

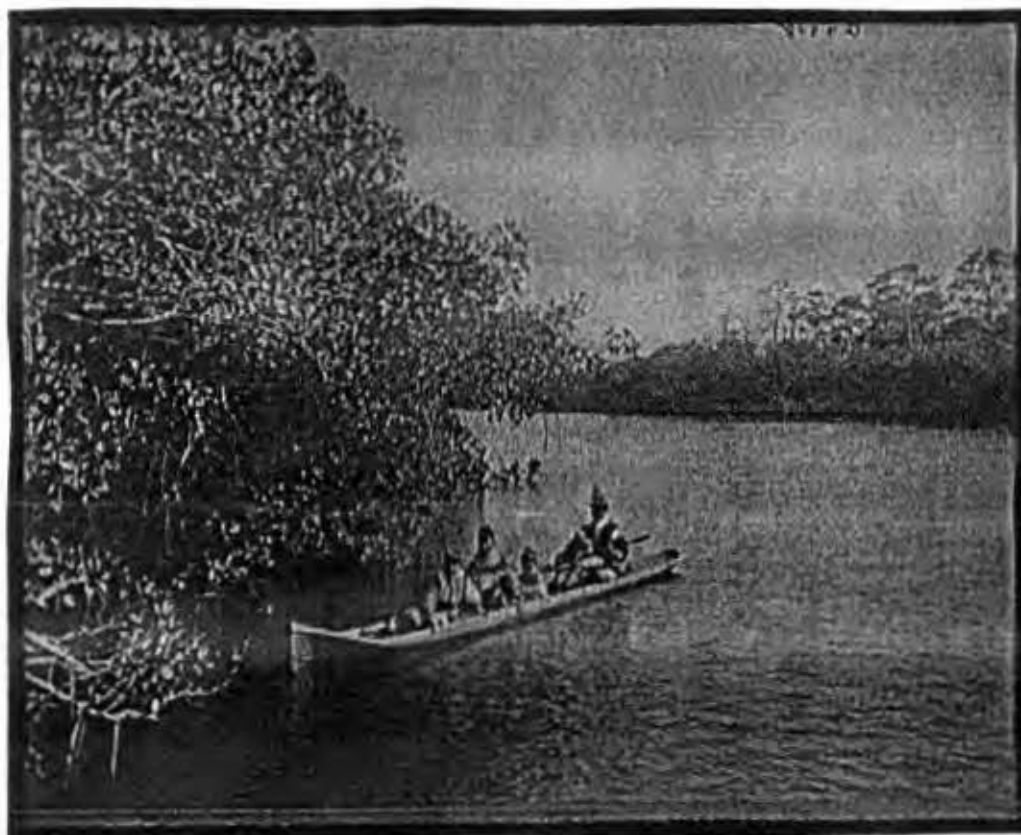
# **NATIVE PEOPLES** LAW CAUCUS NEWSLETTER

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A newsletter for members and friends of the AALL Native Peoples Law Caucus  
A caucus of the American Association of Law Libraries



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## Our Mission

The purpose of the American Association of Law Libraries Native Peoples' Law Caucus is to encourage and facilitate the analysis, cataloging, collection, dissemination, management, organization, and preservation of Native Law in accordance with cultural traditions. The Caucus is concerned with the law of all indigenous peoples.



**Cover Image:** Seminole Dugout Canoe, Miami, Florida; c. [between 1910 and 1920]  
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## 2002-2003 Annual Meeting, Orlando, Florida

Florida, the site of the AALL Annual Meeting, is a place that has generated landmark law both in the past and in the present. The largest tribe in Florida is the Seminole tribe. The Seminole tribe is famous for its role in the recent case of *Seminole Tribe of Florida v. Florida* 517 U.S. 44 (1996), a case about gaming and sovereign immunity. The heart-wrenching Indian Removal Act of 1838 set the stage for President Andrew Jackson to order the majority of the Seminole people to leave Florida. You can drive to a portion of the Seminole reservation in less than two hours from the Orlando meeting.

Today, the Seminole Tribe of Florida has its own library system with a large number of works on these and other cases that document the relations between the United States government and the Seminoles. Many sources on the interesting history of the tribe can be found in a bibliography offered by the library at [www.seminoletribe.com/history/bibliography](http://www.seminoletribe.com/history/bibliography). The presentment of the bibliography comes with a caveat that should be heeded generally by legal researches in the field of Native Peoples Law. "Much of the information concerning the history of the Seminoles and their ancestors, as written by Euroamerican researchers is controversial. Please be critical readers."

Our annual meeting is also close to the Saint Thomas Law Library in Miami. That academic law library supports a LLM program with a myriad of courses on the study of Native Peoples Law focusing particularly on the subject of human rights. If you see **Gordon Russell**, Director of the Library and Information Technology or **Paula Tejeda**, Associate Law Librarian at St. Thomas, ask them about their services and collection that foster innovative study. At St. Thomas, the librarians support such studies as global patent law for indigenous knowledge and the intercultural rights of human peoples. They collect a good deal of information on activity by the United Nations and international courts that consider the rights of people all over the world.

### Caucus Business Meeting

The Annual Business Meeting of the Caucus will be held on Tuesday, July 23, 2002 in Orlando. Check the first edition of the AALL meeting newspaper for the time and location. Bring your ideas and your energy. An update will be given on the campaign to induce Tribal members to become law librarians.

## Upcoming Program on

### Alaska Native Law

Consider joining law librarians from all over the Western United States, and attend the next AALL Western Pacific Regional Chapter Meeting.<sup>1</sup> The WestPac meeting often features a program on Native Peoples Law. The next meeting, to be held September 19 – 21, 2002 in Anchorage, Alaska will be no exception.

With the theme of "New Frontiers in Law Libraries," it offers a program on Alaska Native Sovereignty issues. **Cynthia Fellow**, Alaska State Court Law Librarian, organized the program, and **Judy Meadows**, the Montana State Librarian and former AALL President will be the moderator.

Four Alaska attorneys will discuss the history of Alaska Native sovereignty and current developments in the area. Those who attend will also dine at the Anchorage Museum of History where there are displays focusing on early Alaska Native culture, and contemporary works by Native artists.

Speaker Heather Kendall-Miller is a graduate of the University of Alaska, Fairbanks and the Harvard Law School, a shareholder in the Bristol Bay Native Corporation, and a member of the Dillingham tribe. She has clerked for Alaska Supreme Court Justice **Jay Rabinowitz**, and worked for both for Alaska Legal Services and the Native American Rights Fund.

Kendall-Miller was the first Alaska Native to argue before the U.S. Supreme Court. She is famous for her representation in the famous *Venetie* case. *Alaska v. Native Village of Venetie Tribal Government* 522 U.S. 520, 118 L. Ed. 30 (1998). In *Venetie*, the Court found that the primary purpose of the Alaska Native Claims Settlement Act ("ANCS"), 118 U.S.C. section 1151, was to effect Native self-determination and to end paternalism in Federal Indian Relations.

The program will also feature attorneys **David S. Case**, **Andy Harrington** and **Eric Johnson**. With **David Avraham Voluck**, David Case wrote *Alaska Native and American Law*, 2<sup>nd</sup> ed., University of Alaska Press, forthcoming 2002. That book is the succinctly outlines the modern history of law between Alaska natives and Russian, federal and state governments until the present, and outlines current legal issues.

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<sup>1</sup> AALL "WestPac" covers the States of Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, in addition to the U.S. Pacific Territories and Western Canada.

## United States Tribal Courts Directory

We've needed a reliable one-stop source where we could find basic information about tribal courts at a glance. We've even wished for it. Now two of our colleagues have met the challenge of meeting the need for a reference book showing basic information on the multiplying number of tribal courts. They wrote the book themselves.

**April Schwartz**, Business Law Librarian at the University of Minnesota Law Library and **Mary Jo B. Hunter**, Chief Justice of the Ho-Chunk Nation Supreme Court and Associate Clinical Professor at the Hamline University School of Law, have compiled facts about trial courts by contacting every such court in the country. They have authored the *United States Tribal Court Directory*. The Directory is much anticipated, and will be published in the upcoming year by the Hein Publishing Company.

The authors divided the tribal court listings by State and then by the name of the governing tribe, band, village, or community. They also included the court's address, names of administrators and judges, any court website, telephone and fax numbers, and e-mail addresses. For most courts, there is a description of the court's location, a notation of whether the court is on Indian Land, requirements for admission to the court, and a notation of whether the court's opinions are published.

(continued on page six)



Shown Here: A beautiful quilted shirt with traditional Seminole design. From: Plate 2, Bureau of American Ethnology, Bulletin 161, in Densmore, Frances, Seminole Music, Washington D.C.: US Government Printing Office, 1956



The new *United States Tribal Courts Directory* represents thirty-two states. Its format follows the outline of the *Minnesota American Indian Bar Association Directory*, found at <[www.maiba.org](http://www.maiba.org)> and described in the *2002 Native Peoples Law Caucus Newsletter*.

**Jill Tompkins**, Executive Director of the National Tribal Justice Resource Center, in Boulder, Colorado, furnished the authors with the Center's comprehensive list of tribal courts. That list, in turn, was used as a prototype for the new Directory. April and Mary drafted a questionnaire that they mailed to all courts listed in the Resource Center's initial list. There were courts that did not return a completed questionnaire; however, the authors later surveyed those courts by telephone.

For each court, the resulting directory lists, at a minimum, the addresses and phone numbers first gathered by the Resource Center. But it substantially augments that basic information by presenting facts found through the questionnaire submissions and backup telephone survey. Full entries contain all information submitted by each responding court.

The authors enjoyed support from their employing libraries. The library directors allowed staff to help in preparing the mailing questionnaires, provided editorial assistance, and funded follow-up phone calls and supplies.

Here is a sample entry from the new directory:

## **ALABAMA**

### **Poarch Band of Creek Indians Tribal Court**

5811 Jacksprings  
Atmore, AL 36502  
Telephone: 334-368-9135, ext. 2622, 2653  
Fax: 334-446-8086  
Email: [dwhite@poarchcreekindians.org](mailto:dwhite@poarchcreekindians.org)  
Webpage: [www.poarchcreekindians.org](http://www.poarchcreekindians.org)

Court Administrator:  
Honorable Judge:  
Honorable Appeals Judge:

Donna M. White, Tribal Court  
Earnest R. White  
George B. Jones

The court was established in 1987. The court exercises jurisdiction, over criminal, civil, traffic and juvenile cases. The Tribal Supreme Court hears appeals cases. Judges must be licensed attorneys in the state of residence, and attend various Native American Indian training sessions. The court is located in the Tribal Courtroom, on the Poarch Creek Indian Reservation, Building 300. Requirements for admission to the court: Membership in good standing with the state Bar Association, three letters of recommendation from attorneys not in the same firm; personal appearance before the Tribal Judge; licensed attorney in one's state of residence; payment of an annual license fee. The court's opinions are not published. The tribe also has established a Tribal Drug Court which has been in operation since 1998.

## **Materials on the BIA Trust Fund Cases**

**Compiled by Maria Protti**

In a series of actions known as the *Cobell* cases, the federal courts recognized that the United States' government mismanages the Indian Individual Monies ("IIM") system. The IIM system received and distributes fund from Land allotments in Indian Country.

The Bureau of Indian Affairs ("BIA") administers the collection and distribution of the funds. The Bureau of Indian Affairs ("BIA") was established in 1824 as a subsection of the U.S. Department of the Interior (25 U.S.C. 1 *et seq.*). It concerns U.S. government relations with American Indians. However, treaty making is not relegated to the Bureau.

Eliose Cobell sued the federal government, on behalf of Indians whose money is held by the Bureau of Indian Affairs and managed under the Indian Individual Monies system. The resulting court opinion, as a group, mandate that the monies be better tracked.

Here is a short list of legal materials that are either at the heart of the litigated trust fund controversy or help to throw light on the controversy. Because the subject litigation is not completed resolved, more material is sure to be written. This compilation is not exhaustive

### **I. Statutes**

Many jurists are surprised to find that many of the controlling statutes are quite old.

The American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. sections 402-443

"The Curtis Act," Act of June 28, ch. 517, 30 Stat. 495

"The Dawes Act," ch. 9, 24 Stat. 388 (as amended at 25 U.S.C. section 33 et seq.) This Act allowed nonallotted reservation land to be made available to non-Indians.

The Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. section 461 et seq.

"The Indian Tucker Act," 28 U.S.C. section 1505

## II. Cases

The most pertinent cases are a part of a string of cases that have developed over time, and in the vernacular are called "Cobell I, Cobell II, Cobell II, Cobell IV, and Cobell V."

*Cobell v. Babbitt*, 9 F. Supp. 2d 24 (D.D.C. 1998) (*Cobell I*)

*Cobell II*, 37 F. Supp. 2d 6 (D.D.C. 1999) (holding that defendants in contempt of Court for failing to make good effort to comply with discovery order)

*Cobell III*, 52 F. Supp. 2d 11 (D.D.C. 1999)

*Cobell v. Norton*, 188 F.R.D. 122 (D.D.C. 1999) (*Cobell IV*) (awaiting sanctions)

*Cobell V.*, 91 F. Supp. 2d 1 (D.D.C. 1999)

The most recent related case is *Cobell v. Norton*, 30 F. Supp. (D.D.C. 2001). It involved a class action suit by beneficiaries of IIM trust account against past Department of Interior Secretary Gale A. Norton and other federal officials who serve in official capacities as trustee delegates on behalf of the federal government.

## III. Reports

*Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Funds*, H.R. Rep. No. 102-499 (1992)

GAO/T-AIMD-93-4, U.S. General Accounting Office: Financial Management: BIA's Management of the Indian Trust Funds and GAO/T-AIMD-94-99 (1994)

Department of the Interior, Assistant Secretary for Indian Affairs, Bureau of Indian Affairs, *Historical Analysis of Individual Indian Money Account*, 65 Fed. Reg. 1752 (April 3, 2000)

## IV. Websites

A number of sites center on the subject but these are the most current, and continue to evolve as new developments in the oversight of IIM record management and claims for mismanagement mount. Generally these websites track proposed legislation, new



methods of monitoring, argue for regulatory control, and feature commentary decrying the lack of adherence to accounting standards.

### V. Selected Commentary

Reid Peyton Chambers, Judicial Enforcement of the Federal Trust Responsibility to Indians, 27 Stan. L. Rev. 1213 (1975)

## **Edward Curtis's Photographic Images Now Online**

The North American Indian, a twenty volume set by Edward S. Curtis, is important for its representation of American Indian cultures in the years from 1907 to 1930. To create this work, Edward S. Curtis traveled throughout the United States photographing the everyday activities of American Indians. Librarians have digitized the first generation print photogravure plates and narrative included in the original volumes. Those images can now be found at the Library of Congress website:

<<http://memory.loc.gov/ammem/award98/ienhtml/curthome.html> >.

The images in these volumes became world famous. Together, they signify the controversial perception that traditional American Indian culture is vanishing. The photographs influenced, and the creation of the photographs was inspired by, an emergence of contemporaneous law that made illegal many kinds of Native American traditional assembly, ceremonial activities, dancing, cooking, hunting, medicine, praying, singing, and teaching. Generally, Curtis photographed tribes in the Great Plains, Great Basin, Plateau Region, Southwest, California, the Pacific Northwest and Alaska.

But not all of the photogravure plates were taken from scenes that were natural. Curtis staged much of the scenery and dressed many people that he photographed. By browsing Curtis' presented images, the viewer will get a

sense of not only the breath of Curtis work, the viewer will gain a sense of the overly-romanticized portrayal of the people shown.

The online collection contains 2,226 images, with comprehensive cataloging description including identification such as plate numbering, dimensions, and the captions originally penned by Curtis. One can browse the newly digitized images by subject in predetermined terms for artifacts, activities, and social status group in thematic categories, for example, occupations, buildings, and customs and rituals.

An outline of the contents of the original volumes can also be found, along with the titles and publication dates of each volume, the plates in the volume, and the plates in each portfolio. Dates shown represent the time of recording, not the dates the images were created.

A descriptive typical entry gives the item number of the picture, a link to information on the creator, "Curtis, Edward S., 1868-1952" and many notes, the type of photograph, the color of ink, the size, where the photo was originally produced and the original source of the photograph. A list of detailed subject terms is given along with the current repository and the web URL location of the print. Once the image is called up on a computer screen, a unique digital identification and a note on the degree of resolution will appear.

## **Ethnic Newswatch: On-line Native News**

*Ethnic Newswatch* is a full text online collection of articles from over 200 newspapers, magazines, and journals. Many of the sources are publications with a Native American Indian focus. Using *Ethnic Newswatch* is an easy way to get in-depth news stories covering events and opinion in Indian Country.

An average of eight thousand new articles are added each month. Along with the capability for inputting advanced directional symbols and connectors, this continuous augmentation allows for sophisticated searching. The database compiler is Softline Information, Inc. Serials in *Ethnic Newswatch* include:

**Akwe:kon Journal** (renamed Native Americas)

ISSN 8756-369x; Citation Start March 1994 – Citation End June 1994;

Full Text Start March 1994 – Full Text End June 1994

**Akwesasne Notes**

ISSN 0002-3949; Citation Start January 1985; Full Text Start January 1985

**Char-Koosta News**

ISSN 0528-8592; Citation Start October 1991; Full Text Start October 1991

**The Cherokee Observer**

ISSN 1077-0968; Citation Start January 1994; Full Text Start January 1994

**Indian Country Today (Lakota Times)** ISSN 1066-5501; Citation Start

January 1993; Full Text Start January 1993

**NAJA News** ISSN 1085-6757; Citation Start December 1994; Full Text

Start December 1994



**Native Americas** (Formerly Akwe:kon Journal) ISSN 1092-3527; Citation Start December 1994; Full Text Start December 1994

**Native Nevadan** ISSN 0028-0534; Citation Start October 1991- Citation End June 1992; Full Text Start October 1991 – Full Text End 1992

**Navajo Nation Today** no ISSN; Citation Start October 1991 – Citation End February 1992; Full Text Start October 1991; Full Text End February 1992

**Navajo Times** No ISSN; Citation Start February 1995;

Full Text Start February 1995

**News from Indian Country** no ISSN; Citation start August 1991;

Full Text Start August 1991

**Ojibwe Akiing** no ISSN; Citation start December 1996;

Full Text Start December 1996

**The Ojibwe News** no ISSN; Citation start January 1994; Full Text Start January 1994

**Seminole Tribune** ISSN 0891-8252; Citation Start April 1993; Full Text Start April 1993

**Sho-Ban News** ISSN 0197-7954; Citation Start November 1991; Full Text Start November 1991

**Tribal College Journal of American Indian Higher Education** ISSN 1052-5505; Citation Start July 1989; Full Text July 1989

## **The National Indian Law Library Works on Its' Strategic Plan**

**By David Sheldon, NILL Law Librarian**

The National Indian Law Library (NILL) at the Native American Rights Fund, is a public law library devoted to federal Indian and tribal law. Our mission is to develop and make accessible unique and valuable collection of information and to assist people with their Indian law-related information needs. Special emphasis is placed on helping individuals and organizations who are working on behalf of Native Americans and have the potential to positively influence their lives.

NILL is currently revising its strategic plan for service to the public. The strategic plan will include significantly developing and updating its extensive tribal law collection, digitizing tribal law and other materials for its web site <http://www.narf.org/nill/Nillindex.html>, and greatly expanding its web site offerings on Native American law research in the next few years. The National Indian Law Library plans to write an in-depth article detailing the library's projects, goals, strategies and opportunities for collaboration in a futures issue of this newsletter.

Your input on the future direction of the National Indian Law Library is encouraged! Please contact: **David Selden**, Law Librarian ([dselden@narf.org](mailto:dselden@narf.org)) or **Monica Martens**, Assistant Law Librarian ([mmartens@narf.org](mailto:mmartens@narf.org)) at the National Indian Law Library/Native American Rights Fund, 1522 Broadway, Boulder, CO 80302, (303) 447-8760 to voice your suggestions and/or concerns.

For more general information about NILL including our services and collection, please see our website at: <http://www.narf.org/nill/aboutnill.html>.

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