



NARF Legal Review

Native American Rights Fund

THE TRIBAL SUPREME COURT PROJECT

Today, many of the battles in Indian country are being fought in the courtroom. Many judges, who lack an understanding of the fundamental principles underlying federal Indian law and who are unfamiliar with the practical challenges facing tribal governments, are making decisions that threaten the continued sovereign existence of Indian tribes. Perhaps the greatest threat to Indian tribes comes from the recent decisions of the United States Supreme Court. As noted Indian law scholar David Getches found, in the past two decades, Indian tribes have lost approximately 80% of their cases before the Supreme Court. (David H. Getches, *Beyond Indian Law: The Rehnquist Court's Pursuit of States' Rights, Color Blind Justice and Mainstream Values*, 86 MINN. L. REV. 267 (2001))

(providing an in-depth analysis of the Court's re-writing of Indian law.) And these losses have been severe. The Court has in recent years taken a very aggressive approach to eroding tribal sovereignty and jurisdiction. At the same time, the Court has been increasing State jurisdiction over Reservations

In 2001, Tribal Leaders formed the Tribal Supreme Court Project as a part of the Tribal Sovereignty Protection Initiative. The Project

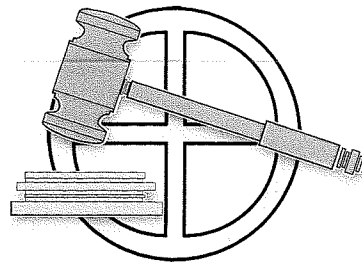
was created to coordinate resources, improve strategy and strengthen Indian advocacy before the Court. The Project operates under the theory that if Indian tribes take a strong, consistent, coordinated approach before the U.S. Supreme Court, they will be able to reverse, or at least reduce, the erosion of tribal sovereignty and tribal jurisdiction by the federal courts. The

Tribal Supreme Court Project is jointly staffed by attorneys from the Native American Rights Fund (NARF) and the National Congress of American Indians (NCAI).

Now in existence for just over four years, the Tribal Supreme Court Project can look back to review its theory in practice. Since 2001, the Project has been involved in seven cases argued before the U.S. Supreme Court with four

solid wins, two disappointing losses and one draw. This winning percentage is a vast improvement from the deplorable win-loss record Indian tribes have suffered before the Court in the past two decades. And this winning record does not reflect a number of cases where the Project has worked "behind the scenes" to ensure that victories won at the U.S. Circuit Courts of Appeal are denied discretionary review by the Supreme Court.

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The Tribal Supreme Court Project is also constantly looking ahead, preparing for the next series of cases challenging tribal sovereignty and contesting tribal jurisdiction. As we look forward to the October 2005 Term, the Project is evaluating the impact of the death of Chief Justice William H. Rehnquist, while reviewing the qualifications and experience of his successor, Judge John G. Roberts. The Project continues to monitor new developments in relation to the resignation of Justice Sandra Day O'Connor from the Court. The Project remains very busy, tracking numerous cases at various stages of appeal within both state and federal courts, while directly participating in the preparation of amicus briefs in the U.S. Supreme Court and the U.S. Circuit Courts of Appeals.

Looking Back

In the October 2004 term of the U.S. Supreme Court, Indian country suffered a difficult loss in *City of Sherrill v. Oneida Nation of New York* (No. 03-855), celebrated a significant victory in the Cherokee Nation cases (Nos. 02-1472 and 03-853) and worked diligently to ensure that important victories won at the lower courts were denied review by the Supreme Court.

In *City of Sherrill*, the Supreme Court reversed the U.S. Court Appeals for the Second Circuit and ruled against the Oneida Nation, holding that while the Nation maintains a valid claim for damages for reservation lands sold in violation of the Nonintercourse Act, it may not assert tax immunity on repurchased lands within the reservation boundaries until those lands are placed into trust by the Secretary of Interior. This case was closely monitored by many Indian

tribes for its impact on tribal land claims and its application of a number of important principles of federal Indian law. Justice Ginsburg wrote the opinion in the 8-1 decision against the Nation, stating: "Given the longstanding distinctly non-Indian character of the area and its inhabitants, the regulatory authority constantly exercised by New York State and its counties and towns, and the Oneidas' long delay in seeking judicial relief against parties other than the United States, we hold that the Tribe cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue. The Oneidas long ago relinquished the reins of government and cannot regain them through open-market purchases from current titleholders."

For the first time in a case involving tribal claims, the Court's decision invoked the equitable doctrine of laches – that the long passage of time, the Oneida's inaction during that time and the disruptive nature of the remedy – prevents the Nation from asserting its tax immunity. The Court made clear that it was not invalidating the land claim, but only one of the remedies available for the claim. The Court's reliance on the doctrine of laches, which was never presented or briefed by the parties, betrays a deep lack of understanding of the legal and historical realities that prevented many tribes from being able to vindicate their rights until recent decades. While the decision should be construed as a narrow decision regarding the remedies that are available for land claims under the Nonintercourse Act, the Second Circuit has now relied on *City of Sherrill* and the doctrine of laches to reverse the district court's award of \$247 million in money damages and to entirely

bar the land claims brought in *Cayuga Indian Nation of New York and Seneca-Cayuga Nation of Oklahoma v. Pataki*. The Project is also very concerned that states and others are using the *City of Sherrill* and the doctrine of laches to bar causes of action or to diminish the remedies available in other tribal claims, including treaty hunting and fishing litigation, natural resource claims and water rights adjudications.

In the *Cherokee Nation* cases, the U.S. Supreme Court reviewed and considered for the first time the enforceability of the Indian Self Determination Act of 1975. In the first case, *Cherokee Nation of Oklahoma and Shoshone-Paiute Tribes of the Duck Valley Reservation v. Thompson*, the Tenth Circuit Court of Appeals had held that the federal government was immune from any liability for its failure to pay full contract support costs to Indian tribes, during a period in the mid 1990's in which Congress did not place a statutory cap on the amounts the Indian Health Service (IHS) could pay tribal contractors. In the second case, *Thompson v. Cherokee Nation of Oklahoma*, the Federal Circuit Court of Appeals had reached the opposite conclusion, awarding the Cherokee Nation \$8.5 million in damages for the failure by the federal government to fully pay contract support costs.

In the litigation, the United States had taken the position that Indian tribes are not entitled to the same protections afforded other government contractors, and self-determination contracts are merely "governmental funding arrangements." A unanimous U.S. Supreme Court rejected the U.S. position and held that Indian self-determination contracts are "legally binding" agreements – enforceable promises by the federal government similar in nature to other procurement contracts. Justice Breyer, delivering the opinion for the unanimous Court, accepted the view of "the Tribes and their amici... that as long as Congress has appropriated sufficient legally unrestricted funds to pay the contracts at issue, the government cannot normally back out of a promise to pay on the grounds of 'insufficient appropriations,' even if the contract uses

language such as 'subject to the availability of appropriations,' and even if an agency's total lump-sum appropriation is insufficient to pay *all* the contracts the agency has made" (emphasis in original).

In both the *City of Sherrill* and the *Cherokee Nation* cases, the Project developed a tribal amicus brief strategy starting at the petition for certiorari stage, and then coordinated the preparation and filing of several tribal amicus briefs on the merits after review was granted. The Project also monitored several other Indian law cases at the petition for certiorari stage, oftentimes working directly with the attorneys representing their tribal clients, to ensure that other victories won at the U.S. Circuit Courts of Appeal and the various state Supreme Courts were denied review by the U.S. Supreme Court, including:

Eastern Shoshone Cases (Nos. 04-731 and 04-929). In a mixed decision for Indian country, the Federal Circuit held that the Supreme Court's decision in *United States v. Navajo Nation* moots the Tribes' claims relating to a breach of trust for asset mismanagement under the Indian Mineral Leasing Act of 1938. However, the United States is liable for mismanagement of trust funds after collection and for losses to trust funds resulting from the failure to collect. Finally, the Tribes are entitled to interest on the amounts of funds that the government was obligated to collect or delayed in collecting.

Hammond v. Coeur d'Alene Tribe of Idaho (No. 04-624). The Ninth Circuit held that the incidence of the Idaho motor fuel tax impermissibly falls on the Tribes, notwithstanding the state legislature's declared intent to shift the incidence of the tax to the non-Indian distributors. Further, the Ninth Circuit held that the Hayden Cartwright Act, which authorizes states to tax motor fuel sales on "United States military or other reservations," does not manifest sufficiently clear congressional intent to abrogate tribal immunity and allow states to tax gasoline sales on Indian reservations.

South Dakota v. Cummings (No. 04-74). The South Dakota Supreme Court held that a county sheriff may not exercise criminal jurisdiction over an Indian in Indian country, even when in hot pursuit for a crime committed off-reservation. The State of South Dakota had asked the U.S. Supreme Court to overturn the case and expand the *Nevada v. Hicks* decision to increase the jurisdiction of states to enter Indian reservations. Even with this good result, it would be a mistake to believe that the issue of "hot pursuit" is resolved. It is certainly possible that this issue will make its way back to the Supreme Court, and if it does it will be a tough challenge to tribal sovereignty.

Finally, over the past term, the Project has been consulted by a number of Indian tribes who have suffered significant setbacks or losses at the lower courts and who were considering review by the Supreme Court. Generally, these petitions for certiorari were discouraged by the Project in recognition that, at present, there is no bad situation that the Supreme Court cannot make worse for Indian country.

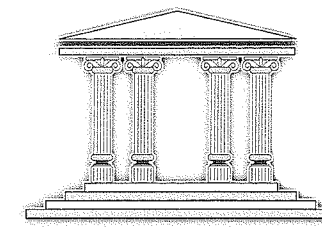
Looking Ahead

In the 2005 Term of the U.S. Supreme Court, Indian country faces another difficult challenge in *Wagnon (formerly Richards) v. Prairie Band Potawatomi Nation* (No. 04-631). In *Wagnon*, the State of Kansas is seeking to overturn the Tenth Circuit's decision to invalidate the application of the Kansas motor fuel tax on tribal sales to non-Indian motorists. Significantly, the Tenth Circuit held that the Nation was not "marketing a tax exemption" but instead its gas station was an essential part of its on-reservation gaming enterprise – particularly where the Nation charged a tax equal to the state tax and the Nation built and maintained the transportation infrastructure on its rural reservation. The importance of this case to the states' interests is underscored by the filing of amicus briefs in support of Kansas by State of South Dakota, joined by 13 other states (Alaska, California, Connecticut, Idaho, Michigan, Missouri,

Nevada, New Mexico, North Dakota, Oklahoma, Pennsylvania, Utah, and Wyoming), the Multistate Tax Commission and the National Association of Convenience Stores, the Petroleum Marketers Association of America and the Society of Independent Gasoline Marketers of America.

The Tribal Supreme Court Project responded, working closely with the attorneys representing Prairie Band Potawatomi Nation and attorneys from throughout Indian country, by coordinating, preparing and filing four tribal amicus briefs: (1) the National Congress of American Indians brief which focuses on the major tax principles in federal Indian law, tracing the history of judicial decisions, beginning with the Indian Commerce Clause and moving forward; (2) the National Intertribal Transportation Alliance brief which discusses the importance of motor fuel taxes to Indian tribes due to the poor quality of road systems in Indian country and the disparity in funding between states and tribes for transportation infrastructure, emphasizing the discriminatory application of state motor fuel taxes on reservations, which siphon reservation funding and leave reservations with the worst roads in the country; (3) the National Intertribal Tax Alliance brief which provides the Court with an overview of the numerous tax compacts entered into by tribes and states, arguing that there has been considerable reliance on the balancing test and that a decision supporting the Kansas position will severely upset these effective state-tribal agreements; and (4) the Kansas Tribes' brief which discusses the violation by Kansas of its Act for Admission and its abandonment of prior state-tribal tax agreements. In all, over 30 individual Indian tribes signed on to the tribal amicus briefs. To their credit, attorneys working for the Tribe and the Project were also successful in persuading the U.S. Solicitor General's Office to file a brief supporting the Prairie Band Potawatomi Nation. Attorneys for the United States shared time with the Tribe in presenting oral arguments to the Supreme Court on October 3, 2005.

Other challenges await. In the area of tribal

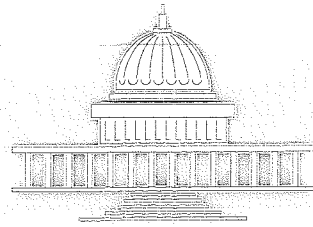


criminal jurisdiction, the U.S. Circuit Court of Appeals for the Ninth Circuit recently issued its decision in *Means v. Navajo Nation* (No. 01-17489). By way of background, during its 2003 Term, the Supreme Court issued its decision in *United States v. Lara* which upheld tribal criminal jurisdiction over nonmember Indians based on the 1990 amendments by Congress to the Indian Civil Rights Act, and ruled that a subsequent prosecution by the federal government does not violate double jeopardy clause of the U.S. Constitution because an Indian tribe is "acting in its capacity of a separate sovereign." In *Lara*, the Supreme Court held that "the Constitution authorizes Congress to permit tribes, as an exercise of their inherent tribal authority, to prosecute nonmember Indians." However, the Supreme Court's opinion left open the issue of whether a tribal prosecution of non-member Indian may be challenged on the basis of a lack of due process or as a violation of equal protection.

In *Means*, the Ninth Circuit addressed both the lack of due process and the violation of equal protection issues left open in *Lara*. First, the unanimous three judge panel held that the "weight of established law requires that we reject Means' equal protection claim," citing *Morton v. Mancari* for the legal principle that Indian tribal identity is political in nature (enrollment in an Indian tribe), and is not based on any suspect racial classification. Next, the court rejected Means' due process challenge, finding that "the Indian Civil Rights Act confers all the criminal protections on Means that he would receive under the Federal Constitution, except for the right to grand jury indictment

and the right to appointed counsel if he cannot afford an attorney." However, since the Navajo Bill of Rights confers the right to counsel to the accused, and since Means was charged with a misdemeanor to which the right to a grand jury indictment does not attach, Means was not deprived of any constitutionally protected rights. The Project has been monitoring the *Means* case (and a similar case titled *Morris v. Tanner*) in the Ninth Circuit for the past two years. The Project fully expects that the losing parties will pursue these matters for review by the Supreme Court.

In the area of tribal civil jurisdiction, the Project continues to deal with the fallout from the Supreme Court's disastrous decisions in *Strate v. A-1 Contractors*, *Atkinson Trading Co. v. Shirley* and *Nevada v. Hicks*. In *Ford Motor Co. v. Todecheene*, the Ninth Circuit held that the Navajo Nation does not have jurisdiction over products liability action arising out of a roll-over accident on the Navajo Reservation on a road wholly owned by the Nation which involved a police vehicle leased by the Nation which resulted in the death of a Navajo police officer. The Project assisted the Navajo Nation in preparing its petition for rehearing or rehearing en banc. In *Smith v. Salish Kootenai College*, the Ninth Circuit held that an Indian tribe does not have civil jurisdiction over tort action that arose as a result of a traffic accident on a public highway within the Reservation which involved a non-member Indian who was a student at the tribal college and who was driving the vehicle as part of a vocational program at the college. The Project prepared and filed a tribal amicus brief supporting the Tribe's petition for rehearing or



rehearing en banc. In both cases, vigorous dissenting opinions were also filed, providing some measure of optimism that the petitions for rehearing will be granted.

In the area of tribal lands, in March 2005, the U.S. Court of Appeals for the First Circuit announced its decision in *Carcieri v. Norton*, upholding the authority of the Secretary of Interior to take land into trust for the Narragansett Tribe under Section 5 of the Indian Reorganization Act (IRA). The Project coordinated the writing of two amicus briefs in the case with the attorneys for the Narragansett Indian Tribe and the United States. This case is a significant victory for Indian tribes because of the significance of the IRA and the Secretary's land into trust authority. First, the court interpreted the definition of "Indian tribe" in the IRA, and rejected an argument that the IRA does not apply to any tribe that was not "now under federal jurisdiction" in 1934. A significant number of tribes could have been hurt by the opposite ruling. Second, the court rejected a broad argument that Section 5 is an unconstitutional delegation of legislative authority. Unfortunately, in May 2005 in response to a petition for rehearing filed by the State, the First Circuit issued an order directing the U.S. to file a response to address the State's argument concerning the application of the IRA to the Narragansett Indian Tribe, including specifically any support for the assertion made at oral argument that "all the Secretaries of the Interior for the last 70 years have read the word 'now' to mean the present, as at the time of a tribe's application," and that trust acquisitions for scores of tribes could be implicated if this Court were to accept the State's argument. The order also directed

the State to brief its alternative argument that even if additional land may be taken into trust on behalf of the Narragansetts, the trust must be restricted to preserve Rhode Island's civil and criminal laws and jurisdiction. Once again, the Project coordinated the preparation and filing of a tribal amicus brief in response to the order, providing the requested information to the Court and opposing the petition for rehearing. The matter has been fully briefed and we are awaiting a decision from the Court.

Other areas under attack include the Indian Child Welfare Act, (*Doe v. Mann* – denial of tribal exclusive jurisdiction under the Indian Child Welfare Act over a child custody decision involving an Indian child within the boundaries of an Indian reservation in a Public Law 280 state); tribal treaty rights (*Skokomish v. United States* – denied the Tribe a federal common law right to monetary relief against any party except a treaty signatory, holding that only injunctive relief is available against state, local governments, or private individuals who violate treaty protected property right); and tribal land claims (*Cayuga Indian Nation of New York and Seneca-Cayuga Nation of Oklahoma v. Pataki* – reliance on *City of Sherrill* and the doctrine of laches to reverse the district court's award of \$247 million in money damages and to entirely bar the land claims).

The battles will wage on. Thus, the importance of the Tribal Supreme Court Project in all of these areas will continue to demand constant vigilance and to call upon the collective resources of Indian tribes, legal scholars, and Indian law firms. ☺

CASE UPDATES

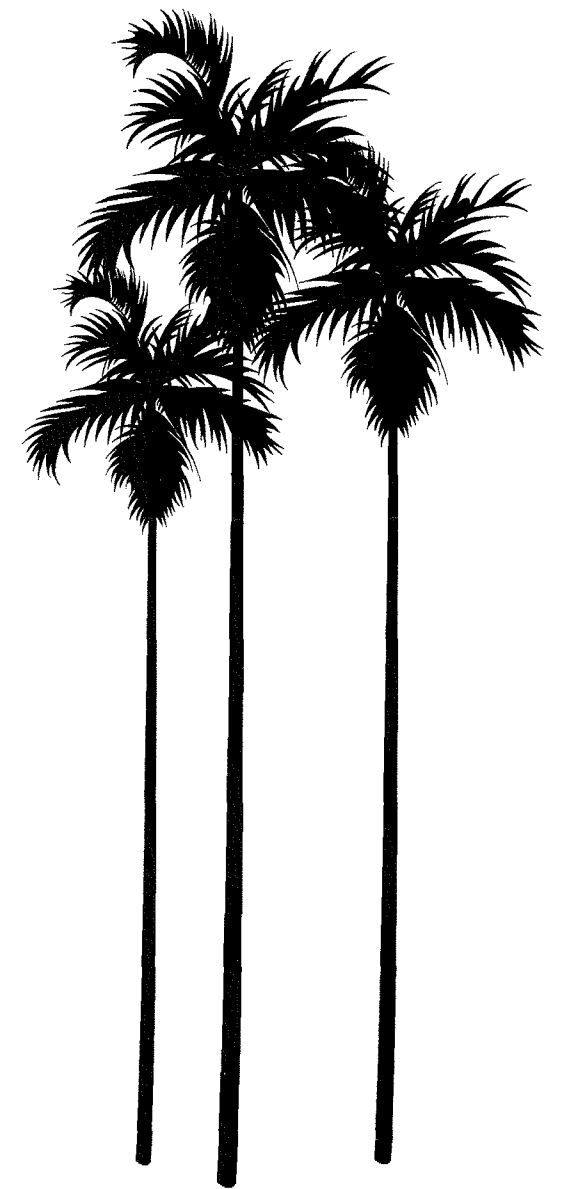
Hawaiian Lands Protected

"The struggle for this rainforest dramatically brings together Native cultural rights and environmental issues; the need to protect sacred, unspoiled areas for Native peoples gives Wao Kele o Puna national importance." (*John Echohawk, Executive Director, Native American Rights Fund*)

In 1993, the United States Congress enacted the Hawaiian Apology Joint Resolution, Public Law 103-150, admitting that the role of the United States military in removing the Hawaiian monarch, Queen Lili'u'okalani, from power and installing a provisional government was illegal under American and international law. Prior to the overthrow, Hawaii was regarded internationally as one of the family of nations which had concluded numerous treaties of trade, commerce and friendship with several countries, including the United States. The Apology was a watershed event in American history, seen by many Hawaiian people as the first step in making reparations for the illegal overthrow. The overthrow has been viewed by Native Hawaiians as the ultimate atrocity committed against their sovereign Nation, the culmination of the enormous political, social, cultural, economic and spiritual changes wrought on the Hawaiian people since the 1778 arrival of Captain Cook.

The United States' admission that the overthrow was illegal, immoral, and unjust was seen as but a first step in the long process of establishing "ho'opono'ono" – the Hawaiian traditional system for "making things right."

In another step towards "ho'opono'ono," on September 12, 2005, Hawaii Governor Linda Lingle, the Office of Hawaiian Affairs (OHA), the Department of Land and Natural Resources (DLNR), and the Trust For Public Land (TPL) announced the purchase of 25,856 acres – more than 40 square miles – of Native Hawaiian rainforest known as Wao Kele o Puna that is strategically located near Hawaii Volcanoes National Park.



The property has had a history of controversy, litigation, and civil protest, but is now on a path to permanent protection thanks to the partnership. Under the plan, the private non-profit Trust for Public Land will acquire the property next year from current landowner Campbell Estate and later convey the culturally important lands to the Office of Hawaiian Affairs. DLNR is working closely with OHA to protect and properly manage the vast forest area when the transfer occurs. Together, the partnership will ensure that Wao Kele o Puna will no longer be threatened with geothermal energy production or converted to non-forest uses.

The Pele Defense Fund, organized in the 1980's to protect native gathering and religious rights in the forest, was instrumental in focusing attention on the need for permanent protection for the forest. "We took a stand for this land two decades ago in the courts, and have never given up the fight to find a permanent way to protect this forest," said Palikapu Dedman, President of PDF. "We are looking forward to working with OHA and DLNR to keep this forest healthy and thriving—it is our responsibility as much as it is our right to malama this place that means so much to our community."

For twenty years, the Native American Rights Fund has co-counseled with the Native Hawaiian Legal Corporation ("NHL") and private counsel Yuklon Aluli and Jim Dombrowski in representing the Pele Defense Fund in efforts to prevent large-scale geothermal development in the Wao Kele O Puna rainforest on the Big Island, and to regain Native Hawaiian access rights to Wao Kele lands. These efforts culminated with the entry in August 2002 of a stipulated judgment and order by the state court in Hilo, Hawaii recognizing the rights of Native Hawaiians to hunt, gather, and worship on the Wao Kele lands – as part of the bundle of "traditional and customary rights" protected, preserved and enforced under Article XII, Section 7 of the Hawaii Constitution. With NARF's assistance, the Trust for Public Lands (Hawaii Office) secured an appraisal of the property and efforts to purchase the land began.

The property is valuable on multiple levels. Wao Kele o Puna is extremely important to

Native Hawaiians, who for centuries have consistently used the property for traditional hunting, gathering, and religious purposes. In addition, the vast rainforest provides essential wildlife habitat for more than 200 native Hawaiian plant and animal species, including several that are listed as threatened or endangered. The vast forest will serve as a protected corridor for native birds traversing from mauka to makai. Wao Kele o Puna is also critical to protecting drinking water quality in Hawaii County, covering over twenty percent of the Pahoa aquifer, the single largest drinking water source on the island.

On August 26th, the Board of Trustees of the Office of Hawaiian Affairs unanimously committed to providing the necessary \$250,000 in gap funding towards the purchase, as well as ongoing funding for planning and management. OHA is acquiring the area to protect the natural and cultural resources on the land, to guarantee that Native Hawaiians can continue to exercise traditional and customary activities on the land, and to ensure that OHA can pass it on to a sovereign governing entity.

"The aina is the foundation of our culture," stated Haunani Apoliona, Chair of the OHA Board of Trustees. "Our ability to protect such a rich and symbolic resource in partnership with TPL and DLNR means that future generations in Hawaii will benefit from our collective vision and foresight in protecting traditional lands and resources."

The U.S. Congress, thanks to the leadership of U.S. Senator Daniel Inouye, a senior member of the Senate Appropriations Committee, approved \$3.4 million in August from the U.S. Forest Service's Forest Legacy Program towards the purchase of the property.

The nearby Hawaii Volcanoes National Park also depends on the vast forest as a seed bank to provide new growth on fresh lava flows that have devastated the Park's own native forests. "The biological future of Hawaii Volcanoes National Park is tied directly to the conservation of native forests at Wao Kele o Puna," said Cindy Orlando, Hawaii Volcanoes National Park Superintendent.

For more information on this issue visit <http://www.oha.org>.

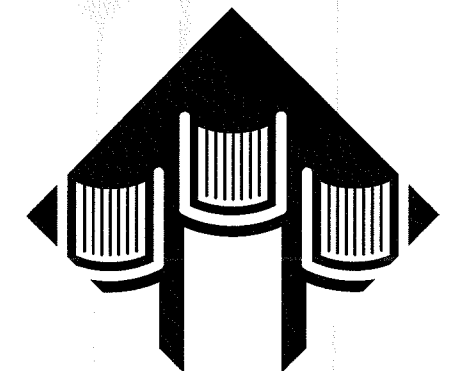
CASE UPDATES

Support for Kamehameha Schools in Hawaii

The Native American Rights Fund (NARF), in coordination with the Bishop Estate Trustees, on behalf of its client, the National Indian Education Association (NIEA) filed an *amicus curiae* brief in support of the petition for rehearing *en banc* filed by the Kamehameha Schools in the Ninth Circuit Court of Appeals. The Alaska Federation of Natives (AFN), through its attorney, signed onto the brief NARF drafted.

In June 2003, a lawsuit was filed by an anonymous student challenging the Kamehameha Schools' policy of restricting admission to Native Hawaiians only. The Kamehameha Schools have given preference to Native Hawaiians in its admissions policy for the past 117 years. In addressing this challenge, the federal district court ruled that the policy was legal because it served "a legitimate remedial purpose of improving Native Hawaiian's socioeconomic and educational disadvantages." On August 9, 2005, in a 2-1 decision, the Ninth Circuit Court reversed that ruling finding that the Schools' admission policy constitutes unlawful discrimination and is a violation of federal civil rights law.

NIEA and their member tribes and tribal organizations have a direct interest in ensuring that the educational needs of Native Hawaiian, American Indian and Alaska Native students, and the public and private programs implemented to fulfill those needs, are protected and preserved under federal law. This case presents questions of exceptional importance. In particular, whether remediation of ongoing socioeconomic and educational deficiencies suffered by Native peoples as the result of the influx of western civilization provides "legitimate justification" to support a remedial race-conscious admissions policy of a private school which gives preference to Native students.



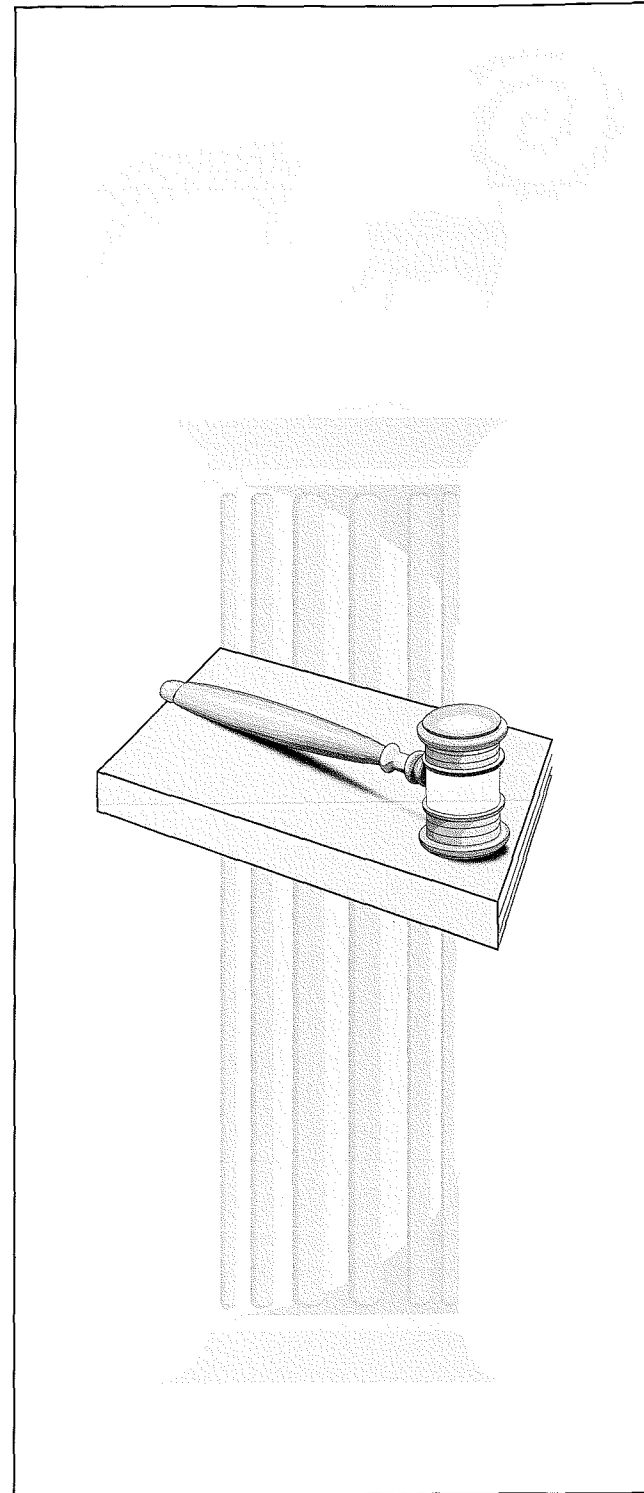
CASE UPDATES

Land Into Trust Declared Constitutional

NARF worked with the Lower Brule Sioux Tribe against the State of South Dakota's challenge to the United States' decision to place approximately 91 acres of land into trust for the Lower Brule Sioux Tribe under Section 465 of the Indian Reorganization Act. In *South Dakota v. United States*, the State alleged, among other things, that the Secretary of the Interior lacks authority to place land into trust because Section 465 is an unconstitutional delegation of legislative authority. In an earlier proceeding regarding this same 91 acres of land, the Eighth Circuit Court of Appeals did hold that Section 465 was unconstitutional, but the U.S. Supreme Court vacated that opinion and remanded to the Secretary for further reconsideration. The State then challenged the Secretary's reconsidered, and again favorable, decision to place the land in trust. In April 2004, the Federal District Court upheld the Secretary's decision and the State appealed.

The Lower Brule Sioux Tribe, acting as *amicus curiae*, and the United States argued before the Eighth Circuit Court of Appeals to defend the Secretary's decision and the constitutionality of Section 465. NARF and former NARF Attorney Tracy Labin filed an *amicus curiae* brief in support of the Tribe.

On September 6, 2005 the Eighth Circuit Court of Appeals affirmed the constitutionality of Section 465, holding that it did not constitute an unlawful delegation of authority to the Secretary. "The statutory aims of providing lands sufficient to enable Indians to achieve self-support and ameliorating the damage arising from the allotment policy sufficiently narrow the discretionary authority granted to the Department." The Court also concluded that the Secretary's action was not arbitrary, capricious, or an abuse of discretion, and affirmed the grant of summary judgment in favor of the Department.☺



New Board Member

Delia M. Carlyle is a native of the Ak-Chin Indian Community in Arizona. She is currently Chairman of the Arizona Indian Gaming Association (AIGA) and Vice-Chairman of the Ak-Chin Indian Community. Since being elected to office in 1984, Ms. Carlyle served as Chairman and Secretary of the Ak-Chin Community Council.

Delia Carlyle joined the staff of the Ak-Chin Indian Community Center in 1978 and was appointed director of the Center in 1994. In 1981 she played a major role in establishing the Community's Elderly Program. Her professional and political service to the Community Center and the Tribal Council enabled her to create and implement numerous programs in areas including housing, health, transportation, social services, education, and community development, all of which directly benefit her Community.

Ms. Carlyle is active outside of her own Community having served as the Ak-Chin Indian Community's representative on a number of boards and committees. At the national level, she was appointed to the National Indian Health Board. Regionally, she served on the Board of Regents for the Southwestern Polytechnic Institute (Albuquerque, New Mexico). Arizona State appointments include the Nineteen Tribal Nations Workforce Investment Act Board, the Indian Education Advisory Board, the Arizona Commission on Indian Affairs and Indian Health Care Advisory Board.

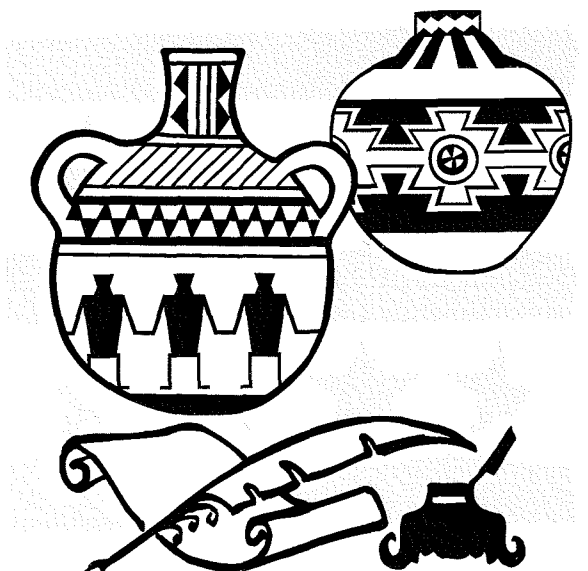
Locally, Delia Carlyle serves as a board member and clerk of the Maricopa Unified School District. She also continues to be active in the Maricopa Precinct Election Board, a position she has held for 15 years. Ms. Carlyle graduated from Maricopa High School in 1974, attended Haskell Indian Junior College in Lawrence, KS and Central Arizona College. Upon returning to the Ak-Chin Indian Community, Delia Carlyle received her Nurses' Aid Certificate and worked at the Hohokam Hospital in Casa Grande. The Health Care field is one of her most enduring

interests. For many years she was a Certified Emergency Medical Technician.

A community and civic leader, Delia Carlyle has been recognized many times for her service and contributions. Among these awards, she was the first recipient of the Tony Sanchez Award for outstanding contributions to Indian Elderly programs. She also was honored for her over 13 years of service to the Nineteen Tribal Nations Workforce Investment Act Board. Ms. Carlyle was recently selected as the first Arizona Native American woman to be inducted into the Arizona Democratic Hall of Fame.

Ms. Carlyle credits her commitment to giving back to her own community and the larger community to the teachings of her aunt who instructed her that "We have to serve when we are asked to serve. It is an honor to do so." Despite her many accomplishments, Ms. Carlyle believes that her greatest achievements are her children and grandchildren.

The Board of Directors and staff of the Native American Rights Fund look forward to working with and learning from Delia.



New Board Member

Lydia Olympic is Aleut and Yupik Eskimo and the daughter of late John Olympic of Kokhanok, Alaska and Mary Ann Olympic of Igiugig, Alaska. Lydia has served on the Igiugig Village Council as a Council member from November 1999 through November 2004, and has been a Council President since November 2004. She lived in Tigard, Oregon before moving back to Alaska to run the newly formed Igiugig Environmental Office which got her involved in local and regional politics.

Lydia attended University of Alaska Fairbanks and Anchorage and will be working toward a degree in Rural Development or Environmental Science thru the Bristol Bay Campus. She currently serves as a Board member for the Native American Rights Fund, EPA Region 10 National Tribal Operations Committee, Bristol Bay Area Health Corporation, Bristol Bay Alliance, and Bristol Bay Native Association.

Lydia has published articles in the EPA Quarterly Newsletter and the Oregonian.

Lydia wants everyone to know that she lives in the most beautiful place in the world, Lake Iliamna and the Kvichak River. It is located 250 miles southwest of Anchorage. Lake Iliamna is the largest freshwater lake in Alaska. Lydia says, "There is only 47 people here in the village and lots more wildlife than people. We have the Mulchatna Caribou herd, historically the largest sockeye salmon run in the world, coastal brown bears, moose, beaver, otter, wolves, eagles, lynx, wolverines, porcupines and lots more animals and fish. I am surrounded by beauty here."

The Board of Directors and staff of the Native American Rights Fund have welcomed Lydia and look forward to her six years on the Board. ☼



CALLING TRIBES TO ACTION!

It has been made abundantly clear that non-Indian philanthropy can no longer sustain NARF's work. Federal funds for specific projects are also being reduced at drastic rates. NARF is now facing severe budget shortfalls. Our ability to provide legal advocacy in a wide variety of areas such as religious freedom, the Supreme Court Project, tribal recognition, human rights, the trust funds case, tribal water rights, Indian Child Welfare Act, and on Alaska sovereignty issues has been compromised. NARF is now turning to the tribes to provide this crucial funding to continue our legal advocacy on behalf

of Indian Country. It is an honor to list those Tribes and Native organizations who have chosen to share their good fortunes with the Native American Rights Fund and the thousands of Indian clients we have served in the past twelve months. The generosity of Tribes is crucial in NARF's struggle to ensure the future of all Native Americans. We encourage other Tribes to become contributors and partners with NARF in fighting for justice for our people and in keeping the vision of our ancestors alive. We thank the following tribes and Native organizations for their recent support. ☼

- Agua Caliente Band Of Cahuilla Indians
- Ak Chin Indian Community Council
- Akiak Native Community IRA
- Aleut Community of St. Paul Island
- Chickaloon Village Traditional Council
- Coeur D' Alene Tribal Council
- Colorado River Indian Tribes
- Colusa Rancheria
- Comanche Nation
- Confederated Tribes of the Grand Ronde Community of Oregon
- Cow Creek Band Of Umpqua Tribe
- Elk Valley Rancheria
- Forest County Potawatomi Community of Wisconsin
- Fort McDowell Yavapai Nation
- Fort Mojave Tribal Council
- Little Traverse Bay Bands of Odawa Indians
- Loudon Tribal Council
- Lummi Indian Business Council
- Miccosukee Resort and Gaming
- Mohegan Indian Tribe
- Morongo Band Of Mission Indians
- Native Village of Eyak
- Nulato Village
- Oneida Tribe of Indians of Wisconsin
- Pechanga Band of Mission Indians
- Pueblo Of Laguna
- Ruby Tribal Council
- Santa Rosa Rancheria
- Shakopee Mdewakanton Sioux Community of Minnesota
- Shoonaq' Tribe of Kodiak
- Southern Ute Tribe
- St. Regis Band of Mohawk Indians
- Sycuan Band of Mission Indians
- Tanana Chiefs Conference, Inc.
- Tlingit and Haida Indian Tribes Of Alaska
- Tuolumne Me-Wuk Tribal Council
- Twenty Nine Palms Band Of Mission Indians
- Upper Sioux Community of Minnesota
- Viejas Band of Kumeyaay Indians
- Village of Old Harbor



National Indian Law Library

Your Information Partner!

About the Library

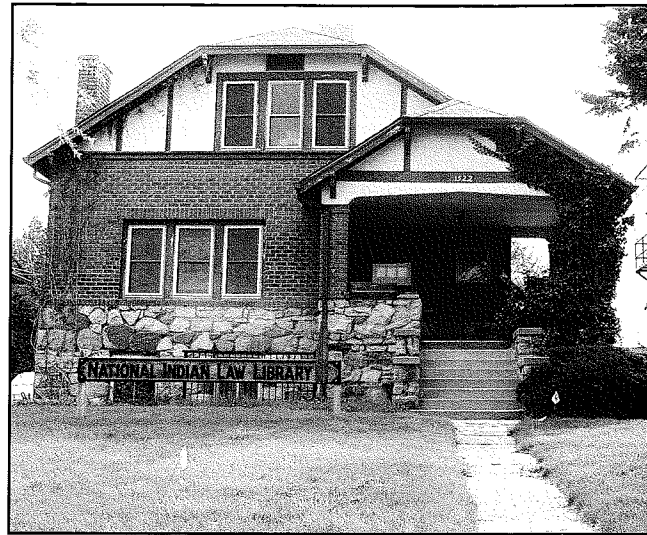
The National Indian Law Library (NILL) located at the Native American Rights Fund in Boulder, Colorado is a national public library serving people across the United States. Over the past thirty-three years NILL has collected nearly 9,000 resource materials that relate to federal Indian and tribal law. The Library's holdings include the largest collection of tribal codes, ordinances and constitutions in the United States; legal pleadings from major American Indian cases; law review articles on Indian law topics; handbooks; conference materials; and government documents.

Library Services

Information access and delivery: Library users can access the searchable catalog which includes bibliographic descriptions of the library holdings by going directly to: <http://www.narf.org/nill/index.htm> or by accessing the catalog through the National Indian Law Library/Catalog link on the Native American Rights Fund website at www.narf.org. Once relevant materials are identified, library patrons can then choose to request copies or borrow materials through interlibrary loan for a nominal fee.

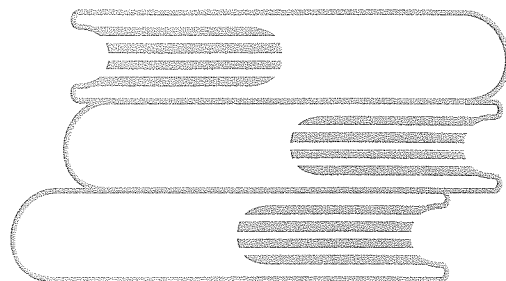
Research assistance: In addition to making its catalog and extensive collection available to the public, the National Indian Law Library provides reference and research assistance relating to Indian law and tribal law. The library offers free assistance as well as customized research for a nominal fee.

Keep up with changes in Indian law with NILL's Indian Law Bulletins: The Indian Law Bulletins are published by NILL in an effort keep NARF and the public informed about Indian law developments. NILL publishes timely bulletins covering new Indian law cases, U.S. regulatory action, law review articles, and news on its web site. (See: <http://www.narf.org/nill/bulletins/ilb.htm>) New bulletins are published on a regular basis, usually every week and older information is moved to the bulletin archive pages. When new



information is published, NILL sends out brief announcements and a link to the newly revised bulletin page via e-mail. Send an e-mail to David Selden at dselden@narf.org if you would like to subscribe to the Indian Law Bulletin service. The service is free of charge!

Support the Library: The National Indian Law Library is unique in that it serves the public but is not supported by local or federal tax revenue. NILL is a project of the Native American Rights Fund and relies on private contributions from people like you. For information on how you can support the library or become a sponsor of a special project, please contact David Selden, the Law Librarian at 303-447-8760 or dselden@narf.org. For more information about NILL, visit: <http://www.narf.org/nill/index.htm> Local patrons can visit the library at 1522 Broadway, Boulder, Colorado. ☺

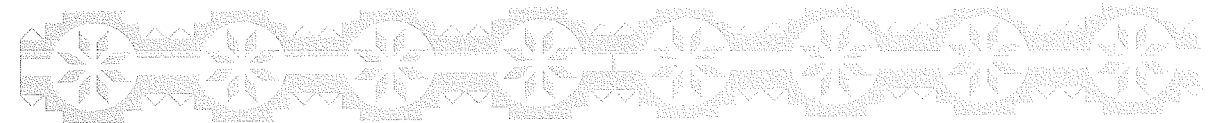


THE NATIVE AMERICAN RIGHTS FUND

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

NARF strives to protect the most important rights of Indian people within the limit of available resources. To achieve this goal, NARF's Board of Directors defined five priority areas for NARF's work: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law and educating the public about Indian rights, laws, and issues. Requests for legal assistance should be addressed to NARF's main office at 1506 Broadway, Boulder, Colorado 80302. NARF's clients are expected to pay whatever they can toward the costs of legal representation.

NARF's success could not have been achieved without the financial support that we have received from throughout the nation. Your participation makes a big difference in our ability to continue to meet ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance.



NARF Annual Report. This is NARF's major report on its programs and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request. Ray Ramirez, Editor, ramirez@narf.org.

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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.

Main Office:

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