

BASIC INDIAN LAW RESEARCH TIPS--PART II: TRIBAL LAW  
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David Selden, Monica Martens [FN1]

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This two-part article seeks to provide practical tips for researchers of Indian law. Part I of this article, which was published in the May 2005 issue, [FN1] focused on federal Indian law research. This Part II covers tribal law research.

In 1997, U.S. Supreme Court Justice Sandra Day O'Connor made a reference to the importance of 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. [FN2] Tribal law is becoming increasingly important as more than 560 sovereign Indian nations and Alaska Native Villages exercise their powers by managing and resolving legal disputes on their lands. As evidenced by the literature and language in recently amended tribal codes and constitutions, many tribes seem to be revisiting historical methods of handling disputes and are formalizing or incorporating traditional and customary law into their legal frameworks.

“Tribal law” comprises law developed by a tribe or Indian nation that applies 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 or distributed to the public. Despite the lack of commercial publication, tribal law resources have become more accessible in the past six years, primarily on the Internet. However, locating the right resources requires patience and tenacity. In addition, the researcher should know whom to contact for research assistance.

### **Encyclopedia and Handbooks**

A small number of encyclopedias and handbooks on tribal law exist and recently a few new titles have been published. A good source that succinctly describes several tribal legal systems is the *Encyclopedia of Native American Legal Tradition*. [FN3] Another source, which goes into more detail, is *American Indian Tribal Governments*. [FN4] In addition, *Introduction to Tribal Legal Studies* and *Tribal Criminal Law and Procedure* are the first two books published as part of a new tribal legal studies textbook series. [FN5] This series, projected to eventually include nine volumes, is geared toward educating students in tribally controlled colleges who may pursue careers in tribal courts. The first two handbooks include introductions to tribal law and legal systems; describe how tribal law relates to federal Indian law; and discuss issues relating to jurisdiction, customary law, and tribal court ethics.

### **Tribal Codes and Constitutions**

Most federally recognized Indian tribes have enacted tribal constitutions, as well as codes or ordinances. However, unlike many state and federal codes, these documents generally are not published in print or electronically. Only approximately six tribal codes and constitutions can be purchased directly from commercial publishers; the rest must be obtained from the tribes themselves. Fortunately, the National Indian Law Library (“NILL”) has been working with tribes over the past twenty years to make these laws available to the public.

The 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 different tribes and Alaska Native villages, and more than 100 of these documents have been digitized and published in full-text on the NILL website. [FN6] The NILL library provides three ways to access this tribal code and constitution content which are highlighted in the Tribal Law Gateway [FN7]. One can access these documents through keyword searches in the NILL catalog, the A-Z list of tribes and by browsing NILL's Online Collection of Tribal Codes & Constitutions.

### ***Internet Catalog Search***

The best access to tribal codes and constitutions is through the library's Internet catalog. [FN8] From the library's home page, choose the "Catalog" link. To find a particular tribe's code, first type "Tribal Codes" in the "Document Type" field, and then type a few unique words from the tribe's name in the "Title or Title Words" or "Indian Tribe" field. For example, to find the code for the Lower Sioux Indian Community in Minnesota, type "Lower Sioux" into the "Title Field" (phrases do not need quotes around them).

Another way to use the NILL catalog is to find codes that cover a specific topic, such as animal control. First, type "Tribal Codes" in the "Document Type" field; then type keywords into the "Table of Contents" or "Global" field (for example, "animal control/dog control" for either phrase). Researchers also can find copies of "Model Codes" in the same manner. Where digital copies of codes and constitutions are available, the library records provide links from the catalog to the digital copy on the website.

### ***Tribal Code and Constitution A-Z List***

The second way to find tribal codes and constitutions is to access the "Tribal Code and Constitution A-Z List" from the library's home page. [FN9] The A-Z list provides alphabetical access to the most recent tribal codes and constitutions available in print or electronic format at the NILL or elsewhere on the Internet. The list also provides tribal contact information for those researchers who wish to call the tribe to locate or verify the currency of documents. In the future, NILL hopes to add holdings of tribal codes and constitutions from other libraries in the United States.

### ***Browsing the Online Collection of Tribal Codes & Constitutions***

The third way to locate copies of tribal codes and constitutions is to browse through the digitized collection of the Online Collection of Tribal Codes & Constitutions where more than 100 documents can be found. [FN10] In addition, electronic copies of most documents found on the NILL site also are available on the National Tribal Justice Resource Center's website. Up until 2006, the Resource Center funded much of our digital code and constitution work and through an agreement, published identical copies on their web site. [FN11]

Currently, a new tribal law research site is being developed at the University of Idaho, called the Tribal Law Exchange Project ("Project"). [FN12] This Project, funded by the National Science Foundation, by 2007 plans to offer free full-text access to tribal codes with a sophisticated search engine.

### ***Tribal Court Opinions***

Nearly one-half (280) federally recognized tribes and Alaska Native Villages have formal court systems. The *United States Tribal Court Directory* 2<sup>nd</sup> ed. is a great guide to tribal court contact information, requirements for admission to the court and other information about accessibility of a tribe's law. [FN13] Covering from 1974 to the present, select copies of tribal court opinions from a few dozen different tribes are published in print in the *Indian Law Reporter*. [FN14] Each annual volume contains and broadly indexes approximately twenty-five tribal court opinions. The NILL has created a cumulative index covering each volume of the *Reporter*, which is available on request.

The *Navajo Reporter* offers access to Navajo Supreme Court and selected trial court opinions. [FN15] Although this series has been published by various commercial entities, the researcher may contact the Navajo Supreme Court for information on how to order the volumes. [FN16] Other tribes and intertribal courts have published court opinions in print, but since these small compilations generally span only a few years and usually lack useful indexing I will not describe these collections.

The best sources for tribal court opinions are electronic databases. Versuslaw.com, [FN17] the National Tribal Justice Resource Center, [FN18] and the Tribal Law & Policy Institute [FN19] publish tribal court opinions on their websites. Combined, all three sources publish close to 2,100 opinions from approximately eighteen tribal courts. The content of the 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 other two free services in that it offers more robust searching capabilities [FN20]. Westlaw® also provides a different set of tribal court opinions. [FN21] Its OKTRIB-CS database includes opinions from Oklahoma tribal courts from 1979 to the present. LexisNexis offers access to limited court opinions from some Montana tribes as well as the Eastern Band of Cherokee. See Harvard Law School Library's Tribal Law research guide for more details on these offerings. [FN22] As with tribal codes and constitutions, in 2007, the Tribal Law Exchange Project plans to offer free, full-text access to tribal court opinions with a sophisticated search engine.

### **Tribal Administrative Law**

Some tribes have administrative agencies and administrative courts. 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 percent of the tribal codes in the NILL collection have some kind of administrative provisions. Examples of tribal administrative law include tax commission rules and regulations, utilities commission regulations, and a shoreline protection ordinance. 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 areas such as cross-deputization, taxation, gaming, education, Indian child welfare, and water rights. The website of the National Congress of American Indians [FN23] provides the best online collection of intergovernmental agreements or compacts. The NILL also provides access to a smaller collection, which can be accessed via its library catalog. The NILL indexes each intergovernmental agreement in its catalog under “tribal compacts” as the “Document Type.”

### **Secondary Sources**

The *Tribal Law Journal* [FN24] is devoted entirely to tribal law. It is published exclusively on the Internet. Tribal law-related articles also can be found using the general full-text databases and indexes described in the section entitled “Law Review Articles” in Part I of this article. [FN25]

### **Law Librarian Help and Research Guide**

The best source for tribal law research help is the NILL, which is the only public library devoted to providing research assistance on federal Indian law and tribal law. [FN26] The NILL has two reference librarians with tribal law research experience to help researchers locate and use the best available resources. The library welcomes requests from the general public or any interested party and provides access to tribal law and Indian law research guides. [FN27] [FN28]

[FN1a]. David Selden is the Law Librarian and Monica Martens is the Assistant Law Librarian at the Native American Rights Fund/National Indian Law Library in Boulder, CO. Contact the authors at (303) 447-8760 or dselden@narf.org; <http://www.narf.org>.

[FN1]. Selden and Martens, “Basic Indian Law Research Tips--Part I: Federal Indian Law,” 34 *The Colorado Lawyer* 43 (May 2005).

[FN2]. O'Connor, “Lessons from the Third Sovereign: Indian Tribal Courts,” 33 *Tulsa L.J.* 1 (1997).

[FN3]. Johansen, *Encyclopedia of Native American Legal Tradition* (Westport, Conn.: Greenwood Press, 1988).

[FN4]. O'Brien, *American Indian Tribal Governments* (Norman, OK: University of Oklahoma Press, 1989)

[FN5]. See Richland, *Introduction to Tribal Legal Studies* (Walnut Creek, CA: Altamira Press, 2004); Garrow, *Tribal Criminal Law and Procedure* (Walnut Creek, CA: Altamira Press, 2004). To order any of

the series online, go to [http:// www.altamirapress.com](http://www.altamirapress.com), click on “ series,” and then “ Tribal Legal Studies.”

[FN6]. See <http://www.narf.org/nill/>

[FN7]. See <http://www.narf.org/nill/triballaw/index.htm>

[FN8]. See. <http://nillcat.narf.org>

[FN9]. *Supra*, note 6

[FN10]. See <http://www.narf.org/nill/triballaw/onlinedocs.htm>

[FN11]. See <http://www.ntjrc.org>.

[FN12]. See [http://www.webpages.uidaho.edu/~dlind/tribal\\_law\\_exchange.htm](http://www.webpages.uidaho.edu/~dlind/tribal_law_exchange.htm)

[FN13]. Schwartz, *United States Tribal Courts Directory 2<sup>nd</sup> ed.* (Buffalo, N.Y.: W. S. Hein & Co., 2006)

[FN14]. *Indian Law Reporter* (Wash., D.C.: American Indian Lawyer Training Prog., 1974-present).

[FN15]. *Navajo Reporter* (Window Rock, AZ: Judicial Branch of the Navajo Nation, 1969-present). Volumes 1 to 7 cover decisions from 1960 to 1999. Volume 8 is expected by the end of the year (2005).

[FN16]. Contact the Navajo Supreme Court at (928) 871-6763. Other court opinions have been published by various tribes and intertribal court systems, but the numbers of opinions are small, the time frames covered are limited, and they lack good indexing.

[FN17]. See <http://www.versuslaw.com>.

[FN18]. *Supra*, note 11.

[FN19]. See <http://www.tribal-institute.org>.

[FN20]. *Supra*, note 17

[FN21]. See <http://www.westlaw.com>.

[FN22]. See [http://www.law.harvard.edu/library/services/research/guides/united\\_states/specialized/tribal\\_law.php](http://www.law.harvard.edu/library/services/research/guides/united_states/specialized/tribal_law.php)

[FN23]. See <http://www.ncai.org> under “ policy issues.”

[FN24]. *Tribal Law Journal* (Albuquerque, NM: Univ. of New Mexico School of Law, 2000-present), available at <http://tlj.unm.edu>.

[FN25]. *Supra*, note 1.

[FN26]. *Supra*, note 5.

[FN27] See <http://www.narf.org/nill/resources/basicguide.htm>

[FN28] See <http://www.narf.org/nill/triballaw/index.htm>