NARF LEGAL REVIEW
Native American Rights Fund
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YES, THERE IS INDIAN COUNTRY IN ALASKA

Group of Chilkat Tlingit in costumes worn at Klukwan, Alaska. ca. 1901 - Smithsonian Institution

The Native American Rights Fund represents the Native Village of Venetie in *State of Alaska v. Native Village of Venetie*. This case involves the Tribe's authority to impose a tax on a non-tribal member who engages in business activity within the Village. On November 20, 1996, just six weeks after the Venetie case was argued before the Ninth Circuit Court of Appeals, a three judge panel unanimously agreed that the 1971 Alaska Native Claims Settlement Act (ANCSA) did not extinguish Indian country in Alaska and that the land that Venetie occupies is Indian country. The decision overrules a Federal District Court for Alaska ruling and represents a landmark case on tribal sovereignty rights. The Neets'aii Gwich'in of Venetie and Arctic Village have much to celebrate. Due to their victory, other Alaska Native villages will also be entitled to Indian country status and all of the powers that go with that status.

The State of Alaska has unsuccessfully asked the Ninth Circuit to reconsider its ruling and is now expected to petition the United States Supreme Court to hear the case.

United States Senator Ted Stevens (R-Alaska) has said that if the state fails to get the ruling overturned in court, then he, Senator Frank Murkowski (R-Alaska) and Representative Don Young (R-Alaska) will attack it in Congress. Senator Stevens went on to say that Senator Murkowski and Representative Young have committee chairmanships and that they will work together to find a solution if they cannot find it within the judiciary itself.

Continued on page 2

Indian Country

continued from page 1

Will Mayo, Chairman of the Alaska Inter-Tribal Council, President of the Tanana Chiefs Conference and Vice-Chairman of the NARF Board of Directors, in describing the court decision as a great victory for tribal governments in Alaska, urged the Alaska tribes to start acting like tribes. "That's what got the case going forward, was tribes saying 'we've got the power — we don't have to ask for it.'"

The *Venetie* decision represents a complete and unqualified victory for the tribes in Alaska. It eliminates the argument that ANCSA extinguished the territorial power of the Tribes. This holding is not unique to Venetie and therefore, will apply to virtually all other Native villages, removing the barrier for other Alaska tribes to establish their Indian country status and jurisdiction. Moreover, many of the factual conclusions made in the Venetie case are common to many if not most rural Alaska Native communities.

The additional powers that tribes will have as a consequence of Indian country include the authority to tax, zone, condemn real property, regulate land use, manage fish and game (although the extent of such authority is unclear) exercise civil and criminal misdemeanor jurisdiction over tribal members, and under certain circumstances exercise civil jurisdiction over non-tribal members as well. In addition, a Tribe with "Indian country" status has the power to temporarily or even permanently expel from the community those who violate Tribal laws. While the State will continue to have concurrent jurisdiction in some areas as a result of Public Law 280, Indian country establishes a presumption in favor of tribal authority.

On the same day that it ruled in Venetie, the Court of Appeals issued a decision in *Alyeska Pipeline Service Co. v. Native Village of Kluti Kaah*. In the *Kluti Kaah* case, the Court concluded that when Congress authorized establishment of the Trans-Alaska Pipeline corridor, Congress also implicitly precluded ANCSA corporations from selecting lands within the corridor and intended to preclude corridor lands from having Indian country status. As a result, the Court ruled that the Kluti Kaah Tribe could not tax the pipeline. The Native Village of Kluti Kaah unsuccessfully requested the Court of Appeals to reconsider this decision. The *Kluti Kaah* ruling only applies to lands within the pipeline right-of-way and therefore will only effect the four Ahtna villages whose ANCSA lands are bisected by the pipeline (Kluti Kaah, Tazlina, Gulkana, and Gakona). The ANCSA lands of these villages (now owned by Ahtna, Inc.) which

NARF LEGAL REVIEW

NARF also argued that the District Court was wrong in ruling that the Alaska Native Claims Settlement Act of 1971 extinguished the Indian country status of Alaska Native villages.

lie outside the corridor will remain eligible for Indian country status.

Case Review

In August, 1995, the Federal District Court in Alaska ruled that Venetie, although a tribe, is not a dependent Indian community under federal law and therefore is not Indian country in which it can impose tribal taxes. In a broadly worded opinion, the District Court held that while Venetie constituted Indian country prior to the passage of ANCSA, ANCSA implicitly extinguished the Indian country status of all Alaska Native Villages, including Venetie. In the District Court's opinion, ANCSA terminated the federal government's "superintendence" over Indian tribes in Alaska. The District Court reasoned that Indian country can exist only "where the degree of congressional and executive control over the Alaska Native tribe is so pervasive as to evidence an intention that the federal government, not the state, be the dominant political institution in the area" and concluded that the federal government no longer exercises that level of active superintendence. The District Court also found that Venetie does not qualify as a "dependent Indian community" because it does not occupy lands specifically "set-aside" "for the use of Indians as such."

NARF appealed this decision to the Ninth Circuit Court of Appeals arguing that Venetie's one million acres held by the Tribe in fee simple and occupied almost exclusively by Tribal members is a dependent Indian community over which the Tribe has jurisdiction. NARF also argued that the District Court was wrong in ruling that the Alaska Native Claims Settlement Act of 1971 extinguished the Indian country status of Alaska Native villages.

On appeal, Venetie argued that the District Court committed two principle errors in concluding that Venetie does not occupy Indian country: (1) by focusing almost exclusively on the "set-aside" and federal superintendence criteria, the Court applied an erroneous Indian country test (one which was much more restrictive than the six-part test set out by the Ninth Circuit in its first *Venetie* decision in 1988); and (2) the Court failed to apply the fundamental rule of construction that statutes passed for the benefit of Indians (including ANCSA) must

Continued on page 4

Indian Country

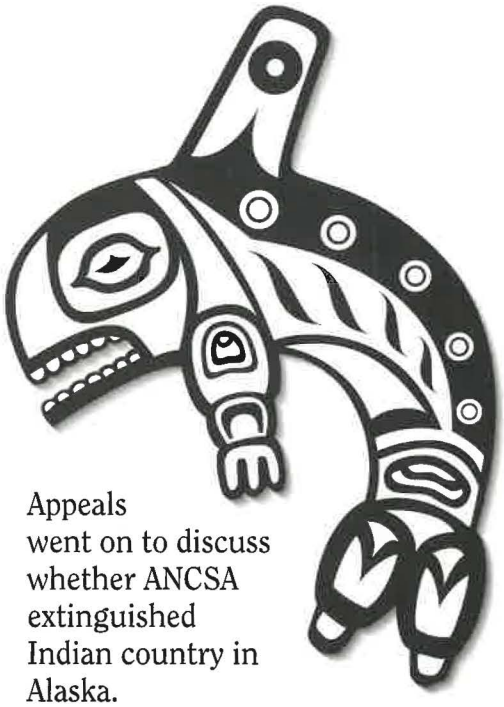
continued from page 3

be liberally construed with doubtful expressions resolved in favor of Indians, and that congressional intent to extinguish Indian country must be reflected by "clear and plain" language. The Ninth Circuit agreed with Venetie on all scores.

In 1988, the Ninth Circuit set forth a six-part test for determining whether a particular Native group constitutes a "dependent Indian community":

(1) the nature of the area; (2) the relationship of the area inhabitants to Indian Tribes and the federal government; (3) the established practice of government agencies toward that area; (4) the degree of federal ownership of and control over the area; (5) the degree of cohesiveness of the area inhabitants; and (6) the extent to which the area was "set-aside" for the use, occupancy, and protection of dependent peoples.

As mentioned above, the District Court rejected this test and substituted a narrower test in which two criteria above all others must be satisfied. The Court of Appeals held that while the "set-aside" criteria (number 6 above) and the federal supervision criteria (numbers 2, 3 & 4 above) are the dominant factors of the "dependent Indian community" test, these requirements should be construed broadly. The Court of Appeals rejected the District Court's conclusion that Native corporation or tribally owned fee lands could not constitute Indian country and also rejected its conclusion that the federal government must be the "dominant political institution" in the area as compared to the state. Having affirmed its prior test, the Court of Appeals went on to discuss whether ANCSA extinguished Indian country in Alaska.



The Court began this portion of its analysis by emphasizing the fundamental principle that statutes affecting Indian rights, including ANCSA, "are to be liberally construed, with doubtful expressions being resolved in favor

of Indians." Employing this rule of interpretation, the Court held that ANCSA did not extinguish Indian country in Alaska.

The Court of Appeals emphasized that any law terminating the federal trust relationship with a Native tribe or organization must do so clearly and explicitly, and that ANCSA contains no such statement. The Court further found that the plain language of ANCSA as well as its legislative history demonstrates Congress' intent to maintain federal superintendence over Alaska Natives. Also relevant to the Court's decision on this issue was the fact that all major Indian legislation since ANCSA has specifically included Alaska Natives or their villages or corporations.

Looking at specific aspects of ANCSA, the Court concluded that ANCSA's transfer of settlement lands to corporate entities rather than Tribes did not extinguish federal superintendence over Alaska Natives. Identifying some of the unique features of ANCSA that support continuing federal superintendence, the Court noted that "Native corporations themselves are subject to federal controls that have not been imposed upon the general corporate community."

The federal government is fulfilling, not abandoning, its trust responsibilities when it facilitates Indian self-determination.

The District Court had relied on ANCSA's policy statement that disavows the creation of any "lengthy wardship or trusteeship" in concluding that federal superintendence was extinguished by ANCSA. Reversing the District Court, the Court of Appeals reconciled ANCSA's policy statement with ongoing federal supervision based on the unique relationship that Native Americans share with the federal government. On this point the Court quotes President Nixon's historic commitment to

the "principle of self-determination without termination" and expressly holds that "ANCSA implemented the federal policy of self-determination without termination of the trust relationship" with Alaska Natives:

The federal government is fulfilling, not abandoning, its trust responsibilities when it facilitates Indian self-determination. Moreover, as expressed by the Self-Determination Act, Indian self-determination involves increased participation of Native Americans in the administration of federal programs, not the elimination of those programs nor the removal of federal officials from a supervisory role over those programs. We believe that ANCSA also implemented the federal policy of self-determination without termination of the trust relationship. Accordingly, we find that Native self-determination and ongoing federal superintendence may coexist, and

Continued on page 6

Indian Country
continued from page 5

that this is precisely the federal-tribal relationship that was introduced by ANCSA.

The Court of Appeals concludes this portion of its opinion in these terms: "ANCSA neither eliminated a federal 'set-aside' for Alaska Natives, as such, nor terminated federal superintendence over Alaska Natives. As a result, Indian country still may exist in Alaska."

Having established that ANCSA did not extinguish Indian country in Alaska the Court turns to the question of whether ANCSA satisfied the "set-aside" and superintendence criteria for "dependent Indian community" status. Rejecting the District Court's holding that Congress did not "set-aside" lands for Natives as such, the Court of Appeals held that ANCSA represents an affirmative "federal 'set-aside'" of land for the benefit of Alaska Natives. In reaching this conclusion the Court noted that Native corporations retain their "Native identity" that "differs markedly from ordinary business corporations." The Court listed several of ANCSA's unique features which make Native corporations clearly "Native" in character. The Court then concluded that while a federal "set-aside" of land is necessary for the establishment of Indian country, ANCSA provides precisely such a "set-aside". The Court found it legally of no significance that ANCSA lands are owned in fee by ANCSA corporations rather than tribes, so long as the necessary federal action is present in setting the lands apart.

"Accordingly, we hold that ANCSA did not extinguish Indian country in Alaska, and that Venetie, having demonstrated that it qualifies as a "dependent Indian community", occupies its territory as Indian country."

Concluding that Congress set land aside for Alaska Natives, the Court of Appeals then evaluated the superintendence requirement of the "dependent Indian community" test which is "designed to determine the extent to which the traditional trust relationship between the federal government and Native Americans remains intact in a particular case." Reversing the District Court on this issue, the Court of Appeals held that the federal government's trust relationship survived ANCSA. The Court specifically rejected the District Court's conclusion that "the federal government no longer exercised that level of active superintendence necessary to evidence an intent to be the dominant political institution in the area in question to the exclusion of the state. We reject the notion that federal supervision must be 'dominant' in order to satisfy the superintendence prong of the Indian country test."

Having concluded that ANCSA satisfies both the federal "set-aside" and federal superintendence criteria, the Court turned to the specific question of whether Venetie satisfies the Court's six-part Indian country test. Applying this test, the Court found that:

(1) the Venetie Tribe has "inhabited a reasonably well-defined territory to the virtual exclusion of other people," both before and after contact with non-Natives, and that is has continued to occupy "much of that same

territory" to the present. The Court also notes that Venetie land is "well-suited to the Tribe's subsistence lifestyle," and that "Venetie has a special 'use and occupancy' relationship to the land at issue."

(2) The Court found that the Venetie inhabitants are almost exclusively members of the [Venetie] Tribe. "The near-perfect correlation between the area inhabitants and Tribal membership indicates the strong ties between the land, its people and the Tribe." The Court also finds that the Tribal community "has enjoyed a long history of interaction with federal officials" including interaction with the Bureau of Indian Affairs long before ANCSA, the adoption of an Indian Reorganization Act constitution, and the presence of other "significant contacts and relationships" with numerous federal agencies.

(3) The federal government has continued to exercise its trust responsibilities with respect to the Venetie community, both through federal grants for an airport, a housing project, water and wastewater systems, a housing renovation project, and through the self-determination/self-governance program.

(4) The federal government exercises sufficient superintendence over native affairs in the area, and there is a sufficient relationship between the community and the federal government, that actual federal ownership of local lands in unnecessary.

(5) There is a high degree of cohesiveness among the Venetie people, virtually all of whom are Alaska Natives who have joined together in the formation and control of their Tribal government.

(6) ANCSA land "set-aside" for [village] corporations qualifies as land "set-aside" for the use, occupancy, and protection of Alaska Natives, as such."

In elaborating on this last point, the Court observes that Venetie presents "an especially compelling illustration of this conclusion" because Venetie exercised the option to reject many aspects of ANCSA by the selection of its former reservation in place of the land selection formula set forth in the Act.

In conclusion, the Court of Appeals reiterated that ANCSA did not extinguish the special relationship nor the responsibility that the federal government owes Alaska Natives. "Accordingly, we hold that ANCSA did not extinguish Indian country in Alaska, and that Venetie, having demonstrated that it qualifies as a "dependent Indian community", occupies its territory as Indian country."

The Court remanded the case back to the District Court to determine the merits of the States's other challenges to Venetie's tax.

NARF UPDATES

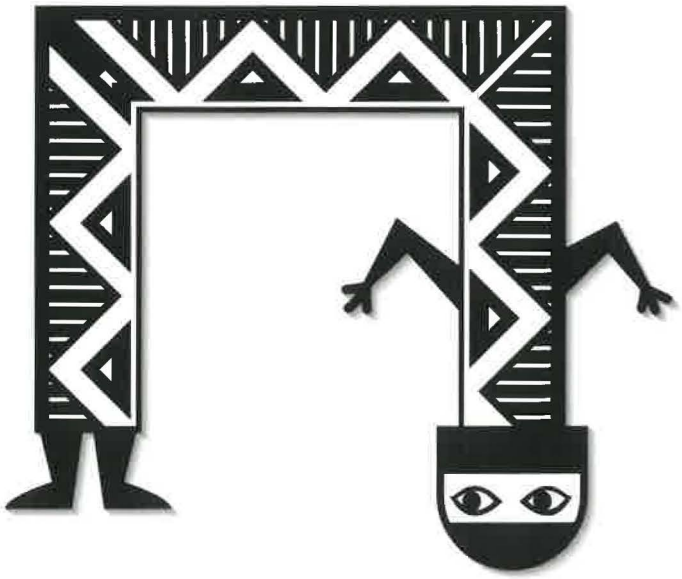
Court rules Alabama-Coushatta Tribe entitled to compensation for lost land

The Alabama-Coushatta Tribe of Texas, after more than 25 years of effort, may now be entitled to compensation for the loss of millions of acres of fertile forest that they once occupied in southeast Texas. The Tribe has been represented by the Native American Rights Fund since 1981 in their quest to prove that their ancestral land was illegally taken from them by settlers.

In July, 1996, the United States Court of Federal Claims ruled that the United States should compensate the Alabama-Coushatta Tribes for the loss of 3.4 million acres of ancestral land illegally taken between 1845 and 1954. This land includes all or part of 12 southeast Texas counties and has been the center for oil, gas and timber production. NARF and the Tribe are now conducting extensive research on determining the law of compensation for the loss of use and occupancy of the land, including fair rental value and profits from oil, gas and timber produced over the years. Initial settlement discussions with the United States have begun.

The Alabama-Coushatta Tribe presently occupies a reservation of approximately 4,200 acres in Polk County, Texas. The Tribe is composed of approximately 900 full blood members who reside on the reservation. In 1954, Congress terminated the trust relationship between the Tribe and the United States. In 1981, NARF also began its representation of the Tribe seeking Congressional action to restore the trust relationship and on August 18, 1987, President Reagan signed Public Law 100-89, restoring federal recognition and the federal trust relationship between the Tribe and the United States.

In the current land claim, the Alabama-Coushatta Tribe argued that it possesses, and has possessed since 1830, aboriginal or Indian title to an area now included in 12 East Texas counties, embracing approximately 6.4 million acres. The Tribe lost possession and use of its lands, without payment or compensation, through the gradual encroachment of non-Indian settlers, a process that began in the 1830's and continued through the mid-1900's. Neither the previous sovereigns of Spain, Mexico and the Republic of Texas nor the United States ever attempted to purchase the lands from the Tribe

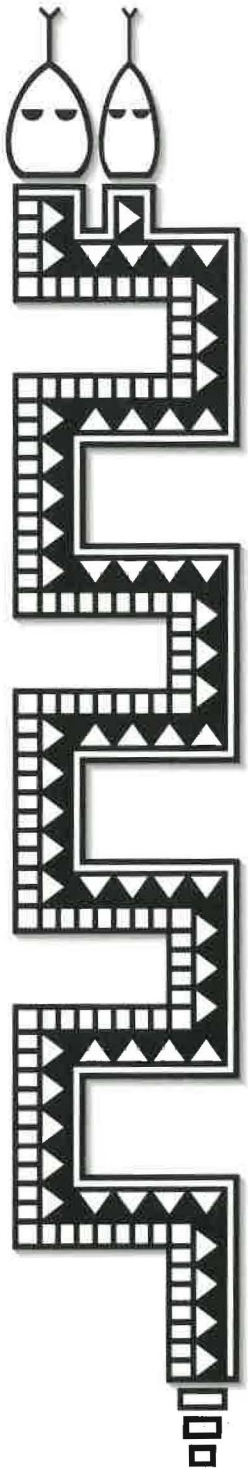


through treaty or agreement or to otherwise extinguish its rights of use and occupancy.

Because the federal common law and the Indian Non-Intercourse Act establish a trust relationship between Indian tribes and the United States with respect to tribal lands, the Tribe asserts that the United States had a duty to protect the Tribe in possession of its aboriginal lands. Therefore, the Tribe's dispossession under the Texas public lands program was in violation of federal common law and statutory protections that establish that Indian land may not be alienated without the plain and unambiguous consent of Congress. Because Congress has enacted no legislation authorizing or ratifying the Tribe's dispossession of its aboriginal land, the Tribe retains its Indian title and thus has a present possessory right in the land.

The Tribe began pursuing its land claim against the United States in 1969 by intervening in the Caddo Tribe of Oklahoma's Indian Claims Commission case. The Commission later dismissed the Tribe's claim on jurisdictional grounds, but stated that "the Alabamas and Coushattas had established extensive areas of use and occupancy which they continued to inhabit for a long time ..." and that "for a long time beginning before and ending after the United States acquired these areas the Alabamas and Coushattas effectively exercised control over these areas and over other Indians who may have ventured therein."

Because of the Indian Claims Commission's finding that the Tribe missed the filing deadline, the Tribe repeatedly asked Congress, beginning in 1975, for permission to bring its claim. Because the Tribe did not receive notice of enactment of the Indian Claims Commission Act as required by that Act, in 1983 Congress finally permitted the Tribe to pursue its land claim against the Government in the U.S. Court of Federal Claims. After a 1986 trial, the trial judge found against the Tribe. Shortly thereafter, the trial judge died. In 1990, the Review Panel, to which the Tribe appealed, found the trial judge's findings and conclusions to be inadequate and sent the case back to a substitute trial judge. In 1993, the substitute judge ruled against the Tribe on some important issues, and ruled in the Tribe's favor on others. Both the Tribe and the Government appealed before the Review Panel in the U.S. Court of Federal Claims on the narrow question of whether the Tribe possessed Indian title in 1845 when Texas became a state and the United States acquired sovereignty.



Courts rule in two landmark cases affecting tribal court jurisdiction

The United States Supreme Court and a Nevada Federal District Court ruled in two separate cases October 1, 1996 on issues centrally important to the struggle of Indian tribal courts to protect their jurisdiction. In both cases, non-Indians who allegedly committed torts while on Indian reservations and who have been sued in tribal court by the victim, sought federal court rulings that the tribes involved have no jurisdiction to require them to appear before the tribal court.

~ The Supreme Court Agrees to Review Case Involving the Three Affiliated Tribes of Fort Berthold ~

In *Strate, et. al. v. A-1 Contractors, et. al.*, the United States Supreme Court agreed to review a decision by the U.S. Court of Appeals for the Eighth Circuit. The case involves the jurisdiction of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota to decide a personal injury case between two non-Indians on the reservation. A non-Indian resident of the reservation was involved in an automobile collision on a state highway within the tribal reservation with a non-Indian owner/employee of a landscape construction company located off the reservation but conducting business on the reservation under a subcontract with the Tribe. The Court of Appeals held that the tribal court does not have jurisdiction over the case.

On January 7, 1997, NARF senior attorney Melody McCoy (Cherokee) presented arguments before the United States Supreme Court on behalf of the Three Affiliated Tribes of the Fort Berthold Reservation. One of the arguments Ms. McCoy presented stated that tribal courts should have jurisdiction along with state courts over motor vehicle torts that threaten the reservation community, even if they occur on state highways. Melody McCoy is just one of five Indian women to argue a case before the United States Supreme Court. Two of the other four women, Arlinda Locklear and Jeanne Whiteing, were also NARF attorneys. A decision in the *Strate* case is expected before July, 1997.

Jonathan Nuechterlein, U.S. Department of Justice; Melody McCoy, NARF attorney; and Don Wharton, NARF attorney at U.S. Supreme Court *Photo Credit: June Lorenzo*

~ Nevada Federal District Court Rules in Favor of Fallon-Paiute Shoshone Tribe ~

In *State of Nevada, et. al. v. Hicks, et. al.*, two officers of the Nevada Division of Wildlife, on two separate occasions, searched the residence and confiscated possessions of a member of the Fallon Paiute-Shoshone Tribe. The tribal member resides on his Indian allotment land within the Fallon Paiute-Shoshone Indian Reservation in Nevada. It was determined that the tribal member committed no crime. His possessions were returned, but in damaged condition. As a result, the tribal member sued the officers in tribal court for the violation of his civil rights. The officers contested the jurisdiction of the tribal court in both the tribal court of appeals (which affirmed the tribal court's jurisdiction) and the Federal District Court for Nevada. NARF represented the Tribe before Judge Hagen of the Federal District Court, who ruled that the tribal court does indeed have jurisdiction to hear the case. The State has appealed this ruling to the U.S. Court of Appeals for the Ninth Circuit.

NARF asserts that these cases represent part of an on-going and extremely important effort to protect the viability and integrity of tribal courts nationally. Tribal judicial systems are under ceaseless attack from those who do not wish to be held accountable for their conduct while on Indian reservations. Tribes look to the federal courts to uphold the right of tribes to provide a forum for the resolution of civil disputes which arise within their territories, even when those disputes involve non-Indians.

NARF believes that protection of tribal jurisdiction is a long and well-documented struggle dating to the very beginnings of this nation's founding. The question is whether the original people of this land will be allowed to define and protect their way of life in those situations where outsiders seek to avoid accountability in tribal courts for their actions while on Indian lands.

Cheyenne and Arapaho Tribes win right to tax oil companies

The Cheyenne and Arapaho Tribes of Oklahoma won a major victory on August 23, 1996 when, in *Mustang Production Co. v. Harrison*, the United States Court of Appeals for the Tenth Circuit upheld the Tribes' right to tax oil gas production on allotted lands. The allotments — 160 acre land parcels held in trust by the federal government for members of the Tribes — are scattered throughout nine counties in western Oklahoma. The parcels are virtually all that remains of the Cheyenne and Arapaho 4.5 million acre reservation which the federal government took back in 1890.

In reviewing the case, the federal appeals court held that "the Tribes have an inherent sovereign power to tax economic activities on their lands, and because the allotted lands are within their jurisdiction, the Tribes have the power to enact and enforce a severance tax on oil and gas production from allotted lands."

The Cheyenne and Arapaho Tribes first enacted the tax in 1988 to raise $1 million annually for roads, schools, and housing for its 10,000 members, many of whom live in poverty. Nineteen oil companies, who for decades have been extracting oil and natural gas from the allotments, immediately challenged the tax. The Tribes retained NARF to defend their rights, and *Mustang* became the first major tribal tax case to be heard in Tribal Court. As the case proceeded through the tribal court system and then into federal court, the federal government entered the case as *amicus curiae* (friend of the court) in support of the Tribes' right to tax.

This precedent-setting decision makes it clear that the allotments are subject to tribal jurisdiction. *Mustang* will directly affect several pending cases in Oklahoma and New Mexico regarding tribal jurisdiction on activities on allotments. It will also assist the many tribes throughout Indian country whose reservations were reduced to allotments until Congress ended the allotment policy in 1934.

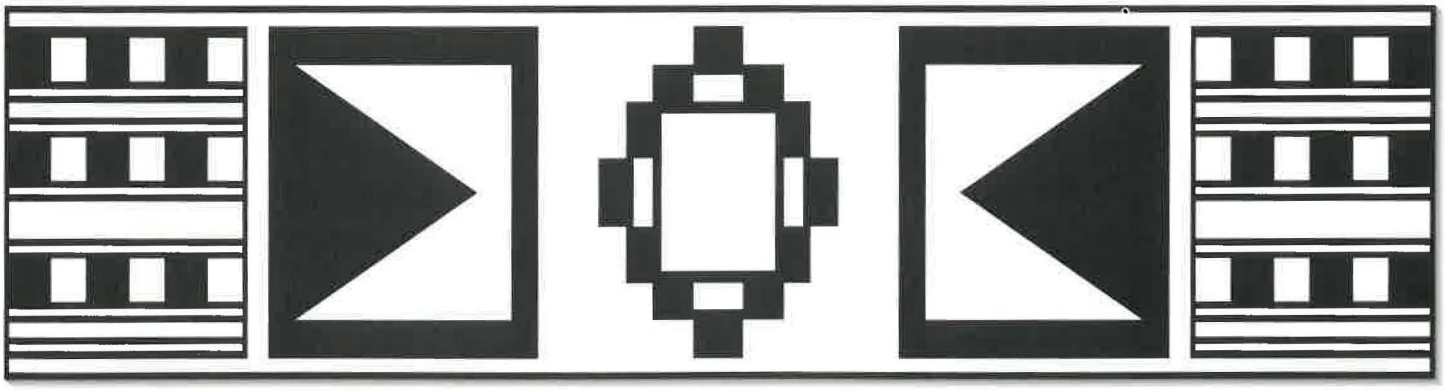
In November, the oil companies petitioned the United States Supreme Court for review of the case. The Tribes will file their response in February, 1997.

Houma Tribe files lawsuit challenging federal recognition process of Indian tribes

The Native American Rights Fund has filed suit against the federal government on behalf of the United Houma Nation of Louisiana. The lawsuit challenges a Bureau of Indian Affairs (BIA) regulation that requires tribes that are petitioning for federal recognition to show that its members descend from a historic tribe. A historic tribe is defined as one that existed at the time of first sustained contact with non-Indians. There is no question that the members of the Houma Nation are of Indian descent.

The United Houma Nation contends that the government's acknowledgment regulations violate the 1994 amendments to the Indian Reorganization Act (IRA). These amendments prohibit federal agencies from making any distinctions between historic and non-historic tribes.

If the suit is successful, the BIA will be required to reconsider the Tribe's petition for recognition without regard to whether its members descend from a historic tribe. NARF has represented the United Houma Nation since 1974 in their struggle to obtain an administrative determination by the BIA that they are a federally-recognized tribe.



Congress moves to reform trust fund system

The Native American Rights Fund published an article entitled "300,000 Indians Sue Federal Government for Mismanaging Their Money" in the Summer/Fall 1996 edition of the NARF *Legal Review*. This publication included a "Call to Action," asking readers to write letters to their Senators and Representatives, as well as to the Chairmen of the House and Senate Appropriations Committees and Subcommittees on Interior and Insular Affairs, in support of adequate appropriations for the Office of the Special Trustee (OST). As reported, NARF, along with other attorneys, filed a class action lawsuit on June 10, 1996 against the federal government. The lawsuit was filed on behalf of 300,000 Indians, to seek redress for government mismanagement of trust funds through which billions of dollars in Indian money has flowed over the years. The suit charges the federal government with illegal conduct in what is viewed as the largest and most shameful financial scandal ever involving the United States government.

The federal government is required by law to manage the Indians' money, held in what is known as trust accounts. Although the money in question is processed by the Interior Department and deposited in the U.S. Treasury, it is the Indians' own money, derived largely from income produced from leases of Indian lands. In a sense, the law requires the Indians to use the federal government as their bank. The Government Accounting Office (GAO) and a big six accounting firm have independently concluded that the government-managed trust fund is in total disarray and hopelessly broken.

NARF, as part of the Individual Indian Money Team (IIM), engaged in a comprehensive legislative advocacy effort to seek adequate Congressional appropriations for the Office of the Special Trustee to begin the needed system reforms to create an adequate trust fund management system. At the time NARF became engaged in the case, the House Appropriations Committee had marked only $19.126 million for the OST. This amount was drastically less than the $49 million, which the Special Trustee had asked the Administration to request, and significantly less than the $36.3 million which the President included in his budget request to Congress. In short, the

House mark provided no funds for the Special Trustee to complete his Strategic Plan (scheduled for completion in March of 1997), nor did it provide any funds for system reform, including creating an adequate IIM accounting system.

The IIM Team determined that the interests of the 300,000 individual Indian trust beneficiaries in the class action litigation obligated it to seek an additional $22.3 million, the amount necessary to establish an adequate IIM accounting system, which the Special Trustee had determined could be accomplished in one year. During the summer of 1996, the IIM legislative team, led by NARF, undertook a comprehensive legislative effort involving the House of Representatives, the Senate and the White House to garner a substantial increase in the funding for the Office of the Special Trustee. Central to this effort was NARF's testimony at the four Summer hearings of the House Task Force on Indian Trust Fund Management, wherein NARF urged Congress to work with the Administration in bi-partisan fashion to appropriate sufficient funds to the OST for purposes of creating an adequate IIM accounting system.

Also key to this effort was a request by the IIM Team to House Resources Committee Chairman Don Young to write letters to both Rep. Bob Livingston, Chairman of the House Appropriations Committee and Rep. Ralph Regula, Chairman of the Appropriations Subcommittee on Interior, urging the House to accept the Senate Committee mark of $36.3 million for the OST. Chairman Young responded with timely letters to Mr. Livingston and Mr. Regula.

On the Senate side, the IIM Team urged the Senate Appropriations Committee to hold the line at the Senate mark in negotiations with the House for conference bill purposes. The IIM Team also contacted the White House prior to its negotiations in late September with Congressional Republican Appropriations leaders, urging the White House to remain firm at the $36.3 level.

Congress finally appropriated $32.126 million for the OST for FY 1997, due to the lobbying efforts of several groups, including the IIM Team. This amount is $13 million more than the House mark, and about $4 million less

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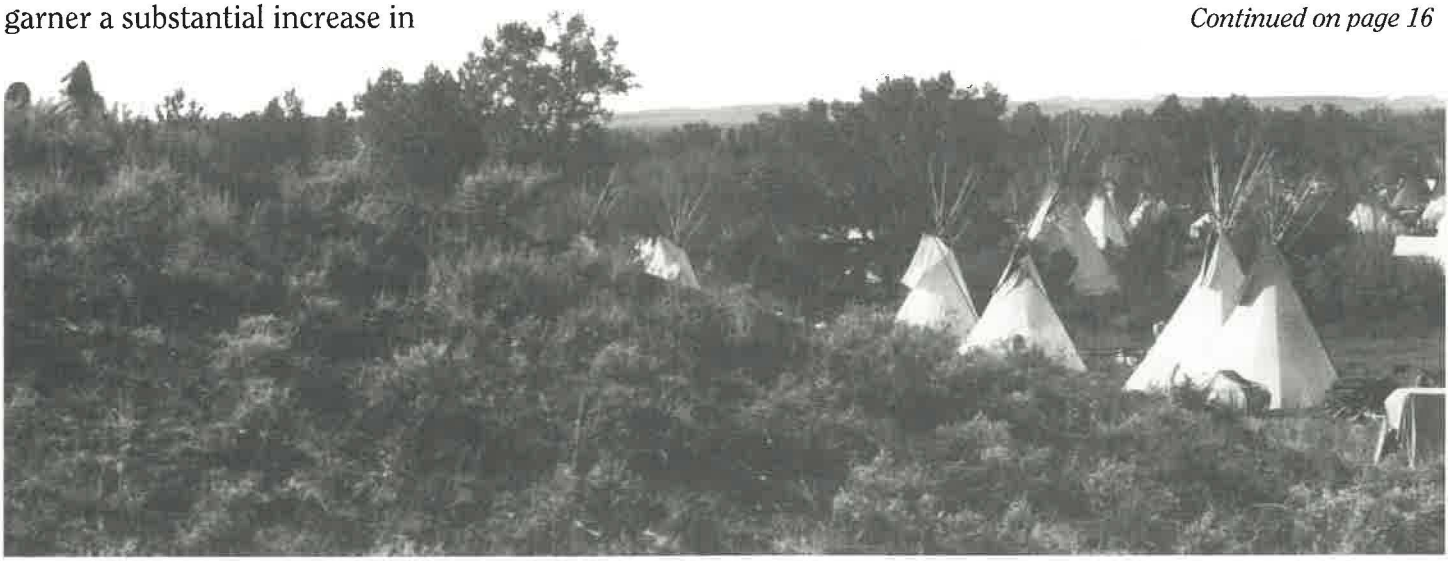


Reform Trust Fund System

continued from page 15

than the Senate Appropriations Committee mark. Of the $32.126 million, $13.461 million is for "improvement initiatives." Based upon the testimony of the Special Trustee before the Senate Committee on Indian Affairs and the House Task Force on Indian Trust Fund Management, it is anticipated that these "funds will be used primarily to upgrade and establish a new IIM accounting system, which is long overdue."

Trust fund litigation update

The class action lawsuit alleges that the federal government, by mismanaging the IIM trust, breached its fiduciary duties to over 300,000 individual Indian trust beneficiaries. The lawsuit has three basic objectives: (1) require the federal government to complete an accurate and reliable calculation, or accounting, of the moneys due IIM account holders; (2) require the federal government to repay IIM account holders the money the federal government has lost through mismanagement or neglect; and (3) compel the federal government to create an adequate trust accounting and management system.

The government has basically conceded that an accounting of the IIM accounts is impossible due to incomplete or missing records. The parties are currently negotiating to establish a statistical analysis methodology ("economic modeling") which will produce the functional equivalent of an accounting. The objective is to determine the amount due IIM account holders. After this process is completed, it is hoped that remaining issues can be resolved by negotiation.

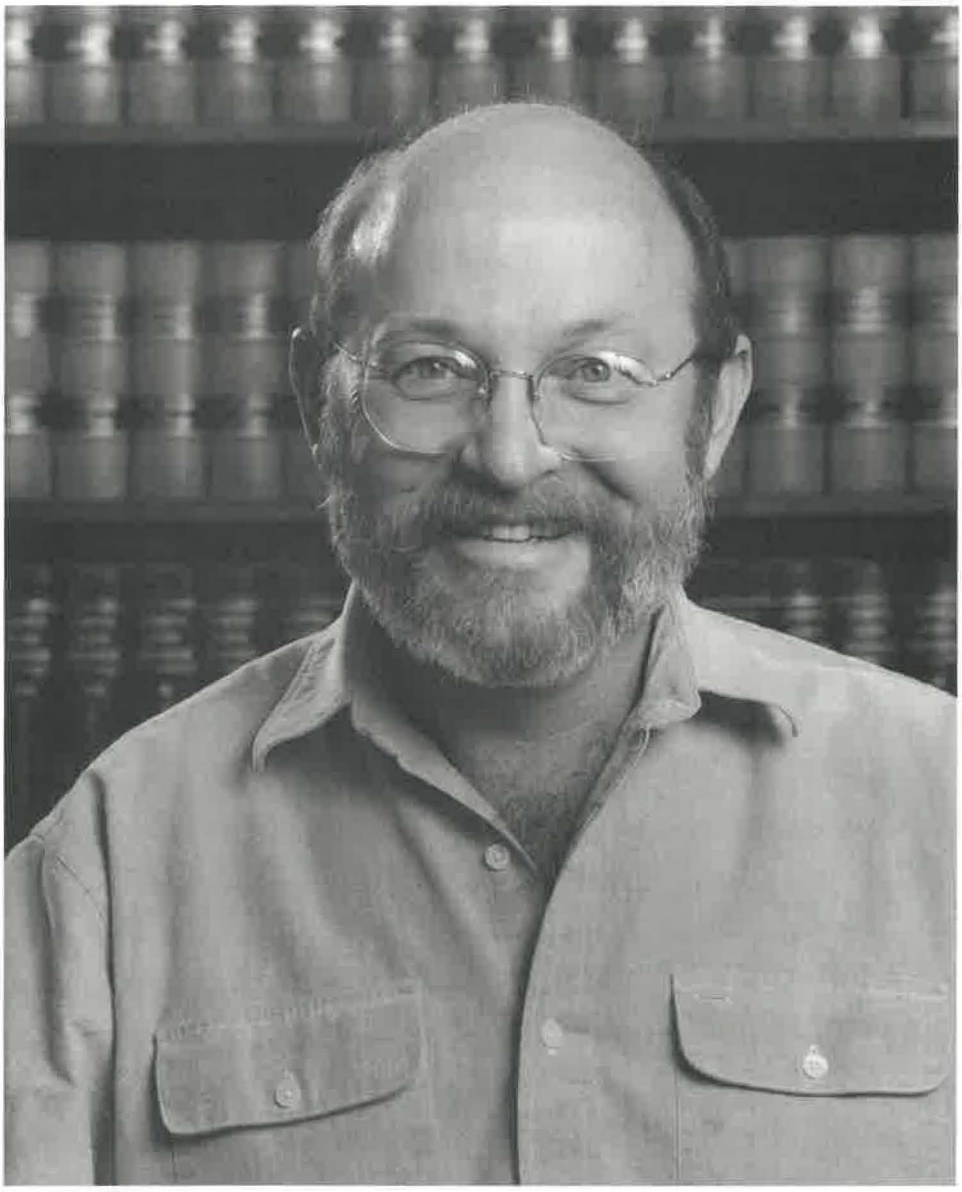
Last Fall, NARF and other attorneys filed a motion for certification of the class under the Federal Rules of Civil Procedure. The government did not object to class certification for purposes of fixing the trust accounting and management system. However, the government asked the court to defer certification for purposes of an accounting and repayment, pending development of a statistical alternative to individual accounting.

In a related development, the government filed its answer to the complaint on January 17, 1997. Essentially, the answer was a "boilerplate" Department of Justice response, wherein the government denied that it has breached any trust obligations regarding management of the IIM accounts. The government also asserted, in part, that: the 300,000 Indians comprising the putative class have no standing to file the lawsuit; the court lacks jurisdiction to order an accounting; the action is barred by the statute of limitations; and the government is immune from suit under the doctrine of sovereign immunity. On February 4, 1997, the court denied the government's arguments and certified the class.

As currently postured, the parties are working cooperatively in an attempt to resolve this massive, complex litigation outside the traditional adversarial court process of motion practice and related flurries of paper filings and oral arguments. Stay tuned!

NARF ATTORNEY

Donald R. Wharton

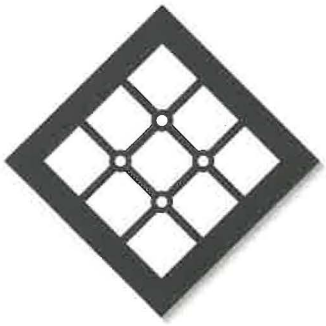


Donald R. Wharton came to NARF's Boulder office in 1988 to direct its newly funded Economic Development Law Project. During the course of the Project it was expanded to include environmental issues. After directing that Project for six years, Don assumed responsibility for other cases at NARF in the area of tribal jurisdiction. Before joining NARF, Don served as the founding Director of Oregon Legal Services Native American Program; Staff Attorney, D.C. Office of the Solicitor, U.S. Department of the Interior; Special Counsel to the American Indian Policy Review Commission, U.S. Senate; Assistant Attorney General for the Navajo Nation's Department of Justice; and, was General Counsel to the Klamath Indian Tribe of Oregon. He is a member of several Court Bars, including the Navajo Nation Bar; the State Bars of Arizona, Colorado and Oregon; the Federal District Courts of Oregon and Arizona, the Ninth Circuit Court of Appeals, and the United States Supreme Court — where he was recently co-counsel with Melody McCoy who argued a case there involving tribal court jurisdiction over non-Indian litigants on January 7, 1997. Mr. Wharton was appointed the J. Skelly Wright Fellow and Visiting Lecturer in Law at Yale Law School for the Spring term of 1995. Don is a graduate of Colorado State University (1970) and the University of Colorado School of Law (1973), and is listed in *Who's Who in American Law.*

NEW NARF BOARD MEMBERS

Ernest L. Stevens, Jr., Wisconsin Oneida, was elected to the Native American Rights Fund Board of Directors, replacing Rick Hill who completed his three terms on the Board. Ernie is an Oneida Business Committee Member and First Vice-President of the National Congress of American Indians. He is a graduate of Haskell Indian Junior College, received a Bachelor of Science Degree from Mount Senario College, and attended graduate school at the University of Wisconsin-Stout.

Ernie has devoted his time as an advocate for the rights and authorities of Indian people and has brought awareness and increased understanding of the critical issues facing Native peoples, both urban and on reservations. He has worked diligently to sustain efforts that reaffirm Indian sovereignty and to enhance the relationships among Indian nations and with the United States. Ernie is a member of various committees, both locally and nationally, that impact the lives of Native peoples. Much of his time is spent working with Indian youth in sports, recreation, and in advancing the educational expectations of the upcoming generations.



Michael P. Williams, Yup'ik, was elected to the Native American Rights Fund Board of Directors, replacing Willie Kasayulie who completed three terms on the Board. Mike is from the Akiak Native Community in Alaska and is active in the Alaska Inter-Tribal Council, tribal government and education. He attended Kuskikwim Community College studying behavioral Science and is currently a Mental Health Counselor. Mike has been active in his community and in the state serving on many boards and committees addressing issues in education and alcohol/drug abuse. He has received many state and local awards for his dedication and his efforts.

Mike is also know for his 26 years as a dog musher in the Iditarod/Kusko dog sled races. Mike dedicates each race to promote sobriety, healthy families, and the prevention of fetal alcohol syndrome. Through his efforts in promoting awareness and education concerning the effect of alcohol and drug abuse, he has been honored by his peers as the Most Inspirational Dog Musher.

NARF welcomes both Ernie Stevens, Jr. and Mike Williams to the NARF Board of Directors. We look forward to working with them and learning from their years of experience and activism in Indian country.

NARF RESOURCES AND PUBLICATIONS

THE NATIONAL INDIAN LAW LIBRARY

For the modern-day Indian, information is priceless in helping their fight to keep tribal homelands intact and traditional tribal ways alive. The National Indian Law Library has been providing Indian tribes and Indian law attorneys with a wealth of Indian law materials for the past 25 years. The materials are documents ranging from legal pleadings written in vital Indian law cases (from Tribal court to United States Supreme Court) to a collection of Tribal codes (there are about 510 federally recognized tribes in the United States.)

The National Indian Law Library began as a special library project of the Native American Rights Fund. It was initially designed to serve as a clearinghouse for materials on American Indian Law for tribes, private and tribal attorneys, legal service programs, law firms, federal and state governments and agencies, and for students. Essentially, it was intended to carry out one of the Native American Rights Fund's priorities, the systematic development of Indian law.

Over time, The National Indian Law Library has become the sole repository of Indian law materials in the nation. The Library fulfills its function by collecting all available materials related to Indian law. These materials are catalogued on a customized library application software database and indexed for inclusion in the National Indian Law Library Catalogue.

The National Indian Law Library Publications For Sale:
(Prices are subject to change, shipping and handling charges are additional)

The Bibliography on Indian Economic Development, 2nd Edition. Designed as a tool for the protection and regulation of commercial activities on Indian reservations. Included in the bibliography are articles, monographs, memoranda, Tribal codes, and miscellaneous materials on Indian economic development. Cost for this title is $30.00.

The National Indian Law Library Catalogue, Volume I. One of The National Indian Law Library's major contributions to the development of Indian law is the creation of this catalogue. It is arranged by subject-matter index, author-title index, plaintiff-defendant index, and NILL number listing. Cost for *The National Indian Law Library Catalogue, Volume I* is $85.00; the *1985 Supplement* is $10.00; the *1989 Supplement* is $30.00.

Top *Fifty: A Compilation of Significant Indian Cases*, compiled by the National Indian Law Library, costs $85.00.

Other Publications Offered For Sale by The National Indian Law Library:
(Prices are subject to change, shipping and handling charges are additional)

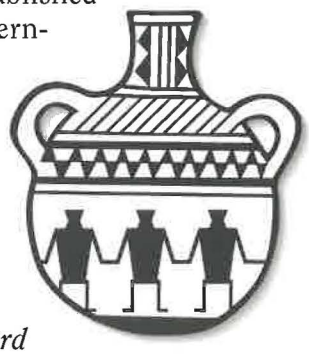
American Indian Law: Cases and Materials, 3rd edition, 1991, by Robert N. Clinton, Neil Jessup, Monroe E. Price, price is $45.00.
American Indian Law: Cases and Materials, 3rd edition, 1992 Supplement, by Robert N. Clinton, Neil Jessup, Monroe E. Price, price is $10.00.

American Indian Law in a Nutshell, 2nd edition, 1988, by William C. Canby, price is $16.00.

American Indians, Time and the Law, 1986, by Charles F. Wilkinson, price is $13.00.

Battlefields and Burial Grounds, 1994, by Walter Echo-Hawk and Roger Echo-Hawk, price is $15.00.

Code of Federal Regulations, Title 25, 1995, published by U.S. Government Printing Office, price is $15.00.



Federal Indian Law, Cases and Materials, 3rd edition, 1993, by David Getches, Charles Wilkinson, and Robert A.

Continued on page 22

NARF

continued from page 21

Williams, Jr., price is $54.00.

Felix S. Cohen's Handbook of Federal Indian Law, 1992 edition, edited by Rennard Strickland, price is $85.00.

Handbook of American Indian Religious Freedom, 1991 edition, edited by Christopher Vescey, price is $15.00.

The Indian Child Welfare Handbook: A Legal Guide to the Custody and Adoption of Native Americans, 1995, published by the American Bar Association, price is $69.95.

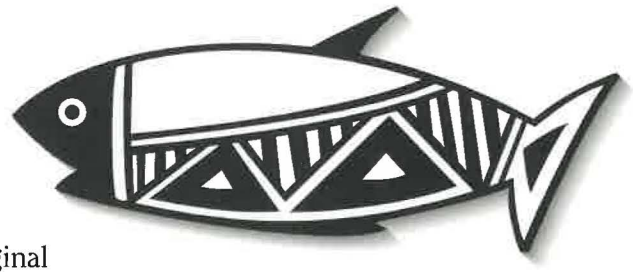
Indian Claims Commission Decisions 1946-1978. This forty-three volume set reports the work of the Indian Claims Commission. Each volume is sold separately at a cost of $25.00. The *ICCD Index* is sold at $25.00.

Indian Land Area Map, 1992, published by the U.S. Department of the Interior, price is $5.00.

Mending the Circle: A Native American Repatriation Guide, 1996, published by the American Indian Ritual Object Repatriation Foundation, price is $40.00.

The Rights of Indians and Tribes, 2nd edition, 1992, by Stephen L. Pevar, price is $8.00.

1988 Update to The Manual for Protecting Indian Natural Resources. The Manual covers the developments in natural resource law over the six years since the publication of the original manual in 1982.



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. (Must be purchased with Update.)
The Update is available for the price of $30.00. The original manual and the update are available for $50.00.

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, the manual discusses the task of developing reservation economics 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 non-tribal entities. $35.00

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. (Must be purchased with update.)
1986 Update To Federal Indian Education Laws Manual. The Update is available for $30.00. The price for original manual and update is $45.00.

A Manual On The Indian Child Welfare Act And Laws Affecting Indian Juveniles. 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. (Must be purchased with Update.)

1992 Update to the Indian Child Welfare Act and Laws Affecting Indian Juveniles Manual. The 1992 Update provides a section-by-section legal analysis of the Act as well as the developments in Indian Child Welfare Act case law over the eight years since the publication of the original manual in 1984. The 1992 Update and the original Manual comprise the most comprehensive examination of the Indian Child Welfare Act to date. The original manual and the 1992 Update are available for $50.00. If you have the original manual and require only the Update, it is priced at $35.00.

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 biannually by the Native American Rights Fund. Third class postage paid at Boulder, Colorado. Ray Ramirez, Editor. There is no charge for subscriptions, but contributions are requested.

TAX STATUS. The Native American Rights Fund is a nonprofit, charitable organization incorporated in 1971 under the laws of the District of Columbia. NARF is exempt from federal income tax under the provisions of Section 501 (c) (3) of the Internal Revenue Code, and contributions to NARF are tax deductible. The Internal Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.

MAIN OFFICE: Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302 (303-447-8760) (FAX 303-443-7776). ***www.narf.org***

WASHINGTON, D.C. OFFICE: Native American Rights Fund, 1712 N Street, N.W., Washington,D.C. 20036 (202-785-4166) (FAX 202-822-0068).

ALASKA OFFICE: Native American Rights Fund, 310 K Street, Suite 708, Anchorage, Alaska 99501 (907-276-0680) (FAX 907-276-2466).

OTU'HAN

In the Journals of Lewis and Clark, it is noted that the Sioux had a custom of giving gifts in the names of those they wished to honor.

This custom is referred to as Otu'han — a Lakota word literally translated as "giveaway." Items of value such as shawls, quilts and household items are gathered over a long period of time to be given away during pow-wows or celebrations in honor of births, anniversaries, marriages, birthdays, and other special occasions. The Otu'han is also customary in memory of the deceased. The custom of giving in honor or memory of someone is still very much alive among Indian people today. We are honored to list those donors making gifts to the Native American Rights Fund in spirit of the Otu'han.

JULY - DECEMBER 1996

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Otu'han

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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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