

NARF

Review

Native American Rights Fund

Federal Recognition - A Historical Twist of Fate

by Faith Roessel

The Wampanoag Tribal Council of Gay Head, Massachusetts, after 200 years finally became formally acknowledged as an "Indian tribe" in 1987 - an identity they themselves never questioned. Long foreclosed from this distinct governmental status, it now brings to them all the rights, privileges, and protections accorded every other "recognized" Indian tribe in the United States.

The Gay Head tribe is not alone. The American Indian Policy Review Commission (AIPRC) in 1977 identified 133 nonrecognized Indian communities in the United States. The Report further documented that of these, 23 were land owners, although the land was not necessarily protected by the federal government. At least 37 communities were found to have had formal treaty relationships predating the United States and at least 29 communities have treaty rights that were either confirmed by the United States or were negotiated directly between the historic tribe and the United States. The AIPRC also found the Bureau of Indian Affairs (BIA) had designated 25 of these 133 Indian communities as Indian tribes. So what went wrong? Why weren't these Indian communities ever recognized?

The answer lies in our history books and in making sense of our federal Indian policy. Kirke Kickingbird and Karen Ducheneaux, authors of *One Hundred Million Acres*, (1978), aptly titled a chapter on non-recognized Indian communities as "Those Whom Even

Time Forgot." In this chapter, the authors pose the question, "But what of the tribes so small, so peaceful, or so isolated that they posed no threat to white settlement? In most cases, they were simply forgotten."

The authors detailed several examples of Indian communities who escaped recognition but who qualify as dependent Indian communities.

They are people who should have the same rights as other Indian tribes. But they are people who were never powerful militarily and thus able to force the United States to deal with them by Treaty. Consequently, there was no need to recognize them or to move them to Oklahoma. It may seem strange to realize that Indian legal rights depend upon the ease with which the United States can abuse Indian communities but such appears to be the case.

Whereas most tribes gained their recognized status through war and treaty, and

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by lands set aside for them, many by a historical twist of fate were denied federal recognition. These excluded tribes continue to exist, but have been administratively denied benefits because they are "non-federally recognized" tribes.

This article will define the nature of federal recognition and describe the history and present administrative requirements to become federally acknowledged. Because the United States Senate has pending before it two federal acknowledgment bills, these will be discussed, as well as the respective positions of the proponents and opponents of such measures. In conclusion, the article will explore who benefits from federal recognition and whether federal recognition contributes to Indian law and policy.

Congressional Recognition and Administrative Acknowledgment

In 1975 a unanimous federal court elucidated an astounding principle on behalf of a NARF client. The court held that even though the Passamaquoddy Tribe of Maine had never entered into a treaty with the United States, and the Congress had never specifically mentioned the Passamaquoddy, the federal government has a trust relationship based on the federal Nonintercourse act with "any tribe of Indians," including the Passamaquoddy. *Joint Tribal Council of Passamaquoddy Tribe v. Morton.*, (1975). This holding went directly against the Department of Interior's position that predicated the trust relationship as only owed to "recognized" tribes.

Passamaquoddy sets forth the legal principle that Congress in 1790 by enacting the Nonintercourse act had generally recognized and assumed a trust responsibility to all Indian tribes. Specific acts of recognition, however, through treaty, executive order or acts of Congress, conceivably could later take place and did between particular tribes and the United States.

Within this context of general and specific recognition, questions continued to arise over whether an Indian group still existed as an Indian tribe to be accorded the trust relationship. In the absence of specific congressional guidelines, the Department of the Interior derived its own standards to determine whether specific Indian groups still maintained a tribal identity.

In the course of this evolution, the Solicitor's Office of the Department of the Interior distinguished between "recognition," a prerogative of Congress and "acknowledgment," a secretarial designation that a government-to-government relationship exists between the United States and a particular tribe. Accordingly, a tribe named in a treaty or receiving benefits from an act of Congress has been recognized, and acknowledging that status is an administrative, perhaps nondiscretionary act. The Department's 1978 regulations may have confused this distinction because it requires an elaborate anthropological showing but without any credence given to prior federal



actions that demonstrate specific recognition. Consequently, the Department still refuses to take into account prior federal acts when reviewing a petition for acknowledgment.

The concept of recognition remains a viable doctrine defined as a formal political decision to establish a government-to-government relationship between an Indian tribe and the United States. Recognition therefore is similar to the process which is found in international law. "A state is not required by international law to recognize an entity as a state or a regime as the government of a state, but this is a political question to be determined by the executive branch of the government." 45 *AmJur 2d Section 15*. The President usually conferred recognition to Indian tribes and foreign governments, with the advice and consent of the Senate through the constitutional treaty making power. In 1871, the treaty period ended between the United States and Indian tribes. Thereafter, recognition was conferred by executive order, legislation, or by other means.

Since the end of the treaty period, whether to recognize an Indian tribe in the first place has been one for Congress to make and is wholly discretionary. In *U.S. v. Candelaria*, (1926), the Supreme Court noted that Congress cannot arbitrarily call the pueblo an "Indian tribe," but "the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress and not by the courts." In *United States v. John*, (1978) the Supreme Court confirmed the status of the Mississippi Choctaw and found that "Neither the fact that the Choctaws in Mississippi are merely a remnant of a larger group of Indians, long ago removed from Mississippi, nor the fact that federal supervision over them has not been continuous, destroys the federal power to deal with them."

Once recognition has been confirmed, this naturally leads to the question whether it may be lost or withdrawn. Charles Wilkinson,

noted Indian law professor and author, argues that tribes have the "right to change." In *American Indians, Time, and the Law*, (1987), Wilkinson states:

The permanency of tribal existence, then, gives tribes and Congress a continuing option. Tribal existence, wholly independent of any federal action, is maintained as long as a tribe or subgroup has the will to maintain it. In turn, Congress retains authority to deal with the tribe in order to correct old mistakes. *Id.* at 78.

Presumably then, once a tribe has been recognized, it cannot lose that status based on federal neglect or on the possibility that the tribe has changed or evolved. Whether a tribe ceases its political relationship with the United States can only be determined by an express act of Congress. A period of federal Indian policy attempted to do just that through termination legislation. *Menominee v. United States*, (1968). Similarly, it follows that specific Congressional legislation would be needed to withdraw a tribe's recognition rather than bureaucratic maleficence.

Proof of Tribal Identity and Existence

In 1978, the Bureau of Indian Affairs (BIA) promulgated administrative procedures for establishing that an American Indian group exists as an Indian tribe, in large part, as a reaction to the eastern land claims and *U.S. v. Washington* litigation. 25 *CFR Part 83*. The BIA was also succumbing to recommendations from the AIPRC which called for Congressional standards for recognition purposes. At the time, Senator James Abourezk, Chairman of the Senate Select Committee on Indian Affairs, had introduced S. 2375, in response to the AIPRC recommendation. This legislation relied on the "Cohen criteria" and allowed for a prima facie showing of recognition based on a treaty, act of Congress, or executive order, thereby shifting the burden of proof to the government. S. 2375 was never acted upon because the Administration assured Congress it had developed its own standards and

procedures, leaving legislation an unnecessary duplication.

The 1978 regulations departed significantly from what had been prior Bureau practice. Between 1935 and 1974, the Bureau had been applying the "Cohen criteria" found in Felix Cohen's *Handbook of Federal Indian Law* (1942 ed.). During this time the Bureau was determining tribal existence in order to ascertain eligibility for government services under the Indian Reorganization Act. Tribal existence questions under study by the Solicitor's office were evaluated under the following: (a) that the group has had treaty relations with the United States; (b) that the group has been denominated a tribe by act of Congress or executive order; (c) that the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe; (d) that the group has been treated as a tribe or band by other Indian tribes; or (e) that the Indian group has exercised political authority over its members through a tribal council or other governmental forms. *Id.* 271.

A Solicitor's opinion was often employed utilizing at least one or more of the above to establish a group as a "tribe" or "band." Other factors that were considered, but not conclusive, were the "existence of special appropriation items for the group and the social solidarity of the group." *Correspondence from LaFollette Butler, Commissioner of Indian Affairs, to U.S. Senator Henry M. Jackson, June 7, 1974.* During the mid-1970's the Bureau maintained that it lacked the authority to "recognize" Indian tribes, but that it might "acknowledge the existence" of Indian tribes previously recognized under treaty or acts of Congress.

Remarkably, in this context, the 1978 regulations lacked any reference to treaties, acts of Congress, or executive orders as a means of prior federal recognition which would weigh in favor of proving tribal existence. Instead, the regulations took a socio-anthropological approach, but used the terminology of "acknowledgment" as conceived by the Solicitor's office.



The regulations, still in use and never modified, require a petitioner to meet seven criteria pursuant to 25 CFR 83.7. A petition must: (a) establish that a petitioning Indian group has been identified from historical times until the present on a substantially continuous basis as "American Indian" or "aboriginal;" (b) contain evidence that a substantial portion of the petitioning group inhabits a specific area or lives in an American Indian community with its members descendants of an Indian tribe which historically inhabited a specific area; (c) establish that a petitioning group has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present; (d) provide the petitioning group's governing document, or in its absence, a description of membership criteria and governmental operations over its affairs and members; (e) provide a membership list consisting of members who are descended from a historical tribe or tribes; (f) establish that the petitioning group's members are not principally members of other North American

Indian tribes; and, (g) show that the petitioning group has not been subject to a termination statute.

The Assistant Secretary for Indian Affairs carries out the prescribed duties through the Branch of Acknowledgment and Research (BAR) within the Bureau of Indian Affairs. BAR staff conducts the review of all petitions. Each petition is reviewed by one team consisting of a historian, an anthropologist and a genealogist. Should there be any "obvious deficiencies or significant omissions" in the petition, staff are to notify and describe them to the petitioner. The petitioner may withdraw or respond to correct these deficiencies; no time limits are specified to do so. Petitions are evaluated on a "first come, first served basis," with priority given to the petition or letter of intent to petition with the earliest filing date with the BAR office.

A fully documented petition that has undergone an initial review and any responses to it may be ready for active consideration, but such a determination remains wholly within the discretion of the BAR staff. When a petition comes under active consideration therefore depends on a variety of factors. A petition ideally would have an early filing date, the obvious deficiency stage would have been relatively short or none at all, and the BAR staff would be able almost simultaneous with the readiness of the petition to immediately begin work on it. The ideal, however, escapes the practice.

Within one year after a petitioner has been notified that active consideration has begun, the proposed findings are published in the Federal Register, unless extended by an additional 180 days upon a showing of due cause to the petitioner. All deadlines under the regulations are unenforceable.

Once the proposed findings are published, any individual or organization may within 120 days rebut the findings by submitting its own factual, legal, and evidentiary documentation.

If BAR refuses to acknowledge the petitioning group, the only opportunity to contest the adverse finding is through the Secretary of the Interior asking the Assistant

Secretary to reconsider his decision. Whether the Secretary will ask the Assistant Secretary to reconsider his decision in practice has been determined by the BAR staff themselves, since they ultimately receive the reconsideration request from the Secretary. A denied petition, therefore, goes back to the very persons who decided against tribal existence in the first place.

In the end, if a petitioner successfully makes it through the process, the regulations provide it will be eligible for services and benefits from the federal government available to other federally recognized tribes and will be able to maintain a government-to-government relationship with the United States. Funding for these new tribes comes under a separate account within the BIA.

"Lost and Found" Tribes

Included in the 1978 regulations was a provision directing the Secretary of the Interior to contact "all Indian groups known to the Department in the continental United States whose existence has not been previously acknowledged by the Department." 25 C.F.R. 83.6. The American Indian Policy Review Commission list was specifically required to be included.

The BIA reports that about 114 Indian groups have indicated an interest to petition for acknowledgment under the regulations. Forty of the requests were on hand when the acknowledgment office started in 1978 with the remaining 74 requests received since then. In accordance with the regulations, 7 groups have been acknowledged and 12 have been denied. Congress, in the meantime, has continued to exercise its legislative authority by recognizing, restoring, or clarifying the status of 5 Indian groups since 1978.

According to the Bureau's most recent statistics, April 1989, 28 fully documented petitions have been submitted and are at various stages of the petitioning process. Four of these petitions are listed as under active consideration, but that does not

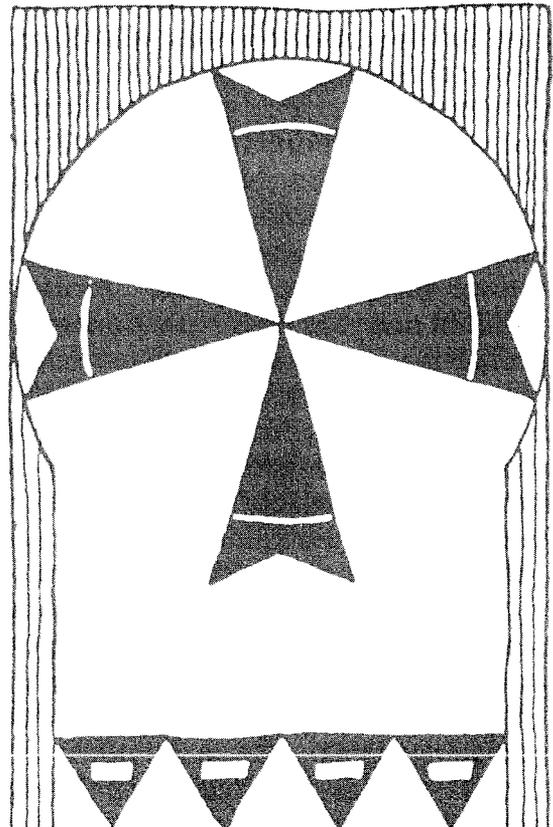
necessarily mean they are all being reviewed at the same time. BIA admits that only 1.5-2.0 petitions are being completed each year. Of the 28 completed petitions, 12 are awaiting some form of Bureau action, and 16 are awaiting petitioner responses to BAR's obvious deficiency letters. Furthermore, the Bureau documents that 35 additional groups are currently working on their petitions and 26 others are known to exist but who have not responded to the Bureau's inquiries. Given the current rate of 1.5-2.0 petitions being completed each year, the acknowledgment process will easily extend into the twenty-first century.

Petitioners are dependent on the Administration for Native Americans (ANA), which provides the only source of federal funding to assist nonrecognized communities in the preparation of their petitions. The BIA does not provide similar assistance to a petitioning group. ANA status clarification grants began in 1981 with the purpose of supporting community applied research and assisting groups by linking them with those who would provide technical assistance. An ANA 1982 Issue Paper on Status Clarification explained ANA's mission as assisting these communities in overcoming the policies of nonrecognition and termination which stand as barriers to Indian social and economic self-sufficiency. Since 1981, ANA has funded 118 grants for status clarification purposes.

Recently, ANA commissioned a study to survey their status clarification recipients. Commonly known as the Orbis Report, outside researchers visited 35 Indian communities who reside in 15 states. The size of the 35 communities ranged from the smallest with 150 members (Jena Band of Choctaw, Louisiana) to the largest with over 30,000 members (Lumbee, North Carolina). Sixty-three percent (22 grantees) of these communities fell *below* the BIA's "small tribe" definition of 1,500 members. Twenty-eight percent (10 grantees) ranged between 1,501 and 5,000 members and close to nine percent (3 grantees) had memberships which exceeded 5,000 members.

ANA status clarification grants go toward providing two types of activities: 1) research and 2) tribal governmental reorganization or strengthening. NARF currently represents a number of grantees in their research which include historical, genealogical, ethnographic, and legal. The Orbis Report observed the arduous task of this type of research noting that since the "groups in question seldom have documented histories available, the researcher is forced to spend considerable time searching state and local archives, private collections, and obscure secondary sources for information. . . . This historical research component is long, tedious, and expensive."

Regarding the second activity of strengthening tribal governments, Orbis underscored the fact that "[a] strong government with sound and effective operational procedures in place should be the springboard for advancing a community to greater social and economic self-sufficiency.... Furthermore, tribes with developed management capabilities and experience can



clearly make a smoother transition once federal recognition is achieved."

The Orbis Report stated that the status clarification grants are achieving their goals. To date, 21 grantees have completed and submitted documented petitions to BAR. Only 11 have not, and 3 were ineligible to do so, because they had been named in a termination statute and would have to seek restoration legislation.

Overcoming Congressional Benign Neglect

Over the past twelve years the Senate has held three oversight hearings on the federal acknowledgment process, in 1980, 1983 and 1988. Following the 1988 hearing, Chairman Daniel K. Inouye urged witnesses to draft proposed legislation to respond to the ills testified to before the Senate Select Committee on Indian Affairs. NARF, at the Chairman's request, played a key role in assisting the Committee to develop legislation and in working with other organizations who took an interest in federal acknowledgment reform. Subsequently in March 1989, Senator Inouye introduced S. 611, the Indian Federal Acknowledgment Administrative Procedures Act. Twelve other Senators have joined in support and are co-sponsors of the bill. S. 611 represents the first comprehensive recognition bill to be introduced in the Senate, since Senator Abourezk's bill in 1977.

S. 611, rather than perpetuating the current acknowledgment system, attempts to correct the deficiencies by proposing solutions which are based on the experience of professionals who have been involved in the system since 1978. In approach, S. 611 distinguishes between two different types of petitioners; those who have been previously recognized and those who have not. For those who have been named in a treaty, executive order, or act of Congress, the petitioner need only show such a document; that the Indian group and its members are descendants from the historic tribe; and, that it has a current governing body. Once this prima facie showing has been made then the Indian group has

demonstrated prior recognition and that status should be acknowledged. The federal government carries the burden of proving the Indian group no longer exists as an Indian tribe.

Those Indian groups who do not have evidence of prior federal recognition would petition through the more elaborate process analogous to the present system. Important improvements, however, have been made. Deadlines are built into the process to overcome the years of delays. A new enforcement mechanism is being proposed to create a right to mandamus action in federal court to enforce the deadlines. Expediency will also be promoted with additional definitions and thresholds of proof stated so petitioners will know when they have met a requirement.

Related to what constitutes sufficient proof, S. 611 sets up for the first time uniform standards to be applied equally to each petitioner. Precedent will prevail and with it conceivably less money expended because petitioners will know what to provide, and will not have to repeatedly respond to vague obvious deficiency letters. An appeal process in S. 611 adds a critical component long overlooked. Disagreements with the new Office of Federal Acknowledgment will be resolved by an independent three-person panel to be named anew in each case. Panel members will be selected on the basis of expertise in anthropology, history and by national reputation.

The new Office of Federal Acknowledgment will only handle federal acknowledgment petitions, compared to the BAR office which only expends 40 percent of its time on active status petitions. This exclusive focus to federal acknowledgment should increase efficiency and promote professionalism. To address possible conflicts of interest between the acknowledgment office and the BIA, the new office is set up independent of the BIA, but still within the Department of Interior.

Two days before the hearing on S. 611, Ranking Minority Member Senator John

McCain introduced his own federal acknowledgment counterpart, S. 912. S. 912 has been viewed as legislating the status quo, with a few changes. It maintains the current BAR office within the BIA. It utilizes the current criteria for petitions without operational definitions to assist social scientists. And, priority consideration goes to tribes who have been terminated.

S. 912 further provides that an Assistant Secretary's adverse decision may be appealed to the Office of Hearings and Appeals within the Department of Interior, rather than undergo expert review as in S. 611. If no action on a petition takes place within 6 years either by the Assistant Secretary or the Appeals Board, the petition will be treated as denied and may be appealed for de novo review in federal court. Although the bill is authorized for 12 years, a petition for recognition must be submitted within six years. The legislation uses the term "recognition" in place of acknowledgment. Whether Senator McCain intends to do away with the distinction or not remains unclear.

On May 5, 1989 the Committee heard testimony on S.611 from the Department of Interior, legal experts, historians, anthropologists, Indian tribes against and in support of the acknowledgment process, and Indian communities seeking acknowledgment. Tribal witnesses who testified against S. 611, interpreted S. 611 as weakening the criteria for federal acknowledgment to such an extent that anyone may qualify as an Indian tribe. As one tribal witness stated in his written testimony, "We see in S. 611 a threat to our sovereign powers. Its broad definitions and lax standards would eventually make a mockery of the very meaning of 'Indian tribe' and 'government-to-government' relationship."

Contrasted with that view, the majority of witnesses at the hearing focused on the problems with the system and the need to substantially improve it. Academic scholars in history and anthropology testified that the revised criteria are actually more difficult to meet than the current criteria and they

supported the operational definitions to assist professionals in the field as to what proof is required and how much. Petitioning groups testified in support of S. 611 as a means to break the log jam at BAR where petitions have been languishing for years. At the end of the hearing, Senator Inouye asked the minority and the majority staff of the Committee to fashion a "compromise" bill that would meet the concerns of all involved. To date, a compromise has yet to be proposed other than drafts of possible approaches. The Committee anticipates a hearing on the compromise version once it has been introduced.

Conclusion

This article in a broad sweep has attempted to put in some historical, legal, and Congressional perspective the phenomenon of recognizing and acknowledging Indian communities that meet certain prescribed criteria. Over ten years ago, the American Indian Policy Review Commission in its task force report concluded that:

The results of 'non-recognition' upon Indian communities and individuals has been devastating, and highly similar to the results of termination: the continued erosion of tribal lands, or the complete loss thereof; the deterioration of cohesive, effective tribal governments and social organizations; and the elimination of special federal services, through the continued denial of such services which the Indian communities in general appear to desperately need.

It is this community of Indian people that NARF has served and continues to serve. Tribal existence forms the core of any Indian community's ability to become independent and self-sufficient, and tribal existence is one of NARF's priority areas. Consequently, the legislative proposals before Congress are of paramount importance to our clients who are not as fortunate as the majority of Indian tribes designated as "recognized."

NARF has built an impressive track record in its tribal existence area. NARF's clients who have chosen to proceed through the acknowledgment process have each been successful. In every case in which legislative

recognition or restoration has been the vehicle, again, NARF has never failed to achieve either goal.

The politics of "recognition" in Indian country cannot be overlooked. Even the AIPRC lamented about the "extremely controversial nature of 'recognition and non-recognition' in the socio-political arena of Indian affairs." Whereas nonrecognized Indian communities have faced almost insurmountable odds in their quest to become recognized, they now face even greater political odds to overcome the perception by some in Indian country that they are illegitimate and will further diminish already scarce resources. While no one can dispute the decrease in fiscal expenditure since 1980 for all domestic programs, including Indian programs, those who are concerned with a smaller pie need to remind themselves of the origins of the federal trust relationship. Rather than it being calculated by the Office of Management and Budget as an appropriation item, the trust relationship is based on the U.S. Constitution, treaties, statutes, and federal common law.

"Recognition" compels students of Indian law and policy to go back to the underlying precepts of the relationship between Indian tribes and the United States. Inquiries into the recognition issue may very well lead to the conclusion that since 1978 the Congress has abdicated its responsibility of recognizing Indian tribes and has left it to an administrative procedure that is carrying on with a life of its own, and now needs Congressional intervention.

"Recognition" also supports the concept that Indian law and tribal existence are not static concepts. The fact that Congress will continue to recognize or restore tribes, and even legislate to authorize the Interior Department to acknowledge tribes substantiates a continual trust relationship; not one dependent on or thwarted by fiscal policy.

We are further instructed that tribal existence and identity do not depend on "recognition." Once that equation is made,

any tribe at some point may be in jeopardy of losing its identity by a mere slip of the federal pen. It has already happened to 33 Alaska Native villages who testified at the 1988 oversight hearing that they had been "inadvertently" de-recognized by the BIA. They have yet to have had their status resolved.

Perhaps the story of Chief Little Shell, a Chippewa leader helps us understand how the accidents of history are closely allied with recognition. Facing forced removal, Chief Little Shell refused to sign what he believed was an unscrupulous treaty. His descendants, now NARF clients, are petitioning the BAR for federal acknowledgment. They are asking, and rightfully so, does not the act of *refusing* to sign a treaty denote an act of a sovereign? The answer should be yes. The BAR will be faced with that question whenever they actively consider the Little Shell petition.

In sum, the benefits of "recognition" for those communities who have achieved that goal are immeasurable. What these Indian communities teach us is an exercise of tribal sovereignty in its purest form; sovereignty never reliant upon federal services nor subsidies.



NARF Board Elects Two New Members

Lionel Bordeaux, president of Sinte Gleska College, and Twila Martin-Kekahbah, chairperson of the Turtle Mountain Chippewa Tribe, were recently named to the NARF Board of Directors. They replace out-going board members Gene Gentry and George Kalama who have served out two year terms, the maximum allowed under NARF by-laws.

Bordeaux, a member of the Rosebud Sioux Tribe, has extensive experience in tribal government and in Indian education. Under his leadership, Sinte Gleska College, located on the Rosebud Sioux Reservation, became the first fully accredited, reservation-based institution of higher education at the bachelor's degree level. He also instituted the first reservation-based master's degree program, establishing a degree program in elementary education at Sinte Gleska.

Bordeaux is also the president and executive board member of the American Indian Higher Education Consortium (tribal college), a board member of the National Advisory Council on Indian Education, and a board member of Americans for Indian Opportunity and the Phelps-Stokes Fund. He has served on the Board of Regents of Haskell Indian Junior College and as president of the National Indian Education Association.

He has received numerous awards that include: 1975 Outstanding Administrator of the Year by Black Hills State College, Spearfish, SD; 1976 Outstanding Educator of the Year by the South Dakota Indian Education Association; 1983 National Congress of American Indians Outstanding Educator of the Year; and, the 1988 National Indian Education Association Educator of the Year.

Bordeaux has served three terms on the Rosebud Sioux Tribal Council, is the Chairman of the Rosebud Sioux Tribal

Education Committee and the acting Chairman of the United Sioux Tribal Education Board. Bordeaux is presently a candidate for a Ph.D in educational administration at the University of Minnesota.

Twila Martin-Kekahbah is the chairperson of the Turtle Mountain Band of Chippewa Indians. Martin-Kekahbah has a wide range of experience in the areas of Indian education and health and has traveled extensively in the U.S. and abroad. She has also served on various boards particularly in the areas of education and health.

Her past accomplishments include serving on the board of directors for: Haskell College Foundation, Lawrence, KS; Center for Rural Health Services, Policy and Research, University of North Dakota Medical School, Grand Forks, ND; Douglas County United Fund, Lawrence, KS; North Dakota Endowment for the Humanities, Bismarck, ND; American Indian Higher Education Consortium, Denver, CO; Camp Fire, Inc., Kansas City, MO; and International School of Native Ministries, Saint Paul School of Theology, Kansas City, KS. She is also a charter member of the medical program Indians Into Medicine, Grand Forks, ND.

Martin-Kekahbah has received numerous honors including: Community leaders of the World--First Commemorative Issue, 1984; Who's Who of American Indians, 1984; OHOYO-Notable American Indian Women, 1981-1983. She also served as a W.K. Kellogg Leadership Fellow, 1984-1987. In addition, she has also given numerous presentations of American Indian women and leadership styles. Martin-Kekahbah has an M.Ed in Educational Administration from Pennsylvania State University.

National Support Committee Adds New Member

The Rt. Rev. William C. Wantland was recently named to the NARF National Support Committee and is a Seminole Indian from Oklahoma, specifically the Tusekia Harjo Band. He has served in the capacity of Bishop at the Diocese of Eau Claire for the last eight years and is the only Native American to serve as a bishop in the Episcopal church. Previously he served in parishes in Oklahoma for almost 20 years.

Rev. Wantland has served as Attorney General of the Seminole Nation of Oklahoma under four principal chiefs from 1969 to 1977. He has also served in leadership capacities for numerous church associations and tribal-related activities, both in Oklahoma and nationwide. They include the Seminole Nation Housing Authority, the Oklahoma Indian Rights Association, the Oklahoma Bar Association Special Committee on Indian rights, the National Committee on Indian Work of the Episcopal church and the American Indian Policy Review Commission of the United States.

Besides his church related responsibilities, Rev. Wantland has continued his active role in the areas of combatting racism as well as drug and alcohol abuse in the State of Wisconsin. In 1986, he received the Wisconsin Equal Rights Council Award for combatting racism against Indians. Rev. Wantland received the Manitou Ikwe Award of the Anishinaabe Way, an Indian alcohol

and drug abuse program in Wisconsin in 1988. Rev. Wantland is the author of three books and numerous published articles. On behalf of the Board of Directors, the other members of the National Support Committee and the staff, we wish to extend a sincere welcome to Rev. Wantland.

NARF Receives Major Contribution From Mashantucket Pequot Tribe

NARF is pleased to have recently received a \$10,000 gift from the Mashantucket Pequot Tribe of Ledyard, Connecticut. The check was presented at NARF's recent Board of Director's meeting by Richard (Skip) Hayward, Chairman of the Mashantucket Pequot and a new member to NARF's Board. This was the first major bingo benefit in the nation in support of NARF's work.

At the Native American Rights Fund we are especially pleased when tribes like the Mashantucket Pequot contribute so that all Native Americans can benefit. We are proud of the fact that more tribes are contributing to NARF than ever before. The increase in tribal contributions makes a real impact on the help we can provide to those tribes who otherwise would not have adequate representation.

We would like to extend a special note of appreciation to Skip Hayward and the Mashantucket Pequot Tribe for their generous contribution.

Case Updates

State of Kansas Enacts Unmarked Burial Sites Preservation Act

On April 24, 1989, Kansas Governor Mike Hayden signed into law House Bill 2144, the "Kansas Unmarked Burial Sites Preservation Act." The new law bans unregulated public displays of human remains and protects unmarked graves from unnecessary disturbance. The measure, which passed the legislature with overwhelming support in both houses, had been introduced at the request of the Kansas State Historical Society. Major supporters of the bill included seven American Indian tribes who are concerned about protection for tribal burial grounds located in Kansas. The bill was also supported by the Kansas scientific and historical community which deplored the loss of valuable cultural resources caused by unregulated "looter's" or disturbances of unmarked graves.

NARF represented the Pawnee Tribe in the matter.

State of Wyoming v. United States of America

The U.S. Supreme Court upheld the "practicably irrigable acreage" (PIA) standard of quantification of Indian water rights in the case of *State of Wyoming v. United States of America*. The PIA standard is used for determining the amount of water impliedly reserved for agriculture and related uses on Indian reservations. The standard takes into consideration and quantifies amounts for future as well as historic and present water uses. Tribes and states in the past have relied upon the PIA standard in water negotiations and quantification of various Indian tribes' water rights have been determined by the use of this standard. The court was equally divided (Justice O'Connor did not participate in the decision), therefore, there is no written opinion. NARF filed an *amicus curiae* brief on behalf of a number of tribes and the National Congress of American Indians.

Amendments to American Indian Religious Freedom Act Introduced

HR 1546 to amend the American Indian Religious Freedom Act (AIRFA) has recently been introduced in the House. NARF attorneys, together with representatives of the National Congress of American Indians and the Association on American Indian Affairs, have also been working with the staff of the Senate Select Committee on Indian Affairs to develop counterpart amendments to AIRFA in the Senate.

The amendments are being proposed to offset the damage done by the disastrous U.S. Supreme Court decision in *Lyng v. Northwest Indian Cemetery Protective Association*. Rendered almost one year ago, that decision stripped Indians of the constitutional right to safeguard the integrity of their sacred worship sites. Both legislative proposals to amend AIRFA -- which will see activity in Congress in the

Case Updates Continued

upcoming months -- can give the law the "teeth" it now lacks, and thus enable Native Americans to take their fight for religious freedom into courtrooms across America.

Nebraska Lawmakers Enact Precedent-Setting Indian Burial Legislation

Nebraska lawmakers have enacted a precedent-setting law which requires state-sponsored museums to return Indian skeletal remains and associated burial goods to tribes for reburial. The law is the first of its kind in the country expressly requiring the return of all tribally identifiable skeletal remains and linkable burial goods to Indian tribes for reburial.

Legislative Bill 340, sponsored by Senator Ernie Chambers of Omaha, also prohibits the unnecessary disturbance of unmarked burials and established criminal penalties for trafficking the contents of burials located within the state. In the event unmarked Indian graves must be disturbed in instances such as road construction, the legislation requires state authorities to contact identifiable Indian tribes and comply with their decisions as to reburial or other disposition.

NARF represented the Pawnee and Winnebago Tribes in the matter.

California v. United States

The United States Supreme Court affirmed a decision protecting the boundaries of three Indian reservations along the Colorado River. Determination of the reservation boundaries is a crucial step in *Arizona v. California*, a related lawsuit to quantify water rights to the river among the tribes and the states. This case forecloses a separate action by two southern California water districts and the states in which they argued that the Secretary of the Interior illegally enlarged the reservation boundaries. NARF filed an *amicus curiae* brief on behalf of several tribes.

Brendale v. Yakima Indian Nation

The United States Supreme Court largely divested the authority of Indian tribes to zone land owned in fee by non-Indians within the reservation boundaries. A non-Indian in a portion of the Yakima reservation which is now heavily populated by non-Indians, due to the late nineteenth century federal policy of allotting Indian tribal lands to individuals, may now build a dense residential subdivision on his land. But a non-member living amidst mostly tribal land may not build a commercial resort on his land. Tribal law would have prohibited the developments of both landowners. NARF filed an *amicus curiae* brief on behalf of several tribes.

NARF RESOURCES AND PUBLICATIONS

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

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Bibliography on Indian Economic Development

Designed to provide aid on the development of essential legal tools for the protection and regulation of commercial activities on Indian reservations. This bibliography provides a listing of articles, books, memoranda, tribal codes, and other materials on Indian economic development. 2nd edition (60 pgs. Price: \$30.00). (NILL No. 005166)

Indian Claims Commission Decisions

This 43-volume set reports all of the Indian Claims Commission decisions. An index through volume 38 is also available, with an update through volume 43 in progress. The index contains subject, tribal, and docket number listing. (43 volumes. Price \$820). (Index price: \$25.00). (Available from the Indian Law Support Center).

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INDIAN RIGHTS MANUAL

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

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

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

Handbook of Federal Indian Education Laws. This handbook discusses provisions of major federal Indian education programs in

terms of the legislative history, historic problems in implementation, and current issues in this radically changing field. (130 pgs. Price \$20).

1986 Update to Federal Indian Education Law Manual (\$30.00) Price for manual and update (\$45.00).

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

PUBLICATIONS

ANNUAL REPORT. This is NARF's major report on its programs and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request.

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Main Office: Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302 (303-447-8760).

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

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

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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 of 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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