

Researching American Indian Tribal Law

by David E. Selden

In 1997, U.S. Supreme Court Justice Sandra Day O'Connor made reference to the importance of tribal sovereignty and tribal law, stating:

Today in the United States, we have three types of sovereign entities—the federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country.¹

The ability to research tribal law is becoming increasingly important as 566 sovereign Indian nations and Alaska Native villages exercise their powers of self-governance. “Tribal law” comprises the laws developed by tribes or Indian nations, which apply within their territories and to their members. It can be a difficult area of law to research because few primary and secondary resources are published and made available to the public.

Despite the lack of commercial publication, tribal law resources have become more accessible in the past ten years, with more primary and secondary resources available mostly in electronic form.² This article highlights the tribal law resources most often used by the National Indian Law Library (NILL), which answers more than 2,000 Indian law questions each year.³

Secondary Sources

A good resource that succinctly describes several tribal legal systems is the *Encyclopedia of Native American Legal Tradition*.⁴ Similarly, but with more detail, *American Indian Tribal Governments*⁵ highlights about a dozen tribal governments and describes how tribes are protecting and expanding their control over areas such as membership, child welfare, and education. Another source, *American Indian Tribal Law*,⁶ is essentially a case book featuring tribal court opinions written for law students. This unique book exam-

ines the development of tribal justice systems through tribal court decisions.

*Introduction to Tribal Legal Studies*⁷ and *Tribal Criminal Law and Procedure*⁸ are two books published as part of a tribal legal studies textbook series. The series is geared toward educating students in tribally controlled colleges who may pursue careers in tribal courts; it is projected to eventually include nine volumes. These books, first in the series, introduce tribal law and legal systems; describe how tribal law relates to U.S. federal Indian law; and discuss jurisdiction, customary law, and tribal court ethics.

Papers and resource guides for tribal law also exist on various websites. The Tribal Law and Policy Institute includes resource guides for drafting tribal codes, as well as model codes on specific subjects.⁹ Additionally, the Native American Rights Fund handbook on writing and revising tribal constitutions may prove helpful to attorneys who are involved in such efforts.¹⁰

For law review and other articles, a number of sources exist. The *American Indian Law Review*¹¹ focuses entirely on Indian law, as does the relatively new, Internet-based *American Indian Law Journal*.¹² Some of the content in these journals deals with issues of tribal law, but most articles cover federal and state Indian law. On the other hand, the somewhat unknown *Tribal Law Journal*¹³ is devoted entirely to tribal law and is published exclusively on the Internet.

Two major bibliographic indices provide access to tribal law articles, although they do not provide unique indexing terms to differentiate federal Indian law articles from tribal law articles. The Legal Resource Index (LRI), published by Gale, is available electronically through both Westlaw^{®14} and Lexis.^{®15} It also is offered online as LegalTrac¹⁶ and in print as the Current Law Index.¹⁷ Researchers can use the index term “Native Americans” to limit



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search results in LRI/LegalTrac. The *Index to Legal Periodicals and Books*,¹⁸ offered online through EBSCO and in print through H.W. Wilson, categorizes Indian law-related articles under “Indians” and “Native Americans.” Both LRI/LegalTrac and *Index to Legal Periodicals and Books* may be available through your bar association or through a public or academic library. NILL has attempted to include citations and links to all known Indian law and tribal law-related articles in its *Law Review Bulletin* since 2003.¹⁹ All citations in this bulletin are searchable through the custom Google search engine on the Indian Law Bulletin.

Primary Sources

NILL has been active in collecting and publishing tribal law on its website since the 1980s. In the last ten years, the library has created Internet-based tools on its Tribal Law Gateway to help the public find tribal law, including materials found on other websites and in fee-based databases. The goal of this Tribal Law Gateway project is to provide the best, most comprehensive information to allow access to tribal codes, constitutions, and court opinions. The library provides several tools to help accomplish this goal and, due to the very small staff and the large number of federally recognized tribes, the Gateway tools will be updated and consolidated over time, and the content will become more comprehensive.

Tribal Codes and Constitutions

Most federally recognized Indian tribes have enacted tribal constitutions, as well as codes or ordinances. However, unlike state and federal laws, tribal laws often are not made available to the public electronically or in print. Only about a dozen tribal codes and constitutions can be purchased directly from commercial publishers; the rest must be obtained from the tribes themselves.

To help solve the problem of access to the laws of 566 sovereign Indian nations, NILL has been working with tribes for more than twenty years to make tribal laws available to the public through its website and from its print collection. The public can request research assistance or content not available electronically by calling or e-mailing the library.²⁰ The library staff will scan and e-mail content. Most requests are filled without charge and within two business days.

NILL has amassed the largest library collection of tribal codes and constitutions in the United States. The library has approximately 250 codes and 480 constitutions from tribes and Alaska Native villages; more than 170 of these documents have been digitized and published in full-text on the NILL website.²¹ Copies of tribal law not available on the website may be obtained by contacting the library staff.

The library provides two ways to electronically access tribal codes and constitutions: (1) through keyword searches in the NILL catalog; and (2) by using the NILL Tribal Law Index on the Tribal Law Gateway. These methods will be described in more detail below. In addition, NILL has partnered with Westlaw to help make tribal codes and constitutions available through Westlaw’s fee-based service. As of November 1, 2013, twenty-four tribes have published their laws with Westlaw.²² LexisNexis offers a smaller collection of tribal law that features codes from Montana tribes.

Search for specific codes and constitutions using the NILL catalog. One way to access tribal codes and constitutions is through NILL’s online catalog.²³ The catalog provides access to all 240-plus

codes and 400-plus constitutions available in both print and electronic format. From the library’s home page, choose the “Library Catalog” link. To find a particular tribe’s code, first select “Advanced Search” from the drop-down menu at the top of the page, and then select “Tribal Code” as the document type. Finally, type a few unique words from the tribe’s name in the “Title” field. See the image below.

The screenshot shows a search interface with a search bar containing "Lower Sioux". Below the search bar are fields for "Author ... enter here", "Publisher ... enter here", "Year From - Year To", "Subject ... enter here", and "Corporate Author ... enter here". A "Types" dropdown menu is open, showing options: "Serial", "Tribal Charters", "Tribal Code" (selected), "Tribal Compacts", and "Tribal Constitutions". A green arrow points to the search button.

In this illustration, we are looking for the code of the Lower Sioux Indian Community in Minnesota. Type “Lower Sioux” into the Title field (quotes not necessary) and select Tribal Code under “Types.” Click on the green arrow to search.

Search for codes and constitution provisions on a topic using the NILL catalog. The catalog also can be used to find samples of codes that cover a specific topic, such as “child welfare.” Again, in Advanced Search mode, select Tribal Code as the document type. Then, enter keywords into the “General search term . . .” field. See the image below. Search terms will be highlighted in yellow. Researchers also can use this technique to find copies of “Model Codes.” Where digital copies of codes and constitutions are available, the catalog record provides links to the online copy.

The screenshot shows a search interface with a search bar containing "child welfare.". Below the search bar are fields for "Title ... enter here", "Author ... enter here", "Publisher ... enter here", "Year From - Year To", "Subject ... enter here", and "Corporate Author ... enter here". A "Types" dropdown menu is open, showing options: "Serial", "Tribal Charters", "Tribal Code" (selected), "Tribal Compacts", and "Tribal Constitutions". A green arrow points to the search button.

In this illustration, we are looking for tribal law related to child welfare. Type “child welfare” into the search field (quotes not necessary) and select Tribal Code under “Types.” Click on the green arrow to search.

Search codes and constitutions using the NILL Tribal Law Gateway. The Tribal Law Gateway²⁴ is a great place to start your research for immediate access to tribal codes and constitutions published on the NILL website with permission from tribes. Use the custom Google search feature to perform a full-text search for specific terms or the alphabetical indexes of tribal names (both the “old” and newer) to find law of a specific tribe.

The NILL catalog should be used in tandem with the Tribal Law Gateway for the most complete research. The catalog provides more comprehensive access to all content, both print and electronic. The catalog offers links to full-text tribal content on the Internet, as well as a full, searchable table of contents for all codes and constitutions. (As mentioned, there are more than 240 codes

and 400 constitutions indexed in the catalog versus approximately ninety codes and constitutions on the website.) Additional research, including contacting tribes, may be necessary to ensure that you have the most up-to-date and official law. Eventually, the Tribal Law Gateway will become a comprehensive tool to research all aspects of tribal codes and constitutions.

Tribal Court Opinions

The National American Indian Court Judges Association (NAICJA) reports that there are more than 400 tribal courts and dispute resolution forums in operation today. The *United States Tribal Court Directory*²⁵ is a great resource for locating information about these courts, including tribal court contact information, requirements for admission to the court, and other information about accessibility to a tribe's laws. Similar information about tribal courts is available from the NILL Tribal Law Gateway and the growing alphabetical index mentioned above.

To find opinions from tribal courts, a number of resources are available. The *Indian Law Reporter*,²⁶ which was first published in 1974, is a print resource for select tribal court opinions from a few dozen tribes. Each annual volume contains and broadly indexes approximately twenty-five tribal court opinions. NILL has created a searchable cumulative index of tribal court opinion citations covering all volumes of the *Reporter*.²⁷ NILL's individual tribal Web pages, available through the Gateway's alphabetical index, provide tips on how to locate court opinions in the cumulative index.

The *Navajo Reporter*²⁸ offers access to Navajo Supreme Court and select trial court opinions. Supreme Court opinions also are available from 2006 to present on the Court's website.²⁹ Although this series has been published by various commercial entities, the researcher may wish to contact the Navajo Supreme Court for information on how to order the volumes.³⁰

The best sources for tribal court opinions are electronic databases. Versuslaw.com³¹ and the Tribal Law and Policy Institute³² publish tribal court opinions of twenty-four tribes, and they have approximately 2,100 opinions on their websites. The content of the two tribal court databases is almost identical, with each site offering unique coverage for three or four tribal courts. Versuslaw.com, an economical, fee-based service, differs from the Tribal Law and Policy Institute in that it offers more robust searching capabilities.

Recently, Westlaw partnered with the NAICJA to provide tribal court opinions in its fee-based service. As of November 1, 2013,

court opinions were available from twenty-four tribes and inter-tribal courts, plus Oklahoma tribes using CFR courts.³³ Westlaw content is now surpassing Versuslaw.com in scope. Also, Lexis offers access to limited court opinions from some Montana tribes, as well as the Eastern Band of Cherokee. For succinct research tips on tribal court opinions, see the links to "How to Find Tribal . . ." on the NILL Tribal Law Gateway.

Tribal Administrative Law

Some tribes have administrative agencies and administrative courts. Examples of tribal administrative law include tax commission rules and regulations, utilities commission regulations, or a shoreline protection ordinance. Research in this area of law can be particularly challenging, especially for administrative court opinions. Administrative rules and regulations usually are published as part of tribal codes and ordinances, but administrative court opinions rarely are published. Approximately 25% of the tribal codes in the NILL collection have some kind of administrative provisions. The best way to access administrative provisions is to search for them by tribe or keyword in the NILL catalog, in the same manner as searching for tribal codes, described above.

Intergovernmental Agreements

Sovereign Indian nations often enter into agreements with states, counties, and other political entities regarding issues such as cross-deputization, taxation, gaming, education, Indian child welfare, and water rights. The website of the National Congress of

American Indians provides the best online collection of intergovernmental agreements and compacts.³⁴ The NILL also provides access to a smaller collection, which can be accessed through its library catalog. The NILL indexes each intergovernmental agreement in its catalog with *Tribal Compacts* as the document type.

Conclusion

The resources described in this article can be helpful to the tribal law researcher, but your best bet for tribal law research help may be to talk with an expert. The NILL is a public law library specializing in American Indian law and provides free research assistance to attorneys and the general public. Do not hesitate to contact David Selden or other NILL staff members for research assistance.

Notes

1. O'Connor, "Lessons from the Third Sovereign: Indian Tribal Courts," 33 *Tulsa L.J.* 1 (1997).
2. Shucha, "'Whatever Tribal Precedent There May Be': The (Un)Availability of Tribal Law," University of Wisconsin Legal Studies Research Paper No. 1227 (Aug. 9, 2013), ssrn.com/abstract=2308056.
3. This article is an update to an article originally published in *The Colorado Lawyer* in 2005. See Selden and Martens, "Basic Indian Law Research Tips—Part II: Tribal Law," 34 *The Colorado Lawyer* 115 (Aug. 2005). The first part of the 2005 article focused on federal Indian law. See Selden and Martens, "Basic Indian Law Research Tips—Part I: Federal Indian Law," 34 *The Colorado Lawyer* 43 (May 2005). An update to Part I was published in 2008, www.narf.org/nill/bulletins/lawreviews/articles/coloradoLawyerArticle-fed.pdf.
4. Johansen, *Encyclopedia of Native American Legal Tradition* (Greenwood Press, 1988).
5. O'Brien, *American Indian Tribal Governments* (University of Oklahoma Press, 1989).
6. Fletcher, *American Indian Tribal Law* (Wolters Kluwer Law & Business, 2011).
7. Richland, *Introduction to Tribal Legal Studies* (2d ed., Altamira Press, 2010).
8. Garrow, *Tribal Criminal Law and Procedure* (Altamira Press, 2004).
9. See www.tribal-institute.org/lists/codes.htm.
10. See tinyurl.com/narfconstitutionhandbook.
11. *American Indian Law Review*, www.law.ou.edu/content/american-indian-law-review-2. Some coverage also is available through Westlaw, Lexis, HeinOnline, and JSTOR.
12. *American Indian Law Journal*, www.law.seattleu.edu/academics/journals/ailj.
13. *Tribal Law Journal*, tj.unm.edu. Some coverage also is available through Lexis and HeinOnline.
14. See www.westlaw.com (Database Identifier: LRI).
15. See advance.lexis.com. Browse "Sources" and click on "Legal Resource Index."
16. See www.gale.cengage.com/pdf/facts/legal.pdf.
17. Current Law Index (Gale Group, 1980–).
18. Index to Legal Periodicals and Books (H.W. Wilson, 1926–), www.ebscohost.com/academic/index-to-legal-periodicals-books.
19. See www.narf.org/nill/bulletins/lawreviews/currentlr.htm.
20. See www.narf.org/contact/library.htm.
21. See www.narf.org/nill.
22. See tinyurl.com/tribalcodesonwestlaw.
23. NILL Library Catalog, nill.softlinkliberty.net/liberty/library-Home.do.
24. NILL Tribal Law Gateway, www.narf.org/nill/triballaw/index.htm.
25. Schwartz, *United States Tribal Courts Directory* (4th ed., W. S. Hein & Co., 2011).
26. *Indian Law Reporter* (American Indian Lawyer Training Program, 1974–present).
27. *Indian Law Reporter: Tribal Court Cases Index*, www.narf.org/nill/ilr.
28. *Navajo Reporter* (Judicial Branch of the Navajo Nation, 1969–). Volumes 1 through 8 cover the Supreme Court and selected district and family court decisions from 1960 to 2005.
29. At www.navajocourts.org, select "Supreme Court Opinions" from the right-hand menu.
30. Contact the Navajo Supreme Court at (928) 871-6763.
31. VersusLaw, www.versuslaw.com.
32. Tribal Law and Policy Institute, www.tribal-institute.org.
33. See tinyurl.com/westlawtribalcases.
34. See ncai.org/Tribal-State_Relations.28.0.html; web.archive.org/web/20081209040621/www.ncai.org/Tribal-State_Relations.28.0.html; www.ncai.org/initiatives/partnerships-initiatives/ncai-tax-initiative/examples-of-tribal-tax-codes-tax-agreements-other-resources. ■