

BASIC INDIAN LAW RESEARCH TIPS--PART I: FEDERAL INDIAN LAW
(August 2008 update to an article originally written for the *Colorado Lawyer* in 2005)

<http://www.narf.org/nill/bulletins/lawreviews/articles/coloradoLawyerArticle-fed.pdf>

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Justice William C. Canby, Jr., in *American Indian Law in a Nutshell*, defines federal Indian law as the law dealing with “the status of the Indian tribes and their special relationship to the federal government, with all of the attendant consequences for the tribes and their members, the states and their citizens, and the federal government.” [FN1] Indian law is a growing area of law, as many of the more than 560 federally recognized tribes and Alaska Native Villages exercise their sovereignty and self-governance, as well as develop their economies. Many western states have significant populations of American Indians, and trust lands cover more than fifty-five million acres in the United States.

A sign of the growing importance of Indian law is that the New Mexico, South Dakota and Washington State Bar Associations have decided to add a question on Indian law on their state bar exams. Despite the increase in activity in this area of law, little has been written on how to research this topic. The most comprehensive guide to researching Indian law was published in 1984 by Nancy Carol Carter. [FN2] While her article is still quite useful, it does not cover the many electronic sources available today. Carter has published additional and more recent research articles on Indian water rights, Alaska Native law and Native Hawaiian law. [FN3]

This article, set out in two parts, attempts to provide some practical tips for the Indian law researcher. This Part I focuses on federal Indian law research. Part II, published in the August 2005 issue of *Colorado Lawyer* and updated on the National Indian Law Library (NILL) web site in 2007, focuses on tribal law research. [FN4] Tribal law is law developed by the tribes, which applies within their territories and to their members. Although hundreds of pages could be written on researching federal Indian law, this article focuses on providing basic tips that are based on questions received by, and research tools commonly used by, the librarians at the National Indian Law Library.

Encyclopedic Works

Both *American Jurisprudence* [FN5] and *Corpus Juris Secundum* [FN6] have useful topical sections on federal Indian law under “Indians.” These works offer a good starting point for researchers unfamiliar with Indian law and are both available on Westlaw®.

Handbooks, Treatises, and Casebooks

For background information on different areas of federal Indian law, there are a few books worth considering. The best source, often considered the “bible” on Indian law, is *Cohen's Handbook of Federal Indian Law*. [FN7] The most recent edition was published in 2005, and a supplement in 2007. Researchers will find both the 1982 as well as a 1942 edition useful as well. LexisNexis™ also provides electronic database access to the *Handbook* under the “Treatises & Analytical Materials” topic. Other useful titles include: *Cases on Federal Indian Law*; [FN8] *American Indian Law*; [FN9] *The Rights of Indians and Tribes: the Authoritative ACLU Guide to Indian and Tribal Rights*; [FN10] and, as noted above, *American Indian Law in a Nutshell*. [FN11]

Law Review Articles

Two major bibliographic indices provide access to Indian law articles. The *Index to Legal Periodicals*, offered in print and through a variety of electronic services, including Westlaw and LexisNexis, categorizes Indian law-related articles under “Indians.” [FN12] Add “Indians” to your search terms to find pertinent articles. The *Legal Resource Index* is another resource, and is available on Westlaw and LexisNexis. [FN13] It also is offered in print as the *Current Law Index* [FN14] or in a Web-based format called *LegalTrac*. [FN15] *LegalTrac* is available at the University of Colorado and University of Denver law

libraries. To limit the results of a search, the searcher should add the index term “ Native American.” [FN16]

Lee Ryan, at the University of San Francisco Law Library, wrote a research “ cheat sheet” on how to search the *Legal Resource Index*. [FN17] If you want to search full-text journals and texts, the topical “Native American Law--Texts and Periodicals” database on Westlaw (NAM-TP) is your best bet.

Case Law

In addition to the casebooks highlighted above, the following sources provide access to federal Indian law cases. The best access to cases is offered electronically through Westlaw and LexisNexis. Other electronic services provide access to primary law sources, but will not be covered in Part I of this article because, regarding federal Indian law, Westlaw and LexisNexis provide the broadest scope of value-added content.

Researchers will notice that both of these services offer access to federal Indian law information under the topic “Native American Law.”[FN18] Although the researcher might expect the content of the databases listed under this topic to be similar, there is a distinct difference. The Westlaw “ Native American Law” databases include information that Westlaw considers related to Native American law. (For a list of these databases see the "Native American Law" tab on Westlaw.) For instance, the "Federal Native American Law – Cases" database (FNAM-CS) contains cases decided by the federal district courts and federal courts of appeals related to "Native American law. "

On the other hand, the Native American law topical label on LexisNexis is a general guide to where you will find information relating to Native American Law, not sub-sets of larger databases as they are in Westlaw, unless they are specifically labeled as such. For example, the "Federal Court Cases, Combined" database listed under the Native American law topic in LexisNexis includes cases from all other topical areas and is essentially the full federal courts database. The significance of this difference to the researcher is that, with LexisNexis, the researcher may need to add additional key words to the search, such as “Indian,” “tribe,” or “Native American,” so as to limit the search results to Native American law.

If you prefer print sources, case law is indexed in *West's Federal Practice Digest* under the topic “ Indians.” [FN19] A handy desk-book is *Landmark Indian Law Cases*, which compiles and indexes the most important Indian law cases decided by the U.S. Supreme Court. [FN20]

Some types of Indian law cases are more difficult to find and research. In 1946, the Indian Claims Commission Act was passed. [FN21] A special tribunal was set up to allow tribes, bands, and other identifiable Indian groups to make claims against the U.S. government for illegal taking of land. The findings of fact and decisions from the Commission were published in the *Indian Claims Commission Decisions*. [FN22] The set is available in print or on microfiche at most academic law libraries and now on the Oklahoma State University web site. [FN23] When using the indexes for these sets, keep in mind that the *Decisions* are published in forty-two volumes and the published indexes are incomplete. Contact the National Indian Law Library for supplements to the index. [FN24] Commission briefs [FN25] and expert testimony [FN26] also are published in microfiche format and are available at the University of Colorado Law Library.

Administrative case law is probably best searched electronically. Both LexisNexis (Department of Interior Board of Indian Appeals database) and Westlaw (FNAM-IBIA database) provide access to the Interior Board of Indian Appeals Decisions. [FN27] Opinions of the Solicitor are collected in a two-volume print source that also has been digitized at the University of Oklahoma Law Library website. [FN28] Opinions are indexed by subject, as well as opinion number.

Researching Indian law-related Opinions of the Solicitor of the Department of the Interior can be challenging. Westlaw offers access to Opinions of the Solicitor as a subset of its FNAM-EXEC database; LexisNexis offers opinions in the “Native American Solicitor's Opinions” database, which mirrors the content in the Opinions of the Solicitor noted above. However, neither database is comprehensive. The U.S. Department of Interior website used to offer Solicitor's Opinions from 1993 to the present; but now

this web site is only available through the Internet Archive. [FN29] In addition to those resources, NILL Librarians rely on a small collection of individually cataloged opinions in the library; various sets of published Interior opinions from 1910-1995, available at many university libraries; and Interior's library. One of these published sets can be found at the University of Oklahoma Law Library's web site. [FN30]

Laws, Treaties, Regulations, and Executive Orders

Most of the codified federal law dealing with American Indians can be found in Title 25 of the *U.S. Code*. Several other titles, notably Titles 5, 18, 28, and 42, also include pertinent laws. Westlaw and LexisNexis offer access to these federal laws in their FNAM-USCA and USCS - United States Code Service: Code, Const, Rules, Conventions & Public Laws databases respectively. [FN31] Westlaw offers topical access to the *Code of Federal Regulations* and *Federal Register* under the "Native American Law" tab. As with federal case law mentioned above, Lexis provides access to the *Code of Federal Regulations*, and *Federal Register* through their "Native American Law" topic as well, but these databases are not subsets of the larger databases as they are on Westlaw.

Neither LexisNexis nor Westlaw offers topic-specific access to Native American law in state regulatory or statutory materials. Both provide access to executive orders relating to Native Americans. [FN32] A good tool to help find copies of treaties and historical federal laws relating to Native Americans is *Indian Affairs: Laws & Treaties*, [FN33] also found on the Oklahoma State University Law Library's website. [FN34] Volume 2 of this set covers treaties with the U.S. government. Other volumes include selected historical laws dealing with American Indians from 1778 to 1970. A more complete set of treaties, both ratified and unratified, can be found in *Documents of American Indian Diplomacy*. [FN35]

Current Awareness Services

Attorneys who regularly practice Indian law may wish to subscribe to one of the federal Indian law current awareness services to keep abreast of new developments in Indian law. The *Indian Law Reporter*, available only in print, provides copies of full-text federal, state, and tribal court opinions each month. [FN36] All cases are indexed in the annual looseleaf volume. *Native American Law Digest* [FN37] is a monthly newsletter providing brief summaries of Indian law news and case law. The *Native American Law Report* also is available electronically, from January 2004, on *Infotrac*. *Infotrac* is a large set of general use periodicals available in electronic format, which includes citations of relevant documents to full-text articles. *Infotrac* is available remotely from many libraries to library cardholders. [FN38]

NILL provides an *Indian Law Bulletins* service on its website and sends e-mail alerts to subscribers when the *Bulletins* have been updated. [FN39] Most *Bulletins* are updated on a weekly basis, but the *U.S. Supreme Court Bulletin* is updated as soon as new information about cases is released. Access to the *Bulletins* website and subscription to the e-mail alerts are free. The *Bulletins* provide summaries and links to full-text copies of recent cases decided in federal and state jurisdictions. They also include notices, proposed rules and final rules published in the *Federal Register*, selected Native American legal news, and the latest Indian law-related law review and bar journal articles. Older *Bulletins* material is archived.

Ask a Law Librarian for Help!

This article presents a brief overview of the print and electronic resources available on Indian law. To learn about the latest resources and to get personalized research assistance, contact the NILL or other law libraries. NILL specializes in Indian law and provides free and fee-based research services to the public. In addition, the library catalog and a wide variety of research resources and guides can be found on the library's website. [FN40] Part II of this article on tribal law research is also available at NILL's web site. [FN41]

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[FN1]. Canby, *American Indian Law in a Nutshell*, 4th ed. (St. Paul, MN: Thomson/West, 2004) at 1.

[FN2]. Carter, "American Indian Law: Research and Sources," 4 *Legal Reference Services Q.* 5 (Winter 1984/1985).

[FN3]. Carter, "American Indian Water Rights: Law and Research," 27 *Legal Reference Services Q.* 1 (2008); Carter, "The Special Case of Alaska: Native Law and Research," 22 *Legal Reference Services Q.* 11 (2003); Carter, "Native Hawaiians: History, Law and Research," 21 *Legal Reference Services Q.* 5 (2002).

[FN4]. See <http://www.narf.org/nill/resources/guide2.pdf>

[FN5]. *American Jurisprudence: A Modern Comprehensive Text Statement of American Law, State and Federal*, 2d ed. (St. Paul, MN: Thomson/West, c2005).

[FN6]. *Corpus Juris Secundum: A Complete Restatement of the Entire American Law as Developed by All Reported Cases* (St. Paul, MN: Thomson/West, 1936-- present).

[FN7]. *Cohen's Handbook of Federal Indian Law* (Newark, N.J.: LexisNexis, 2005).

[FN8]. See Getches, Wilkinson, and Williams, *Cases on Federal Indian Law*, 5th ed. (St. Paul, MN: Thomson/West, 2004).

[FN9]. See Clinton, *American Indian Law: Native Nations and the Federal System, Cases and Materials*, 4th ed. (Dayton, OH: LexisNexis, 2003).

[FN10]. Pevar, *The Rights of Indians and Tribes: the Authoritative ACLU Guide to Indian and Tribal Rights*, 3rd ed. (New York: New York University Press, 2004). * This is a reprint of the 2002, 3rd edition by Southern Illinois University Press.

[FN11]. Canby, *supra*, note 1.

[FN12]. *Index to Legal Periodicals* (Bronx, NY: H.W. Wilson Co., 1994).

[FN13]. *Legal Resource Index* (Farmington Hills, MI: Gale Group, 1980-- present) (see <http://library.dialog.com/bluesheets/pdf/bl0150.pdf>). *Legal Resource Index* (Gale Group) is a computer database companion to *Current Law Index*, available on ABA/net and DIALOG, note 13, *infra*. The *Legal Resource Index* indexes 750 law journals, six law newspapers, and law-related articles in five national newspapers, 300 trade and industry periodicals, and many popular magazines. *Legal Resource Index* is available on LexisNexis and Westlaw.

[FN14]. *Current Law Index* (Los Altos, CA: Information Access Corp., 1980- present).

[FN15]. *LegalTrac* (Farmington Hills, MI: Gale Group, 1980--present).

[FN16]. *Legal Resource Index*, *supra*, note 12.

[FN17]. See http://www.usfca.edu/law_library/lricheat.html

[FN18]. See the Westlaw and LexisNexis database directories and database scope pages for details on specific database content. The directories are available in print and online: *Westlaw Database Directory* or *LexisNexis Directory of Online Services*. Both are published annually and are free from the vendor. For LexisNexis, call (800) 543-6962; for Westlaw, access west.thomson.com/store (this is an https address, not http) or call (800) 937-8529. To access the directories electronically, use web.nexis.com/sources for LexisNexis; for Westlaw, access <http://www.westlaw.com>. After signing on, at the welcome page, type in the title, author, or other identifier in the "Search these databases" box. The twenty most relevant files will be provided using this method. Both LexisNexis and Westlaw allow the user to drill down to their database directories while online. There is no charge for consulting the directory.

- [FN19]. *West's Federal Practice Digest*, 4th ed. (St. Paul, MN: Thomson/West, 1989--present).
- [FN20]. National Indian Law Library, *Landmark Indian Law Cases* (Buffalo, N.Y.: William S. Hein & Co., 2002).
- [FN21]. Indian Claims Commission Act of 1946, 60 Stat. 1049 (codified in 25 U.S.C. § 70-70v (omitted from the Code in that the Commission terminated on Sept. 30, 1978)).
- [FN22]. *Indian Claims Commission Decisions* (Boulder, Colo.: NARF, 1973-- present).
- [FN23]. See <http://digital.library.okstate.edu/icc/index.html>
- [FN24]. See <http://www.narf.org/nill/index.htm>
- [FN25]. Entitled *Briefs Submitted to the Indian Claims Commission: Including Petitions, Proposed Findings of Fact, and Answers* (New York, NY: Clearwater Pub. Co., 1973--present).
- [FN26]. Entitled *Expert Testimony Before the Indian Claims Commission* (New York, NY: Clearwater Pub. Co., 1973).
- [FN27]. U.S. Dept. of the Interior, Board of Appeals, *Decisions of the Interior Board of Indian Appeals* (Arlington, Va.: The Board, 1970--present).
- [FN28]. See <http://thorpe.ou.edu/solicitor.html>. See also U.S. Dept. of the Interior, Office of the Solicitor, *Opinions of the Solicitor of the Department of the Interior Relating to Indian Affairs 1917-1974* (Wash., D.C.: U.S. Dept. of the Interior, 1979).
- [FN29]. See <http://web.archive.org/web/20060924023019/http://www.doi.gov/sol/solopin.html>
- [FN30]. See <http://thorpe.ou.edu/solicitor.html>
- [FN31]. See <http://www.westlaw.com> and <http://www.lexis.com>
- [FN32]. See FNAM-EXEC file at <http://www.westlaw.com> and Executive Order Pertaining to Native American People database at <http://www.lexis.com>
- [FN33]. Kappler, *Indian Affairs: Laws and Treaties* (New York, NY:AMS Press, 1972), available at <http://digital.library.okstate.edu/kappler>
- [FN34]. See <http://digital.library.okstate.edu>
- [FN35]. *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979* (Norman, Okla.: Univ. of Okla. Press, 1999).
- [FN36]. *Indian Law Reporter* (Wash., D.C.: American Indian Lawyer Training Prog., 1974--present).
- [FN37]. *Native American Law Digest* (Fairfax, VA: Falmouth Inst., 1991-- present).
- [FN38]. See, e.g., Denver Public Library at <http://denverlibrary.org/research/az.html>
- [FN39]. *Indian Law Bulletins*, provided free of charge by the NILL/NARF, Boulder, CO, See <http://narf.org/nill/bulletins/ilb.htm>
- [FN40]. See <http://www.narf.org/nill>

[FN41]. See <http://narf.org/nill/resources/guide2.pdf>