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AMERICAN INDIAN LAW

Research Guide

INTRODUCTION

Research in the area of American Indian law is complex and particularly challenging for jurisdictional, conflict of laws, and identity issues. Depending upon the legal issue involved, federal, state, and/or tribal law may apply. An understanding of federal Indian policy is essential in forming the foundation for research which is where many scholars start. Federal laws are the most predominant statutes affecting criminal and civil matters as well as jurisdictional issues for Indian Tribes. Executive orders and proclamations and other executive department actions play a role in Indian law jurisprudence. States have some jurisdictions in selected issues affecting Indian Tribes and Tribes have their own individual codes. Tribes also generally have legislative, administrative and judicial systems similar to the federal government. For some Tribes, the Tribal Council functions as the Tribal Court. For most Indian Tribes, there is also Indian culture, religion, customs and usages or common law considerations. There are court opinions which must be used in Tribal Courts or Tribal Councils. There is no national Tribal code. Some local laws may apply.

Indian Tribes were recognized as Sovereigns or as having their own governments by the Europeans who “discovered” America. The first form of government relations between the Europeans and the Indians were treaties. The treaties were used to make peaceful alliances with the Indians and to obtain land in exchange for promises of various kinds of protections often negotiated with Indian representatives other than Tribal leaders and without complete understanding on the part of the Indians. Treaty making was discontinued in 1871. Relations with Indians moved through allotment and assimilation, reorganization, termination of trust relationships to self determination. Treaties currently in force remain primarily with particular Indian Tribes. The Secretary of the Interior is responsible for maintaining relations with the Indians and must publish a list of recognized Tribes in the *Congressional Record* on an annual basis.

USING THE ONLINE CATALOG AND FINDING MATERIALS IN THE COLLECTION

The library catalog is the access tool for finding materials in the collection including books, periodicals, microforms, videos and electronic titles. In some instances a record will link to publication contents through *Index Master*. There are thousands of items in the collection on Indian law and broader areas of Native American studies which enhance the understanding of Indian law and policy. The primary subject heading is “Indians of North America” with almost 4000 entries. By adding sub-heading in subject searching, it is possible to isolate a narrow topic, for example: Indians of North America Fishing Northwest. Tribal materials are best accessed by using the name of the Tribe in its variant forms. The primary classifications in which material can

be found are KF8201 through KF8228 with Tribal law at 8220 through 8224 and Native American studies generally in E51 through E99. Materials are on all three floors and often a title will be found in the New Book Shelf section. The *LLMC Native American Collection* on microfiche provides a huge collection of older primary and secondary source materials including tribal codes and treaties, periodicals, journals, and newsletters.

U.S. STATUTES, TRIBAL CODES, TREATISES, AND OTHER RESOURCES

Title 25 of the *United States Code* and the annotated versions, *United States Code Annotated* and *United States Code Service* contain most of the federal statutes. Title 18 contains the criminal statutes. The same material can be found in Lexis, Westlaw, Hein OnLine and LexisNexis Congressional. Title 25 *Code of Federal Regulations* provides the regulatory materials. State legislation is different for each jurisdiction and can be accessed through individual code indices. Tribal codes may be difficult to obtain and apply to individual Nations. Search for the Tribal web site. Some collected codes can be found at <http://www.tribal-institute.org/> (Tribal Court Clearinghouse) under Tribal Law, <http://www.ntjrc.org/> (National Tribal Justice Resources Center) under Resources> Tribal Court Codes & Constitutions> Tribal Resolutions and Codes, <http://www.tribalresourcecenter.org> (National Tribal Justice Resource Center) under Resources > Codes and Constitutions, <http://www.narf.org/nill/Nillindex.html> (National Indian Law Library) under Tribal Law Gateway, <http://www.goia.wa.gov> (Governor's Office of Indian Affairs, Washington State) provides some information specific to the state of Washington including some treaties but does not include Tribal codes.

TREATISES AND HANDBOOKS

Canby, William C. *American Indian Law in a Nutshell*. 4th ed. St. Paul, Minn., Thompson/West (2004). KF8205.Z9C36 2004. Reserve Desk. This publication provides a good overview in easy to understand language.

Cohen, Felix S. *Felix S. Cohen's Handbook of Federal Indian Law*. 1982 ed. Charlottesville, Va., Michie (1982). KF8205.C36 1982. Reserve Desk. Comprehensive treatise is a revision of the classic 1942 edition with a new edition soon to be published.

Myers, Hardy, [et al] ed. *American Indian Law Deskbook, Conference of Western Attorneys General*. 3rd ed. Boulder, Colo., University of Colorado Press (2004). KF8205.A76 2004. 3rd floor. Adds to the previous edition coverage tribal land acquisitions, tribal gaming, child custody, and contested sovereignty matters with expanded coverage in other areas.

Pevar, Stephen L. *The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights*. 3rd ed. Carbondale, Ill., Southern Illinois University Press (2002). KF8205.A76 2004. 3rd floor. This handbook is an excellent starting point for Indian law research.

DICTIONARIES, DIRECTORIES, ENCYCLOPEDIAS

Furtaw, Julia C., ed. *Native Americans Information Directory*. 1st ed. Detroit, Mich., Gale Research, Inc. (1993). E76.2.N38 1993. Greenan Reading Room

Johansen, Bruce Elliott, ed. *The Encyclopedia of Native American Legal Tradition*. Westport, Conn., Greenwood Press (1998). KF8204.E53 1998. 3rd floor

Malinowski, Sharon, ed. *Notable Native Americans*. Detroit, Mich. Gale Research, Inc. (1995). This publication is broader in scope than law and biography. E89.M67 1995. Greenan Reading Room

Sokolow, Gary A. *Native Americans and the Law, a Dictionary*. Santa Barbara, Calif. ABC-CLIO (2000). KF8203.6.S66 2000. Greenan Reading Room

SELECTED RESEARCH GUIDES

Carter, Nancy Carol, "American Indian Law: Research and Sources," *Legal Reference Services Quarterly*, Winter 1984/85 p. 5-71. Although dated, provides a comprehensive guide to printed resources with the exception of periodical articles. Periodicals

Carter, Nancy Carol, "American Indian Tribal Governments, Law, and Courts," *Legal Reference Services Quarterly*, vol. 18 (2) 2000 p. 7-24. Periodicals

Carter, Nancy Carol, "The Special Case of Alaska: Native Law and Research," *Legal Reference Services Quarterly*, vol. 22 (4) 2003 p. 11-46. This article provides an introduction and annotated bibliography of Native law for Alaska. Periodicals

Gillingham, John W., "Pathfinder: Tribal, Federal, and State Court Subject Matter Jurisdictional Bounds: Suits Involving Native American Interests," *American Indian Law Review*, vol. 18, 1993 p. 73-132. This is a detailed guide for jurisdictional issues. Periodicals

Hazelton, Penny A. [et al]. *Washington Legal Research Deskbook*. 3rd ed. Seattle, Wash., Marian Gould Gallagher Law Library (2002). Chapter 9 provides a research guide for Indian law in Washington State. KFW75.W37 2002, Reference Reserve

Leavengood, Joe, "Finding the Law on the Rez: An Overview of Researching Indian Law in Idaho and on the Internet," *The Advocate, Official Publication of the Idaho State Bar*, vol. 46 (3) 2003 p. 28-31. This guide emphasizes research in Idaho law and national resources. The issue is sponsored by the Indian Law Section of the Idaho State Bar and emphasizes that subject. Periodicals

McCarty, Robert J., "Native Justice: A Look at Tribal Court Jurisdiction in Washington State," *Washington State Bar News*, Aug. 1999, p 35-42. This article provides answers to questions regarding jurisdictional issues especially in Washington State. Periodicals

Schwartz, April. *Indian Law Research*. This is an online guide located at <http://www.law.umn.edu/library/tools/pathfinders/IndianLaw.html>.

Sovereignty Symposium 16th: 2003: From Sacagawea to Space. Oklahoma City, Okla., Supreme Court of Oklahoma (2003). KF8201.A4 2003. 3rd floor Chapter III “Internet Resources for Indian Law” provides an extensive listing of resources for legal and general Native American studies.

FINDING CASES

There is no comprehensive publication for Tribal opinions. Some opinions can be accessed through Lexis and Westlaw and found in the *Indian Law Reporter* and the *Navajo Reporter*. Some of the web sites listed above also provide access to Tribal court opinions and sites for individual Tribes or Nations sometimes include the court opinions. The National Tribal Justice Resource Center, through VersusLaw, claims to provide the most comprehensive access available for Tribal court opinions located at <http://www.tribalresourcecenter.org/resources/>

Court Opinions:

Indian Law Reporter. Washington, D.C., American Indian Lawyer Training Program (1974-). KF8201.A3I5. 2nd floor

Landmark Indian Law Cases. Buffalo, N.Y., Williams S. Hein & Co. (2002). KF8204.5.L36 2002. 3rd floor

Navajo Reporter. Window Rock, Ariz., Judicial Branch of the Navajo Nation (1979-). KF8228.N3A5. 3rd floor

LAW REVIEW RESEARCH

Periodical literature provides a broad array of materials on Indian law. Some journals are devoted specifically to Indian law, some have special issues on the topic, and others provide scholarly articles, case notes, and even pathfinders relating to Indian law generally as well as narrow topics. Full text articles can be found in Lexis, Westlaw and Hein Online through the journal collections using broad and narrow search terms. *LegalTrac* through *InfoTrac* on the library home page provides indexing for law reviews.

The *Index to Legal Periodicals and Books* also provides indexing to periodical literature.

PERIODICALS AND NEWSPAPERS

American Indian Law Review. Norman, Okla., University of Oklahoma College of Law (1973-). Periodicals

Indian Country Today. Rapid City, S.D., Native American Pub. (1994-) Also online at <http://64.62.196.98/> Periodicals

The NARF Legal Review. Boulder, Colo., Native American Rights Fund (1983-) KF8201.A3N37. 3rd floor