



# Legal Review

NATIVE AMERICAN RIGHTS FUND

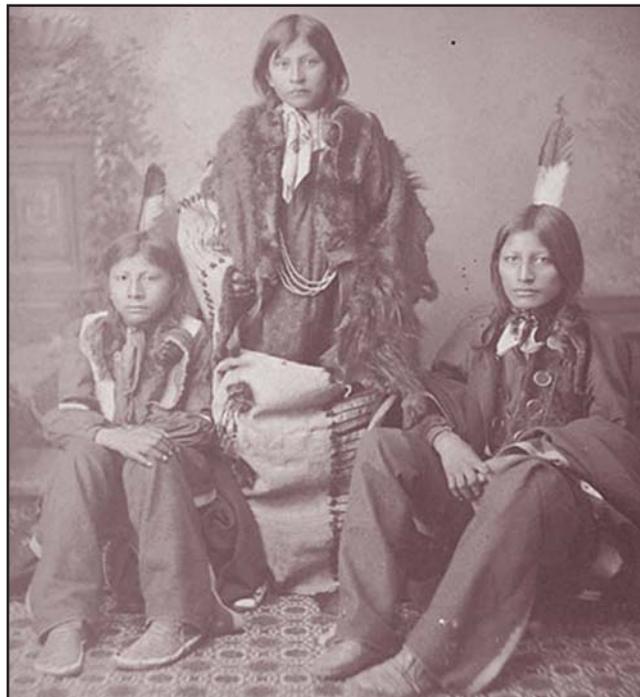
## Let All That is Indian Within You Die!

Like a lot of the details of the United States historical relations with the indigenous inhabitants of this land, the story of the Indian boarding school policy of the United States government has largely been written out of the history books. Yet, this was a major federal policy. And it had major impacts, positive and negative, on indigenous individuals, families, and communities. These impacts are still felt to this day. In retrospect, the policy was based on flawed thinking – despite the fact that it was clothed in at least the appearance of good intention. The flawed basis of the policy was that the all-out elimination of what is uniquely “Native,” and full-scale assimilation into the dominant society of the United States, was required in order to ensure the survival of individuals of Native descent. The policy was, at its core, a policy of cultural genocide.

The negative impacts of the cultural genocide persist today. United States Assistant Secretary for Indian Affairs Kevin Gover (Pawnee) observed in 2000, when reflecting on the Bureau of Indian Affairs’ involvement in the policy:

“The trauma of shame, fear and anger has passed from one generation to the next, and manifests itself in the rampant alcoholism, drug abuse, and domestic violence that plague Indian country. Many of our people live lives of unrelenting tragedy as Indian families suffer the ruin of lives by alcoholism, suicides made of shame and despair, and violent death at the hands of one another.”

Once it is admitted that the policy was flawed and harmful, steps can begin to be taken to allow for healing. In fact, there are many models and examples of how healing can be accomplished when one culture or society harms another. ▶



*Before. Carlisle Indian Industrial School Portrait of Timber Yellow Robe, Henry Standing Bear and Wounded Yellow Robe. image NAA INV 00606600 National Anthropological Archives, Smithsonian Institution.*

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Universally, those models of healing, of reconciliation, require recognition of what happened and who was responsible as a first step. In this case, the United States and major Christian church denominations are implicated as most responsible. Beyond that, however, the details remain to be sorted out, as will be explained.

Beginning to create the circumstances in which healing can occur will require the Native American Rights Fund (NARF), along with many others working in the area, to turn back institutionalized ignorance of what happened, to dismantle legal blockades constructed long ago and being constructed anew to protect individuals and institutions from legal and financial responsibility, and to simply begin to uncover the truth of what has happened. NARF is proud and excited to have recently upped its efforts in this area—creating a groundbreaking effort to create the space for our native nations to begin to heal from the boarding school policy. As an integral part of the healing process, this will also allow the United States and others involved in implementation of the policy over the decades the chance to heal from the damages they caused and that they suffer from as well.

Native American children were forcibly abducted from their homes and put into Christian and government run boarding schools beginning in the mid 1800's and continuing into the 1950's. This was done pursuant to a federal policy designed to "civilize" Indians and to stamp out Native cultures; a deliberate policy of ethnocide and cultural genocide. Cut off from their families and culture, the children were punished for speaking their Native languages, banned from conducting traditional or cultural practices, shorn of traditional clothing and identity of their Native cultures, taught that their cultures and traditions were evil and sinful, and that they should be ashamed of being Native American. Placed often far from home, they were frequently neglected or abused physically, sexually, and psychologically. Generations of these children became the legacy of the federal boarding school policy. They returned to their communities, not as the Christianized farmers that the boarding school policy envisioned, but as deeply scarred humans lacking the skills, community, parenting, extended family, language, and cultural



*After. Carlisle Indian Industrial School Portrait of Timber Yellow Robe, Henry Standing Bear and Wounded Yellow Robe. image NAAINV 00606700 National Anthropological Archives, Smithsonian Institution.*

practices of those raised in their cultural context.

There has been scant recognition by the U.S. federal government and church denominations that initiated and carried out this policy, and no acceptance of responsibility for the indisputable fact that its purpose was cultural genocide. There are no apparent realistic legal avenues to seek redress or healing from the deep and enduring wounds inflicted both on the individuals and communities of tribal nations. Lawsuits by individuals have been turned aside, and unlike other countries that implemented similar policies – e.g. Canada, New Zealand and Australia – there has been no official U.S. proposal for healing or reconciliation.

**The U.S. Boarding School Policy**

The goal of “civilization” of Native people was to transform them into “Americans” by assimilating



*Carlisle Indian Industrial School portrait of group of Navajo boys and one girl in uniform six months after arrival at school. NAA INV 02292500. National Anthropological Archives, Smithsonian Institution.*

them into mainstream American culture. Reforming adults who were fully acculturated into Native ways and spiritual beliefs and practices was seen as too daunting. Transforming the children was a more promising goal.

The goal of transforming Native young people through assimilation is apparent in the earliest history of the colonies. The roots of attempted assimilation through education lie deep in the history of the Virginia Colony, sanctioned by the Anglican Church as early as 1619. William and Mary College was founded in 1693 as an Anglican school to serve the young men of the colonists and Native Americans. Dartmouth College's earliest roots are in its Puritan founder's desires to establish a school for local Native men.

The federal Indian boarding school policy has been a collaboration of the Christian churches and the federal government since its earliest inception, beginning with the Indian Civilization Fund Act of March 3, 1819. Thomas Lorraine McKenney, a Quaker, served as the first Superintendent of Indian Trade starting in 1816 and was one of the key figures in the development of American Indian

policy. It was McKenney who advocated for the federal policy of education and civilization through a network of schools to be run by the missionary societies under the supervision of the Superintendent of Indian Trade. He likely was the architect of the Civilization Act to "encourage activities of benevolent societies in providing schools for the Indians ... and authorized an annual 'civilization fund' to stimulate and promote this work."

The thrust of "civilization" of Native Americans was to strip them of their traditions and customs and teach them the ways of the majority culture in missionary schools, i.e., transform the children into Christian farmers or laborers. The churches were funded by the federal government to accomplish this cultural genocide. The Bureau of Indian Affairs (BIA) was created in 1824 within the Department of War primarily to administer the funds to the churches from the Civilization Fund. In 1824, the Indian Civilization Fund subsidized 32 schools that enrolled more than 900 Indian children. By 1830, the Indian Civilization Fund supported fifty-two schools with 1,512 enrolled students. Funds from Indian treaties augmented

the program, frequently without consultation with or consent of the Tribe signatory to the treaty.

During the 60 years between 1819 and 1879 most of the Church-run schools were on or near the reservations or homelands of the Native American children. The children would return home either daily or on weekends to be with their families and communities. But the experience was that this resulted in children adhering to their cultural practices and beliefs. In order to eradicate these practices and beliefs it would become the policy to isolate the children from their influence. In 1886 John B. Riley, Indian School Superintendent summed it up:

“If it be admitted that education affords the true solution to the Indian problem, then it must be admitted that the boarding school is the very key to the situation. However excellent the day school may be, whatever the qualifications of the teacher, or however superior the facilities for instruction of the few short hours spent in the day school is, to a great extent, offset by the habits, scenes and surroundings at home — if a mere place to eat and live in can be called a home. **Only by complete isolation of the Indian child from his savage antecedents can he be satisfactorily educated.**”

Mere education was not enough. Separating children from their family, their tribe, their culture, and their homes on the reservation was seen as necessary to the larger goal of assimilating them into the majority culture.

### **The Struggle to “Civilize” the Native People**

There was a debate about whether to exterminate the “wild” tribes that had not been confined to a reservation, or to seek their conversion to a “civilized” life – by which was meant to be Christian farmers or craftsmen. The military and the frontier settlers were the primary advocates of the former, and the churches the latter. It wasn’t a serious debate in the sense of impending strategy. While there were examples of barbaric slaughter of Native people – e.g. Wounded Knee, Sand Creek, etc. – it was, in fact, simply too expensive to enter

into an extended campaign of genocide on the heels of an expensive Civil War. It was estimated that the annual cost to maintain a company of United States Cavalry in the field was \$2,000,000. Whatever the standards of humanity, the economics augured for assimilation as the preferred alternative.

Among the frontier settlers, with largely squatter sensibilities and values, was the occasional person of conscience that could see past their own self-interest in acquiring land and riches – to the incredible injustices visited on the Native people in the process of their dispossession of those very same lands and riches. John Beeson, likely a Quaker, was one such person who lobbied tirelessly to expose the erroneous depiction of the Indians as the aggressors when it was the settlers who were in fact the transgressors against Indian lands and resources on the frontier. Beeson met several times with President Abraham Lincoln and pressed upon him the idea that Indians should receive instruction in every phase of the culture that was displacing their own: Anglo-American economy, democratic self-government, and the Christian religion.

A contemporary of Beeson who worked toward the same goal was Episcopal Bishop of Minnesota Henry B. Whipple. In 1860 Whipple sent a letter to President Buchanan lamenting the evils of liquor and the inability and unwillingness of the federal government to enforce the laws prohibiting its distribution among the tribes. He also observed that the federal policy of treating the tribes as self-governing nations was mistaken; it would be better to regard Indians as wards and undertake their assimilation. Once the laws were enforced, practical Christian teachers could instruct them in agriculture and other arts of civilization. More important, he decried the corrupt patronage system of appointment of Indian agents that resulted in the looting of Indian resources, fraudulent contracts and sham schools that accomplished little more than to line the pockets of the Indian Agents. He sought a system that would allow for the appointment of “a commission of men of high character, who have no political ends to subserve,” to which should be given the responsibility for devising a more perfect system for administering Indian affairs.



*Carlisle Indian Industrial School Capt Richard Pratt with Navajo girls and boys from New Mexico upon their arrival, 1880. NAA INV 02292400. National Anthropological Archives, Smithsonian Institution.*

### The Board of Indian Commissioners and the Peace Policy of 1869

The changes sought by the reformers came to fruition in the year 1869. That year marked establishment by Congress of the Board of Indian Commissioners and President Grant’s “Peace Policy,” which included a federal boarding school policy. These efforts were intended to fulfill two important goals: 1) the replacement of corrupt government officials, called the “Indian Ring,” with religious men, nominated by churches to oversee the Indian agencies on reservations; and 2) to Christianize the Native tribes and eradicate their culture and religion, primarily through removal of the children from reservation settings.

The boarding school policy authorized the voluntary and coerced removal of Native American children from their families for placement in boarding schools run by the government and Christian churches. The boarding school policy represented a shift from genocide of Indian people to a more defensible, but no less insidious, policy of cultural genocide – the systematic destruction of indigenous communities through the removal

and reprogramming of their children. This approach was thought to be less costly than wars against the tribes or eradication of Native populations.

The first appointments to the Board of Indian Commissioners were male Protestants. This remained the case until two Roman Catholics were appointed in 1902 by Theodore Roosevelt. Although not appointed as representatives of their denominations, they clearly were selected by those denominations to be appointed. This was a clear and obvious violation of the principle of separation of church and state, but none of the leaders of the day believed that principle applied in matters relating to Native Americans. The Catholics, having been initially excluded from the Board, argued fervently that the children should have the freedom to choose their religion, saying in one statement:

“The Indians have a right, under the Constitution, as much as any other person in the Republic, to the full enjoyment of liberty of conscience; accordingly they have the right to choose **whatever Christian belief they**





*Carlisle Indian Industrial School portrait of female Omaha Indian students in school uniforms 1894. NAA INV 06821500. National Anthropological Archives, Smithsonian Institution.*

wish, without interference from the Government.” (The Churches and the Indian Schools, 1888-1912, Prucha, Francis Paul, Univ. of Nebraska Press 1979) (Emphasis supplied.)

In 1872, the Board of Indian Commissioners allotted seventy-three Indian agencies to various denominations as follows:

- Methodists, fourteen agencies in the Pacific Northwest (54,743 Indians),
- Orthodox Friends, ten (17,724),
- Presbyterian, nine in the Southwest (38,069),
- Episcopalians, eight in the Dakotas (26,929),
- Catholics, seven (17,856),
- Hicksite Friends, six (6,598),
- Baptists, five in Utah, Idaho and the Indian Territory (40,800),
- Reformed Dutch, five (8,118),
- Congregationalists, three (14,476),
- Christians, two (8,287),
- Unitarians, two (3,800),
- American Board of Commissioners for Foreign Missions in the Indian territory of Oklahoma (1,496),
- Lutherans, one (273).

Whatever pretense there may have been about the appointment of Christians as Commissioners, there was no mistaking that the allocation of the agencies was by Christian denominations.

**The systematic destruction of indigenous cultures and communities through the removal and reprogramming of Native children**

Boarding schools located far from homelands were initiated when 2nd Lieutenant Richard Pratt founded the Carlisle Indian School in 1879 in Carlisle, Pennsylvania. The fundamental principle was that Native Americans must be taught to reject tribal culture and adapt to white society; famously saying his goal was to “kill the Indian, in order to save the man.” This initiative called for the removal of children from family and community, voluntarily when possible, by coercion if necessary. Parents were threatened with the loss of provisions – which almost certainly meant starvation– or even jail for withholding children.

Nineteen Hopi men were designated as “Hostiles” by the U.S. Army on November 25, 1894 and incarcerated in Alcatraz “until they shall evince, in an unmistakable manner, a desire to cease interference with the plans of the government for the civilization and education of its Indian wards.” They had opposed the forced removal and education of their children. (<http://www.nps.gov/alca/historyculture/hopi-prisoners-on-the-rock.htm>)

Children were held in isolation in regimented and sterile settings. Separated from their homes and communities, they were placed in dormitory settings fashioned after the military model where they were controlled, trained, neglected and abused. They were punished for speaking their native languages, banned from acting in any way representative of traditional or cultural practices, stripped of traditional clothing, hair and all things and behaviors reflective of their cultures. They were intentionally and systematically inculcated with shame for being Indian through ridicule of their religions and their life-ways; shame that became internalized as self-loathing and emotional disenfranchisement for their own cultures.



*Carlisle Indian Industrial School Teacher Miss Hunt with group of students in school uniform 1879. Photo lot 81-12 06805200. National Anthropological Archives, Smithsonian Institution.*

For many of the girls and boys, the only touch they received from the small population of adults stationed at the schools, were the beatings or, perhaps worse, forced sexual contact with adults, or older students who themselves had been victims. Kept at the boarding school year round, many grew up solely in the company of other children, under the control of a few adults, who shared the perception that their wards were savages and heathens to be managed, tamed and “civilized”.

Systemic institutional neglect and the fear of death from persistent mortalities motivated many students to run away. At Carlisle Indian School in the years from 1883 through 1918 there were 1842 desertions and nearly 500 deaths; ranging between 3.5 and 4.5 times the national average at that time. Capture after running away – the only desperate act within the power of the children and teens – was punished by physical restraints, beatings, and isolation in unlighted cellars and unlighted and unventilated outbuildings designed as jails.

Before long, there were some 500 boarding schools in 18 states: Arizona, California, Colorado, Kansas, Michigan, Minnesota, Montana, Nebraska,

New Mexico, Nevada, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Virginia and Wisconsin. As late as 1973, there were still 60,000 American Indian children enrolled in off-reservation schools.

Reports include the disappearance of children born to boarding school students as the result of rape. Unaccounted for thousands of children died from disease, malnutrition, loneliness and abuse. Survivors reported that many of the dead were buried anonymously, some in mass graves, on the grounds of the residential schools. The remains of these children have never been returned to their families or communities.

### **Turning Back A National Tragedy**

In 1928 the Miriam Report on federal administration of Indian affairs concluded with respect to the boarding schools that “The survey staff finds itself obligated to say frankly and unequivocally that the provisions for the care of the Indian children in boarding schools are grossly inadequate.” In 1969, the Kennedy Report declared Indian education “a national tragedy.” Teachers in 1969 still saw their role as that of “civilizing the native.”



*Before. Carlisle Indian Industrial School group from Arizona and Florida upon arrival at school. SPC Sw Apache 02089900. National Anthropological Archives, Smithsonian Institution.*

Schools failed to “prepare students academically, socially, psychologically, or even vocationally for the urban life to which the schools directed them. As a result, many returned to their reservations disillusioned, to spend the rest of their lives in economic and intellectual stagnation.”

Those victimized in the schools, their children, grandchildren and great-grandchildren, have become the legacy of the boarding schools and the federal policy that established and sustained them. Many of those that returned to their communities came as wounded human beings. Denied the security and safety necessary for healthy growth and development, they retained only fractured cultural skills to connect them with their families and communities. These survivors were left with varying degrees of scars and skills, but most profoundly, of psychological subordination. Many report feeling self-hatred for being Indian; bereft of spirit, knowledge, language and social tools to reenter their own societies. With only limited labor skills, exacerbated by the subordinated spirit trained into them, too many carried undefined and unremitting anxieties that drove them to alcoholism, drug abuse, violence against their own

families and communities, and suicide.

Native communities have advocated over the decades for an end to the federal boarding school policy. Despite the fact that some students at the boarding schools did thrive, still others suffered, and the success of individuals did not justify the policy of cultural genocide and could have been achieved without it. Eventually, in large part due to the impact of the Kennedy Report and tribal advocates, the policy started to turn back via passage in 1972 of the Indian Education Act and in 1975 of the Indian Self Determination and Education Assistance Act. This legislation made it possible for tribes to begin to control their own schools, and to turn back the policy of educating the Indian out of the Indian students.

Change was not immediate. The damage that has already been done over the previous century is a long way from being resolved. The nation seemed to turn its face in denial over what had happened. This prolongs the suffering, as the injuries to Native communities, families, and individuals carries on until they are healed. The first step in creating that opportunity for healing



*After. Carlisle Indian Industrial School group of boys and girls from Arizona and Florida after 3 years at school. SPC Sw Apache 02090000. National Anthropological Archives, Smithsonian Institution.*

involves telling the truth about what happened; instead of turning away from the past, we must embrace it and honestly admit all that happened.

**No Access To Justice**

There is no meaningful access to justice in the courts for the individuals and communities that suffer from the impacts of the implementation of the boarding school policy. Legal barriers to bringing suit against the United States for compensation for injuries exist in the form of statutes of limitations. Lawsuits against individual teachers, priests, and church representatives face the same kind of barriers in state courts. One Catholic order went to the South Dakota state legislature in 2010 to get a law cutting off claims against the Church and them as individuals. One wonders if that is their teaching about what Christ would do.

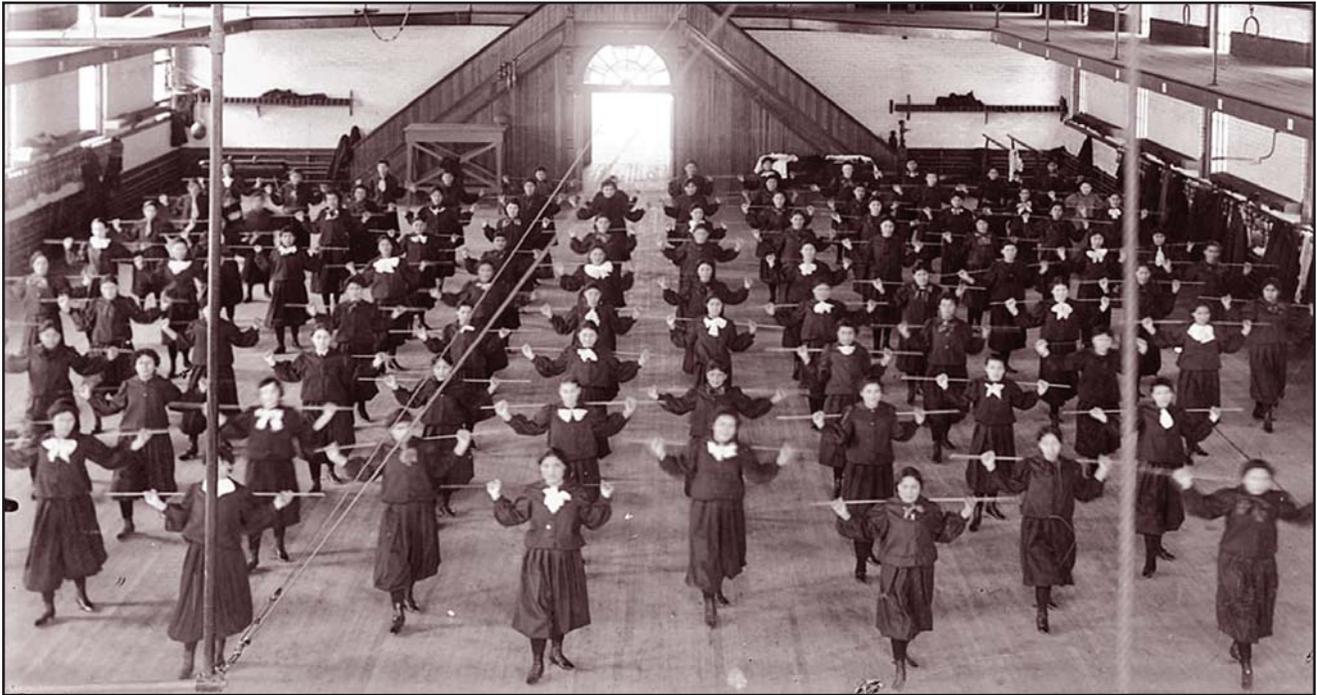
**NARF Involvement – Symposium and Coalition**

In 2011, NARF, the Boarding School Healing Project of the Seventh Generation Fund, the University of Colorado School of Law and the University of Wyoming School of Law convened a

symposium of individuals from across the U.S. and Canada who had been working on various aspects of boarding school issues. The goal of the symposium was to discuss priorities and strategies to achieve a national recognition of the wrongs visited on Native American individuals and communities, and to obtain remediation to provide a framework for healing of these historic and enduring wrongs. The symposium participants agreed that it was necessary to continue the work on the issue and formed the National Native American Boarding School Healing Coalition (N-NABS-HC) to formulate a specific strategy and framework to pursue broader support and participation. NARF completed non-profit incorporation of the Coalition in June 2012 through the Navajo Nation's Business Regulatory Department. Application for certification as a tax exempt 501(c)(3) organization has been filed. The founding meeting of the Corporation was held in September 2012, and the first annual meeting was held in October 2013.

NARF has been working to assist the N-HABS-HC to meet its mission. The Coalition has recommended that the United States create a Commission on Boarding School Policy with the





*Carlisle Indian Industrial School American Indian girls in school uniform exercising inside gymnasium 1879. NAA INV 06828200. National Anthropological Archives, Smithsonian Institution.*

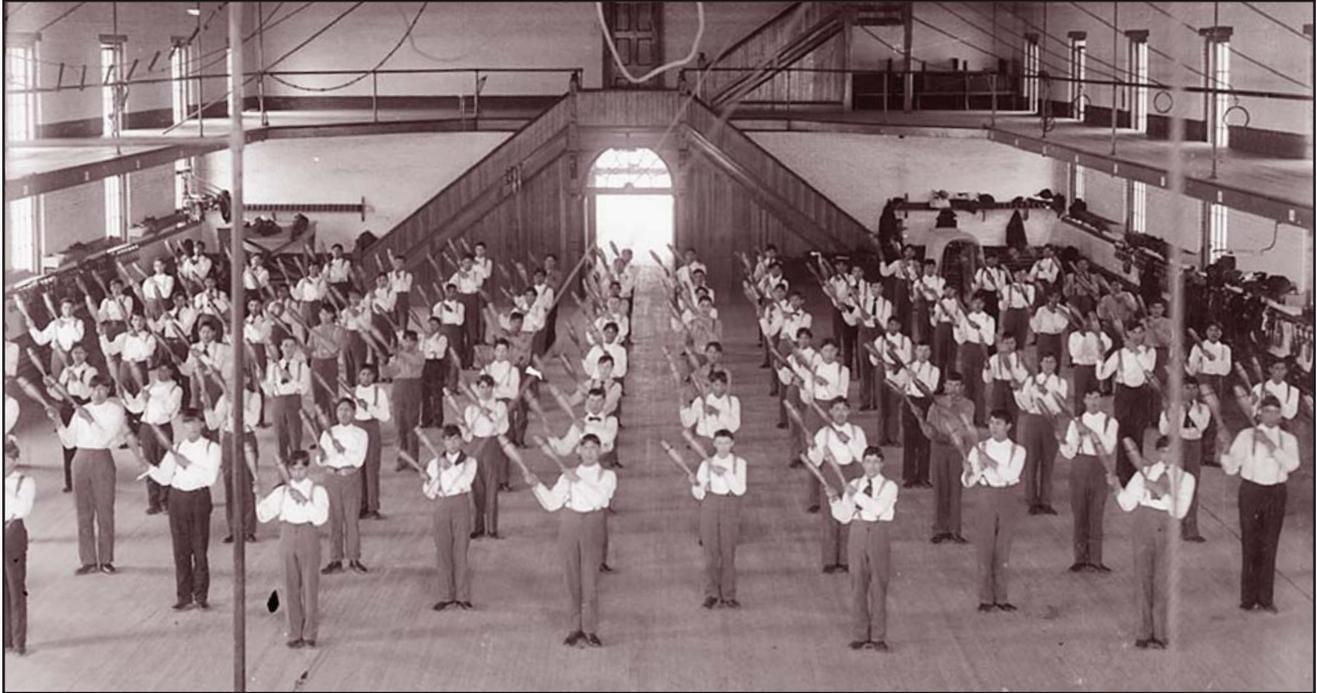
full and active participation of impacted Native Americans at all stages to carry out a range of essential tasks. The tasks of the Commission should include: (1) providing accurate and comprehensive information to the United States government, Indigenous Peoples and the American public about the purposes and human rights abuses of boarding school policies; (2) gathering documentation from survivors, their families and others about the treatment of children in the schools, the abuse and neglect they suffered, and the number of deaths that to date are unreported, including an accounting for the remains of children that are as yet un-repatriated to families and Tribes; (3) receiving recommendations for redress and programs to facilitate and support healing for individuals, families, communities, tribes, Pueblos and Alaska Native Villages; (4) recommending legislative provisions that will remove the barriers to access to justice for individuals, communities, tribes, Pueblos and Alaska Native Villages; (5) documenting healing programs that are proving effective or that display promise of being effective in helping heal tribal nations and their members from historical trauma; (6) and

documenting scientific theories that help explain the process, effects, and recovery from historical/inter-generational trauma.

The National Commission would plan, design, and carry out its work in collaboration with impacted indigenous communities and experts in the relevant fields. It would:

- gather records and related information about the operation of the schools by the government and the churches;
- gather information from experts about inter-generational and historical trauma;
- take recommendations from affected communities about what is needed to effectuate true community and national healing;
- raise public awareness and provide public education about U.S. boarding school policies and their ongoing effects; and
- recommend and commit support for culturally-appropriate community-led remedies with the full and effective participation of survivors, communities, and tribal nations.

N-NABS-HC also stresses the importance of redress for the ongoing intergenerational trauma



*Carlisle Indian Industrial School American Indian boys in school uniform exercising inside gymnasium 1879. NAA INV 06828200. National Anthropological Archives, Smithsonian Institution.*

and cultural loss that are a direct result of these policies for so many indigenous individuals, families, communities and tribal Nations across the United States. Opportunity and resources must be made available for indigenous communities using indigenous principles and understandings to plan, design, implement and manage programs and processes for healing the longstanding inter-generational and historical traumas that continue to plague them, including programs to reverse language loss. These programs and processes must be locally conceived and administered with input from impacted individuals and families as well as traditional spiritual and cultural knowledge-holders, healers and other practitioners.

The quest for a fully participatory process – one that results in meaningful and just redress, reconciliation and restoration of what can be restored – will involve engaging impacted indigenous individuals and peoples to define what justice, healing and redress look like for them. This vision may differ among and between distinct communities. It is imperative to begin collecting input now on what measures are needed in each Native nation and

community to begin to reverse the bitter legacy of this policy, a policy of deliberate cultural genocide. It is time to let our nations begin healing.

### Summary

It is time to heal our communities and our nations. Tribal nations and the United States both stand to benefit immensely by stepping towards recovery and righting the relationship that continues to suffer because of wide scale denial and ignorance of the history of the United States boarding school policy. Both will begin to heal once the truth of the story is told. Efforts to create and recreate the wheel are underway, as of necessity, in many tribal communities across the nation. Science is advancing to finally come to understand what Native communities have been aware of for a long time—that traumas experienced in the past continue to harm the victims and the victimizers through the generations until the harm is effectively confronted and healing is undertaken in earnest. The time for this healing to begin is now, and this project is poised to help make it happen. 🌸

## **Children in the Meadows and Wetlands**

There are children in the meadows and wetlands

Native children ran there to hide

When teachers pulled and butchered their hair

When teachers stole their medicine bags

When teachers collected their moccasins

When teachers dressed them in strange clothes

When teachers beat them with boards and belts

When teachers starved them for being bad Indians

The children ran to the meadows and wetlands

There are children in the meadows and wetlands

Hostages who were taken to Haskell

Who never saw their families again

Who never saw nine or eleven or tomorrow

Who didn't make it home for summer vacations

Who couldn't stop whooping and coughing

Who couldn't learn English fast enough

Who wouldn't fall to their knees often enough

They ran 'til they fell in the  
meadows and wetlands

There are children in the meadows and wetlands

Hostages who were taken to Chilocco

Where they ran from teachers' fists and boots

Where they ran from bounty-hunters' cages

Where they ran from high collars and hard shoes

Where they ran from lye soap in their mouths

Where they ran from day and night

Where they ran until wolves outran them  
Their teeth are in the meadows and wetlands  
There are children in the meadows and wetlands  
Hostages who were taken to Carlisle  
Who got to build the school buildings  
Who got Christian burials without coffins  
Who got a mass grave with their friends  
Who got plowed under for a football field  
Who got embedded in concrete for the stadium  
Who got to be the practice site for the Washington Redskins  
Because they ran to the meadows and wetlands  
There are children in the meadows and wetlands  
Native children ran there to hide  
You can see their clothes in museums  
You can see their pipe bags at the opera  
You can see bands marching on their hallowed ground  
You can see mascots dancing over their dead bodies  
You can imagine their hair long and beautiful again  
Safe from teachers and scissors at last  
These children in the meadows and wetlands  
--suzan shown harjo

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Contributed by long-term friend and ally of NARF,  
and activist for Native peoples, Suzan Shown Harjo  
(Cheyenne/Muskogee)



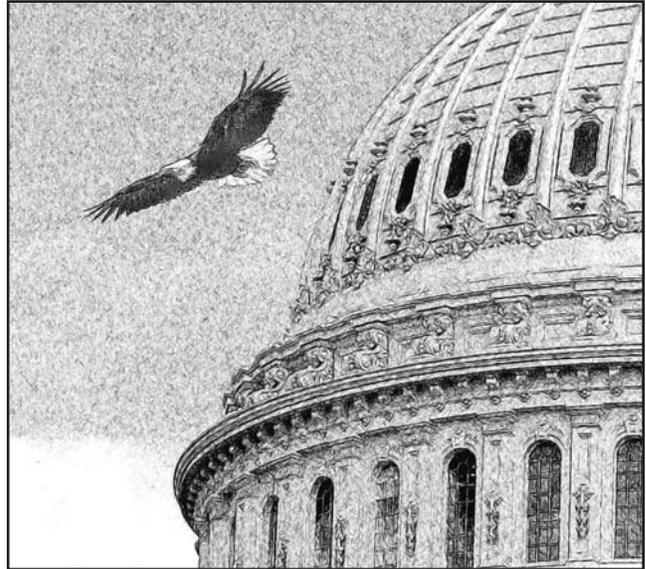
# CASE UPDATES

## Tribal Supreme Court Project

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). The Project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected tribal sovereignty. The purpose of the Project is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Indian tribes. We encourage Indian tribes and their attorneys to contact the Project in our effort to coordinate resources, develop strategy and prepare briefs, especially at the time of the petition for a writ of certiorari, prior to the Supreme Court accepting a case for review.

On September 30, 2013, the U.S. Supreme Court held its long conference to decide how many new cases to accept for review from a huge list of petitions that stacked up during its summer recess. Among the 2000+ petitions considered were five Indian law cases all of which were denied review. The Tribal Supreme Court Project remains focused on *Michigan v. Bay Mills*—a case granted review by the Court at the end of the last term even though the United States had filed a brief recommending that cert be denied. Although this litigation should be about the merits of Bay Mills' claims under the Michigan Indian Land Claims Settlement Act to conduct gaming on lands acquired with settlement funds—it is not. In its current posture before the Court, the State of Michigan is using this case to mount a full frontal attack on tribal sovereign immunity and the authority of states to regulate “gaming activity” under the Indian Gaming Regulatory Act (IGRA). The State of Alabama, joined by fifteen other states, and the State of Oklahoma have filed amicus briefs in support of Michigan (see summaries below).

On the merits, Michigan is asking the Court to examine “IGRA as a whole” to find Congressional intent to waive tribal sovereign immunity or, in



the alternative, to overrule *Santa Clara Pueblo* and apply a “less strict standard” when considering whether legislation such as IGRA abrogates tribal sovereign immunity. If the statutory arguments are not successful, the state is asking the Court to recognize that tribal sovereign immunity “is a federal common law doctrine” created by this Court and subject to adjustment by this Court. Thus, according to *Michigan*, the Court should narrowly read *Kiowa* as a “contract-based ruling” and (at the extreme) hold that a tribe’s immunity is limited to its on-reservation governmental functions. With the doctrine of tribal sovereign immunity and the authority of states under IGRA on the table, this case has become high-stakes litigation for Indian tribes across the country. Although *Bay Mills* and other tribes have solid legal arguments to make to the Court, the optics and politics of this case do not bode well for a good outcome.

The Project is working closely with a number of Indian law and Supreme Court practitioners to develop the most effective amicus brief strategy to inform the Court how Congress carefully crafted IGRA to balance the interests of the states, tribes and the federal government in the area of Indian

gaming, and to provide an opportunity for meaningful resolution of disputes between states and tribes without any need for the Court to intervene through an abrogation of tribal sovereign immunity.

### Case Granted Review By The Supreme Court

*Michigan V. Bay Mills Indian Community* – On December 2, 2013, the Supreme Court is scheduled to hear oral argument involving the petition filed by the State of Michigan seeking review of a decision by the U.S. Court of Appeals for the Sixth Circuit which held that federal courts lack jurisdiction to adjudicate the state's IGRA claims to the extent those claims are based on an allegation that the Tribe's casino is not on Indian lands and that such claims are also barred by the doctrine of tribal sovereign immunity. The Solicitor General had filed a brief expressing the views of the United States and recommending that the Court deny review of the petition.

The Bay Mills Indian Community opened a casino in late 2010 on fee land about 90 miles south of its Upper Peninsula reservation. The Tribe had purchased the land with interest earnings from a settlement with the federal government over compensation from land ceded in 1800s treaties. Under the Michigan Indian Land Claims Settlement Act of 1997, any land acquired with these settlement funds would "be held as Indian lands are held." Michigan argued that the tribe opened the casino on lands that do not qualify as "Indian lands" under IGRA and in violation of a state-tribal gaming compact. The questions presented in the petition are:

The Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (IGRA), authorizes an Indian tribe to conduct class III gaming under limited circumstances and only on "Indian lands." 25 U.S.C. § 2710(d)(1). This dispute involves a federal court's authority to enjoin an Indian tribe from operating an illegal casino located off of "Indian lands." The petition presents two recurring questions of jurisprudential significance that have divided the circuits: (1) Whether a federal court has jurisdiction to enjoin activity that violates IGRA but takes place outside of Indian

lands; and (2) Whether tribal sovereign immunity bars a state from suing in federal court to enjoin a tribe from violating IGRA outside of Indian lands.

On August 30, 2013, Michigan filed its opening brief and is using this case to mount a full frontal attack on tribal sovereign immunity and the authority of states to regulate "gaming activity" under the Indian Gaming Regulatory Act (IGRA). First, Michigan asks the Court to examine "IGRA as a whole" to find Congressional intent to waive of tribal sovereign immunity or, in the alternative, to overrule *Santa Clara Pueblo* and apply a "less strict standard" when considering whether legislation such as IGRA abrogates tribal sovereign immunity. Second, if the statutory arguments are not successful, Michigan asks the Court to recognize that tribal sovereign immunity "is a federal common law doctrine" created by this Court and subject to adjustment by this Court. Thus, according to Michigan, the Court should narrowly read *Kiowa* as a "contract-based ruling" and (at the extreme) hold that a tribe's immunity is limited to its on-reservation governmental functions.

On September 6, 2013, two amicus briefs in support of Michigan were filed. First, the State of Alabama, joined by fifteen other states, filed an amicus brief asking the Court to allow states to sue tribes for declaratory and injunctive relief when tribes are operating "unlawful gambling, payday lending, and similar activities" within the state. The states' amicus brief characterize the commercial activities of Indian tribes as "hav[ing] built everything from brick-and-mortar casinos to Internet-based banks, based on the perception that they can evade federal and state regulations within state territory." Second, the State of Oklahoma filed its own amicus brief to the draw the Court's attention to three examples of what it characterizes as the failure of the United States and the National Indian Gaming Commission to stop "illegal tribal gambling" within the state.

The Tribe's response brief was filed on October 24, 2013, and supporting amicus briefs were filed on October 31, 2013.



## NARF Files Second Round of Tribal Trust Fund Suits

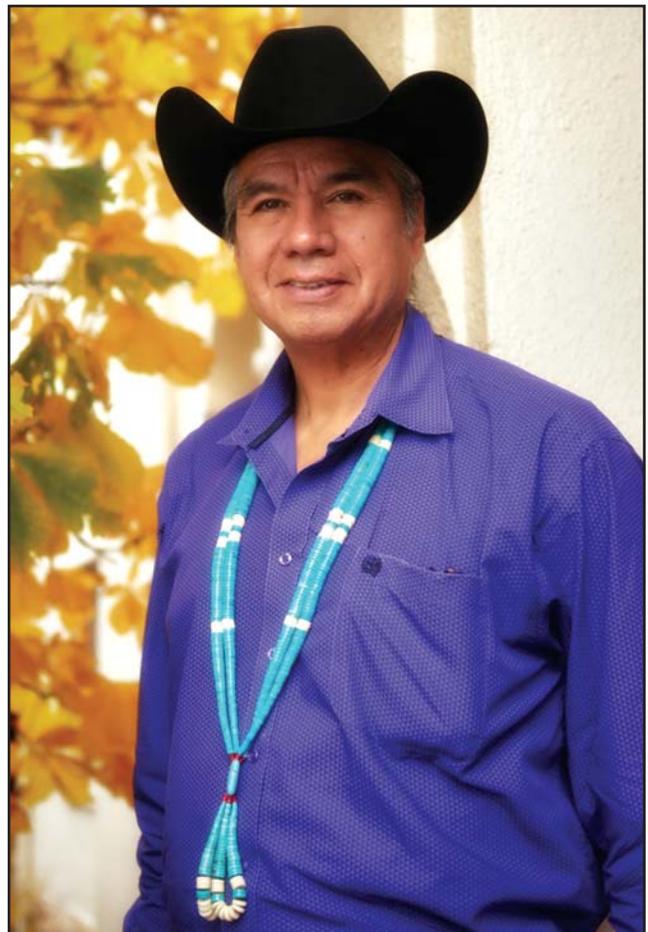
In *Sisseton Wahpeton Oyate v. Jewell*, the Native American Rights Fund represents four tribes – Sisseton Wahpeton Oyate; Quinault Indian Nation; White Earth Chippewa Nation; and, Oklahoma Kickapoo Tribe – in the new case filed on April 30, 2013 in the Federal District Court for the District of Columbia seeking historical accountings of the Tribes’ trust accounts, funds and resources. NARF expects the government to file a Motion to Dismiss the case later

this year on statute of limitations grounds, but we also hope to engage in settlement negotiations at the political level with the Obama Administration regarding the Tribes’ trust accounting and mismanagement claims. It is expected that several other tribes will join this suit to seek historical accountings of their trust accounts. ❁

## NEW NARF BOARD MEMBER

**Tex Hall** is the longest serving chairman of the Mandan, Hidatsa and Arikara Nation, also known as the Three Affiliated Tribes. Hall has a Bachelor of Arts degree in education from the University of Mary, in Bismarck, North Dakota, and a Master of Education Administration degree from the University of South Dakota in Vermilion, South Dakota. Hall served two terms as president of the National Congress of American Indians, co-chair of the National Indian Education Task Force and chairman of the Great Plains Region Tribal Chairmen's Association. He was appointed to the first tribal advisory committee ever established in the history of U.S. Department of Health and Human Services to recommend and advise the Secretary of the Department. He initiated the Keepseagle class action lawsuit that brought a historic settlement of \$760 million for Native American farmers and ranchers. In 2013, he was awarded the Wendell A. Chino Humanitarian Award from the National Indian Gaming Association.

The Board and staff of the Native American Rights Fund look forward to working with Chairman Hall. ❁



# National Indian Law Library

## Justice Through Knowledge!

The National Indian Law Library provides free weekly updates on Indian law.

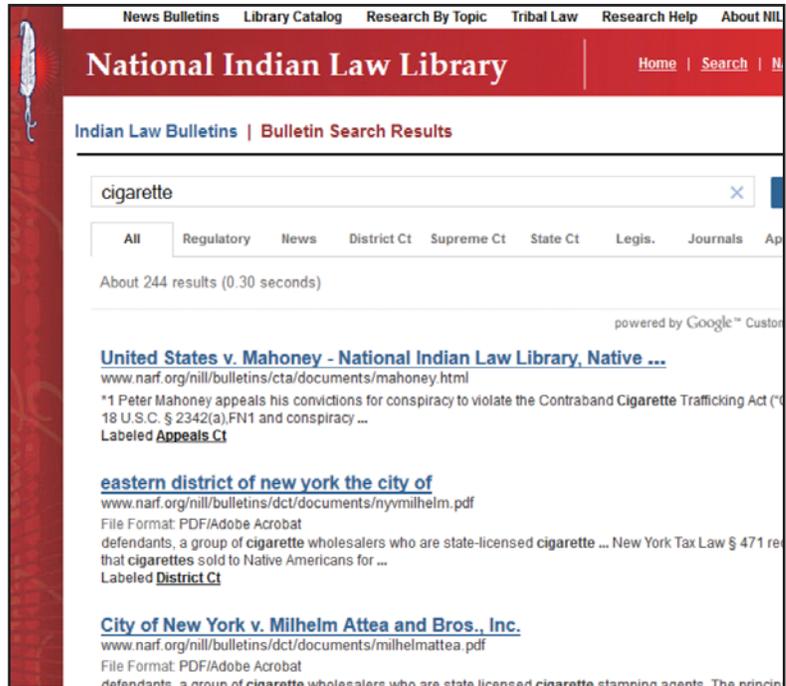
You probably are familiar with the great work NARF does in court rooms and the halls of Congress relating to tribal recognition, treaty enforcement, trust fund settlements, NAGPRA, and more. Did you know that NARF's National Indian Law Library provides free weekly Indian law updates?

Each week, the law librarian and 3 volunteers perform research to uncover the latest legal developments and information relevant to Native Americans. This research includes locating recent cases decided, legal news and scholarship, U.S. legislation, regulatory action from agencies and departments such as the Environment Protection Agency, the Bureau of Indian Affairs and the Department of Education. Recent updates included:

- latest news and legal action on the Adoptive Family Indian Child Welfare case
- new rules relating to the Courts of Indian Offenses
- notice of the passage of the Violence Against Women Reauthorization Act of 2013
- the latest news about the "Redskins" trademark and impacts of the Affordable Healthcare Act

Sign up for free to get the latest updates sent to your email by visiting the library blog at: <http://nilllibrary.blogspot.com/> (Insert your email in the "Follow By Email" box or sign up for a wider variety of updates from the library and NARF at: <http://tinyurl.com/narfupdates>

**Weekly Bulletin Alerts are Saved to Make a Powerful Free Indian Law Research Database**



The National Indian Law Library Indian Law Bulletins are archived into a large database that can be searched using custom Google search. If you remember seeing something in the Indian Law Bulletins alerts that you want to find again, try using the custom Google search engine to locate that item. Your research results will be organized under nine different tabs that represent individual bulletins. See sample search on "cigarette" above. If you have questions or want general Indian law research help, contact the library for help. <http://www.narf.org/contact/library.htm>

Support the National Indian Law Library in its effort to fight injustice through access to knowledge. You help ensure that the library continues to supply free access to Indian law resources and that it has the financial means necessary to pursue innovative and groundbreaking projects to serve you better. Please visit [www.narf.org/nill/](http://www.narf.org/nill/) donate now for more information on how you can support this mission. 🌟

# CALLING TRIBES TO ACTION!

It has been made abundantly clear that non-Indian philanthropy can no longer sustain NARF's work. Federal funds for specific projects have also been reduced. Our ability to provide legal advocacy in a wide variety of areas such as religious freedom, the Tribal Supreme Court Project, tribal recognition, human rights, trust responsibility, tribal water rights, Indian Child Welfare Act, and on Alaska tribal sovereignty issues has been compromised. NARF is now turning to the tribes to provide this crucial funding to continue our legal advocacy on behalf of Indian Country. It is an honor to list those tribes and Native organizations who have chosen to share their good fortunes with the Native American Rights Fund and the thousands

of Indian clients we have served. The generosity of tribes is crucial in NARF's struggle to ensure the future of all Native Americans.

The generosity of tribes is crucial in NARF's struggle to ensure the freedoms and rights of all Native Americans. Contributions from these tribes should be an example for every Native American tribe and organization. We encourage other tribes to become contributors and partners with NARF in fighting for justice for our people and in keeping the vision of our ancestors alive. We thank the following tribes and Native organizations for their generous support of NARF for our 2013 fiscal year – October 1, 2012 to September 30, 2013:

- Ak-Chin Indian Community
- Amerind Risk Management Corporation
- Bois Forte Reservation Tribal Council
- Colorado River Indian Tribes
- Confederated Salish & Kootenai Tribes
- Cow Creek Band of Umpqua Indians
- Delaware Nation
- Forest County Potawatomi Foundation
- Kaibab Paiute Tribe
- Keweenaw Bay Indian Community
- Lac Courte Oreilles Band of Ojibwe
- Little Traverse Bay Bands of Odawa Indians
- Muckleshoot Tribe
- National Indian Gaming Association
- Native Village of Eyak
- Native Village of Port Lions
- Pawnee Nation
- Poarch Band of Creek Indians
- Pokagon Band of Potawatomi Indians
- Pueblo of Zia
- Qawalangin Tribe of Unalaska
- Rosebud Sioux Tribe Education Department
- Saginaw Chippewa Indian Tribe
- San Manuel Band of Mission Indians
- Sault Ste. Marie Tribe of Chippewa
- Seminole Tribe of Florida
- Seven Cedars Casino/Jamestown S'Klallam
- Shakopee Mdewakanton Sioux Community
- Shoalwater Bay Indian Tribe
- Spirit Lake Dakotah Nation
- Stillaguamish Tribe
- Suquamish Indian Tribe
- Tanana Chiefs Conference
- Three Affiliated Tribes
- Tlingit and Haida Indian Tribes of Alaska
- Tulalip Tribes
- Ute Indian Tribe
- Yavapai-Prescott Indian Tribe
- Yoche Dehe Wintun Nation
- Yurok Tribe



# THE NATIVE AMERICAN RIGHTS FUND

The Native American Rights Fund (NARF) is the oldest and largest nonprofit national Indian rights organization in the country devoting all its efforts to defending and promoting the legal rights of Indian people on issues essential to their tribal sovereignty, their natural resources and their human rights. NARF believes in empowering individuals and communities whose rights, economic self-sufficiency, and political participation have been systematically or systemically eroded or undermined.

Native Americans have been subjugated and dominated. Having been stripped of their land, resources and dignity, tribes today are controlled by a myriad of federal treaties, statutes, and case law. Yet it is within these laws that Native Americans place their hope and faith for justice and the protection of their way of life. With NARF's help, Native people can go on to provide leadership in their communities and serve as catalysts for just policies and practices towards Native peoples nationwide. From a historical standpoint Native Americans have, for numerous reasons, been targets of discriminatory practices.

For the past 43 years, NARF has represented over 250 Tribes in 31 states in such areas as tribal jurisdiction and recognition, land claims, hunting and fishing rights, the protection of Indian religious freedom, and many others. In addition to the great strides NARF has made in achieving justice on behalf of Native American people, perhaps NARF's greatest distinguishing attribute has been its ability to bring excellent, highly ethical legal representation to dispossessed tribes. NARF has been successful in representing Indian tribes and individuals in cases that have encompassed every area and issue in the field of Indian law. 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 continues to play a vital role in the survival of tribes and their way of life. NARF strives to protect the most important rights of Indian people within the limit of available resources.

One of the initial responsibilities of NARF's first Board of Directors was to develop priorities that would guide the Native American Rights Fund in its mission to preserve and enforce the legal rights of Native Americans. The Committee developed five priorities that continue to lead NARF today:

- Preservation of tribal existence
- Protection of tribal natural resources
- Promotion of Native American human rights
- Accountability of governments to Native Americans
- Development of Indian law and educating the public about Indian rights, laws, and issues

**NARF 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. Ray Ramirez Editor, [ramirez@narf.org](mailto:ramirez@narf.org).

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**Tax Status:** The Native American Rights Fund is a nonprofit, charitable organization incorporated in 1971 under the laws of the District of Columbia. NARF is exempt from federal income tax under the provisions of Section 501 C (3) of the Internal Revenue Code, and contributions to NARF are tax deductible. The Internal Revenue Service has

ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code.

Under the priority of the preservation of tribal existence, NARF works to construct the foundations that are necessary to empower tribes so that they can continue to live according to their Native traditions, to enforce their treaty rights, to insure their independence on reservations and to protect their sovereignty.

Throughout the process of European conquest and colonization of North America, Indian tribes experienced a steady diminishment of their land base to a mere 2.3 percent of its original size. Currently, there are approximately 55 million acres of Indian-controlled land in the continental United States and about 44 million acres of Native-owned land in Alaska. An adequate land base and control over natural resources are central components of economic self-sufficiency and self-determination, and as such, are vital to the very existence of tribes. Thus, much of NARF's work involves the protection of tribal natural resources.

Although basic human rights are considered a universal and inalienable entitlement, Native Americans face an ongoing threat of having their rights undermined by the United States government, states, and others who seek to limit these rights. Under the priority of the promotion of human rights, NARF strives to enforce and strengthen laws which are designed to protect the rights of Native Americans to practice their traditional religion, to use their own language, and to enjoy their culture.

Contained within the unique trust relationship between the United States and Indian nations is the inherent duty for all levels of government to recognize and responsibly enforce the many laws and regulations applicable to Indian peoples. Because such laws impact virtually every aspect of tribal life, NARF maintains its involvement in the legal matters pertaining to accountability of governments to Native Americans.

The coordinated development of Indian law and educating the public about Indian rights, laws, and issues is essential for the continued protection of Indian rights. This primarily involves establishing favorable court precedents, distributing information and law materials, encouraging and fostering Indian legal education, and forming alliances with Indian law practitioners and other Indian organizations.

Requests for legal assistance should be addressed to the Litigation Management Committee at NARF's main office, 1506 Broadway, Boulder, Colorado 80302. NARF's clients are expected to pay whatever they can toward the costs of legal representation.



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**Main Office:** Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302 (303-447-8760) (FAX 303-443-7776). <http://www.narf.org>

**Washington, D.C. Office:** Native American Rights Fund, 1514 P Street, NW (Rear) Suite D, Washington, D.C. 20005 (202-785-4166) (FAX 202-822-0068).

**Alaska Office:** Native American Rights Fund, 745 W. 4th Avenue, Suite 502, Anchorage, Alaska 99501-1736 (907-276-0680) (FAX 907-276-2466).

**Workplace Campaigns:** NARF is a member of America's Charities, a national workplace giving federation. Giving through your workplace is as easy as checking off NARF's box, #10350 on the Combined Federal Campaign (CFC) pledge form authorizing automatic payroll deduction.

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