

AALL NATIVE PEOPLES LAW CAUCUS NEWSLETTER

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Summer 1993

A newsletter for members and friends of the AALL Native Peoples Law Caucus

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Algonquins in New England

This summer some of our members who come to the Boston AALL convention will walk the Freedom Trail and hear stories from park rangers about Paul Revere, John Hancock, and Samuel Adams. Others will visit the African Meetinghouse where Frederick Douglass made his great abolitionist speeches. In 1993, the United Nations' Year for Indigenous People, are our only reminders of New England's Native Americans the trays of artifacts at Harvard's Peabody Museum of Archaeology and Ethnology? Are these people as long forgotten as the meanings of the Indian names of the Boston suburbs heard on the morning traffic reports: Acushnet, Cohasset, Mattapoisett, Nahant, Natick, Neponset Circle, Nantasket Beach, Saugus, Scituate, and Waban?

In the 24 generations which have passed since the Pilgrims came ashore on December 11, 1620, many of New England's Algonquin nations still exist. Seven are now federally recognized tribes. Of these, the Wampanoags of Gay Head are descended from the

Indians who befriended the Pilgrims. Their confederacy under their Great Sachem, Massasoit, extended from near Boston throughout the Cape, the South Shore and included parts of Rhode Island and Connecticut. Another federally recognized tribe, the Mashantucket Pequots who now live near Mystic, Connecticut, are descended from survivors of a massacre committed by the Massachusetts Puritans in 1637. The Narragansett Indians of Rhode Island were once a powerful confederacy rivaling the Wampanoags in strength. They made an alliance with Philip, Massasoit's youngest son. In King Philip's War, 1675-1676, the two confederacies attempted to drive the English from New England. The Houlton Band of Maliseet, the Penobscot Nation, and the Passamaquoddy Tribe of Maine fought for the Americans during the Revolution and are credited with saving Maine for the U.S.

Other non-federally recognized tribes in the region are the Golden Hill Paugussett, the Mohegans, the Paucatuck Pequots, the Association of Aroostook Indians, the Mashpee Wampanoags, the Coastal Schaghticoke Indian Association, the Nipmuc Tribal Council, and the St. Francis/Sokoki Band of Abenakis.

Native Americans can document their presence in New England back 9000 years. Many have traditions of

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Please address comments about the caucus to:

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Please address items for the newsletter to:

Molly McCluer
University of Washington Law Library
1100 N.E. Campus Parkway
Seattle, WA 98105
(206) 685-9459
mclcluer@carson.u.washington.edu



thanks! to Amy Hamblin for document production

ENVIRONMENTAL CONFERENCE at University of Oregon

Several hundred environmental activists, Native American representatives, educators, lawyers, students and other interested parties from all over the world gathered at the campus of the University of Oregon in Eugene from March 4 through 7 for the eleventh annual Public Interest Environmental Conference. The title of this year's conference, "Indigenous Peoples: Sacred Roots, Sacred Ties", underscored its focus on the relationship between native peoples and the environmental movement. Indigenous leaders from Guatemala, the Cree Nation, Australia, Peru, San Carlos Apache Nation, Sri Lanka, Philippines, Mississippi Band of Choctaws, Chile, and the Shawnee-Delaware tribes, and too many others to list shared their visions and experiences in fighting for native and environmental rights. Discussion groups paid particular attention to spiritual aspects of environmental problems, and the distinctive contribution that Native American spirituality makes to the consideration of these problems. Conference participants also grappled with the considerable legal barriers to the survival of native peoples and the protection of the environment. The highlight of the conference was a keynote address by Milliani B. Trask, Kai'aina, Ka Lahui Hawaii, who described the exciting efforts of Native Hawaiians to attain independence and to protect their beautiful homeland from the invasion of tourist dollars.

The conference also served as an international meeting of people interested in EcoNet [see v. 7, #2 of this newsletter], a world-wide electronic conference of environmentally concerned scholars and activists, and E-Law, the group that attempts to give a modest amount of structure to this eclectic amalgamation of people and ideas.

For further information on EcoNet, E-Law, this or future conferences contact Professor John Bonine, Co-Director of Western Environmental Law Clinic, University of Oregon School of Law (503)346-3828

Submitted by: Martin Loesch, attorney;
Karr, Tuttle, Campbell; Seattle

International Year of Indigenous People

The United Nations' celebration of indigenous peoples, heralded in our last issue, has had a somewhat spotty record so far. The e-mail list Native-L has offered the following items in recent weeks:

- On May 3, Leavenworth prison officials ordered Leonard Peltier into punitive segregation. He had, on advice from his attorney, refused to comply with a new sign-in plan called "Monitoring High Escape Risk Prisoners Program", which would require him to check in with officials every two hours. Despite prison reports describing him as maintaining "above average adjustment", attorneys claim his signature could be used against him at parole or clemency hearings. Compliance with the program would also interfere with his participation in sweat lodge rituals. Peltier is currently awaiting a decision from the Eighth Circuit from a 1992 appeal on his original conviction. Meanwhile, FBI director William Sessions has defended lobbying by Minneapolis agent Nicholas O'Hara, in which O'Hara makes statements contradicted by the Department of Justice, and which contain negative character assessments of Peltier, such as are forbidden by DOJ guidelines.

- On May 13, the International Council of Indian Treaties requested that a book written and published by French author Gerard de Villiers, entitled Kill Rigoberta Menchu, be removed from bookstands at the U.N. Geneva headquarters. Mario Ibarra of the ICIT described the book as insulting to Menchu and demeaning to her efforts, and stated that U.N. officials and Menchu are consulting with lawyers as to what action to take.

- On May 17, Clifford Dann was sentenced to 9 months in prison and a \$5000 fine for his conviction May 3 for assaulting a federal officer. Agents from the Bureau of Land Management had entered Newa Segobia, land claimed by the Western Shoshone Nation under the 1863 Treaty of Ruby Valley. In a military-style invasion, they confiscated 200 horses belonging to Dann and his family. Dann, age 59, doused himself with gasoline and threatened to set himself on fire; he subsequently refused to participate in his trial, claiming lack of federal jurisdiction.

And yet,

(Continued on next page)

IOWA INDIAN DEFENSE NETWORK

The Iowa Chapter of the Native American Law Student Association and the University of Iowa College of Law are pleased to announce the initiation of the IOWA INDIAN DEFENSE NETWORK (IIDN), a free computer network bulletin board service dedicated to the exchange of information, views, data, and material on American Indian Law and Indian affairs. The data line telephone number for IIDN is: (310) 335-9838. [Ed.: IIDN is not available on Internet, because of incompatible protocols.]

The system operator (SYSOP) for IIDN is Robert N. Clinton. If you have trouble accessing IIDN after carefully reading and following the instructions or if you have other questions, contact him at (319) 335-9032 (voice) OR (319) 335-9019 (fax).

* After the Dann arrest, more than 28 protest demonstrations were held throughout the world, organized by the Western Shoshone National Council.

* JoAnn Tall, a Lakota woman from Pine Ridge, was the North American winner of the 1993 Goldman Environmental Prize of \$60,000. Despite crippling arthritis, Tall, the mother of eight children, has an astonishingly long and varied record of community activism, most recently in fighting the location of toxic waste dumps on or near reservations.

* Ada Deer, a Menominee from the faculty of the University of Madison-Wisconsin, has been nominated to become the Assistant Secretary of the Interior for Indian Affairs. Deer led the fight in the 1970's to end termination policies and restore tribal status to the Menominees. And the National Institute of Health recently created an Office of Alternative Medicine, choosing Dr. Joe Jacobs, Mohawk, as the first Director of that office.

See also "Under the Wire", p. 4.



The first world map, from the Newberry Library, reproduced in *Marvelous Possessions: the Wonder of the New World*, by Stephen Greenblatt (University of Chicago Press, 1991).

NATIVEPROFS-L

NATIVEPROFS-L is a listserv for and about the American Indian and Alaska Native Professoriate. We created this listserv in response to the desire for continual communication among native professors expressed at the annual conference for the American Indian and Alaska Native Professoriate in 1993, sponsored by Arizona State University, at Tempe, Arizona. Persons using this listserv will be members of this organization, or be sponsored by a member of this organization. This listserv is not intended for use by the general public.

If you wish to subscribe to NATIVEPROFS-L, please contact Michael Wilson at idoj@crux1.cit.cornell.edu

[From Native-L, from the Usenet "soc.culture.native" newsgroup]

SUPPORT FOR NATIVE SOVEREIGNTY

For an information packet on the Navajo - Hopi - U. S. land dispute at Big Mountain, you can send \$5 to: Support for Native Sovereignty, P.O. Box 2104, Seattle, WA 98111. Support for Native Sovereignty also publishes the quarterly newsletter *On Indian Land* for \$8/yr. Other information packets available include the following titles: the Western Shoshone, Sacred Sites, American Indian Religious Freedom, and "In Total Resistance".

For extended reading on the Big Mountain issue, see *The Wind Won't Know Me*, by Emily Benedek, Knopf, 1992.

INTERNATIONAL TRADE

From the Spring 1993 issue of *Pacific Economic Review*, we note two brief articles on Native American-Japanese trade relations. "Native Americans Focus on Japan" (pp. 6-7) describes a visit by a delegation of eight tribes, sponsored by the American Indian Trade Development Council (AITDC), to the Makuhari Messe Japan Food Exposition March 8-13. It stresses the delight felt by participants from both cultures in discovering how strong the cultural similarities are, and notes that a letter of intent resulted between the delegation and one of Japan's largest fishing companies.

Deni Leonard, director of the Aboriginal Public Policy Institute in San Francisco, has written an article ("Native Americans Move Toward Coop in Timber Trade", p. 17) in that same issue, describing the AITDC's effort to establish aggregate marketing strategies among the tribes. He notes, for instance, that the Warm Springs, Yakima, Colville, and Hoopa tribes together own more forest resources than does Weyerhaeuser. The AITDC is also working to help tribes use collective strength when marketing products and services internationally, in tourism, fishing, agricultural and energy industries as well as in timber.

(Neither article describes the AITDC; neither the AITDC nor the Aboriginal Public Policy Institute is listed in Gale's 1993 *Native Americans Information Directory*, or in the *Encyclopedia of Associations*.)

"Look over your shoulder". Leon Shenandoah, Presiding Moderator of the Grand Council of the Iroquois, told us. "Look behind you. See your sons and your daughters. They are your future. Look farther, and see your sons' and your daughters' children and their children's children even unto the Seventh Generation. That's the way we were taught. Think about it: you yourself are a seventh Generation!"

From: Arden, Harvey, and Wall, Steve. *Wisdomkeepers: Meetings with Native American Spiritual Elders*. Hillsboro, Oreg.: Beyond Words Publishing, n.d. at 120.

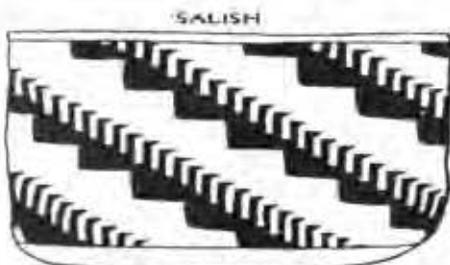
SAMI

(The following article is condensed from a Native-L posting 5/3/93, and from an externship report by Berrie Martinis.)

Norway, a civil law country, is characterized by a largely homogeneous population, a centralized system of government, and a popular socialist philosophy. The indigenous people of Norway, Sweden, Finland and Russia, often called Lapps, are accurately called the Sami. Berrie Martinis, a 2L student at the University of Washington Law School, designed an academic externship that sent her to Norway for the fall quarter. She learned about the Norwegian legal system from the inside as she worked with relatives who are practitioners there, and attended the Sami National Day celebration in Karasjok, the Sami capitol and home of the Sami parliament.

In 1987, the Norwegian national assembly (the Stortinget) introduced a bill designed to provide the Sami with their own popular assembly. The assembly's purpose was to help the Sami to develop their own language and culture, and to assist with (advise in) cases that exclusively involve the Sami people. In 1989, after a general election among the Norwegian Sami, King Olav opened the new assembly, called the Samedikki. It is a member of the Nordic Lapps Council, consisting of Sami representatives from the four countries named above.

Two-thirds of all Sami live in Norway. Political uprisings there in the 1950's helped to mobilize ethnic awareness, and Norwegian Samis today are generally better educated and more politically active than Sami in other countries. The question of whether the Sami should ultimately constitute a separate nation is politically sensitive, and they themselves are divided on the issue.



Under the Wire

• The United Nations' World Conference on Human Rights convened in Vienna June 14 under a cloud of controversy caused by its decision to support China's request not to invite the Dalai Lama, by a lack of agreement on its short working document, and by "obstructionist tactics" by China, Indonesia, India, Pakistan, Syria, Yemen and Iran. (APC, an international network, allowed us to teleet in during the conference for related documents.)

The Ottawa Citizen, 6/13/93

• Speaking to half a million people in Seville, Pope John Paul defended the work of early Spanish missionaries in the New World by saying they were driven by religious zeal. The pope's remarks were made in closing a church congress on how best to spread the gospel 500 years after those efforts, and prior to his visiting several towns connected with Columbus' voyage.

The Reuter Library Report, 6/13/93

• A conference in Russia is grappling with constitutional issues, including demands for sovereignty from 21 ethnic republics. Yeltsin's proposal offers half the seats in the parliament to these 21, and the other half to 68 geographical republics. That proposal is strongly opposed by the vice prime minister among others.

NPR Weekend Edition, 6/13/93

• Now making the rounds in arts theatres is Manufacturing Consent, a documentary on Noam Chomsky and his work which should interest anyone working in the information industry. A significant portion of the documentary is devoted to information on East Timor. Chomsky also refers to Native American legal history to make a point about corporate use of resources.

Call for Papers

ETHNICITY: GLOBAL PERSPECTIVES

National Association for Ethnic Studies, 1994 Annual Conference, Kansas City, MO

The National Association for Ethnic Studies, meeting concurrently with the Central States Anthropological Society, invites interested persons to present papers, panels, or media productions on the national and international implications of ethnicity. Proposals from all disciplines and areas of enquiry are welcome: arts, humanities, social and behavioral sciences, natural sciences, education, public policy, law, and politics.

The conference will create a forum for creative interaction on such issues as migration, immigration, the crossing of geographic and cultural borders, the development of ethnic identity, the establishment of ethnic boundaries and the resolution of ethnic conflict. Abstracts will be published as part of the NAES conference proceedings. Abstracts and proposals are due October 1, 1993.

To submit an abstract for consideration, request information from:

Professor Otis L. Scott, Director, Ethnic Studies Center
California State University
Sacramento, CA 95819
916-278-6645 FAX 916-278-5787
e-mail: SCOTT@CCVAX.CCS.CSUS.EDU

For all other information about the conference, contact:

Prof. Harriet J. Ottenheimer, Director
American Ethnic Studies Program, Leasure Hall
Kansas State University, Manhattan, KS 66506
913-532-6934 FAX 913-532-6978
e-mail: mahafan@ksuvm.ksu.edu

AMERICAN INDIAN RELIGIOUS FREEDOM ACT

Efforts to amend the American Indian Religious Freedom Act (AIRFA) are underway. Although a bill has not yet been introduced, Senator Daniel Inouye of Hawaii, together with Senator Ben Nighthorse Campbell of Colorado and the American Indian Religious Freedom Coalition, are meeting with tribal leaders, government agencies, and committees to draft comprehensive amendments. The current AIRFA is a short statute that professes to protect the Native Americans' "inherent right of freedom to believe, express, and exercise...[their] traditional religions." According to AIRFA's original sponsors and supporters, the statute was intended to offer substantive rights and protection for Native American religious practices and sites. AIRFA's potential, however, has never been realized. Its implementation was hampered by resistance from federal agencies and several United States Supreme Court decisions.

The proposed amendments to AIRFA will address at least three major concerns. Protection for and access to Native American sacred sites located on government and inter-tribal lands are major components of the proposed bill. Another goal of the proposed legislation is reinstatement of the compelling state interest test for Native American First Amendment free exercise of religion claims. The compelling interest test was struck down in *Oregon v. Smith*, a 1990 Supreme Court decision that received considerable public criticism. The revised AIRFA would also ensure protection for Native American religious practices.



At present there are at least sixty to seventy sacred sites in jeopardy within the United States. According to Russell Means, a Native American activist and former leader of the American Indian Movement, sacred sites are the basic foundation of traditional Native American culture and religion. Means estimates that there are ten times as many Native Americans now as there were in 1890, yet only about forty thousand, or a fifth as many, still practice their traditions. According to Means, "[w]e might speak our language, we might look like Indians and sound like Indians, but we won't be Indians" in a world without sacred land.

The 1993 American Indian Religious Freedom Act hopes to secure for native peoples the future of their traditional religions. Besides designating lands for protection that are sacred to tribes and tribal leaders, the Act also guarantees to Native Americans the right to practice traditional religions, and the right of access to necessary religious natural resources. The traditional ceremonial use of peyote would be protected from state and federal prohibitions. However, the Act may allow for the reasonable regulation of persons who import,

cultivate, harvest, or distribute peyote. The religious use of eagle feathers and other animals and plants regulated by the government would be made more widely available to Native Americans without compromising their protected status.

Other proposed provisions of the Act will seek to ensure the religious rights of Native American prisoners. Currently, Native American prisoners have less freedom to practice their traditional religious rites and less access to their spiritual leaders than prisoners who practice Judeo-Christian religions. For instance, John Funmaker, a Native American spiritual leader, reports that he is denied the access granted to other religious leaders within the prison system. While Christian leaders are allowed to visit prisoners every Sunday, he is only granted one day a month to visit Native American prisoners. Other Native American spiritual leaders recount that Native American prisoners are not allowed to keep sacred symbols within their cells even though they do not jeopardize prison security in any way. Eagle feathers are confiscated from Native American prisoners. Yet other prisoners are allowed to keep bibles within their cells. The proposed bill will try to address these concerns. There will likely be an exemption, however, for practices that would present problems in a prison atmosphere, such as the religious use of peyote by Native American prisoners.

The proposed bill requires that sacred sites and religious practices be kept confidential by government employees privy to such information. However, concerns have been raised by the Pueblo Tribes who feel that the proposed bill is meaningless for them because they are unable to provide any outsider with a list of sacred sites. Senator Inouye and other leaders are seeking ways to address the Pueblos' concerns.

Perhaps most importantly, the new American Indian Religious Freedom Act would provide Native Americans with a cause of action against individuals or agencies who fail to comply with the Act. For instance, criminal sanctions could be imposed against individuals who damage a known Native American religious site. A

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PROGRAM CHANGE

In our last issue, we noted that the Caucus' program proposal for this year's convention was "The Forgotten Legacy: Native American Contributions to the U.S. Constitution and the Bill of Rights". The Education Committee initially approved the program, but later felt compelled to drop it for lack of space. We hope to revive the proposal next year; in the meantime, please note that Caucus member deana harragarra waters will be participating in a panel Wednesday afternoon from 1:30-3:00 p.m. (I-5, "Lawyers Who Care: Giving Them the Information They Need").

successful litigant would be entitled to attorneys' fees and associated costs. This provision would give Native Americans an important enforcement tool. It would also remedy the United States Supreme Court's interpretation of the current AIRFA which made the statute a mere policy statement without a cause of action.

The bill's introduction into Congress has been delayed several times. New hearings within the Senate Committee on Indian Affairs are scheduled for late June of this year. While Senator Inouye has in previous terms fought for amendments to AIRFA, this year's coalition which is comprised of at least fifty Native American, religious, and environmental groups, may garner more support in the House and Senate. The Clinton administration's interest in Native American affairs may also help secure support for the bill's passage. Because of the imminent destruction of many Native American sacred sites, it appears that a crucial juncture has been reached that may determine the future of many tribal religions. The American Indian Religious Freedom Act of 1993 offers the first comprehensive solution to ongoing conflicts between the federal government and tribal religious interests. The viability of many tribes' religious well-being depends upon the success of legislative protection for their sacred sites and religious freedom.

Submitted by: Mary Skenandore, 2L,
University of Washington Law School

Ainu

One of the organizers of the Nibutani Forum '93, a conference on the Ainu people of Japan, posted a notice recently in which she stated "one of the reasons why people out there seem indifferent to the topic is a lack of knowledge about the Ainu." She goes on to tell a familiar story of migration, invasion, exploitation, rebellion, legal maneuvers with respect to land, governmental attempts to force assimilation, diaspora, and social and economic disintegration. Although the Japanese government declines to recognize the Ainu, the United Nations does, and the Suzuki Foundation is underwriting the Ainu's first international conference, to be held August 19-21 in Hokkaido, northern Japan. The address is Nitobe Forum '93 Organizing Committee / 31-3 Nibutani, Biratori / Sarugun, Hokkaido / Japan 055-01. Phone 011-81-1457-2-2089.

Although her description of the Ainu is too long to reproduce here, she notes that it was taken from Chikkap Michiko's book Single Race Nation Theory.

Errata: From our last issue (v.1, #2, p.3, col.1, last paragraph), instructions for subscribing to the e-mail list Native-L: the word "listserve" should be spelled listserv, and the Internet address should read:

listserv@tamvm1.tamu.edu

Bitnet is: listserv@tamvm1.bitnet



AIRFA VIDEOS

Three new video programs concerning the 1993 amendment to the **American Indian Religious Freedom Act** are available from Kifaru Productions, 1550 California Street, Suite 275, San Francisco, CA 94109. (415-381-6560; fax 415-381-6246). They are *The Peyote Road*, a feature-length documentary exploring the use of cactus peyote by North American indigenous peoples (\$125, 1 hour); *Understanding the American Indian Religious Freedom Act*, which concerns protection of the use of sacred sites, eagle feathers, peyote and prisoner's rights (\$19, 15 minutes); and *Traditional Use of Peyote*, a summary of the Native American Church crisis (\$19, 15 minutes).

LANGUAGE AND CULTURE

CAUCUS is a tailorable conferencing package which offers a user a choice of different languages. American Indian Telecommunications is a non-profit group dedicated to promoting systems which support cultural diversity. For information on either, please write to:

George D. Baldwin, Chair
American Indian Telecommunications
P.O. Box 7654
Rapid City, South Dakota 57709
Voice/computer 605-865-4422,
Dakota BBS 605-341-4552 8N1

Reference Books

Several good reference books are available in the field of native peoples' law. One is Gale's Native Americans Information Directory, edited by Julia C. Furtaw (1993). In Gale's trademark clarity of organization and display, its five sections include American Indians, Alaska Natives (Indians, Eskimos, Aleuts), Native Hawaiians, Aboriginal Canadians (Indians, Inuits, Metis), and general resources. Each of the five sections is organized symmetrically, with subsections on, for instance, tribal communities, national organizations, library collections, publishers and videos.

Also new this year is the sixth edition of Reference Encyclopedia of the American Indian, edited by Barry Klein for Todd Publications. It covers much of the same type of material, and includes bibliographies and biographies. Other reference titles, intended for a more general

audience, include Julian Burger's The Gaia Atlas of First Peoples: A Future for the Indigenous World (Doubleday, 1990), a colorful primer of issues and identities; and Carl Waldman's Atlas of the North American Indian (Facts on File, 1985). The latter condenses a great deal of historical detail with detached yet sensitive commentary, and includes good maps. See also the December 1992 issue of Wilson Library Bulletin, with five feature articles on Native American library services.

In our next issue, we hope to have an article on reference resources available through the Native American Rights Fund's Law Library in Boulder.

LIBRARY SUBJECT HEADINGS

An Australian librarian wrote recently to the net asking to survey examples of ways in which subject headings marginalize indigenous peoples or minorities (such as "black-on-black crime"). Lisa Mitten, a social sciences bibliographer at U. Pittsburgh and knowledgeable netter, referred him to Sand Berman of the Hennepin County Library in Minnetonka, Minnesota, who she says has devoted his professional life to lobbying LC on this topic. Another respondent suggested contacting the Southwest Museum in Los Angeles, noting that they had recently received a major grant to study the topic.

AALL Members Help to Create National Library Policy for Native Americans

The U.S. National Commission on Libraries and Information Science (NCLIS) has completed a three year study which focuses on the informational needs, resources, and services of Native American tribal peoples. Our AALL law library community is elated that four of our members directly had a hand in the creation of that study which has become a well-discussed national blueprint.

Robin Kickingbird (Kiowa Potawatomi) was an interview-contributor to the study's "Strategic Plan for the Development of Library and Information Services Americans." **deana harragarra waters** (Kiowa-Otoe-Missouri), Law Librarian and Attorney, Native American Rights Fund, Boulder, Colorado, **Joan W. Howland**, Director of the University of Minnesota Law Library, and **Anita L. Morse**, Graduate School of Library Studies, University of Michigan, also provided essential information and advice on discussions which led to the study's findings. These women were among the many prominent policy officials, legislators, tribal leaders, private agencies, and individual and state or national library organizations which joined to formulate the study.

The result is the exhaustive three-inch thick report entitled Pathways to Excellence: A Report on Improving Library and Information Services for Native American Peoples (ISBN 0-16-03158-4). That report concluded a series of regional hearings, interviews, and site visits to reserva-

tions. The first part of the report consists of findings and challenges. The second part outlines a strategic, long-range plan of action meant to assist Native American leaders and tribal communities.

The findings urge that the library and information needs of Native Americans be adequately met. There is an urgent national need to record the heritage, traditions, achievements and wisdom of Native American cultures. The tribal wisdom and indigenous knowledge of American Indian people face extinction if these challenges are not addressed. The Commission noted that the legacy of Native Americans is to pass knowledge through a chain of oral tradition. "Wisdom Keepers" are revered as living libraries who maintain traditional knowledge, customs and histories. This knowledge base includes law, government, folklore, legend and tribal history.

Pathways to Excellence is a document for use by policy makers, legislators, state library agencies and other decision makers at the Federal, State and local community levels to improve the library and information services provided to Native American populations. Improved access to a broad array of information services, technologies and resources is essential to ensure effective educational development, and to enhance literacy. Library use can increase productivity, to preserve the Native American cultural heritage, to provide a basis for economic viability, to facilitate full and meaningful employment and to support tribal self-determination, stability and sovereignty.

According to the report, ten major tasks will improve library and information services for Native American Peoples:

1. Develop consistent funding sources required to support improved Native American Library and Information Services.
2. Strengthen library and information services training and technical assistance to Native American communities.
3. Develop programs to increase tribal library material holdings and to develop relevant collections in all formats.
4. Improve access and strengthen cooperative activities.
5. Develop state and local partnerships.
6. Establish a general federal policy and responsibilities.

(Continued on next page)

CAUCUS MEETING

The Native Peoples Law Caucus will meet Sunday, July 11, 5:00 - 6:30 pm (shortly before the Opening Reception). Look for the location in your registration materials, and we'll look for you there!



7. Identify model programs for Native American libraries and information services.
8. Develop museum and archival services for preserving Native American culture.
9. Encourage adult and family literacy programs and basic job skills training, and strengthen tribal community colleges and libraries.
10. Encourage application of newer information network technologies.

The Pathways to Excellence: Summary Report is available from the U.S. GPO Sale Order desk (phone (301) 953-7974) at \$3.50. The order number is 040-000-00581. The complete Pathways to Excellence: A Report on Improving Library and Information Services for Native American Peoples costs \$25.00, order no. 040-000-00587-1.

Submitted by Maria Protti

Resolutions Affecting Native Americans from the 1991 White Conference On Library and Information Services

(A Partial Listing of Resolutions of Interest to our AALL Native Peoples Law Caucus)
Adopted Unanimously by the Delegates:

1. That the National Museum of the American Indian Act be amended to provide for establishment of a National Native American Library Center within the Museum of the American Indian to:
 - a. Implement the long-range strategic plan for development of library and information services to Native Americans as continually modified, monitored, and reevaluated by the Tribal governments operating under it.
 - b. Serve as a stimulus and focal point for the preservation, production, collection, and distribution of materials of interest to Native American libraries.
2. That the Depository Library Program Act be amended to permit each Tribal government or Reservation to designate one library on or near a Reservation as a depository library for publications of the U.S. Government.
3. That the High-Performance Computing Act of 1990 be amended to include Native American involvement in a coordinated Federal research program to ensure continued U.S. leadership in high-performance computing.
4. That libraries be asked to implement policies which expressly support Tribal sovereignty.
5. That all States in which Reservations are located and/or have significant Native American populations be urged to promptly implement similar legislation.
6. That the National Congress of American Indians membership issue a policy statement supporting a priority for the role and needs of our libraries.
7. That Congress establish a scholarship fellowship program for which Native Americans and organizations are eligible to enable the Native American entities to negotiate

with schools of library science to provide specific academic programs to meet the special needs of Native American libraries and information centers.

Other Recommendations and Petitions:

1. That the President and the Congress establish a study commission to recommend policies and programs to improve access to library and information services for Native Americans.
2. That, recognizing its special relationship to Native American peoples, the Federal government immediately begin a comprehensive program to collect, preserve, and make available documents relating to Native American history, emphasizing equitable access, including electronic formats.
3. That libraries have collection development policies which provide universal access to all forms of information and materials meeting the diverse needs of users, including but not limited to, language and cultural background differences.
4. That the President and the Congress enact legislation to authorize and fund a program which provides financial and technical assistance for library and information services for multicultural, multilingual populations.
5. That funding agencies in the public and private sectors increase their support of fellowships and scholarships for minority library students and library and information progressions and, along with library schools, assume responsibility for the recruitment of culturally-diverse populations into the library and information service professions.

Compiled by Maria Protti

ALGONQUINS

(Continued from page 1)

encountering other Europeans before the arrival of the Pilgrims. One Italian scholar has theorized that the Etruscans carried on extensive commerce with the New England Indians from 1500 B.C. to 474 B.C.¹ Barry Fell, a Harvard marine biologist and expert on epigraphy, has concluded from hieroglyphics in Massachusetts, New Hampshire and Maine that there were Egyptians, Libyans, and Celtic Iberians trading in America at least 400 years before Christ.² Other, perhaps better known, early visitors to New England were St. Brendan in 515 A.D., the Vikings around 1000 A.D., and Madoc, Prince of Wales in the 12th century. In the post-Columbus era, John and Sebastian Cabot are believed to be the first explorers to have seen the New England coast, and Verrazano in 1524 is considered the first to have come ashore.³

Linguists have found hundreds of Egyptian words and also Celtic words in the dialects of Northeastern Algonquin; when the first Christian missionaries encountered the Micmacs in Canada and other U.S. Algonquins, they found that the Indians were using hieroglyphics. These hieroglyphics have now been identified as being the same as ones used by Libyan mariners in New England 1000 years before.⁴

These early encounters, if authentic, are significant in that they make a legal fiction of the discovery doctrine upon which the European monarchs (and later U.S. Chief Justice John Marshall) relied to justify their New World claims.

The first treaty signed in Massachusetts was the March 1621 treaty between Massasoit and Gov. John Carver of the Pilgrims. This was one of what would eventually be hundreds of treaties concluded between the states and the Indians in the

17th and 18th centuries. By 1871, when it declared treaty-making with Indians illegal, the U.S. federal government would conclude 311 treaties with the Indian nations.

Unlike the U.S. foreign affairs record with other nations where abrogation of treaties has occurred only in a few instances, every treaty with Indian nations has been abrogated to some extent by Congress.⁵ Treaties made with the New England nations were no exception.

By the 1970's the impoverished New England tribes began to seek redress in the courts for treaty violations. The most spectacular land claim was that of the Passamaquoddy Tribe and the Penobscot Nation for 12.5 million acres (58% of the State of Maine) and \$25 billion in damages. At issue were treaties made with Massachusetts before the 1819 creation of Maine in violation of the Indian Non-intercourse Act of 1790, 1 Stat. 137. In 1977 the U.S. Dept. of Interior and the Dept. of Justice agreed to press the Indians' claim in court unless a settlement could be negotiated. The state of Maine refused to negotiate, and its Congressional delegation introduced bills in the House and Senate which would retroactively ratify the illegal treaties. Fearing congressional action, the two tribes then began negotiations with the federal government which culminated after 5 years of secret negotiations in the Maine Indian Claims Settlement Act of 1980, 25 U.S.C. secs. 1721-1735 (1988). By this statute and by Maine legislation, the Penobscot, Passamaquoddy, and Maliseets were granted an option to buy 305,500 acres, and a \$27 million trust fund was created for them.

The Maine settlement has been criticized because it granted the Indians only a small percentage of the claimed land while largely eliminating the Indian nations' sovereign immunity. It also expanded the state's tax and environmental jurisdiction over the Indians. This statute may even preclude the Maine tribes from operating casinos under the Indian Regulatory Gaming Act of 1988, 25 U.S.C. secs. 2701 et. seq. (1988).

The Penobscot, Passamaquoddy, Maliseet, Micmac, and Abenaki were once members of the Wabanaki confederacy with homelands stretching from Nova Scotia to Vermont. By U.S. statute, Indian claims can only be brought by Indians residing within the United States. Consequently, the Maliseets of Canada could not share in the Maine settlement affecting their ancestral lands.

The Abenakis of Vermont are in a similarly disadvantaged position. Not being a U.S. federally recognized tribe, they are entitled to no federal benefits here, and under Canadian law, they cannot share in the benefits given to Abenakis in Canada, a recognized band there.

In 1976 the Wampanoags of Mashpee lost their suit to recover 11,000 acres of their ancestral land. At issue was whether they were in fact a tribe. The all-white jury was instructed by the trial judge that to be a tribe, the Mashpee had to demonstrate a cohesive system of government. The Mashpees had long governed themselves in their traditional manner and had only oral history of their decisions. This lack of written legal documentation caused the jury to find that they were not a tribe in 1790, 1869, 1870, and 1976. Consequently, their lawsuit was dismissed.⁶

The Mashantucket Pequots in Connecticut were more successful in proving their tribal status. The tribe of approximately 150 members used official records, land deeds, proclamations, and archaeological collections to gain federal recognition and substantial monetary reparations in 1983. Under the leadership of their tribal chairman and over the opposition of Gov. Lowell P. Weicker, Jr., they were able to open the Foxwoods High Stakes Bingo and Casino last year. Since its opening, Foxwoods casino has become the most successful casino in the world, taking in \$1.5 million a day.

The Pequots' success has not gone unnoticed. The 80 member Golden Hill Paugussetts who own one quarter acre of their original reservation are suing to recover ancestral lands in Connecticut's Fairfield and New Haven counties. Their lawsuit has wrecked havoc on the real estate market in these counties. They also are seeking federal recognition as a tribe, and if it is obtained, hope to open a casino. The Narragansetts in Rhode Island, the Wampanoags of Gay Head on Martha's Vineyard,

the Ramapough Tribe in New Jersey, and the Oneida Tribe in New York are currently negotiating to open casinos.

Challenges to Indian casino gambling have come from several sectors. Fearing the increasing competition from the Indian casinos, Donald Trump (who owns 3 casinos in Atlantic City) brought suit in federal district court in Newark, New Jersey on April 30th. His lawsuit alleges that the Indian Gaming Regulatory Act of 1988 forces states to permit federally recognized tribes to set up casinos when these gambling activities are prohibited by the states; that it deprives the states of their sovereign rights to tax, regulate and police gambling; that the Act discriminates in favor of a small group of people.

Almost a month later, on May 26th, several U.S. senators and congressmen introduced bills banning future full-scale Indian casinos unless the states where future casinos would be built allowed casinos as commercial for-profit enterprises. They have expressed their concerns over the infiltration of the casinos by organized crime. The Internal Revenue Service is also currently seeking a ruling whether the Pequot Tribe should pay federal taxes on its business earnings.

Supporters of the Indian casinos argue that the casinos now operating in 23 states have brought \$6 billion in revenue each year to once-destitute tribes. The Pequots, who in 1973 had only 2 elderly ladies living on their 214 acre reservation, have used their income for scholarships, day care centers, health care, housing, archaeology projects, seminars, and publications on Native American history.

They recently had their reservation, which was established in 1667 and is the oldest reservation in the U.S., declared a National Historic Landmark. With the recent purchase of a 1200-acre scout camp adjacent to their reservation, the reservation is now close to 3000 acres. The growth of their reservation has caused concern because the property will now be off the tax rolls. A recent editorial in the Hartford Courant spoke only somewhat tongue-in-cheek about the domino theory and the Pequots buying a swath of land all the way from Ledyard to Hartford.⁷

Casinos are not universally favored by Native Americans. In mid-May, the Grand Council of Peace Chiefs of the Iroquois announced its opposition to casino gambling on reservations.⁸ This action is significant, because the 50-member council acts only by consensus. The Council has stated that it fears compacts negotiated secretly with state governments, corruption among Indian leaders, and misappropriation of gambling profits.

The Great Seal of Massachusetts depicts an Indian holding a bow and arrow with a sword over his head. The Latin motto on the seal reads "By the sword, liberty and peace."⁹ Many Indians find this offensive, and for years, the Massachusetts Commission on Indian Affairs has been trying to get the seal redesigned. As Massachusetts and New England Indian leaders attempt to deal with increasingly difficult issues, many symbolic swords still hang over their peoples' futures.

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FOOTNOTES

¹ Bonfanti, Leo. *Biographies and Legends of the New England Indians*. Wakefield, Mass.: Pride Publications, 1968 at 12.

² Fleming, Thomas. *Who Really Discovered America*. Reader's Digest, February 1977 at 72.

³ Bonfanti, *supra* at 13.

⁴ Fleming, *supra* at 73.

⁵ Johnson, Ralph W. *Fragile Gains: Two Centuries of Canadian and United States Policy Toward Indians*. 66 *Washington Law Review* 643, at 685 n. 237 (1991).

⁶ *Mashpee Tribe v. Town of Mashpee*, 447 F. Supp. 940 (D. Mass. 1978), *aff'd sub. nom. Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575 (1st Cir.), *cert. denied* 444 U.S. 866 (1979).

⁷ Horgan, Denis. *Pequots with Gambling Riches Could Buy Up State*. *Hartford Courant*, May 9, 1993, A Edition.

⁸ Pilazzetti, Agnes. *Indians Decry Gambling on Reservations*. Assembly Panel Hears Plea from Leaders. *The Buffalo News*, May 14, 1993, First Edition.

⁹ Denison, D.C. Interview with Sinw Turtle. *Boston Globe Magazine*, May 10, 1992 at 8.