

BASIC INDIAN LAW RESEARCH TIPS--TRIBAL LAW
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(A January 2012 update to an article originally published in the *Colorado Lawyer* in 2005. A companion article, *Basic Indian Law Research Tips – Federal Indian Law* also is available.²)

In 1997, U.S. Supreme Court Justice Sandra Day O'Connor made reference to the importance of tribal sovereignty and tribal law, stating:

Today in the United States, we have three types of sovereign entities—the federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country.³

Tribal law is becoming increasingly important as more than 560 sovereign Indian nations and Alaska Native villages exercise their powers of self-governance. While much of tribal law is based on Anglo-American law, there has been a growing trend among tribes to re-examine their law and to consider historical methods of handling disputes so that it reflects the values of their individual nations. As a result, many nations are formalizing or incorporating traditional and customary law into their legal frameworks.

“Tribal law” comprises the laws developed by tribes or Indian nations, which apply within their territories and to their members. It can be a difficult area of law to research, because few primary and secondary resources are published and made available to the public. Despite the lack of commercial publication, tribal law resources have become more accessible in the past ten years with more primary resources available in electronic form and secondary resources in print. Locating the right resources sometimes requires patience and tenacity, and in many instances, the researcher must know who to contact for assistance. This article highlights the best tribal law resources most often used by the National Indian Law Library while answering more than 2,000 questions each year.

Secondary Sources – Books, articles, etc.

A small number of encyclopedias and handbooks on tribal law exist, and recently a few new titles have been published. A good source that succinctly describes several tribal legal systems is the *Encyclopedia of Native American Legal Tradition*.⁴ Similarly, but with more detail, *American Indian Tribal Governments* highlights about a dozen tribal governments and describes how tribes are protecting and expanding their control over areas such as membership, child welfare, and education.⁵ Another source, *American Indian Tribal Law*, essentially a case book written for law students, examines the development of tribal justice systems as well as tribal constitutions and codes through examples of tribal court decisions.⁶ In addition, *Introduction to Tribal Legal Studies* and *Tribal Criminal Law and Procedure* are the first two books published as part of a new tribal legal studies textbook series⁷. The series is geared toward educating students in tribally controlled colleges who may pursue careers in tribal courts; it is projected to eventually include nine volumes. The first two books introduce tribal law and legal systems; describe how tribal law relates to U.S. federal Indian law; and discuss jurisdiction, customary law, and tribal court ethics.

For law review and other articles, a number of sources exist. The *American Indian Law Review* focuses entirely on Indian law. Some of the content deals with tribal law, but most articles cover federal and state Indian law issues.⁸ On the other hand, the somewhat unknown *Tribal Law Journal* is devoted entirely to tribal law, and is published exclusively on the Internet.⁹ Two major bibliographic indices provide access to tribal law articles. (These indices do not provide unique indexing terms to differentiate federal Indian law articles from tribal 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” and “Native Americans.”¹⁰ (Add “Indians” or “Native Americans” to your search terms to find pertinent articles.) The *Legal Resource Index* (LRI) is another resource available on Westlaw and LexisNexis. It also is offered in print as the *Current Law Index* or in an online format called *LegalTrac*.¹¹ (To limit the results of a search in LRI, the searcher should add the index term “Native American.”)

Tribal Codes and Constitutions

Most federally recognized Indian tribes have enacted tribal constitutions, as well as codes or ordinances. However, unlike many state laws, these documents are often not published electronically or in print. Only about one dozen tribal codes and constitutions can be purchased directly from commercial publishers; the rest must be obtained from the tribes themselves. Westlaw has partnered with the Native American Rights Fund/National Indian Law Library to provide tribal codes and constitutions on Westlaw. (As of January 1, 2012, twenty-three tribes have published their laws with Westlaw.¹²) Lexis-Nexis offers a smaller collection of tribal law that features codes from Montana tribes.

The National Indian Law Library (NILL) has been working with tribes for more than twenty years to make tribal laws available to the public through its website and by request. NILL has amassed the largest library collection of tribal codes and constitutions in the United States. The library has approximately 250 codes and 480 constitutions from tribes and Alaska Native villages; more than 170 of these documents have been digitized and published in full-text on the NILL website.¹³ Copies of tribal law not available on the website may be obtained by contacting the NILL. NILL provides two ways to access tribal codes and constitutions are (1) through keyword searches in the NILL catalog or (2) by using the NILL Tribal Law Index on the Tribal Law Gateway.¹⁴ These methods will be described in more detail below.

Search the NILL Online Catalog for Codes & Constitutions

One way to access tribal codes and constitutions is through NILL's online catalog.¹⁵ You may find it easier to learn how to search for tribal codes and constitution by watching/listening to short video tutorials available on the Tribal Law Gateway. Otherwise, from the library's home page, choose the *Library Catalog* link. To find a particular tribe's code, first select *Advanced Search* from the drop-down menu at the top of the page. Then select *Tribal Code* as the document type. Finally, type a few unique words from the tribe's name in the *Title or Title Words* field. See the image below.

NILL LIBRARY CATALOG

The screenshot shows the NILL Library Catalog search interface. At the top, there is a search bar with the text "General search term ... enter here" and a green arrow button. To the right of the search bar is a dropdown menu labeled "Advanced search" and a green play button. Below the search bar, there is a checkbox labeled "Find all words" and a checked checkbox labeled "Search the text of any attached documents". There are several input fields: "Lower Sioux" in the "Title or Title Words" field, "Year From" and "Year To" fields, "Author ... enter here", "Subject ... enter here", "Publisher ... enter here", and "Corporate Author ... enter here". There are also two "ABC" icons. At the bottom, there is a "Types" dropdown menu with the following options: "Serial", "Tribal Charters", "Tribal Code" (selected), "Tribal Compacts", and "Tribal Constitutions".

In this illustration, we are looking for the code of the Lower Sioux Indian Community in Minnesota. Type "Lower Sioux" into the Title field (phrases do not need quotes around them) and select the Tribal Code type. Click on the green arrow to search.

Using the catalog, one also can find samples of codes that cover a specific topic, such as "child welfare." Again, in advanced search mode, select "Tribal Code" as the document type and type keywords into the "General search term..." field. See image below. When looking at the full records for codes, you may find lengthy table of contents; you will need to use the edit/find feature of your web browser to locate/highlight the search terms. (This process also is demonstrated in one of the tutorial videos on the Tribal Law Gateway. Researchers also can use this technique to find copies of "Model Codes." Where digital copies of codes and constitutions are available, the catalog record provides links to the online copy.

NILL LIBRARY CATALOG

→ child welfare. Advanced search

Find the phrase Search the text of any attached documents

Title ... enter here Year From - Year To

Author ... enter here Subject ... enter here

Publisher ... enter here Corporate Author ... enter here

Types

- Serial
- Tribal Charters
- Tribal Code
- Tribal Compacts
- Tribal Constitutions

In this illustration, we are looking for tribal law related to child welfare. Type “child welfare” into the search field (phrases do not need quotes around them) and select the Tribal Code type. Click on the green arrow to search.

NILL Tribal Law Index

The second way NILL provides to find tribal codes and constitutions is the “NILL Tribal Law Index,” which also is available from the Tribal Law Gateway. This A-Z list provides alphabetical access to the most recent tribal codes and constitutions available in print or electronic format at the NILL or elsewhere on the Internet. (Contact the library for print copies.) The list also provides tribal contact information for those researchers who wish to call the tribe to locate documents or verify their currency.

Tribal Court Opinions

Nearly half of federally recognized tribes and Alaska Native Villages have formal court systems. To find information about those courts, see the *United States Tribal Court Directory*, 4th ed. It is a great guide to tribal court contact information, requirements for admission to the court, and other information about accessibility of a tribe's law.¹⁶

To find opinions from tribal courts, a number of resources are available. The *Indian Law Reporter*, which spans back to 1974, is a print resource for select tribal court opinions from a few dozen different tribes.¹⁷ Each annual volume contains and broadly indexes approximately twenty-five tribal court opinions. The NILL has created a cumulative index of tribal court opinions covering all volume of the *Reporter*.¹⁸

The *Navajo Reporter* offers access to Navajo Supreme Court and selected trial court opinions.¹⁹ Supreme Court opinions are also available 2006 – present on the court's web site. Although this series has been published by various commercial entities, the researcher may contact the Navajo Supreme Court for information on how to order the volumes.²⁰ Other tribes and intertribal courts have published court opinions in print, but since these small compilations generally span only a few years and usually lack useful indexing I will not describe these collections.

The best sources for tribal court opinions are electronic databases. Versuslaw.com,²¹ and the Tribal Law & Policy Institute²² publish tribal court opinions of 24 tribes and they have approximately 2,100 opinions on their websites. The content of the two tribal court databases is almost identical, with each site offering unique coverage for three or four tribal courts. Versuslaw.com, an economical, fee-based service, differs from the Tribal Law & Policy Institute in that it offers more robust searching capabilities. Recently, Westlaw® has partnered with the National American Indian Court Judges Association to provide tribal court opinions in its fee-based service. As of January 1, 2012, court opinions were available from twenty-

four tribes plus Oklahoma tribes using CFR courts.²³ Westlaw content is now surpassing Versuslaw.com in scope. Also, Lexis offers access to limited court opinions from some Montana tribes as well as the Eastern Band of Cherokee. See the National Indian Law Library's Tribal Court Opinion Research guide for more details on these offerings.²⁴

Tribal Administrative Law

Some tribes have administrative agencies and administrative courts. Examples of tribal administrative law include tax commission rules and regulations, utilities commission regulations, or a shoreline protection ordinance. Research in this area of law can be particularly challenging, especially for administrative court opinions. Administrative rules and regulations usually are published as part of tribal codes and ordinances, but administrative court opinions rarely are published. Approximately 25 percent of the tribal codes in the NILL collection have some kind of administrative provisions. The best way to access administrative provisions is to search for them by tribe or keyword in the NILL catalog, in the same manner as searching for tribal codes, described above.

Intergovernmental Agreements

Sovereign Indian nations often enter into agreements with states, counties, and other political entities regarding issues such as cross-deputization, taxation, gaming, education, Indian child welfare, and water rights. The website of the National Congress of American Indians provides the best online collection of intergovernmental agreements or compacts.²⁵ The NILL also provides access to a smaller collection, which can be accessed via its library catalog. The NILL indexes each intergovernmental agreement in its catalog with *Tribal Compacts* as the document type.

Law Librarian Help and Research Guide

Researching tribal law is challenging and the resources are continually evolving. Your best bet for tribal law research help is to contact the NILL, the only public library devoted to providing research assistance on federal Indian law and tribal law. The NILL director, David Selden has more than fourteen years of tribal law research experience and can locate and deliver the resources you need to answer your tribal law questions. In addition, don't forget the NILL online catalog and the Tribal Law Gateway. The catalog provides access to descriptions of more than 9,000 resources available by request or download and the gateway provides additional tribal law research guidance.

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² Selden and Martens, "Basic Indian Law Research Tips--Part I: Federal Indian Law," 34 *The Colorado Lawyer* 43 (May 2005, updated 2008 at <http://www.narf.org/nill/bulletins/lawreviews/articles/coloradoLawyerArticle-fed.pdf>).

³ O'Connor, "Lessons from the Third Sovereign: Indian Tribal Courts," 33 *Tulsa L.J.* 1 (1997).

⁴ Johansen, *Encyclopedia of Native American Legal Tradition* (Westport, Conn.: Greenwood Press, 1988).

⁵ O'Brien, *American Indian Tribal Governments* (Norman, OK: University of Oklahoma Press, 1989)

⁶ Fletcher, M. L. *American Indian tribal law* (Austin, Tx: Wolters Kluwer Law & Business, 2011)

⁷ Richland, *Introduction to Tribal Legal Studies* (Walnut Creek, CA: Altamira Press, 2010); Garrow, *Tribal Criminal Law and Procedure* (Walnut Creek, CA: Altamira Press, 2004). To order any of the series online, go to <http://www.altamirapress.com>, and search "tribal legal studies."

⁸ See <http://adams.law.ou.edu/ailr/>

⁹ *Tribal Law Journal* (Albuquerque, NM: Univ. of New Mexico School of Law, 2000-2010), available at <http://tlj.unm.edu>

¹⁰ 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*. For print directories, contact LexisNexis (800) 543-6962 or Westlaw (800) 937-8529. To access the directories electronically, use <http://w3.nexis.com/sources/> for LexisNexis or <http://directory.westlaw.com/> for Westlaw. There is no charge for consulting the directory.

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- ¹¹ *Legal Resource Index* (Farmington Hills, MI: Gale Group, 1980-- present) (see <http://library.dialog.com/bluesheets/html/bl0150.html>).
- ¹² See <http://tinyurl.com/tribalcodesonwestlaw>
- ¹³ See <http://www.narf.org/nill/>
- ¹⁴ See <http://www.narf.org/nill/triballaw/index.htm>
- ¹⁵ See <http://nill.softlinkliberty.net/liberty/libraryHome.do>
- ¹⁶ Schwartz, *United States Tribal Courts Directory* 4th ed. (Buffalo, N.Y.: W. S. Hein & Co., 2011).
- ¹⁷ *Indian Law Reporter* (Wash., D.C.: American Indian Lawyer Training Prog., 1974-present).
- ¹⁸ See <http://www.narf.org/nill/triballaw/ilr.htm>
- ¹⁹ *Navajo Reporter* (Window Rock, AZ: Judicial Branch of the Navajo Nation, 1969-present). Volumes 1 to 8 cover the Supreme Court and selected District and Family Court decisions from 1960 to 2005.
- ²⁰ Contact the Navajo Supreme Court at (928) 871-6763; <http://www.navajocourts.org/indexsuct.htm>
- ²¹ See <http://www.versuslaw.com>.
- ²² See <http://www.tribal-institute.org>.
- ²³ <http://tinyurl.com/westlawtribalcases>
- ²⁴ See <http://www.narf.org/nill/triballaw/court.htm>.
- ²⁵ See http://ncai.org/Tribal-State_Relations.28.0.html