

NARF

Legal Review

Native American Rights Fund

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The National Indian Law Library Tribal Code Project: A Product Of A Successful Joint Effort

by Joanna L. Wilkerson

Despite centuries of devastation, Indian Tribes have persisted as politically, socially, and culturally distinct entities, capable of and intent upon deciding their own destination through tribal government. This continuing endeavor finally culminated in a fundamental change during the era of social upheaval and reformation of the 1960's. Thus was begun a more comprehensive, concerted effort in the legal protection of Indian rights by lawyers who have an understanding of the subtleties of the problems at work and the interests at stake. The permanency of Indian Tribes was acknowledged during the Johnson administration and reaffirmed by President Nixon's special message to Congress recommending a policy of support to Indian self-government.

Tribal governments are now becoming vehicles to serve the interests of their constituents. Constitutions conceived by Indian Tribes themselves are replacing BIA boiler-plate documents. Tribal courts are taking the place of the BIA controlled courts of Indian offenses and Code of Federal Regulations (CFR) courts. Although many tribal laws are still replicae of the BIA models of earlier years, tribal governments are now comprehensively rewriting law and order codes. Some governments are rewriting their existing tribal documents, and others are replacing them entirely with documents of their own fashioning. Tribes are taking

legislative control of reservation management, environmental and wildlife protection, criminal prosecution, family welfare, juvenile delinquency, housing, zoning, economic development, taxation, business associations, non-Indian presence and business relations, and every other conceivable legal concern by promulgating comprehensive, sophisticated codes of law to serve the needs and protect tribal culture.

The rapid developments spawned both in federal Indian law and in tribal government revealed, among other things, a vacuum of resources. There had never been any effort to create and upkeep a comprehensive collection of past and present cases, legislation, treaties, and other documents

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pertinent to the practice of Indian law, as well as existing tribal constitutions, codes, revisions, amendments, and other tribal government documents. In response to this insufficiency, the Native American Rights Fund (NARF) established a special project in 1972 called the National Indian Law Library (NILL) to serve as a clearinghouse for such a need.

The isolated nature of tribal governments required some systematic procedure of gathering and updating tribal codes and constitutions. The extensive time and cost involved in such an undertaking was prohibitive. Early efforts were made to gather existing documents, such as Colorado State College professor George E. Fay's compilation of tribal constitutions, charters and by-laws begun in 1967; and the work of University of Washington School of Law professor Ralph Johnson in compiling a microfiche collection of Indian tribal codes in 1980. Although both of these collections have been updated during this decade, as of 1988 there was no lending collection of complete tribal codes, constitutions, and other tribal documents for use in drafting or up-dating code provisions.

In September of 1987, NARF began submitting proposals for the funding of a tribal code project to be housed at NILL. In early Spring 1988, the AT&T Foundation awarded an initial grant of \$7,500 for the twofold purpose of collection development of the most comprehensive "Tribal Code" accumulation and the implementation of a regular updating process to ensure that the tribal codes are current. In the summer of 1988, the project's coordinator was hired to begin the arduous task of contacting tribal governments, requesting their participation in this essential project. By the end of summer, the "Tribal Code" collection project was underway.

The grant which made the tribal code collection project possible, though generous, was still only the initiative for an immense and ongoing process. The rest would depend on the complete and perpetual cooperation of

the tribal governments themselves. It would be a little like the old tale of "rock stew" and the old man who put in the first potato, inspiring the other members of his starving community to contribute what little each one had, until eventually there was a great feast for all.

When the project first began, NILL's code collection contained about eighty entries of code material, some of which lacked their subsequent amendments. Only twenty of these were complete codes of laws; the rest were various ordinances, resolutions and other fragments. There was only one document from Alaska. There was no established method of contacting tribal governments and requesting code materials, following up on promised documents or gathering updates. The most efficient means of contact, at this point, was a compiled tribal leader's list, however many of the addresses and phone numbers proved to be outdated. Excluded from this listing were unrecognized and petition-status tribal entities. Later an entirely separate list of unrecognized Tribes and those petitioning for recognition, was discovered in the Bureau of Indian Affairs's Department of Acknowledgment and Research. Others not included in either of these lists were simply hunted down through telephone calls and research.

The compilation of these three sources produced a current mailing list of approximately 700 tribal governments for the project. An introductory letter described the project, stressed the importance of such a collection and requested that the tribes assist by sending to NILL their legal documents in their entirety, either as a complimentary copy or including an invoice, and to forward any future updates. Though there had been great uncertainty as to what type of response to expect, dozens of pieces began immediately to arrive in the mail, and the rock stew began to take on a little flavor.

The response to letters requesting copies of code materials continued, varying from notices of delay in availability, to statements of traditional law and absence of written

documents, to boxes full of documents. It was tremendous. Given the scarcity of resources and man-power available on most reservations, the response was both unexpected and excellent. With the overwhelming cooperation demonstrated by the tribes, it began to appear more possible to accomplish the seemingly impossible comprehensive compilation of tribal law on a very tight budget. New documents continue to arrive and tribal files are expanding.

Since the initial contact in the introductory letter, NILL has received replies from approximately 450 out of 700 mailed inquiries. The collection now contains over a thousand pieces of tribal law, comprising roughly fifteen thousand hardcopy pages, and includes over a hundred documents from Alaskan Villages and corporations. Of the 107 constitutions in the collection, approximately a dozen are from Alaska Villages, in addition 17 have been authored by tribal entities seeking federal recognition. There are two dozen corporate charters, eight of which are from Alaska. There are now 60 complete codes of law, where self-labelled as such, including ten from the Pacific Northwest, 11 from California and the West, 10 from the Northern Plains, 16 from the Southwest and Oklahoma, 3 from the Southeastern region, 1 from New England, 9 from the Great Lakes and 1 from an Alaskan Village. Of the other Alaskan documents, most are articles of association, ordinances establishing tribal courts, enrollment ordinances, and foster home regulations.

This does not include those governments who do not refer to their documents as a single collection, but whose complete collection of statutes the Library nevertheless retains. Frequently the tribal government has only passed statutes pertinent to its particular situation, occasionally resulting in some unique laws and ordinances. Unlike before, the Library now has model documents on almost every conceivable subject, from declarations of self-determination to burial to sewage disposal, limited adoption of the Uniform Commercial Code, off-Reservation

regulations, conservation and pow-wow ordinances, and an array of usual and unusual subjects in fact so numerous that a new area of the catalogue has been created to accommodate tribal code topics.

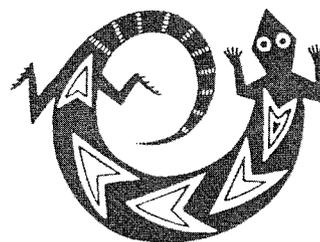
This is fortunate, since requests for the most sophisticated and effective examples of codes addressing certain issues are made to NILL from three times a week to as frequently as three times a day. Authors of new codes, ordinances and/or revisions, usually tribal lawyers, judges, and councilmen, are the most frequent and grateful users of the collection of tribal legal documents. Some of the more frequent subjects of tribal law revision work reveal the growth and assertion of self-government. Business codes are an especially popular request, with the growing degree of self-control over tribal business and development. The most sophisticated tribal business code at the Library is over 100 pages. Hunting and fishing codes are requested as frequently, in response to the pressures arising from limited resources and to the cultural interests at stake for Indians. Fortunately, this is a subject on which there are numerous codes. Constitutions rewritten by tribal governments to serve their own people are an item in demand by others who are doing likewise. But the requests are more than challenging to the collection in some fields. The growing frequency of requests for conservation and environmental protection codes taxes a field of Indian tribal law so new that there are few documents to fill the requests; there has been little such regulation promulgated in the past by tribal legislatures. Likewise, there are few examples of limited tribal adoption of the UCC, even though uniformity in trade laws is critical to facilitate growing trade relationships between Indian and non-Indian entities. Also, sophisticated corporation and business association codes are of increasing demand, as tribal governments reassert self-control and reroute economic development along paths more compatible to their needs.

Despite deficiencies in the collection, the very fact that such subjects are requested with increasing frequency suggests that soon the dearths will be filled, as long as the Tribes continue to contribute the finished products of their efforts so that others will be able to benefit from them in the future. The process becomes self-generating as rewritten and improved codes, based on models found at NILL, themselves become refined models for the future assertion of the right of Indians to govern themselves.

Yet the urgent need for a single repository, where tribal governments habitually send all documents and their revisions, necessitates the highest possible level of cooperation in order to provide for the most benefit to all. NILL, like the rest of NARF, is strongly committed to the significance of a total team effort in the development of Indian Law to meet the challenges of tribal self-government. As with any team effort, individual components of that team must execute their respective roles if the effort is to be successful. While collection development, legal research and reference may not be as visible to the public as appearances in the national media, NARF believes these functions must serve as a focus for the preservation of tribal existence. Indeed, the Tribal Code Project depends heavily on tribal cooperation and self-initiative in sending NILL existing and/or new documents. Although great willingness has already been demonstrated, in response to recent requests it is estimated that at least half the existing tribal legal documents have yet to be acquired by NILL.

Probably no library came into existence with more of a mandate to serve as an information provider than did NILL. This Tribal Code Project of NILL is only an example of how NARF has, since its founding, been involved in efforts to develop Indian Law. It is the goal of NILL to serve as a medium through which tribal decision makers can exchange information and thus improve the work of all tribal governments. The information problem which faces tribal

governments is the lack of mechanics for supplying to them the information they need. No individual tribal government has the capacity to keep track of what other tribal governments are doing and therefore tribal governments are not learning from the mistakes and successes of each other. Efforts such as the Tribal Code Project indicate that NILL promises to be an important information resource for tribal governments in the years to come.





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Case Updates

San Juan Paiute Tribe Receives Federal Recognition

On December 11, 1989, the San Juan Southern Paiute Tribe of Arizona received the Notice of Final Determination from the Department of the Interior, Bureau of Indian Affairs, stating that the Tribe "exists as an Indian tribe within the meaning of Federal law" and "therefore, meets the requirements necessary for a government-to-government relationship with the United States." This announcement from Eddie Brown, Assistant Secretary for Indian Affairs, came more than five years after filing the original petition with the Branch of Acknowledgement and Research (BAR) requesting Federal recognition of the San Juan Southern Paiute Tribe. NARF represents the Tribe in the matter.

Native Village of Tyonek v. Puckett

The Ninth Circuit Court of Appeals amended and ordered published an earlier memorandum disposition which affirmed the dismissal of a challenge to the authority of the Native Village of Tyonek and its officers on the grounds of sovereign immunity. The District Court held that Tyonek possesses "the authority to exclude non-members of the Village from its [tribal] family housing." The Court rejected the argument that the Alaska Native Claims Settlement Act had diminished Tyonek's sovereign immunity and governmental powers. The Court also ruled that the federal courts have jurisdiction over actions brought by tribes to determine their authority over non-members. The case is important because it is the first case in the modern era expressly upholding the tribal status, powers and immunities of an Alaska Native Tribe. NARF filed an *amicus curiae* brief in support of the Village.

The National American Indian Museum Act Signed by President Bush

Provisions that require the Smithsonian Institution to return native human remains to a tribe upon request were included in the National American Indian Museum Act signed into law on November 28, 1989. Under the Act, the Smithsonian Institution must return native bodies when the preponderance of the evidence indicates that the remains are culturally affiliated with the requesting tribe. Funerary offerings are also subject to repatriation under the same standard where they are associated with a specific remain or grave site. An estimated 19,000 dead native bodies are held by the Smithsonian Institution. NARF represented the Pawnee Tribe in helping secure the repatriation provisions.

New Board Members Selected

The NARF Board of Directors selected Ada Deer, a member of the Menominee Tribe of Wisconsin, as its new chairwoman. Deer replaces outgoing leader, Norman Ration, a Navajo-Laguna Indian from New Mexico who until recently headed DNA Legal Services.

The Board also elected Wilma Mankiller, Principal Chief of the Cherokee Nation, and John R. Lewis, Director of the Inter-Tribal Council of Arizona as new board members.

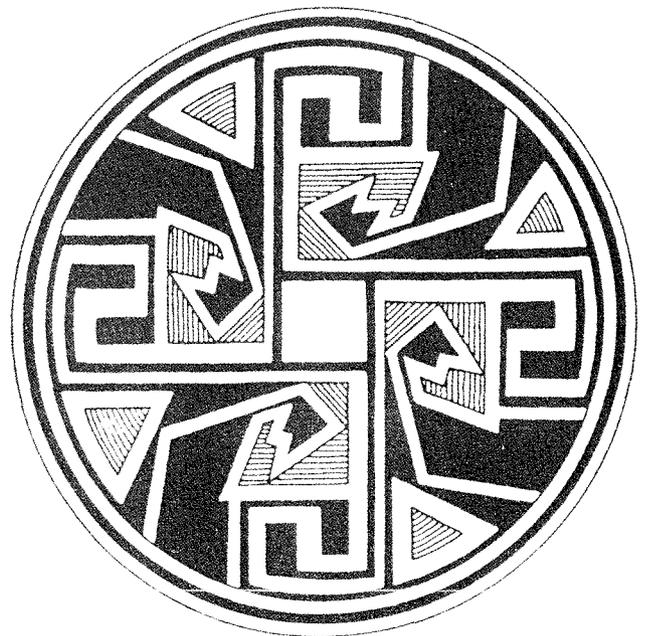
Deer has an extensive background in public service, both in Wisconsin and nationwide. She ran for Secretary of State in the Democratic Primary in Wisconsin in 1977 and 1982. Deer is currently President of the Wisconsin Chapter of the National Association of Social Workers and has served on numerous local, state and national boards including Common Cause, Girl Scouts of the U.S.A., the American Indian Scholarship Program and Housing Assistance Council. In 1982 she was among the first 18 women honored by the Wonder Woman Foundation.

Principal Chief Mankiller has extensive experience in tribal and community-based activities in her work with the Cherokee Nation. Chief Mankiller has also worked with the Cherokee Nation as Deputy Principal Chief, National Community Development Department Director, Program Development Specialist, and Economic Stimulus Coordinator. Principal Chief Mankiller has won numerous honors and awards that include: International Woman of Distinction; Honorary Doctorate of Public Service, Rhode Island College 1989; Woman of the Year, Ms. Magazine, 1987; Honorary Doctorate in Human Letters, University of New England, 1986 and Oklahoma Women's Hall of Fame, Governor's Advisory Committee, 1986. She serves on the following boards and committees: Council of Energy Resource Tribes, Arkansas Riverbed Authority, Ms. Foundation for Women, Indian Law

Resource Center, Seventh Generation Fund, Native American Indian Women's Association, National Congress of American Indians, and Native Americans for a Clean Environment. Principal Chief Mankiller has a B.S. in Social Work and graduate work in community planning.

John R. Lewis has an extensive background in management and administration in working with Indian organizations in the Southwest. He is the current director of the Inter-Tribal Council of Arizona. Lewis has also worked at Southwestern Indian Development, Med-Start Project, National Indian Training and Research Center, Pascua Yaqui Development Project, and the Colorado River Indian Tribes.

Lewis also serves as a board member with the Arizona Academy, the Valley of the Sun United Way and the Minority Advisory Committee, Arizona State University. He has a B.A. in Anthropology and an M.A. in Cultural Anthropology. The two new board members replace outgoing members Norman Ration and Dan LittleAxe, an Absentee - Shawnee member from Oklahoma.



Native American Rights Fund

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

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

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