425

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