

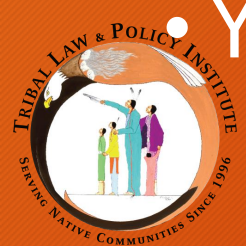
Indigenous Precedent: Where Is Our Meaningful Access to Tribal Case Law?

Lauren van Schilfgaarde
Tribal Law Specialist
Tribal Law and Policy Institute



The Tension

- Dominant narratives have been frequently used to oppress tribal governments and marginalize tribal rights
 - E.g. Doctrine of Discovery
- Presently, the narrative is that tribal courts are illegitimate and unfair, because they are unknowable
 - Tribal common law is so far from Anglo-American common law as to be unrecognizable to non-Indians
 - Tribal law is inaccessible
- Yet, tribes are also fighting to re-indigenize their tribal law



Origin of Tribal Judiciaries



- Divergence of Values:
Tribal Councils and Chiefs more likely to serve a dispute resolution role, rather than executive or legislative duties
 - Goal was mediation as opposed to ascertaining guilt
 - Facilitator as opposed to decision-maker
- Courts of Indian Offenses
 - 1849 - Creation of the Interior Department
 - 1883 - CFR Courts are institutionalized, *Ex Parte Crow Dog*
 - Heightened need for inter-tribal/Indian-non-Indian dispute resolution
 - Staffed by Indian judges, but served at the pleasure of the Indian agent

Modern Tribal Courts

- 1934 - Indian Reorganization Act
 - Many tribes assumed judicial functions, replacing CFR courts
- Opportunity
 - For a system that is more responsive to tribal needs and under tribal control
 - To resurrect traditions and customs
- But for many, traditional methods, often rooted in religious ceremonies, were lost

INSTITUTE FOR GOVERNMENT RESEARCH
STUDIES IN ADMINISTRATION

THE PROBLEM OF INDIAN ADMINISTRATION

Report of a Survey made at the request
of Honorable Hubert Work, Secretary
of the Interior, and submitted to him,
February 21, 1928

SURVEY STAFF

Lewis Merriam
Technical Director
Ray A. Brown
Henry Roe Cloud
Edward Everett Dale
Emma Duke
Herbert R. Edwards
Fayette Avery McKenzie
Mary Louise Mark
W. Carson Ryan, Jr.
William J. Spillman

Truly a Third Sovereign?

Tribal court development has been sanctioned by Congress, yet tribes fight for comity for tribal court orders*

Tribal sovereignty precedes the U.S. Constitution, yet is often critiqued against and entangled with

Tribes are treated as a single unit, in which deficiencies are assumed, and responded to with diminished authority

Tribal authority has only be Congressionally re-expanded conditionally and piece-meal

Support for tribal court development has been minimal

The image features a collection of Native American pottery. In the background, a large, bulbous jar is decorated with intricate black and white designs, including a central figure of a bird with spread wings, possibly a hawk or eagle, surrounded by floral and geometric patterns. To the left, a smaller, plain, light-colored vase stands. In the foreground, two shallow bowls are visible. The bowl on the left has a circular panel containing a bird in flight, next to a square panel with a cross-hatched pattern. The bowl on the right is decorated with a series of stylized, curved, scroll-like motifs. A semi-transparent black horizontal band across the middle of the image contains the text "Critique 1: Tribal Customary Law is Unknowable" in white. A solid yellow rectangular block is positioned on the right side of the image, partially overlapping the black band.

Critique 1: Tribal Customary Law is Unknowable

Fear that tribal courts use “customs and traditions”

The underlying reason for rejecting tribal court jurisdiction over nonmembers is because tribal courts “are influenced by the unique customs, languages, and usages of the tribes they serve. Tribal courts are often ‘subordinate to the political branches of tribal governments,’ and their legal methods may depend on ‘unspoken practices and norms.’”

- *Duro v. Reina*, 495 U.S. 676, 693 (1990)



“Tribal law is still frequently unwritten, being based instead on the ‘values, mores, and norms of a tribe and expressed in its customs, traditions, and practices,’ and is often ‘handed down orally or by example from one generation to another’ . . . The resulting law applicable in tribal courts is a complex ‘mix of tribal codes and federal, state, and traditional law,’... which would be unusually difficult for an outsider to sort out.”

- *Nevada v. Hicks*, 533 U.S. 353, 384 (2001)

Dollar General

- *Dollar General Corp. v. Mississippi Band of Choctaw Indians* confirmed these fears remain
- “The elements of Doe's claims under Indian tribal law are unknown to Dolgencorp and ***may very well be undiscoverable by it***. Choctaw law expressly incorporates, as superior to Mississippi state law, the ‘customs and usages of the tribes.’ Choctaw Tribal Code § 1-1-4.”
 - Hon. Smith, dissenting, in *Dolgencorp, Inc. v. Miss. Band of Choctaw Indians*, 732 F.3d 409, 419–24 (5th Cir. 2013)



The Embrace of Custom is Itself Fearsome

- Attacks on tribal law's embrace of custom point to no specific instance in which litigants, particularly nonmembers
 - Received an unexpected outcome
 - Received an unfair outcome
- Instead, concern with the potential for embracing *different*



It's true

- Tribal courts actively embrace tribal customary law, many mandated to do so
- Common law should reflect the community's values
 - Just as Anglo law reflects Anglo values
- Resistances to assimilation and acculturation have frequently been accomplished through reliance on customary beliefs, preserving the old and creating the new
- Self-determination demands that we articulate our own law
 - Christine Zuni Cruz



An Unenviable Judicial Task

- Tribal court judges are tasked with harmonizing tribal customs and traditions with the modern needs of Indian people
- The peril is in how -
 - Careless use of intertribal common law
 - Applying pan-Indian customs
 - Treating traditions as timeless/immutable, that require unquestioning deference
 - Treating elders as immutable lawmakers
 - Require too burdensome of a process to hear elders



Choice of Law Hierarchies

- Tribal legislatures provide many different hierarchies and procedures in their choice-of-law provisions.
- For example
 - Prioritizing customary law over federal or state law
 - Ranking customary law on par with “other laws”
 - Authorizing consideration of customary law, so long as not in conflict with tribal statutes and federal law
 - Authorizing consideration of customary law, but only as a device for interpreting the tribal court code
 - Emphasize the use of customary law in certain types of disputes



A random selection...

- Match-E-Be-Nash-She-Wish Band of Pottawatommi Indians Judicial Ordinance, Chapter VII, Section 6: Law Applicable in Civil Actions
 - (a) In all civil actions the Tribal Court shall apply this Ordinance, all amendments thereto, all tribal laws enacted hereafter and *all customs and usages of the Tribe. In the event any doubt arises as to the customs and usages of the Tribe, the court may request the advice of tribal citizens familiar with tribal customs and usages.*



A random selection...

- Port Gamble S’Klallam Tribe Law and Order Code
 - 3.06.05 - Applicable Law - In deciding civil actions, the Community Court shall first look at the written law ... The Court may then look to *Tribal custom and usage in doing so, the Court may request the advice of persons familiar with Tribal Custom and usage. ...*”
 - 4.07.01 - Rules of Evidence - “[T]he Court reserves the right to independently interpret the rules in accordance with the laws, customs, and traditions of the Port Gamble S’Klallam Tribe.”
 - 3.09.52 - Foreign Judgments - When Recognized - “...The Tribal Court need no recognize a foreign judgment if: ...(d) The foreign judgment would serve to violate any federal law, tribal law, *custom or tradition*, or the Treaty...”



Pleading and Proving Custom

- Many tribes now
 - Require the judge to notice relevant, generally known custom
 - Provide processes for pleading and proving the applicability of custom
- But largely, the burden of finding and pleading custom has fallen to elders
- Pat Sekaquaptewa calls for
 - Tribally institutionally mandated self-studies
 - Custom law treaties and archives
 - Tribal bar study materials and exams requiring basic custom law knowledge
- ... But, not every source of customary law is comprehensive or legitimate



But still...

The underlying reason for rejecting tribal court jurisdiction over nonmembers is because tribal courts "are influenced by the unique customs, languages, and usages of the tribes they serve."

- *Duro v. Reina*, 495 U.S. 676, 693 (1990)



Limited Application of Tribal Customary Law

- Matthew Fletcher argues that concerns of “unknown” tribal customary law are unwarranted, because tribal customary law simply would not be applied to an outsider
- Intratribal Common Law - Common law applied by tribal courts in cases arising out of an *indigenous legal construct*
 - Disputes between members involving tribal lands
 - Family law cases involving members or consenting nonmembers
 - Tribal government disputes
 - Constitutional law questions



Intertribal Common Law

- Substantive common law applied by tribal courts in cases arising out of an Anglo-American legal construct
 - May include tribal court's importation of federal and state court common law
 - ICRA interpretation
 - Secured Transaction Codes
 - Doctrine of sovereign immunity
 - Tort claims
 - Contract claims, etc.



Critique 2: Tribal Law is Inaccessible



The Critique: Secret “Rules of the Game”

- “[T]he primary reason for [reluctance of off-reservation businesses to trade on Indian reservations] is the difficulty in determining and understanding “the rules of the game.”
 - Brief for Amicus Curiae South Dakota Business Association, in *Dollar General Corp. v. Mississippi Band of Choctaw Indians, et. al.*
- Tribal court defendants may find that there are “no rules of procedure,” and that the rules are “being made up as [the case goes] along.”
 - Brief Amici Curiae of the National Association of Criminal Defense Lawyers and Experienced Tribal Court Criminal Litigators in Support of Respondent, in *United States v. Michael Bryant, Jr.* at 18 (2016).



Particular Concern for Non-Indian Litigants

- Fear of unfamiliarity with tribal law and the tribal judicial system
- “Democratic deficit,” -nonmembers are not allowed to vote in tribal elections, run for tribal office, or serve on tribal juries
- Assumption that tribal law is inherently unfair to nonmembers
- VAWA and TLOA specifically requires publication of laws



Perception of secrecy?

- “[T]ribal law, unlike federal and state law, can be very difficult, if not impossible, to locate.”
- “For a majority of the 56[7] federally recognized tribes in the United States today, no law has been published. Where it is available, tribal law is scattered across web sites, databases, and print publications.”
 - Bonnie Shucha, *“Whatever Tribal Precedent There May Be”*: *The Unavailability of Tribal Law* (2014)



These critiques sound familiar...

- Testimony before the 1960s Congressional Constitutional Rights Subcommittee included numerous anecdotal complaints about the abuses and incompetence of tribal adjudication - spurring the enactment of ICRA
- The 1979 “Getches Report” (*Indian Courts and the Future: Report of the NAICJA Long Range Planning Project*) detailed a lack of tribal law, including constitutional texts, statutes, and common law, forcing tribal courts to rely on Anglo law





Finding Our Written Common Law

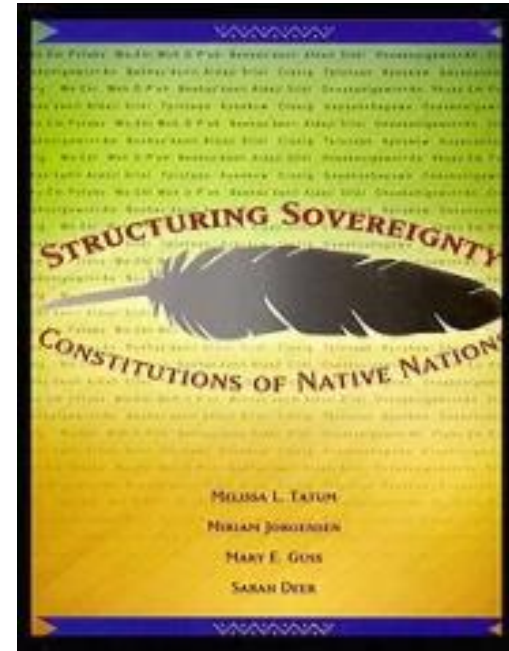
Still true today?

- The number of tribal courts has doubled since 1978
- Many courts enjoy greater independence and budgetary support
- Respect for tribal courts is growing amongst local and state partners
- And access to tribal law has significantly improved!



Tribal Constitutions

- 144 Tribes post their Tribal Constitution on their Tribal Website



Tribal Constitutions

Structuring Sovereignty: Constitutions of Native Nations, part of the *Tribal Legal Studies Textbook Series*, is designed to see change, and numerous examples from actual governing documents to demonstrate the many ways that Native nations can

The following tribes post their constitutions on their tribal websites.

Alabama

- [Poarch Band of Creek Indians Constitution - Muni Code](#)

Alaska

- [Central Council of Tlingit and Haida Indian Tribes of Alaska Constitution](#)
- [Chilkat Indian Village Constitution](#)
- [Kenaike Indian Tribe Constitution](#)
- [Sitka Tribe of Alaska Constitution](#)

Arizona

- [Colorado River Indian Tribes of the Colorado River Indian Reservation Constitution and Bylaws](#)
- [Fort McDowell Yavapai Nation Constitution](#)
- [Hopi Tribe Constitution and Bylaws](#)
- [Hualapai Constitution](#)
- [Kaibab Paiute Tribe Constitution](#)
- [Paisana Yaqui Tribe Constitution](#)
- [Quechan Tribe of the Fort Yuma Reservation Constitution and Bylaws](#)
- [Salt River Pima-Maricopa Indian Community Constitution](#)
- [Tohono O'odham Nation Constitution](#)
- [White Mountain Apikche Tribe of the Fort Apache Indian Reservation Constitution](#)
- [Yavapai-Apache Nation Constitution](#)

California

- [Blue Lake Rancheria Constitution](#)
- [Coyote Valley Band of Pomo Indians Constitution](#)
- [Federated Indians of Graton Rancheria Constitution](#)
- [Greenville Rancheria Constitution](#)
- [Hakemwotki Pomo of Upper Lake Constitution](#)
- [Hoopa Valley Tribe of the Hoopa Valley Indian Reservation Constitution and Bylaws](#)
- [Hoglans Band of Pomo Indians Constitution](#)
- [Sanik Tribe Constitution](#)
- [Kashia Band of Pomo Indians of the Stewart Point Rancheria Constitution](#)
- [Pascuenta Band of Nomlaki Indians Constitution](#)
- [Pit River Tribe Constitution](#)
- [Quechan Tribe of the Fort Yuma Reservation Constitution and Bylaws](#)
- [Resolvin Rancheria Constitution](#)
- [Round Valley Indian Tribes Constitution](#)
- [Susanville Indian Rancheria Constitution](#)
- [Timbisha Shoshone Tribe \(Clear Lake Valley\) Constitution](#)
- [Tolowa Dee-Ni Nation \(Smith River Rancheria\) Constitution](#)
- [Tule River Indian Tribe Constitution and Bylaws](#)
- [Watho Tribe Constitution and Bylaws](#)
- [Yurok Tribe Constitution](#)

Tribal Codes/Laws Available on Tribal Websites

- 139 Tribes post all or at least part of their Tribal Codes on their Tribal Websites

Tribal Laws/Codes

One way for tribal nations to exercise their sovereignty is to establish their laws and codes which govern their respective communities.

The following Tribes post their Tribal Codes on their website:

Alabama

- [Poarch Band of Creek Indians – Muni Code](#)

Alaska

- [Central Council of Tlingit & Haida Indian Tribes of Alaska Statutes \(partial\)](#)
- [Kenaitze Indian Tribal Code](#)
- [Sitka Tribe of Alaska Codes](#)

Arizona

- [Colorado River Indian Tribes Tribal Laws and Ordinances](#)
- [Fort McDowell Yavapai Nation Law and Order Code](#)
- [Gila River Indian Community Ordinances \(partial\)](#)
- [Hopi Laws](#)
- [Navajo Nation Code](#)
- [Pascua Yaqui Tribe Tribal Codes](#)
- [Quechan Law and Order Code](#)
- [Salt River Pima-Maricopa Indian Community Code of Ordinances](#)
- [Tohono O'odham Code](#)
- [White Mountain Apache Code](#)

California

- [Bishop Paiute Tribal Ordinances](#)
- [Blue Lake Rancheria Ordinances](#)
- [Coyote Valley Band of Pomo Indians Ordinances](#)
- [Dry Creek Rancheria Tribal Code](#)
- [Hahematoilel Pomo of Upper Lake Book of Codes](#)
- [Hoopa Valley Tribe of the Hoopa Valley Indian Reservation Tribal Titles](#)
- [Hopland Tribal Code](#)
- [Jamul Indian Village Ordinances \(partial\)](#)
- [Karuk Tribal Court Ordinances, Codes & Rules of Court](#)
- [Kashia Band of Pomo Indians of the Stewart Point Rancheria Tribal Codes](#)
- [La Jolla Band of Luiseño Indians Ordinances \(partial\) – Intertribal Court of Southern California](#)
- [Los Coyotes Band of Indians Law and Order Code \(partial\) – Intertribal Court of Southern California](#)
- [Pauma Band of Mission Indians Ordinances \(partial\) – Intertribal Court of Southern California](#)
- [Pit River Tribal Law](#)
- [Quechan Law and Order Code](#)
- [Rincon Band of Luiseño Indians Tribal Law](#)
- [Round Valley Indian Tribe Tribal Court Code](#)
- [San Manuel Band of Mission Indians Tribal Laws \(partial\)](#)
- [San Pascual Band of Mission Indians Ordinances \(partial\) – Intertribal Court of Southern California](#)
- [Shingle Springs Band of Miwok Indians Codes, Polices and Bylaws](#)
- [Smith River Rancheria – Tolowa Dee-ni Nation Code and Ordinances](#)
- [Viejas Band of Kumeyaay Indians Ordinances \(partial\) – Intertribal Court of Southern California](#)
- [Washoe Tribe of Nevada and California Law and Order Code](#)
- [Yurok Tribal Codes](#)

OMAHA TRIBAL CODE (2013)

This edition is effective August 1, 2013. To view individual titles, click on name below.

Omaha Tribal Council Resolution No. 13-83 Reissuance of Omaha Tribal Code

- Title 01 Courts
- Title 02 Rules of Civil Procedure
- Title 03 Rules of Criminal Procedure
- Title 04 Rules of Appellate Procedure
- Title 05 Crimes
- Title 06 Police
- Title 07 Fire Protection
- Title 08 Alcoholic Beverage Control
- Title 09 Animal Control
- Title 10 Traffic Control

Pascua Yaqui Tribe
Tribal Codes

http://www.pascuayaqui-nsn.gov
Table of Contents

2017

Pascua Yaqui Tribe
Office of the Attorney
General

7777 S. Camino Huasim
Building C
Tucson, AZ 85745

Phone (520)883-
8108
TTY (520)883-8108

Constitution of the Pascua Yaqui Tribe Amended in 2015

- Title 1 - General Provision
 - Ch 1-Codification Ordinance
 - Ch 2-Definitions & Rules of Construction
 - Ch 3-Enactment of Ordinance RESERVED
 - Ch 4-Code Revisions
- Title 2 - Government Administration
 - Part I-Tribal Council
 - Ch 1-2 Tribal Council Code of Ethics
 - Ch 1-4 Oversight Committee
 - Ch 1-5 Budget Preparation
 - Part II-Departments, Divisions
 - Ch 2-1 Office of Attorney General
 - Ch 2-2 Development Services
 - Ch 2-3 Education

Tribal Court Opinions

- 60 Tribes post at least some tribal court opinions on their tribal website, or as part of a free online reporter, such as the Northwest Intertribal Court System

Northwest Intertribal Court System
20818 44th Ave West
Suite 120
Lynnwood, WA 98036
office (425) 774-5808
fax (425) 744-7704
nics@nics.ws

Help Bookmark Text Size: -A +A Hide TOC Print Doc Search Opinions

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- + Volume IV
- + Volume V
- + Volume VI
- + Volume VII
- + Volume VIII
- + Volume IX
- + Volume X
- + Volume XI
- + Volume XII
- + Volume XIII

Northwest Intertribal Court System
Tribal Court Appellate Opinions
CODE PUBLISHING COMPANY | Seattle, Washington

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Hopi Judicial Branch
Hopi Tribal Courts

HOME ABOUT US COURT INFORMATION HOPI LAWS COURT CASES RESOURCES FORMS FAQs

Court Cases
You are here: Home > Court Cases

Index of Hopi Appellate Court Opinions and Decisions

These are not the official documents.
The Hopi Tribal Court can be contacted for official copies.

Cases are grouped by year:

- 1981-1985
- 1986-1990
- 1991-1995
- 1996-2000

- Appellate Cases - 1981-1985
- Appellate Cases - 1986-1990
- Appellate Cases - 1991-1995
- Appellate Cases - 1996-2000
- Appellate Cases - 2001-2005
- Appellate Cases - 2006-2010
- Appellate Cases - 2011-2015
- Appellate Cases - 2016-current



Great Access = Greater Tribal
Common Law?



Tribal Court Citations - 1999 Study

Russel Lawrence Barsh,
*Putting the Tribe in Tribal
Courts: Possible? Desirable?*,
Kan. J.L. & Pub. Pol'y (1999)

- Study on citation practices in Tribal Courts (1992-1998) (Indian Law Reporter)
 - 56 tribal courts at trial and appellate levels, 359 opinions
 - 79% relied on intra-tribal authority (precedent or legislation)
 - 46% relied on federal law (primarily in a jurisdiction or procedural context)
 - 28% relied on state law
 - **10% relied on inter-tribal court precedent**

Tribal Court Citations - 2008 Study

Matthew L.M. Fletcher, TRIBAL COURTS, THE INDIAN CIVIL RIGHTS ACT, AND CUSTOMARY LAW: PRELIMINARY DATA (2008)

- Study on tribal court decisions applying ICRA to civil rights claims
 - 120 cases
 - 95% relied on federal and state case law

Tribal Court Citations - 2014 Study

Rose Carmen Goldberg, *No Tribal Court Is an Island? Citation Practices of the Tribal Judiciary*, 3 AMERICAN INDIAN L. J. 247 (2014)

- Study on citation practices in Tribal Courts (2010-2013) (Westlaw)
 - 23 tribal courts at trial and appellate levels, 208 opinions
 - “Tribal court” includes the Inter-Tribal Court of Appeals of Nevada and Oklahoma Tribal Courts
 - 69% relied on intra-tribal authority (precedent or legislation)
 - 15% relied on federal law (primarily in a jurisdiction or procedural context)
 - 14% relied on state law
 - .6% relied on inter-tribal court precedent (10 cases)

Limited Inter-Tribal Court Citations

- Tribal courts have difficulty identifying and applying tribal common law
- Tribal courts rely on Anglo-American common law to decide many, if not most, of the cases before them.
- Of the Intertribal Court Citations ->
 - Likely to be part of an intertribal court
 - Positive citations likely to be in procedural-type contexts



Why does this matter?

- American constitutional law derives from a text to which Indian tribes are not, and cannot, be a party
- The values that underpin legal phrases like “due process” stem from culturally distinct origins
- Tribes have demonstrated a creativity ability to more effectively and efficiently administer justice in culturally responsive manners
- **Self-determination demands that we articulate our own law**
- Looking to each other, we can aid in re-indigenizing tribal justice, as well as improve upon the justice field federally



Tribal Innovations

- Tribal courts are already developing some of the most creative and progressive strategies including
 - Inter-governmental cooperative agreements
 - Civil remedies for criminal offenders
 - Traditional dispute resolution practices
 - Permanent guardianships and child welfare services
 - Wellness Courts



Compare - 1979 Report

Indian Courts and the Future: Report of the NAICJA Long Range Planning Project (1979)

- 1979 “Getches Report”, studied 23 tribal courts
- Found that while ICRA was generally embraced, it was embraced as “procedural guide” to provide fairness to litigants, rather than as a means to adopt federal civil rights protections unequivocally
- E.g. the Report noted that because the Judge often knew the defendant “personalized attention to the needs of defendants was...common...”
 - This is now considered a best practice in restorative justice
-

On the practical side

- The power to cite to other courts could help preserve tribal courts' severely limited resources.
- Citations to prior decisions can replace time-consuming step-by-step legal analysis
 - Better respond to the unique circumstances of each case with more nuance
 - Create a richer tribal common law
 - Better incorporate customary law and tradition



So, what's the
problem?



Tribal Barriers to Accessible Law

- Misconception that tribes are a unified entity, like counties in a state
- Tribal Court Funding
 - Often acknowledged, but then swiftly dismissed
- Lack of Tribal Court staff dedicated to tracking, inputting, and analyzing



Publishing the Law

- Self-Publishing
 - Print copies of opinions, and superseded constitutions and legislation, allow for an archive that cannot be overwritten
 - Expensive
 - Can be subsidized by large subscribers, but means only large libraries and firms can afford access to the law
 - Online
 - Researchers rarely venture farther than their favorite database*
- Sending Content In



A close-up photograph of a person's hands typing on a laptop keyboard. The hands are positioned over the keyboard, with fingers pressing down on the keys. The background is blurred, showing a document with text. The overall lighting is warm and focused on the hands and keyboard.

Availability of Tribal Law

National Indian Law Library (NILL)

TRIBAL LAW GATEWAY

- Find tribal codes, court opinions, and other legal materials by tribe
- More than 300 tribes participating
- More than 100 tribal codes available




The screenshot shows the website's header with a dark blue navigation bar. On the left is a feather logo. The text 'Get Indian Law news delivered to your inbox' is followed by an 'EMAIL ADDRESS' input field, a 'SIGN ME UP' button, and a 'NATIVE AMERICAN RIGHTS FUND' button. A search icon and the text 'DONATE today' are on the right. Below the navigation bar, the text 'NATIONAL INDIAN LAW LIBRARY' is displayed. A horizontal menu contains links for 'INDIAN LAW BULLETINS', 'TRIBAL LAW GATEWAY', 'RESEARCH GUIDES', 'RESEARCH HELP', 'ABOUT NILL', and 'CATALOG'. The main content area features a large image of a seated female statue in a classical style, set against a background of tall, fluted columns. The text 'JUSTICE THROUGH KNOWLEDGE' is overlaid on the right side of the image. Below the image, a paragraph of text reads: 'The National Indian Law Library (NILL) of the Native American Rights Fund is a law library devoted to federal Indian and tribal law. NILL maintains a unique and valuable collection of Indian law resources and assists people with their Indian law-related research needs. You can find some of our most popular resources below.'

Native American Constitution and Law Digitization Project


- This Project is a cooperative effort among the University of Oklahoma Law Center, the National Indian Law Library (NILL), and Native American tribes providing access to the Constitutions, Tribal Codes, and other legal documents.
- Includes archival documents, including
 - Older versions of Constitutions
 - The 1945 edition of Cohen's Handbook
 - Treaties

**Native American Constitution and Law
Digitization Project**

Coordinated by



**The University of
Oklahoma
Law Library**



**The National Indian
Law Library**
of the
**Native American
Rights Fund**

This Project is a cooperative effort among the [University of Oklahoma Law Center](#) and the [National Indian Law Library](#) (NILL), and Native American tribes providing access to the Constitutions, Tribal Codes, and other legal documents. Project Coordinators are David Selden (NILL) and Marilyn Nicely (OU).

Tribal constitutions and codes are the heart of self-government for over 500 federally recognized tribes, and are the lifeblood of Indian sovereignty. The University of Oklahoma Law Center Library and the National Indian Law Library work with tribes whose government documents appear on this web site; these tribal documents are either placed online with the permission of the tribes, or they are U.S. Government documents, rightfully in the public domain.

[Alaska](#) | [Archive](#) | [Codes](#) | [Cohen's Handbook](#) | [Constitutions](#) | [Indian Lands](#) |
| [IRA Era Constitutions and Charters](#) | [Oklahoma](#) | [Solicitor's Opinions](#) | [Supreme Court](#) | [Treaties](#) | [Links](#) | [Tribal UCC](#) | [Research Guides](#) |

[SEARCH THIS SITE](#)

DISCLAIMER: The on-line versions of tribal codes, constitutions, and legal information which appear here are provided for your convenience for scholarship and informational purposes only. The official versions of any tribal code or constitution may be obtained by contacting the tribe directly or by contacting the National Indian Law Library:

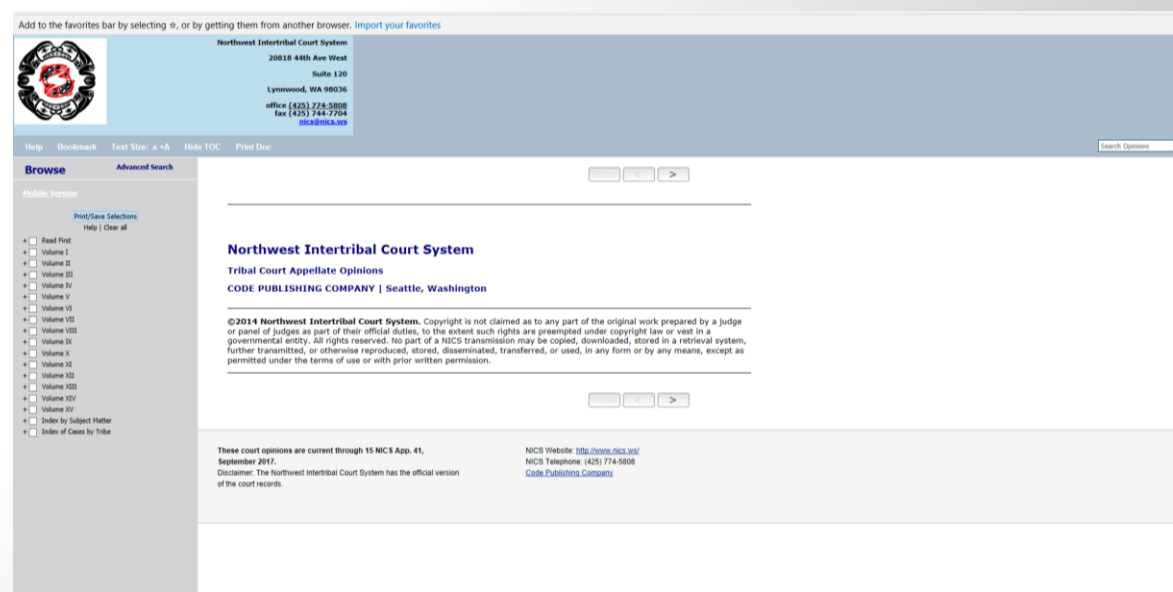
National Indian Law Library
1522 Broadway
Boulder, CO 80502
Phone: (303) 442-8260

Other publications or documents are likewise made available for scholarship and informational purposes only. Source documents must still be used for authority.

This page is maintained by:
Marilyn K. Nicely, American Indian Law Subject Specialist and Technical Services Librarian: mnico@ou.edu

Northwest Intertribal Court System

- Provides tribal court appellate opinions from 30 Indian tribes in the Pacific Northwest, Alaska, and Northern California.
- Cases range from 1981 to present (2017)
- Indexed by subject matter
- Free!



The screenshot displays the Northwest Intertribal Court System website. At the top, there is a header with the court's logo on the left and contact information on the right: "Northwest Intertribal Court System, 20818 44th Ave West, Suite 120, Lynnwood, WA 98036, office (425) 774-5808, fax (425) 744-7264, www.nics.us". Below the header is a navigation bar with links for "Help", "Bookmark", "Text Size: A +A", "Hide TOC", and "Print Doc". A search box labeled "Search Opinions" is located on the right side of the navigation bar.

The main content area is titled "Browse" and "Advanced Search". On the left side, there is a "Public Version" section with a "Print/Save Selections" link and a "Help | Clear all" link. Below this is a list of volumes, each with a checkbox and a plus sign: "Volume I", "Volume II", "Volume III", "Volume IV", "Volume V", "Volume VI", "Volume VII", "Volume VIII", "Volume IX", "Volume X", "Volume XI", "Volume XII", "Volume XIII", "Volume XIV", "Volume XV", "Index by Subject Matter", and "Index of Cases by Tribe".

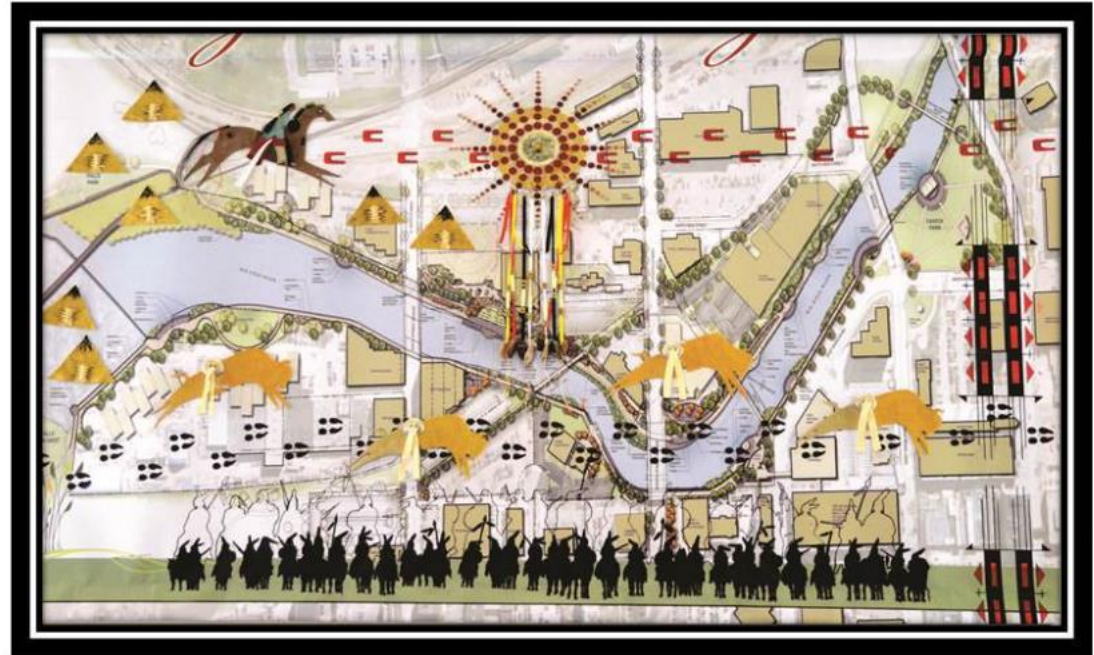
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Tribal Justice: 25 Years as a Tribal Appellate Justice

- A web component for Frank Pommersheim's book *Tribal Justice: 25 Years as a Tribal Appellate Justice*
- Includes links to his tribal court opinions, including from 10 different tribal courts

Frontispiece by Yankton Sioux Tribal Artist Jerry Fogg

TRIBAL JUSTICE: 25 YEARS AS A TRIBAL APPELLATE JUSTICE



Painting by permission of artist Jerry Fogg, Yankton Sioux Tribe

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Print Reporters



Indian Law Reporter

- Published monthly by the American Indian Lawyer Training Program.
- Covers federal, state, and tribal courts, and occasionally administrative tribunals.
- Began covering tribal courts in 1983, publishing selected cases from selected tribal courts.
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Indian Law Reporter

The **Indian Law Reporter**, a comprehensive and unique monthly information service that reports cases—primarily in full-text format—from federal, state and tribal courts, as well as administrative agencies, is an essential resource for every individual, agency, government, and other institution that needs to keep abreast of developments in the field of American Indian law. Published continuously since 1974, materials appearing in the Indian Law Reporter are conveniently organized and marked for insertion into a loose-leaf binder divided into the following categories:

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- United States District Court opinions
- United States Court of Federal Claims
- State Court opinions
- Tribal Court opinions
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- Table of Cases and Topical Index


Annual subscription to the Indian Law Reporter includes 12-monthly issues, binder and tabs, plus shipping and handling within the United States and Canada. See order form for subscription rates for current year's subscription and past volumes.

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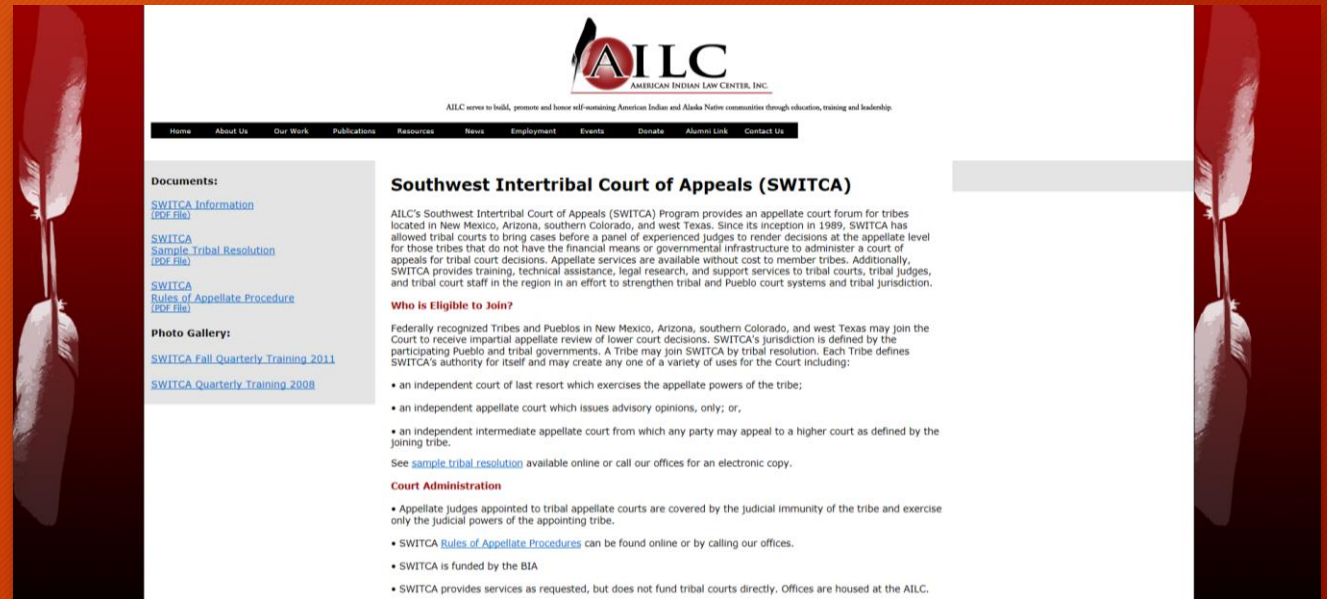
West's Tribal Law Reporter

- \$192/month
- Includes the full text of reported decisions of the appellate and supreme courts of (~20+) tribal nations (Tribal Court Reporter)
- Also includes decisions from various U.S. courts of appeals and the U.S. Supreme Court that address issues relevant to tribal law.
- Tribal decisions include West editorial enhancements, including synopsis, digest, and topic and key numbers.



Southwest Intertribal Court of Appeals Reporter

- Provided by the [American Indian Law Center, Inc.](#)
- Includes cases and opinions issued by the Court dating back to 1990.
- Full set - \$75; volumes for \$25/each
- New volumes are sent to member courts free of charge
- The [Southwest Intertribal Court of Appeals](#) provides an appellate court forum for tribes located in New Mexico, Arizona, southern Colorado, and west Texas.



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AMERICAN INDIAN LAW CENTER, INC.

AILC serves to build, promote and honor self-sustaining American Indian and Alaska Native communities through education, training and leadership.

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Documents:

- [SWITCA Information \(PDF File\)](#)
- [SWITCA Sample Tribal Resolution \(PDF File\)](#)
- [SWITCA Rules of Appellate Procedure \(PDF File\)](#)

Photo Gallery:

- [SWITCA Fall Quarterly Training 2011](#)
- [SWITCA Quarterly Training 2008](#)

Southwest Intertribal Court of Appeals (SWITCA)

AILC's Southwest Intertribal Court of Appeals (SWITCA) Program provides an appellate court forum for tribes located in New Mexico, Arizona, southern Colorado, and west Texas. Since its inception in 1989, SWITCA has allowed tribal courts to bring cases before a panel of experienced judges to render decisions at the appellate level for those tribes that do not have the financial means or governmental infrastructure to administer a court of appeals for tribal court decisions. Appellate services are available without cost to member tribes. Additionally, SWITCA provides training, technical assistance, legal research, and support services to tribal courts, tribal judges, and tribal court staff in the region in an effort to strengthen tribal and Pueblo court systems and tribal jurisdiction.

Who is Eligible to Join?

Federally recognized Tribes and Pueblos in New Mexico, Arizona, southern Colorado, and west Texas may join the Court to receive impartial appellate review of lower court decisions. SWITCA's jurisdiction is defined by the participating Pueblo and tribal governments. A Tribe may join SWITCA by tribal resolution. Each Tribe defines SWITCA's authority for itself and may create any one of a variety of uses for the Court including:

- an independent court of last resort which exercises the appellate powers of the tribe;
- an independent appellate court which issues advisory opinions, only; or,
- an independent intermediate appellate court from which any party may appeal to a higher court as defined by the joining tribe.

See [sample tribal resolution](#) available online or call our offices for an electronic copy.

Court Administration

- Appellate judges appointed to tribal appellate courts are covered by the judicial immunity of the tribe and exercise only the judicial powers of the appointing tribe.
- SWITCA [Rules of Appellate Procedures](#) can be found online or by calling our offices.
- SWITCA is funded by the BIA
- SWITCA provides services as requested, but does not fund tribal courts directly. Offices are housed at the AILC.

Commercial Resources



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§ 2000e-2. Unlawful employment practices
United States Code Annotated | Title 42. The Public Health and Welfare

Document | Notes of Decisions (9,216) | History (120) | Citing References (62,280) | Context & Analysis (848) | Powered by KeyCite

KeyCite History

Graphical Statute

The graphical statute map includes references to prior texts, presidential messages, congressional records, reports and proposed legislation you may want to review.

Negative Treatment (4)

Investigate the validity of a statute section by viewing cases, session laws, and proposed legislation that may negatively impact the statute.

Versions (1)

Read the text of a statute section as it appeared on a particular effective date.

Legislative History Notes (20)

Review legislative changes affecting a statute section as detailed by West attorney editors or state revisors' offices.

Bill Drafts (0)

Reports and Related Materials (95)

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Pennsylvania, C.A. No. 04-2359 , UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
ember 13, 2004, Decided
Alito, Jr.

. Horn, 00-9005/9006 , UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT , 359 F.3
Decided
Circuit Judge * Samuel A. Alito, Jr., Circuit Judge. ...
Alito, Jr., NYGAARD, J.

ora v. Ashcroft, No. 03-1396 , UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT ,
ary 22, 2004, Argued, February 3, 2004, Filed, RULES OF THE THIRD CIRCUIT COURT OF APPE
PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT

V: Denying alien withholding of removal was not error, as she did not show that upon her forced
of her persecution due to any social status; rather, she would only be targeted because she ha
Alito, Jr.

Royal Oak Enters., No. 03-1494 , UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
ember 4, 2003, Submitted Under Third Circuit LAR 34.1(a), December 29, 2003, Opinion Filed,
MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITE

V: Summary judgment for employer in employee's ADEA lawsuit was proper; at the earliest, the
being told he would have to retire, and the limitations period was not equitably tolled.
Alito, Jr.

es v. Knight, C.A. No. 03-3655 , UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
ded, US Supreme Court certiorari denied by Knight v. United States, 160 L. Ed. 2d 176, 125 S. 4
Alito, Jr.

. Hendricks, No. 02-3225 , UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT , 82 F
bember 15, 2003, Submitted Under Third Circuit LAR 34.1(a), November 13, 2003, Filed, RULE

WestLaw and Lexis Nexis

Versus Law

- Covers 22 tribal courts (21 tribes), with over 2800 opinions. VersusLaw and the [Tribal Court Clearinghouse](#) have a cooperative agreement.
- Receive free access to [VersusLaw](#) Case Law Research in exchange.

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The "Search Query" section contains a breadcrumb trail: [New Search](#) [Saved Searches](#) [Preferences](#) [Library Directory](#) [Search Tips](#) [AdvanceLinks](#) [Circuit Map](#). Below this, it prompts the user to "Please select one of the following to search:" and lists "Library Selections" with links to [All Federal Courts](#), [U.S. Supreme Court](#), [Federal Circuits](#), [Federal Circuits incl/States](#), [Federal District Courts](#), [State Appellate Courts](#), [Foreign Jurisdictions](#), [Tribal Courts](#), [State Statutes](#), [State Admin Regs](#), and [Federal Practice Courts](#). There is also a section for "Other Libraries" with links to [U.S. Code](#) and [Code Federal Regulations](#).

The main search area is titled "Select the Tribal Courts you want to Search." and lists 22 tribal courts with checkboxes: Chitimacha Tribal Court (LA), Colville Confederated Tribes Court of Appeals (WA), Confederated Tribes of Grand Ronde (OR), Coquille Tribal Court (OR), Coushatta Tribal Court (LA), Crow Court of Appeals (MT), Eastern Band of Cherokee Indians (NC), Fort McDowell Yavapai Tribal Court (AZ), Fort Peck Tribal Court - Assiniboine and Sioux Tribes (MT), Hopi Tribal Court (AZ), Hualapai Tribal Nation (AZ), Makah Tribal Court (WA), Mashantucket Pequot (CT), Mohegan Gaming Disputes Court (CT), Mohegan Tribal Court (CT), Navajo Nation Court (AZ), Oneida Appeals Commission (WI), Passamaquoddy Tribal Court (ME), Puyallup Tribal Court of Appeals (WA), Saint Regis Mohawk Tribal Court (NY), Tunica-Biloxi Tribal Court (LA), and Turtle Mountain Tribal Court (ND).

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Tribal Court Clearinghouse



Tribal Court Clearinghouse

- Tribal Courts
- Tribal Laws/Codes
- Tribal Constitutions
- Tribal Court Decisions

Tribal Courts

This page provides general contact information for the justice systems of tribal nations. Also see [Tribal Constitutions](#), [Tribal Codes](#), and [Tribal Case Law](#) for links to tribal justice system materials.

Tribal justice systems are critical components of the tribal government. They are empowered to resolve conflict and controversy. Prior to European contact, native people practiced various forms of meaningful and productive conflict and dispute resolution. Tribal member participation in the debate of issues and in the defense of the alleged was not just allowed, it was expected. Unfortunately, these tribal methods were unfamiliar to the settlers and were often discounted and even discouraged.

Tribes have always had, and continue to retain the sovereignty authority to establish and operate their own tribal justice systems. In 1934, with the enactment of the [Indian Reorganization Act](#) (25 U.S.C.A. § 461, et. seq.), Indian tribes were encouraged to exercise their inherent sovereignty to establish their own justice codes and operate court systems enforcing those laws. The Act authorized tribes to organize and adopt constitutions. However, many of the tribally-created constitutions were boiler-plate templates, requiring Secretary of the Interior approval for many tribal government actions. Despite its flaws, the Act is considered a monumental shift in federal Indian policy, providing a framework for and first-step towards expanding tribal self-government.

Today, tribal justice systems are diverse in concept and character. While some are extensively elaborate, others are just beginning to develop a "Western" judicial system within the context of their individual nations. Some tribes prefer the adversarial process, while others emphasize traditional dispute resolution. Many courts apply large bodies of written or positive law and others apply custom and tradition to address controversy and settle disputes. Tribal courts enforce their own tribal laws, many of which you will find linked below.

Below is a list of known Tribal Courts organized by the court's state location. Links include official Tribal Court websites, Tribal Court directories, official Tribal websites, Tribal Constitutions, Tribal Codes and Laws, and Tribal case law, depending on availability. Also included is a list of operational [CJL Courts](#). Tribes that are located in multiple states are duplicated.

Alabama

Peach Band of Creek Indians
Peach Band of Creek Indians Tribal Court
8811 Jackagings
Annemore, AL 36502
Phone: (251) 368-9136, ext. 2852
Fax: (251) 448-8086
Peach Band of Creek Indians Corporation - Home Code
Peach Band of Creek Indians Tribal Code - Home Code

Alaska

Alaska Tribal Judges Association
1114 Jewell Tribal Court Directory

Akiachak Native Community
Akiachak Tribal Court
Association of Alaska Council Presidents
P.O. Box 70
Akiachak, AK 99551
Phone: (907) 825-4626
Fax: (907) 825-4640

Akiak Native Community
Akiak Tribal Court
P.O. Box 52127
Akiak, AK 99552
Phone: (907) 765-7540
Fax: (907) 765-7512

Alutns Village
Alutns Tribal Court
P.O. Box 70
Alutns, AK 99720

Tribal Law and Policy Institute (TLPI) Links

- TLPI Home
- TLPI Publications
- TLPI Photo/Video
- TLPI Events and Services
- TLPI Webinars
- TLPI Staff
- Request Technical Assistance
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TLPI Websites

- Watkins On Common Ground
- Tribal Healing In Wellness Courts
- Tribal Sex Trafficking Resources
- Tribal Protection Order Resources
- Child Welfare Capacity Building Center for Tribes
- Tribal Child Welfare Resources
- Tribal Legal Studies
- Tribal Law Updates
- Indian Nations Conferences

TLPI Publications Eby Subject

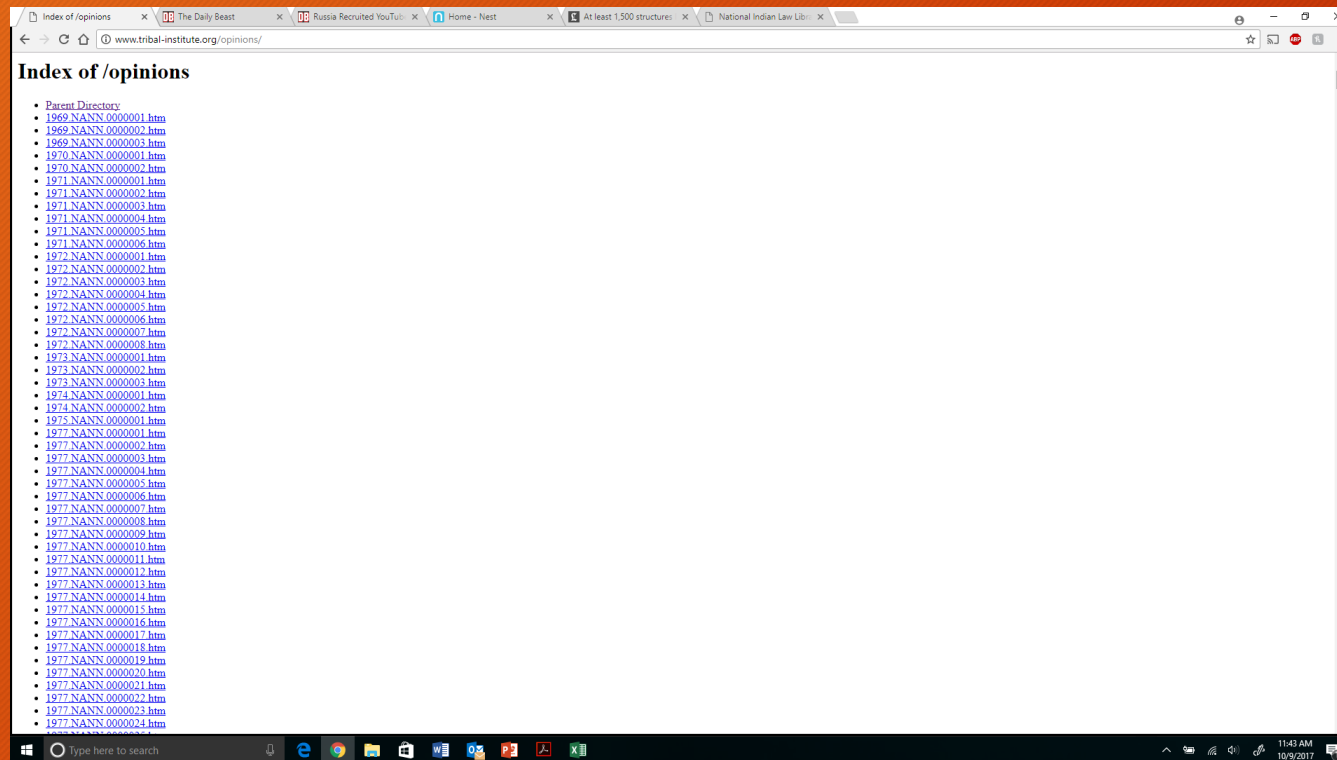
- Tribal Healing In Wellness Courts
- Violence Against Native Women
- Sexual Assault
- Child Abuse and Neglect
- Tribal State Court Collaborations
- Public Law 280
- Justice Justice

TLPI Publications Eby Series

- Legal Code Development Series
- Tribal Legal Studies Textbook Series



www.tribal-institute.org/opinions/



Tribal Legal Code Development Series

[www.home.tlpi.org/
legal-code-
development-series](http://www.home.tlpi.org/legal-code-development-series)

Legal Code Development Series

TLPI is proud to offer the following Legal Code Development series as part of our organization's vision to empower Native nations to create and control their own institutions for the benefit and welfare of all community members.

Please visit our [Projects and Services](#) page for more information on our various grant projects that allow for free technical assistance to Native nations that are creating or revising legal codes. Additionally, we have a [Fee For Service](#) option for projects that are not eligible for free technical assistance under one of our operating grants.



Tribal Laws Against Sexual Assault and Stalking

Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault and Stalking is designed to assist Native nations interested in developing or revising victim-centered laws on sexual assault and stalking. This resource includes sample language and exercise questions designed to guide discussion on what laws will best reflect tribal values. Originally published in 2008, this resource was revised and updated to reflect innovations in tribal law and new federal requirements. (2017)



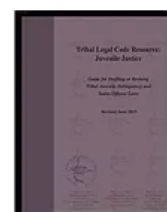
Tribal Civil Dependency and Related Laws

Guide for Drafting or Revising Tribal Civil Dependency and Related Laws is designed to assist Native nations in drafting or revising their civil dependency laws as part of the development or reform of their child welfare system. Topics covered range from incorporating custom and tradition, to child-in-need-of-assistance proceedings to foster care in Native nations. (2017)



Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction

Guide for Drafting or Revising Tribal Laws to Implement TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction is designed to provide guidance for Native



Tribal Juvenile Delinquency and Status Offense Laws

Guide for Drafting or Revising Tribal Juvenile Delinquency and Status Offense Laws is designed to assist Native nations in drafting or revising their juvenile statutes

Resources for Indian Law Research

- Appendix: Tribal Law Collections, in Bonnie Shucha, “*Whatever Tribal Precedent There May Be*”: *The Unavailability of Tribal Law*, 106 LAW LIBRARY JOURNAL 199 (2014).
- Kelly Kunsch, *A Legal Practitioner’s Guide to Indian and Tribal Law Research*, 2 AMERICAN INDIAN L. REV. 484 (2014).
- David Seldon, Monica Martens, “Basic Indian Law Research Tips—Part II: Tribal Law,” Colorado Lawyer and Colorado Bar Association (2007)
- David Seldon and Monica Martens, “Basic Indian Law Research Tips—Part I: Federal Indian Law,” 34 *The Colorado Lawyer* 43 (May 2005).
- Rose Carmen Goldberg, *No Tribal Court Is an Island? Citation Practices of the Tribal Judiciary*, 3 AMERICAN INDIAN L. J. 247 (2014).



What's missing?



Lack of a Meaningful Repository

- Despite immense gains in constitution and code accessibility, tribal case law is still woefully unattainable
- We need a resource to aid in the collection and analysis of tribal common law
- Weary of resources that limit access based on finances, potentially limiting tribal court access to its own cases



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