

NARF

Review

Native American Rights Fund

NARF Celebrates Its 20th Anniversary

The Native American Rights Fund recently celebrated its 20th Anniversary as the national legal defense fund for this country's Native Americans. Since its founding in 1970, NARF has represented Indian clients in nearly every state in the nation. The hundreds of cases in which it has been involved have concerned every area and issue in the field of Indian law. NARF's work during the past twenty years has had a tremendous impact on Indian rights in areas of preserving tribal existence, protecting tribal resources, promoting human rights, holding state and federal governments accountable to Indian tribes, and developing and strengthening Indian law to help preserve Native American rights.

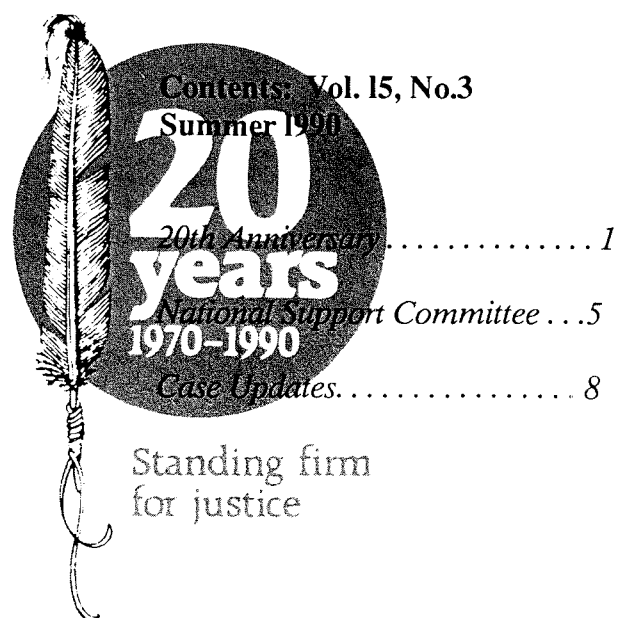
Following is a brief review of the origin of NARF and its goals and the two-day symposium held July 31 - August 1, 1990, to celebrate NARF's 20th Anniversary.

Origin and Goals of NARF

NARF began as a pilot project of California Indian Legal Services (CILS) in 1970. CILS is one of the government funded legal services programs established as part of the "War on Poverty" which was launched in the 1960s under the Office of Economic Opportunity. These programs were intended to provide poor and disadvantaged people access to lawyers and the legal process. Many of these legal services programs were established on Indian reservations and in Indian communities. As these programs began working with Indian legal

problems, they soon came to learn that Indians and their problems were, for the most part, governed and controlled by a specialized and little known area of the law known as "Indian law" -- a complex body of law composed of hundreds of Indian treaties and court decisions, and thousands of federal statutes, regulations and administrative rulings. As the Indian legal services lawyers began to study and apply "Indian law" in representing their Indian clients, success in the courts greatly increased.

In 1970, the Ford Foundation, instrumental in the development of the NAACP Legal Defense Fund and the Mexican American Legal Defense



Fund, became interested in establishing a national legal program for Indians. The Foundation first sought an on-going program which had already proven itself successful in litigating Indian rights. The Foundation became interested in California Indian Legal Services and met with CILS to discuss the need for a national program to address major Indian legal problems around the country. With Ford Foundation funding, CILS agreed to institute a small pilot project enabling it to expand their services to Indians on a national basis. That project became known as the Native American Rights Fund (NARF). As planned, NARF separated from CILS in 1971, moved to a more central location in Boulder and incorporated separately under an all-Indian Steering Committee (later changed to Board of Directors). NARF grew rapidly from a three-attorney pilot project to an eighteen-attorney firm in a few short years.



Young girl looking at a John Nieto painting at NARF's "Arts and Advocates" Art Show.

NARF's growth and success throughout these past twenty years is attributable entirely to the validity of the original concept upon which it was founded -- that there is a great need for a national Indian rights organization to provide legal representation to tribes to protect their rights and address their major legal problems. At the heart of this need is the common goal of all native American groups to preserve their status as Indian tribes and to maintain their traditional way of life.

Consistent with the philosophy of Indian self-determination, NARF is governed by a 13-member Board of Directors composed entirely of Indian people. This all-Indian board controls NARF's activities by setting the priorities and policies. Members are chosen on the basis of their involvement in Indian affairs, their knowledge of the issues, and their tribal affiliation for wide geographical representation. It is the philosophy of the Board of Directors to keep NARF as apolitical as possible and to concentrate on issues which will be of lasting benefit to all tribes.

To achieve this goal, NARF's Board of Directors has defined five priority areas for NARF's work. These five priority areas are: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law.

Under the first priority, NARF works to enable tribes to continue to live according to their native traditions; to enforce their treaty rights; to insure their independence on reservations; and to protect their land. Through the past twenty years, NARF has had scores of cases in the tribal existence classification, and many of these cases have established strong precedents in the efforts to preserve tribal existence. NARF's activities under the tribal existence category fall in the area of tribal sovereignty issues, economic development, and federal recognition and restoration.

The protection of tribal natural resources, the second priority, is closely linked to the preservation of tribal existence. Without a sufficient

natural resource base to sustain it, tribal existence is difficult to maintain. Unfortunately, questions over tribal ownership and control occur more frequently with Indian resources than in the larger society. This is a result of the failure of the federal government to fulfill its trust duty to protect the Indian tribes and their property rights. Natural resource ownership questions are therefore a legitimate concern to NARF in responding to major Indian legal needs. For decades, the federal government refused to deal adequately with protecting Indian resources. However, Indian tribes, contrary to the expectation of many in the last one-hundred years, are not disappearing but are becoming a permanent part of the American system; thus, these issues regarding tribal resources must finally be resolved for the benefit of all people concerned. Natural resource areas in which NARF has been involved are land rights, eastern land claims, water rights, and hunting and fishing rights.

The third NARF priority concerns securing basic human rights for Native Americans in areas of religious freedom, education, health, housing, welfare and the rights of Indian inmates. In addressing human rights NARF seeks to enforce laws which are designed to address the unique needs and problems of Native Americans. The protection of traditional Native American religions is one area NARF has worked extensively for the last 20 years. Indian religions are entitled to the same First Amendment protection as other religions. This includes access to and protection of sacred objects and sites and the freedom to practice traditional religious ceremonies. Another important human rights concern is education. NARF has worked successfully with tribes, parent groups, and national Indian organizations to assure that Native Americans have an active voice in deciding the educational future of their children.

The fourth priority is the accountability of the dominant society to Native Americans. Not only is the federal government accountable to Indians for carrying out its trust responsibilities, but states and local governments are equally bound to recognize and honor the unique federal rights and immunities of the tribes and Indians within

their respective borders. NARF works to hold all levels of government accountable for the proper enforcement of the laws and regulations which govern the lives of Indian people.

The proper development of Indian law, the fifth priority, is essential for the security of Indian rights. This involves not only the establishment of favorable court precedents in critical areas of Indian law, but the distribution of information and materials to all others working for Indian rights. Since 1972, NARF's National Indian Law Library project has been collecting, indexing and distributing Indian legal information in response to thousands of requests nationwide. Another major ongoing project since 1972 is the Indian Law Support Center, a national backup assistance center serving legal services programs around the country located on reservations, in Indian communities, and urban areas working with Indian clients.

20th Anniversary Activities

NARF celebrated its 20th Anniversary with a two-day symposium on Federal Indian Law. Approximately 200 lawyers, law students, tribal people, and individuals participated in the symposium held in Boulder, CO at the Hotel Boulderado. Present and former staff and Board members were joined by special guests active in the area of Indian affairs.

John Echohawk, NARF Director, opened the symposium with a brief history of NARF and Indian law.

Vine Deloria, Jr., keynote speaker, addressed the need for lawyers to develop their own model of federal Indian law. He said that because federal courts seem to be operating on an "ad hoc basis," Indian law doesn't really exist as a theoretical discipline. He said that the study of different disciplines such as culture, religion, education, economics, history, language and logic all have important lessons for a lawyer looking for new strategies to practice law.

Deloria said that attorneys should know and present history to offset ignorance by the federal courts intent on "rewriting or creating mystic history" to rationalize court decisions. He said In-

dian law is primarily history and that cases have been lost because of an acceptance of erroneous historical information.

In his address, Deloria urged attorneys to look outward from the field of law to what is happening in other areas of human experience to find "new ways to articulate Indian law."

The Indian Law Symposium panels focused on seven areas of Indian rights in which NARF has been very much involved during the last twenty years. Present staff attorneys were joined by former attorneys and board members to present panel discussions on Tribal Jurisdiction, Tribal Status, Alaska Natives and Native Hawaiians, Economic Development, Natural Resources, Water Rights and Human Rights. The panels and the members were:

Tribal Jurisdiction

Yvonne Knight, (Ponca/Creek), moderator and NARF attorney; Tom Fredericks, (Mandan-Hidatsa), former NARF executive director; William Thorne, (Pomo), NARF board member, and Richard Trudell, (Sioux), former NARF board member.

Tribal Status

Faith Roessel, (Navajo), moderator and NARF attorney; Richard "Skip" Hayward, (Mashantucket Pequot), NARF board member; John Stevens, (Passamoquoddy), former board member, and Tom LeClair, (Mohawk), former NARF attorney.

Alaska Native and Native Hawaiians

Bart Garber, (dena ina), moderator and NARF attorney; Charles Wilkinson, former NARF attorney; Anthony Strong, (Tlingit-Klukwan), NARF board member, and Mahealani Kamauu, (Native Hawaiian), NARF board member.

Economic Development

Don Wharton, moderator and NARF attorney; Tom Tureen, former NARF attorney; Christopher Peters, (Yurok), former NARF board member, and Eddie L. Tullis, (Poarch Band of Creek Indians), NARF board member.

Natural Resources

David Getches, moderator and former NARF executive director; Don Miller, NARF board member; Calvin Peters, (Squaxin Island), NARF board member, and Louis LaRose, (Winnebago), former NARF board member.

Water Rights

Ethel Abeita, (Laguna Pueblo), moderator and NARF deputy director; Bob Pelcyger, former NARF attorney; Bob Anderson, (Minnesota Chippewa), NARF attorney, and Jeanne Whiteing, (Blackfeet-Cahuilla), former NARF deputy director.

Human Rights

Steve Moore, moderator and NARF attorney; Jeannette Wolfley, (Shoshone Bannock - Navajo), former NARF Deputy Director; Patrick Lefthand, (Kootenai), former NARF board member, and Twila Martin-Kekahbah, (Turtle Mountain Chippewa), NARF board member.

Other activities during the celebration included the premier of the "Artists and Advocates Art Show" and a benefit jazz concert by Dave Brubeck who is also a member of NARF's National Support Committee. The "Artists and Advocates Art Show" is a traveling art exhibit and a silent auction which brings together artwork donated by Native American artists to benefit NARF and the American Indian Art Institute, Sante Fe, NM. Included in the show are paintings, sculptures, pottery and weavings by artists such as Bruce LaFountain, Ben Harjo, Sam English, Dana Tiger and Lucy Lewis.

Conference materials including presentor outlines are available from NARF. Please contact Rose Brave, NARF office manager, for copies of the materials. The price for the materials is \$20.00. The National Indian Law Library (NILL) will soon have available video tapes from the conference. For information about the tapes, please contact NILL.

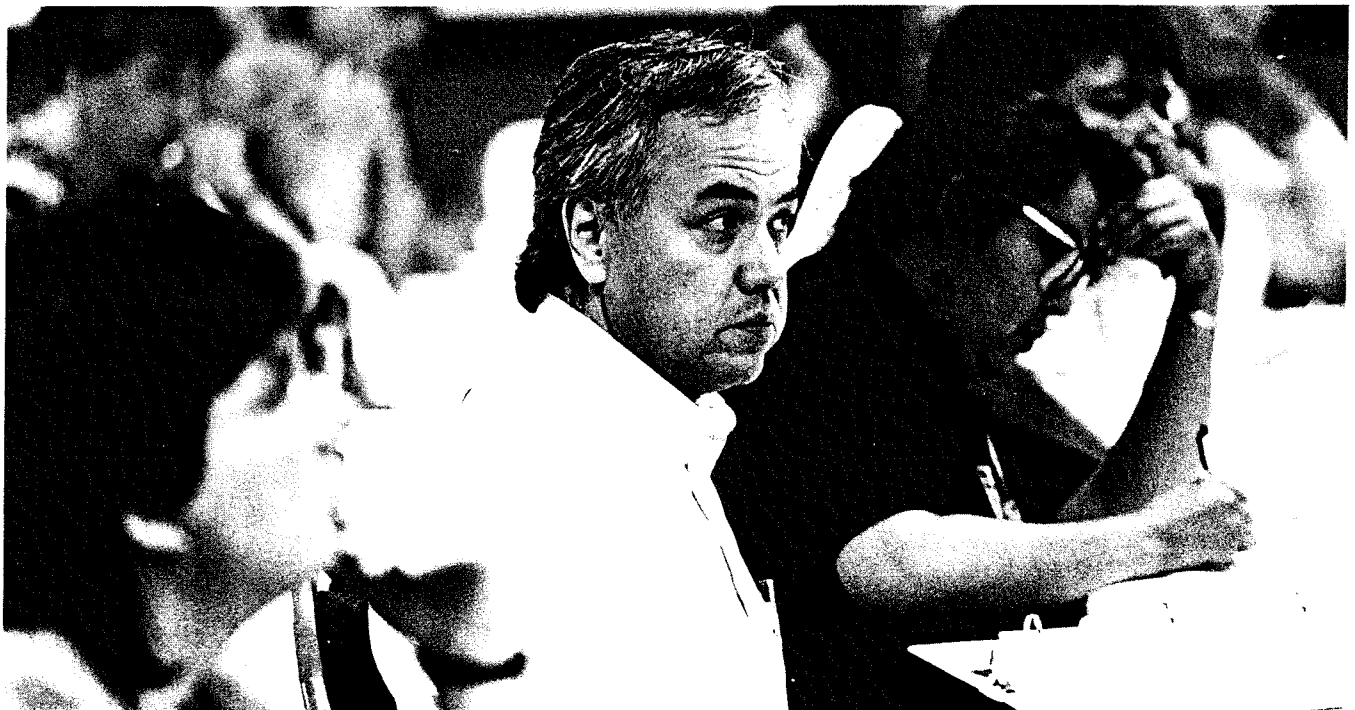
Walter S. Rosenberry and W. Richard West, Jr. Join the National Support Committee of NARF

NARF is pleased to announce that two new members have recently joined the National Support Committee of the Native American Rights Fund.

Walter S. Rosenberry, III, community servant, of Denver, CO has served on the boards of various not-for-profits since 1981. He now serves as the present trustee and officer of the Weyerhaeuser Family Foundation in St. Paul, MN. Rosenberry has also served as either chairman or board member with the following organizations: the Graland Country Day School, the Children's Hospital of Denver, the Denver Art Museum and St. Anne's Episcopal School at Denver. He served on the board of Loretto Heights College, the Taft School, ACLU of Colorado, the U.S. Supreme Court Historical Society, the National Association of Children's Hospitals and related institutions, and the Forest History Society.

W. Richard West, Jr., attorney and member of the Cheyenne-Arapaho Tribes of Oklahoma, is the appointed "founding director" of the National Museum of the American Indian. He has spent his entire professional career representing Indian tribes and organizations before the Congress and federal and state courts on a wide range of matters including taxation, natural resources, and economic development issues. West began his legal career in the Indian law department of Fried, Frank, Harris, Shriver & Jacobson in partnership of that firm. Previous to his present position he was a partner in the Albuquerque, New Mexico law firm of Gover, Stetson, Williams & West. He also has served in the past on the Boards of the American Indian National Bank and the National Indian Justice Center.

We are very pleased and proud to have these two distinguished citizens join our efforts in such a substantial way.



Participants during the 20th Anniversary Indian Law Symposium

20th Anniversary Celebration:



Richard "Skip" Hayward, NARF Board Vice-President



Pictured L-R: Michael Chapman, Rita Keshena, Federal Indian Gaming Commissioner Tony Hope, Lucy Chapman and Ada Deer, NARF Board Chairwoman. Ms. Keshena and Ms. Chapman were delegates from the Menominee Tribe. The Tribe presented NARF with a \$25,000 donation which was acknowledged at the Symposium banquet.

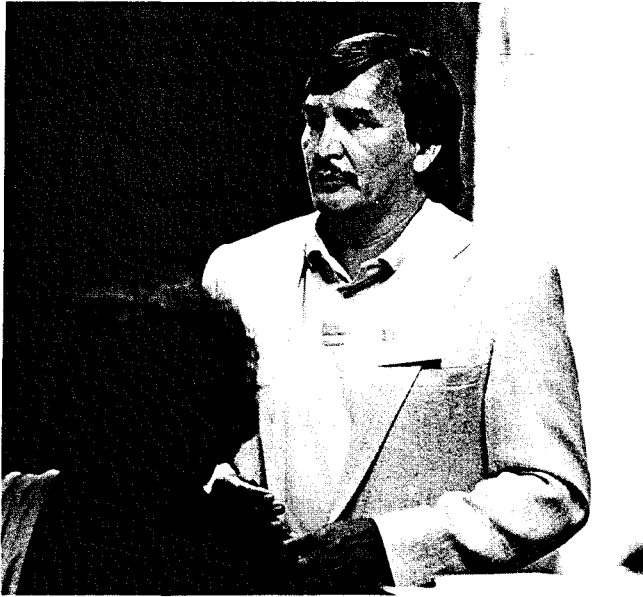


Pictured L-R: John Stevens, former NARF board member, Tom Fredericks, former Executive Director and John Echohawk, NARF Executive Director



Melody McCoy, NARF attorney, giving presentation at the Indian Legal Services Center's conference on Indian Law. The conference followed NARF's 20th Anniversary symposium.

Events and People



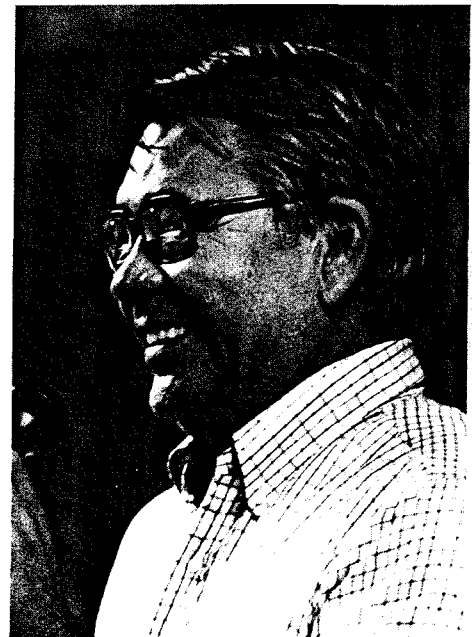
Richard Trudell, former NARF board member.



John Stevens, former NARF board member, giving presentation on tribal status.



Yvonne Knight, NARF staff attorney, giving presentation on tribal jurisdiction.



Keynote Speaker Vine Deloria, Jr.

Case Updates

Duro v. Reina

The U.S. Supreme Court held that an Indian tribe may not exercise criminal jurisdiction over non-member Indians who commit a crime. The Court's holding was primarily based on the fact that since a nonmember cannot vote in tribal elections, hold tribal office, or sit on a tribal jury, his relationship with the tribe was much the same as a non-Indian's relationship with a tribe. The Court therefore said the situation of the nonmember Indian in *Duro* is identical to the non-Indian in *Oliphant* wherein the Court found that Indian tribes do not have jurisdiction over non-Indians for purposes of criminal prosecution. NARF submitted an *amicus curiae* (a friend of the court) brief on behalf of several tribes.

Noatak v. Hoffman

The State of Alaska has filed a petition with the United States Supreme Court for review of the 9th Circuit Court of Appeals decision which held that Alaska Native Villages are recognized as tribes by the United States and that Indian tribes can bring suits against states in federal court for past damages notwithstanding the Eleventh Amendment. NARF represents the Village of Noatak in the case.

Alabama-Coushatta v. U.S.

On May 30, 1990, a Review Panel of the United States Claims Court vacated the trial judge's order dismissing the Tribe's claim and ordered that the case be remanded to a new hearing officer. The Tribe is suing the United States for breach of trust damages arising out of the United States' failure to protect the Tribe in possession of its 9 million acres of aboriginal territory. The Review Panel determined that the initial hearing officer failed to find facts on several factual issues, failed to address certain legal issues and improperly applied the law on at least one critical issue. NARF represents the Tribe in the case.

Department of the Interior Policy Statement - Criteria and Procedures for Indian Water Rights Settlements, Published March 12, 1990

NARF on behalf of the Nez Perce, Northern Cheyenne, Klamath and Chippewa-Cree Tribes of Rocky Boy's Reservation, has been involved in an effort to get the criteria and procedures rescinded. The guidelines were primarily drafted by Office of Management and Budget in an effort to limit the expenditure of federal funds in the settlement of Indian reserved water rights claims. The criteria as they are now being applied limit the federal contribution to the settlement. This approach ignores the

fact that in any given negotiation setting, there will be a myriad of factors, many of which would be unique to a particular setting, that can and should come into play. Additionally, the Department failed to consult with the tribes which would be affected by the criteria before they were published. There are many other reasons NARF and its clients oppose the application of these criteria. Efforts are underway to unite all tribes with water rights claims to persuade the Department to either rescind the criteria or replace them with a substantially revised set of criteria.

Federal Death Penalty Amendment

NARF was instrumental in the passage of an amendment to the Omnibus Anti-Crime Bill which prohibits the death penalty provision of the bill from being applied to Indian country. Under the amendment, tribes can choose whether or not to have the death penalty apply to their reservation. NARF represented several tribes in the matter.

Cheyenne-Arapaho Tribes v. U.S.

Oral argument has been scheduled for September before the 10th Circuit Court of Appeals in *Cheyenne - Arapaho Tribes v. U.S.* At issue are whether the leases given to oil companies by the Bureau of Indian Affairs on behalf of the Cheyenne-Arapaho Tribe had expired at the end of the primary term and whether the Secretary abused his discretion in not consulting with the Tribe in the renewal of the leases and whether the Secretary applied the correct economics when the leases were renewed. NARF represents the Tribes in the case.

Twin City Construction Co. v. Parisien

The Eighth Circuit Court of Appeals reversed an earlier district court decision which denied jurisdiction to the Turtle Mountain Chippewa Tribal Court. The case, *Twin City Construction Co. v. Parisien*, involves a tribal member who sued a non-Indian contractor conducting business on the reservation. The appeals court instructed the district court to allow the tribal member to proceed with his suit in tribal court. The district court had refused to lift an injunction that prohibited the case from proceeding in tribal court. The appeals court found that issues of jurisdiction should be considered under the amended tribal code in the appropriate forum or forums beginning with the tribal court. NARF represents the tribal member in the case.

NARF RESOURCES AND PUBLICATIONS

THE NATIONAL INDIAN LAW LIBRARY

The National Indian Law Library (NILL) has developed a rich and unique collection of legal materials relating to Federal Indian law and the Native American. Since its founding in 1972, NILL continues to meet the needs of NARF attorneys and other practitioners of Indian law. The NILL collection consists of standard law library materials, such as law review materials, court opinions, and legal treatises, that are available in well-stocked law libraries. The uniqueness and irreplaceable core of the NILL collection is comprised of trial holdings and appellate materials of important cases relating to the development of Indian law. Those materials in the public domain, that is non-copyrighted, are available from NILL on a per-page-cost plus postage. Through NILL's dissemination of information to its patrons, NARF continues to meet its commitment to the development of Indian law.

AVAILABLE FROM NILL

The NILL Catalogue

One of NILL's major contributions to the field of Indian law is the creation of the National Indian Law Library Catalogue: An Index to Indian Legal Materials and Resources. The NILL Catalog lists all of NILL's holdings and includes a subject index, an author-title table, a plaintiff-defendant table and a numerical listing. This reference tool is probably the best current reference tool in this subject area. It is supplemented periodically and is designed for those who want to know what is available in any particular area of Indian law. (1,000 + pgs. Price: \$75).

Bibliography on Indian Economic Development

Designed to provide aid on the development of essential legal tools for the protection and regulation of commercial activities on Indian reservations. This bibliography provides a listing of articles, books, memoranda, tribal codes, and other materials on Indian economic development. 2nd edition (60 pgs. Price: \$30). (NILL No. 005166)

Indian Claims Commission Decisions

This 43-volume set reports all of the Indian Claims Commission decisions. An index through volume 38 is also available, with an update through volume 43 in progress. The index contains subject, tribal, and docket number listing. (43 volumes. Price \$820). (Index price: \$25). (Available from the Indian Law Support Center).

Prices subject to change

INDIAN RIGHTS MANUAL

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

A Manual on Tribal Regulatory Systems. Focusing on the unique problems faced by Indian tribes in designing civil regulatory ordinances which

NARF RESOURCES AND PUBLICATIONS

comport with federal and tribal law, this manual provides an introduction to the law of civil regulation and a checklist of general considerations in developing and implementing tribal regulatory schemes. It highlights those laws, legal principles, and unsettled issues which should be considered by tribes and their attorneys in developing civil ordinances, irrespective of the particular subject matter to be regulated. (110 pgs. Price \$25).

A Self Help Manual for Indian Economic Development. This manual is designed to help Indian tribes and organizations on approaches to economic development which can ensure participation, control, ownership, and benefits to Indians. Emphasizing the difference between tribal economic development and private business development, this manual discusses the task of developing reservation economies from the Indian perspective. It focuses on some of the major issues that need to be resolved in economic development and identifies options available to tribes. The manual begins with a general economic development perspective for Indian reservations: how to identify opportunities, and how to organize the internal tribal structure to best plan and pursue economic development of the reservation. Other chapters deal with more specific issues that relate to the development of businesses undertaken by tribal government, tribal members, and by these groups with outsiders. (Approx. 300 pgs. Price \$35).

Handbook of Federal Indian Education Laws. This handbook discusses provisions of major federal Indian education programs in terms of the legislative history, historic problems in implementation, and current issues in this radically changing field. (130 pgs. Price \$20).

1986 Update to Federal Indian Education Law Manual (\$30) Price for manual and update (\$45).

A Manual On the Indian Child Welfare Act and Law Affecting Indian Juveniles. This fifth Indian Law Support Center Manual is now available. This manual focuses on a section-by-section legal analysis of the Act, its applicability, policies, findings, interpretations, and definitions. With additional sections on post-trial matters and the legislative history, this manual comprises the most comprehensive examination of the Indian Child Welfare Act to date. (373 pgs. Price \$35).

PUBLICATIONS

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.

THE NARF LEGAL REVIEW is published by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Susan Arkeketa, Editor. There is no charge for subscriptions.

Tax Status. The Native American Rights Fund is a non-profit, 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.

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D.C. Office: Native American Rights Fund, 1712 N Street, N.W., Washington, D.C. 20036 (202-785-4166).

Alaska Office: Native American Rights Fund, 310 K Street, Suite 708, Anchorage, Alaska 99501 (907-276-0680).

Native American Rights Fund

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

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

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