



NARF Legal Review

Native American Rights Fund

ROSEBUD SIOUX EDUCATION DEPARTMENT REDUCES TRUANCY AMONG TRIBAL SECONDARY STUDENTS



A recent evaluation report cites major improvements in high school attendance and drop-out rates on the Rosebud Sioux Indian Reservation in South Dakota, and attributes the improvements to the Rosebud Sioux Tribe's Education Code and Department. The evaluation, conducted by RJS & Associates, Inc., is the first-ever independent and formal assessment of a tribal education code and department. The evaluation was funded by the Carnegie Corporation of New York which in the past has funded the Native American Rights Fund's (NARF) work in Indian education, including NARF's work with the Rosebud Sioux Tribe.

The evaluation substantiates NARF's theory that tribal control of education can positively impact tribal students. Since the Tribe enacted its Code almost ten years ago, graduation rates for secondary students in both the tribal and public schools on the Reservation have increased along with a corresponding decrease in drop-out rates. In St. Francis,

South Dakota, where 99% of the student population is Indian, the drop-out rate went from 36.5% in 1989-90 to 7% in 1997-98. At the same time, the graduation rate increased from 24% to 69%. In the principal public school, Todd County High School, where 90% of the student population is Indian, graduation rates increased from 48% to 72%, and drop-out rates declined from 11% to 7.6%. The evaluation credits this amelioration to the Tribe's education reform efforts, particularly the tribally-developed and Department-administered Truancy Intervention Program (TIP) which began in 1993.

Sherry Red Owl, a tribal member and the first and only Director of the Tribe's Education Department, says "When I began in 1990, truancy at both public and tribal schools had reached a crisis level. We knew that our kids would never succeed 'in school' if they were not 'in' school."

The Tribe took some immediate steps, but ultimately instituted the TIP as the primary means for ▶

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reaching its goals. Under the TIP the Tribe channels enormous federal and tribal financial and human resources to addressing the root causes of student absenteeism — disabilities, low self-esteem, and poverty — and to stressing the advantages of a formal education within a tribal community.

Melody McCoy (Cherokee), NARF staff attorney, notes that “The Rosebud Sioux Tribe saw the role of the Tribal Government in improving education. That is gathering data and identifying and tracking problems and progress. That is focusing and coordinating available resources on specific needs. We helped the Tribe get going and they have just run with it.” McCoy adds that NARF has represented the Tribe since 1987 in its pioneering effort to improve education for tribal students in all schools through direct governmental involvement.

The RJS & Associates’ evaluation also noted the Tribe’s progress in preserving its cultural heritage. As required by its Code, the Tribe has overseen the development of a Lakota studies curricula. Also as required by the Code, the Tribe’s curricula has been adopted by the Todd County public school district. To the best of NARF’s knowledge, this marks the first time that a public school district anywhere in the country has adopted a tribal curricula into its regular education program. The evaluation also found that the Tribe has fulfilled the Code provisions requiring the adoption of tribal parental involvement in education programs. Most importantly, the evaluation makes clear that the Rosebud Sioux programs and initiatives can be strengthened and turned into models for other tribes that could help many more tribal students nationwide.

Since the Rosebud Sioux Tribe started its Education Department, other tribes have begun to follow suit. The efforts of about ninety tribes are centered on the over 500,000 American Indian and Alaska Native elementary and secondary students in this country who consistently suffer disproportionately high drop-out rates and low educational achievement and attainment levels.

The Carnegie Corporation funded the evaluation of the Rosebud Sioux Tribe’s Education

Department to determine how well the tribes are doing at addressing these chronic symptoms. The evaluation shows that tribal education codes and departments can improve tribal student educational opportunities. The evaluation urges increased funding for tribal education departments so that their impact can be expanded.

Education at Rosebud Sioux

The history of non-Indian control of the education of the Rosebud Sioux Tribe is typical of that of many tribes nationwide. The Fort Laramie Treaty of 1868 located the Tribe on a Reservation in what is today south central South Dakota. In the 1870s, as promised by the Treaty, Anglo-American schools were established on the Reservation by the Franciscans and the Jesuits. In addition, countless Rosebud Sioux children were sent to distant federal boarding schools. But by the late 1800s and throughout the 1900s the federal and religious schools began to be phased out. By 1960 the South Dakota public schools had assumed most of the education functions on the Reservation. Operation of the one remaining religious school was turned over to the Tribe in the 1970s.

Today, the Rosebud Sioux Tribe has over 31,000 members, making it among the five largest tribes in the United States. Over 18,000 members live on or near the Reservation. The overwhelming majority of tribal children go to public elementary and secondary schools. Many of the rest go to the tribally operated K-12 St. Francis Indian School. The Tribe also operates a Headstart Program and a tribal college, Sinte Gleska University.

In the 1980s, the need for betterment and coordination of these various education entities and programs on the Reservation was increasingly voiced by tribal leaders and educators. The Tribe lacked the resources to take over all education on the Reservation. But with the establishment of an Education Committee as a standing committee of the Tribal Council (the legislative branch of the tribal government), Committee members began to think about what kind of tribal role in improving education was feasible.

Sinte Gleska University had become one of the premier tribal colleges in the country, and the

Committee wanted to translate that success down to the elementary and secondary levels. This was especially important because achievement rates at those levels were low and drop-out rates were high. In 1989, about 25% of Rosebud Sioux high school students dropped out. Those that remained averaged in the 30th percentile nationally in reading and math. Though the student population was about 90% Indian, Todd County had only 20 Indian teachers out of 160, and there were no Indian administrators. Indian parents did not feel welcome in the public schools.

To the Committee, these problems raised many questions: Were the schools' curricula relevant to the students' lives? Why were there so few Indian teachers and administrators? What could be done about the increasing abuse by students of drugs and alcohol? How could schools be better linked to the communities, and what would get parents more involved in the schools? The Committee was convinced that, through regulation, the Tribe could help where others were failing.

First and foremost among the desires of the Committee was that the schools, particularly Todd County, would teach the Tribe's language, widely spoken among the tribal people. Sinte Gleska University had successfully brought the tribal language and culture into its learning process. Lionel Bordeaux, longtime president of the University and former NARF Board of Directors member, explains that, "We've had the freedom to design a curriculum consistent with who we are, instead of who others want us to be."

It was thought that this same strategy could go a long way towards making the elementary and secondary schools more responsive to the students, making them more a part of the community, and keeping students attending and parents involved in the schools. The need for tribal legislation in this area was aptly driven home when a Committee member approached Todd County about including the Rosebud Lakota language in the regular curriculum and was asked, "Where are the laws that require us to do so?"

The Rosebud Sioux Tribal Education Code

In 1987, the Committee asked NARF to represent the Tribe in its efforts to develop an education code and establish an education department. With the support of the Northwest Area Foundation and the Bush Foundation, NARF first spent several months researching whether it was legally feasible for a tribe to regulate education on a reservation, especially the state public schools. NARF concluded that, consistent with its inherent sovereign authority over its members and land base, the Tribe has a right to control education on its Reservation, even when that education is provided by governments other than the Tribe.

When NARF began to look for models of tribal education legislation for the Rosebud Sioux, it realized that there were none. While some tribes had asserted or tried to assert direct control over reservation education, no tribe was doing so comprehensively. No tribe was actively regulating, even concurrently with a state, the public schools on its reservation.

Since there were few successful models, the legal framework for the Rosebud Sioux Education Code was an arduous process. NARF recommended, and the Tribe agreed, that the Code should supplement, not supplant, the existing education laws and policies on the Reservation. Through its Education Code and Department, the Tribe could marshal and coordinate all of the Reservation education systems and resources with the goals of reclaiming its youth, perpetuating the Tribe, and improving educational opportunities and education quality.

It was decided early on that the Code should target specific areas in which the Committee felt that the schools and other governments were not meeting the needs of the Tribe. The four target areas were: curriculum and education standards; staffing and teacher training; alcohol and substance abuse education; and parental and community involvement. Significantly, these areas are among those invariably cited by many historical and contemporary reports and research as being vital to improving tribal student progress. After an extensive review and comment process, ►

the Code was adopted by unanimous vote of the Tribal Council in October, 1991. The Code establishes the Tribe's Education Department and sets forth regulation of all schools in the four target areas. Under the Code, the Education Department and Sinte Gleska University have major roles in implementing and developing the tribal programs and initiatives. The Code stresses collaboration by the Tribe with non-tribal governments and schools in reforming and improving Reservation education.

Largely spurred by its work with the Rosebud Sioux Tribe, NARF has continued to bring and broaden its unique expertise and experiences in

successfully advancing Indian sovereign rights to the educational arena. NARF's efforts with tribes in South Dakota, North Dakota, Montana and New Mexico, and its work with Indian organizations such as the National Congress of American Indians, the National Indian Education Association, the American Indian Higher Education Consortium, and the National Indian School Boards Association have been funded by the Carnegie Corporation, W.K. Kellogg Foundation, Northwest Area Foundation, Bush Foundation, and Coca-Cola Foundation.



Rosebud Sioux Tribe a Finalist for Harvard's Tribal Governance Awards Program

The Tribal Education Code and Department have helped place the Rosebud Sioux Tribe among the sixteen finalists for the Honoring Contributions in the Governance of American Indians ("Honoring Nations") awards program.

Administered by the Harvard Project on American Indian Economic Development at Harvard's Kennedy School of Government, Honoring Nations identifies, celebrates and shares information about outstanding examples of tribal governance among the 550-plus Indian nations in the United States.

Funded by the Ford Foundation and modeled after similar government best practices programs in Brazil, the Philippines, the United States, and South Africa, Honoring Nations is the Harvard Project's newest program. Established in 1986, the Harvard Project's goal is to understand the conditions under which sustained, self-determined socio-economic development is achieved on American Indian reservations.

Harvard Project co-director Dr. Manley Begay says, "Honoring Nations was created to spotlight ideas that work in tribal self-governance. All across Native America, tribal governments are doing exciting things to strengthen their respective nations, and Honoring Nations will celebrate

some of these success stories and make them available to decision makers everywhere."

Sixty applications were submitted for the inaugural year of Honoring Nations. According to Andrew Lee, the program's executive director, "the quality of the applications is extremely impressive, and we are very pleased by the excitement this first-of-its-kind program is generating throughout Indian country."

At each stage of the selection process, applications are evaluated on effectiveness, significance, transferability, creativity, and sustainability. On October 6, 1999, the sixteen Honoring Nations finalists will make presentations to the Honoring Nations Advisory Board — made up of distinguished leaders from the academic, government, non-profit, legal, and business sectors — which will select eight "high honors" for national recognition. The October event, to take place in Palm Springs, California in conjunction with the 56th Annual Convention of the National Congress of American Indians, will also include a public honoring ceremony.

In addition, the Harvard Project will prepare reports, case studies and instructional materials based on the honorees' accomplishments. These will be disseminated throughout Indian country to allow other tribal nations to learn from the success of the honorees.

CASE UPDATES

Muckleshoot Tribe Receives Favorable Court Opinion

On May 19, 1999, the United States Court of Appeals for the Ninth Circuit reversed and remanded a previous district court ruling, holding that the United States Forest Service failed to meet the requirements of the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA) when they exchanged with the Weyerhaeuser Corporation 4,698 acres of land important to the Muckleshoot Tribe of Washington, as their historic aboriginal territory, where tribal members hunt and gather huckleberries and other plant products, activities which help maintain their cultural identity.

The Muckleshoot Tribe is made up principally of descendants of tribes or bands that were parties to the Treaty of Point Elliott and the Treaty of Medicine Creek. The Tribe was organized pursuant to the Indian Reorganization Act of June 18, 1934. The United States, acting by and through the Secretary of the Interior and his duly authorized delegates, has consistently recognized the Muckleshoot Tribe as the political successor in interest to certain of the Indian tribes, bands and villages that were parties to the Treaty of Point Elliott or the Treaty of Medicine Creek.

The Indian ancestors to the present Muckleshoot Tribe included people from villages on the Green and White Rivers that form part of the drainage for Huckleberry Mountain. The Tribe alleges that for thousands of years, the ancestors of present tribal members used Huckleberry Mountain for cultural, religious, and resource purposes — uses that continue to the present day. The Forest Service lands exchanged to Weyerhaeuser were part of the Tribe's ancestral grounds.

The Tribe's claims under NHPA on appeal can be divided into three categories. The Tribe first contended that the Forest Service failed to consult adequately with it regarding the identification of traditional cultural properties. The Tribe also asserted that the Forest Service inadequately mitigated the harmful impact of the exchange on sites of cultural significance. Finally, the

Tribe argues that the Forest Service violated NHPA by failing to nominate certain sites to the National Register.

Huckleberry Mountain, the land subject to the dispute in this case, is located in the Green River watershed in the Mt. Baker-Snoqualmie National Forest ("the Forest") in the state of Washington. The Forest contains sixteen percent of the wilderness in the Pacific Northwest. Thirteen percent (259,545 acres) of the 1,983,774 acres within the National Forest boundary are privately owned, primarily by Weyerhaeuser and other large corporations.

The Pilchuck Audubon Society and the Huckleberry Mountain Protection Society (collectively "the Societies") and the Tribe lodged separate appeals of the Environmental Impact Statement and the Record of Decision (ROD) with the Office of the Regional Forester. These appeals were denied on March 7, 1997. On March 28, 1997, pursuant to the ROD, Weyerhaeuser and the Forest Service executed an exchange agreement under which Weyerhaeuser conveyed to the United States 30,253 acres of land in and around Mt. Baker National Forest in return for 4,362 acres of land in the Huckleberry Mountain area. In addition, Weyerhaeuser donated to the United States 962 acres to the Alpine Lakes Wilderness and 1,034 acres for Forest Service management. The National Forest lands that Weyerhaeuser received included old growth, commercial grade timber. The Forest Service also exchanged to Weyerhaeuser intact portions of the Huckleberry Divide Trail, a site important to the Tribe and that the Forest Service found eligible for inclusion in the National Register for Historic Preservation. Weyerhaeuser gave the Forest Service lands that were, for the most part, heavily logged and roaded. Weyerhaeuser intends to log the lands it received in the Exchange.

In the spring of 1997, the Tribe and the Societies commenced separate actions in the district court seeking declaratory and injunctive relief to halt the Huckleberry Mountain ►

Exchange. The district court consolidated the two actions and granted Weyerhaeuser's motion to intervene because it was party to the Exchange. The combined action, brought pursuant to the Administrative Procedures Act, alleged violations of the Federal Lands Policy and Management Act, the General Exchange Act, the Weeks Act, the National Forest Management Act, and NEPA. The Tribe also asserted that the government breached its fiduciary duty to the Tribe. The district court denied all of these claims. The Tribe and Societies appealed only the claims under NHPA and NEPA. The Exchange was finalized on March 12, 1998.

The Native American Rights Fund, in filing an *amicus curiae* brief on behalf of its client, the National Congress of American Indians, argued that the federal government's policy of self determination and the current administration's policy of implementing self determination through government-to-government consultation, and how these policies are effectuated by agencies and courts in applying the law, are of great concern. The district court's holding that the Forest Service's identification effort was "reasonable" contradicts the trend of self determination legislation, including the National Historic Preservation Act and regulations implementing the Act.

NARF further argued that the Forest Service did not even comply with its own policies and the dictates of statutory law. First, the Forest Service did not identify all the historic properties within the Huckleberry Land Exchange. The Forest Service decided to trade away 4,698 acres of land important to the Muckleshoot Tribe as part of its historical aboriginal territory. Second, the Forest Service made its decision without government-

to-government consultation with the Muckleshoot Tribe, and thus made its decision without complying with the NHPA. Third, the district court erred because it did not treat the consultation obligation as an affirmative obligation on the Forest Service, nor did it examine whether the Forest Service's consultation efforts met the standards required by NHPA, its implementing documents, and national policy — or even the Forest Services own policies.

NARF asked the Court to set standards for agencies to meet when statutes, regulations, or policy require tribal consultation. The standard should require meaningful consultation, on a government-to-government basis between persons with clear authority to make decisions for their government, in advance of a decision and with some sensitivity to the possibility that either side may need additional time to discuss issues with others and recognizing that protocols may be necessary to deal with confidentiality or other issues.



Native American Rights Fund Files *Amicus Curiae* Brief in Hawaiian Case

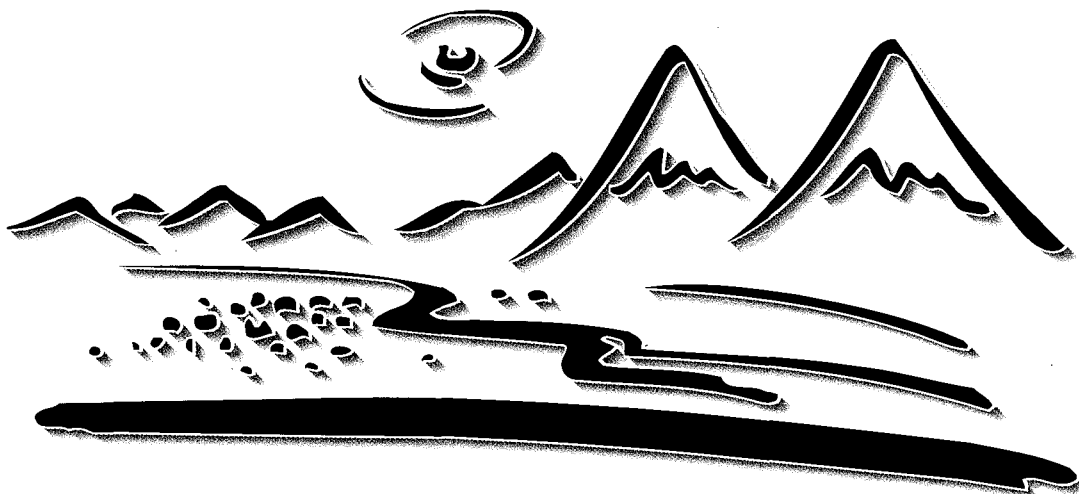
The Native American Rights Fund (NARF), on behalf of its client, the National Congress of American Indians (NCAI), filed an *amicus curiae* brief on July 28, 1999 in the United States Supreme Court case of *Rice v. Cayetano*. The case involves a challenge by a white Hawaiian to the validity of a state of Hawaii voting restriction which allows only Native Hawaiians to vote for trustees of the Office of Hawaiian Affairs (OHA). OHA administers income received from certain trust lands for the benefit of Native Hawaiians. Harold Rice argues that the restriction violates the Fourteenth and Fifteenth Amendments to the Constitution. The Ninth Circuit Court of Appeals upheld the voting restriction. One of Rice's arguments is that since there are no tribes in Hawaii, the voting restriction is purely race-based and subject to strict scrutiny.

NARF and NCAI in this brief support the voting restriction based on the status of Native Hawaiians as an indigenous sovereign people. NARF argues that as an indigenous sovereign people, Native Hawaiians fall within the Indian Commerce Clause of the United States

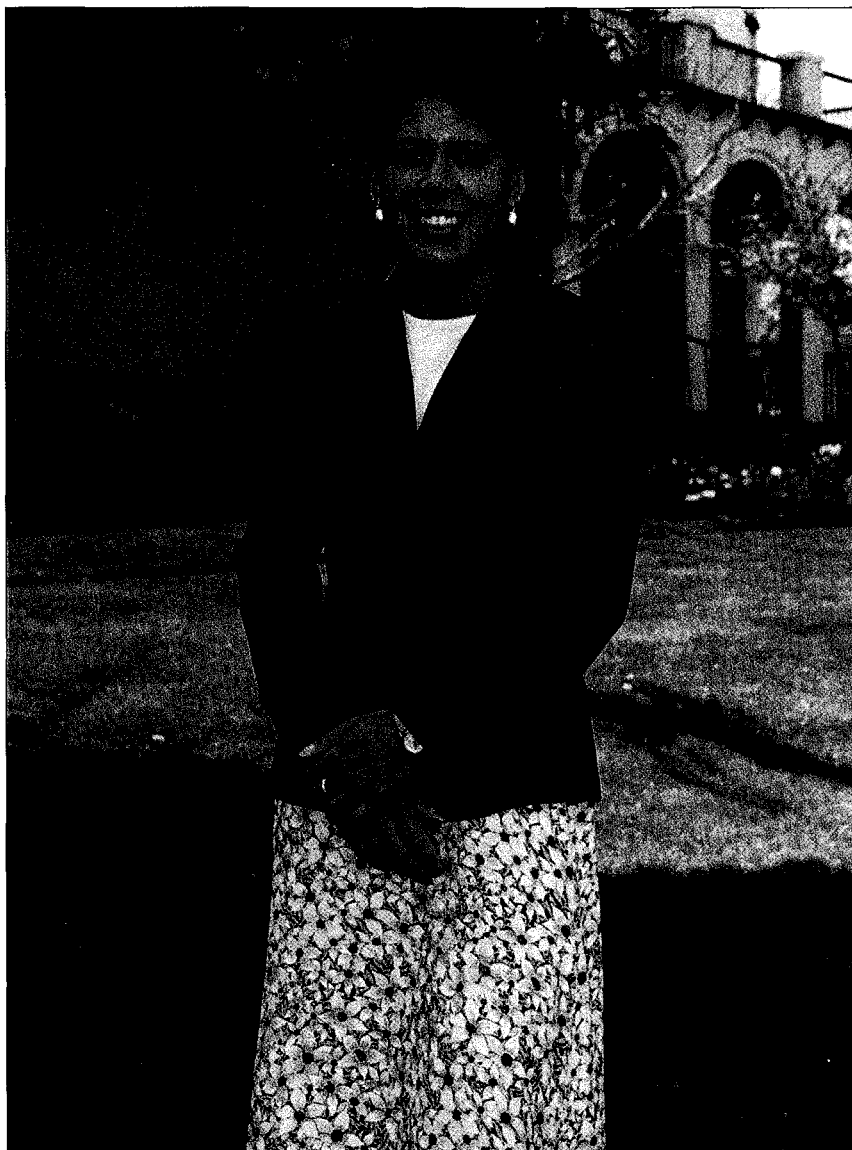
Constitution. Because of this, the federal government has a "special relationship" with indigenous peoples of the United States which insulates federal legislation dealing with those peoples from strict scrutiny in the face of equal protection challenges. The Fifteenth Amendment was not intended to affect the federal dealings with indigenous peoples in any way.

Congress can delegate federal authority to deal with indigenous peoples to the states and can ratify state action to benefit indigenous peoples. Congress has recognized Native Hawaiians as an indigenous people, has instructed the State of Hawaii to use the resources from lands transferred to the State in 1959 for the betterment of the conditions of the Native Hawaiian people, and has otherwise encouraged and endorsed Hawaii's efforts to better their condition.

The case could have broad ramifications not only for Native Hawaiians, but for all Native Americans. The case is set for oral argument on October 6, 1999.



NARF ATTORNEY PROFILE



Lorna Babby, a member of the Oglala Sioux Tribe, joined the Washington D.C. staff of the Native American Rights Fund in January 1998. She is a graduate of Gonzaga University and Yale Law School and has focused professionally on issues relating to the protection of Indian land and water rights. Prior to joining NARF, Lorna was a staff attorney with the Indian Law Resource Center and a Water Rights Specialist with the Bureau of Indian Affairs. She has been

involved in litigation to halt the expansion of mining operations adjacent to the Fort Belknap Reservation in Montana and to quantify the water rights of the Shoshone and Arapaho Tribes on the Wind River Reservation in Wyoming. Lorna is now a member of the litigation team representing 500,000 individual Indians in a class action suit against the United States for mismanagement of trust funds.

NARF RESOURCES AND PUBLICATIONS

The National Indian Law Library

For the modern-day Indian, information is priceless in helping their fight to keep tribal homelands intact and traditional tribal ways alive. The National Indian Law Library has been providing Indian tribes and Indian law attorneys with a wealth of Indian law materials for the past 27 years. The materials are documents ranging from legal pleadings written in vital Indian law cases to a collection of Tribal codes.

The National Indian Law Library began as a special library project of the Native American Rights Fund. It is designed to serve as a clearinghouse for materials on American Indian Law for tribes, private and tribal attorneys, legal service programs, law firms, federal and state governments and agencies, and for students. Essentially, it was intended to carry out one of

the Native American Rights Fund's priorities, the systematic development of Indian law. The National Indian Law Library has one of the largest collection of Indian law materials in the nation. Its mission is to continue to develop and make accessible a unique and valuable collection of information and to assist people with their Indian law research needs. Special emphasis is placed on helping individuals and organizations who are working on behalf of Native Americans and have the potential to positively influence their lives. The library serves its patrons by providing reference and basic research assistance and by locating and delivering relevant information. Please contact David Selden at (303) 447-8760 or e-mail dselden@narf.org for assistance.

The National Indian Law Library Publications For Sale:

The National Indian Law Library will be offering NARF and NILL produced publications for sale and will discontinue re-sale of other Indian law publications. As a substitute, NILL will provide an up-to-date annotated list of selected Indian law books with simple ordering instructions. We believe that our patrons will benefit from quicker service and better prices.

Book Sale

The National Indian Law Library will continue to offer NARF and NILL publications for sale. Look for an annotated list of publications in the next NARF Legal Review. NILL is discontinuing the sale of non-NARF publications. We are offering the books below at discounted prices in order to deplete our inventory.

	<u>WAS</u>	<u>NOW</u>
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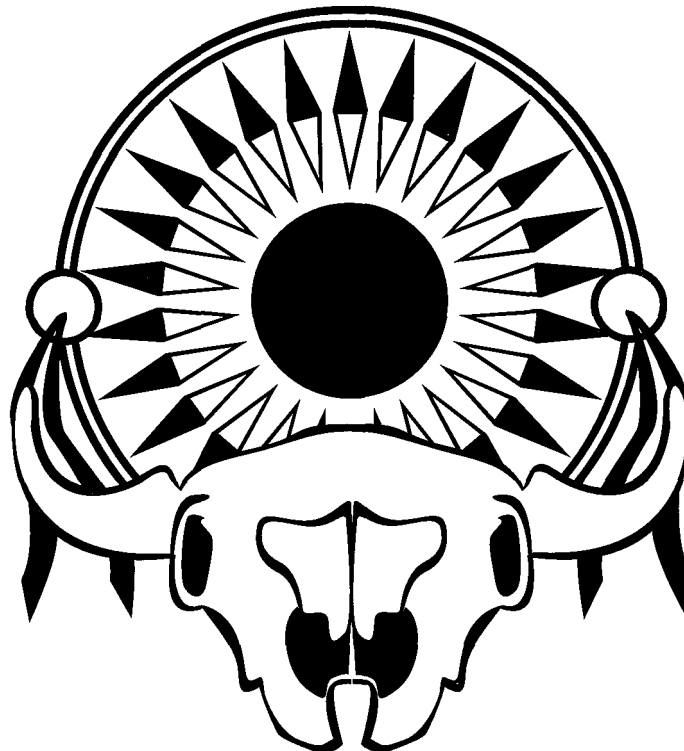
THE NATIVE AMERICAN RIGHTS FUND

For the past 29 years, the 15 attorneys, support staff and Board of Directors of NARF have represented over 200 Tribes in 31 states in such areas as tribal restoration and recognition, tribal jurisdiction, land claims, hunting and fishing rights, the protection of Indian religious freedom, and many others. In addition to the great strides made in achieving justice on behalf of Native American people, perhaps NARF's greatest distinguishing attribute has been its availability to bring excellent, highly ethical legal representation to dispossessed Tribes. The survival and strengthened sovereignty of the nation's 557 federally recognized tribes of 1.8 million Native Americans are due, in no small measure, to the battles waged and won by NARF.

The accomplishments and growth of NARF over the years confirmed the great need for Indian legal representation on a national basis. This legal advocacy on behalf of Native Americans is more crucial now than ever before. NARF strives to protect the most important rights of Indian people within the

limit of available resources. To achieve this goal NARF's Board of Directors defined five priority areas for NARF's work: (1) the preservation of tribal existence; (2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law.

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





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