ADDENDUM

LEGAL CASES AFFECTING NATIVE AMERICAN SPIRITUALITY AND CULTURAL FREEDOM

***Cherokee Nation v. Georgia (1831)***

Very early in American judicial history, a legal fiction was created which caused native tribes to become defined as "distinct, independent, political communities qualified to exercise powers of self-government and having other prerogatives by reason of their tribal sovereignty.

***Worcester v. Georgia (1832)***

The Supreme Court declared that a weaker power does not surrender its independence by associating with a stronger power and accepting its protection. Like the *Leyes.*. of Queen Isabella of Spain, forced provocation leading to conquest, allowed the Spanish to have the natives to be under the Conqueror's law. Similarly in the U.S., the "conquered" natives were subjects now to the ultimate power vested in Congress. This led to a relationship of guardian and ward. As Clifton observes "the fictitious construct of Chief Justice Marshall allowed for aspects of sovereignty and certain rights, those of a childlike ward, protected by the "parental" United States."[1]

***Oneida Indian Nation of New York v. New York (1970)***

On February 5, 1970, in the U.S. District Court at Utica, N. Y., an aggregation of lawsuits commonly called the Eastern Indian land claims was filed. The Oneida and Indian Nation of New York claimed ownership to about 100,000 acres. The complaint charged that in 1795, before the counties of Madison and Oneida even existed, the State of New York purchased land from the Oneida Indian Nation in an illegal transaction because it did not have technical approval of the federal government. Prior to these eastern land claims, most Native American litigation took place in mid-western and western states involving claims between native groups and the U. S. government. The basis for most claims were related to rights under treaties, claims to water, mineral rights relations with Americans on and around Reservations. Some cases involved resettlement to "Indian Territory" (Eastern Kansas and Oklahoma) under the Indian Removal policy of 1830's. In contrast the eastern land claims were not based on formalities with the federal government nor do they involve rights on/about Reservations. In 1977, Federal Judge Edmund Port of the District of New York ruled that New York State had violated the Trade and Intercourse Act on a 1795 purchase of 100,000 acres from the Oneida nation. A year later damage was assessed and finally in 1983, the ruling affirmed that the counties were entitled to indemnification and reimbursement of the State of New York, the wrongdoer and therefore responsible for bearing the cost. The Second Circuit Court of Appeals affirmed the rulings of Judge Port.[1]

The Oneida case went next to U.S. Supreme Court on October 1, 1984 and by March 5, 1985 the court handed down its decision. Five judges supported the previous findings while four dissented. Among the dissenters include Chief Justice Burger, White and Rehnquist.

***Badoni vs. Higginson (1977, 1980)***

In recent times, land dispute cases go back as early as 1977 with *Badoni vs. Higginson* in District Court (Utah). Navajo religious leaders sued federal officials claiming that the government's mismanagement of Rainbow Bridge National Monument violated the First Amendment. This national monument had been lost to the Navajo through executive order in 1910 without tribal consent or compensation. After Glen Canyon Dam was complete, a large recreational lake surrounded the monument. Federal officials licensed concessionaires to run boat services to the monument and to sell alcoholic beverages. This was not only offensive but violated Navajo religious belief. Moreover, inaccessibility to the religious site and the loud drunkenness of obnoxious tourists interfered with religious ceremonies. The solution for the Navajos was a prohibition on beer drinking at the monument and the closing of the area periodically to visitors. The district court granted the government's motion for summary of judgement on grounds that Navajo'' lack of property interests precluded remedies and that the public's interest outweighed the Navajo's free exercise rights. Three years later the Tenth District Court (1980) rejected the requirement of proprietorship but retained the lower court's finding that the public's interest in low cost electricity and tourism superceded Native religious rights. The ruling asserted that the Park Service's actions did not compel the Navajos to violate tenets of their religion. Moreover, the ruling stated that excluding tourists from the area during religious ceremonies would constitute the creation of a religious shrine and would violate the Establishment Clause. The court then dismissed the plaintiff's reliance on AIRFA stating, "We do not have before us the constitutionality of these laws or regulations (*Badoni*, 1980, 180).

***Bear Ribs v Taylor, (1979); Marshno v McMannus (1980)***

Native American prisoners were successful in district court cases (1979-1980) in which they argued respectively that the warden's refusal of access to sweat lodges and of access to sacred objects, religious leaders and drum ceremonies, violated their First Amendment rights. In these cases, including *Reinert v Hass* (1984), the courts relied on AIRFA to support the plaintiff's claims under the First Amendment.

***Standing Deer v. Carlson (1987)***

In 1987 the Ninth Circuit Court divested AIRFA of procedural obligations in which 18 inmates of the federal penitentiary at Lompac, California requested the court to set aside prison regulation banning all headgear including Native American headbands as a violation of the inmates' First Amendment rights and AIRFA regulations. The Court denied the request ruling that the penological interests in maintaining a headgear ban outweighed the prisoners' religious interests. With respect to consulting natives as to the effect of the ban on religious rights, the judges responded that AIRFA did not create procedural obligations.

According to O'Brien, the "Act shows that Congress did no more than affirm the protection and preservation of Indian religions as a policy of the United States."[1] She moreover observes that these cases prove to be most successful when the courts can compare the tribal practice to one of the dominant Western religions. A case in point is *Frank v Alaska*, where the court ruled in favor of an Athabascan native who had been arrested for killing moose out of season. Since the meat was used for a funeral ceremony, it was the "the sacramental equivalent to the wine and wafer in Christianity." The court ruled it did not violate the Establishment Clause and pleaded neutrality in the face of religious difference.

***The United States of America v Buerk (1979)***

In a similar case, the court ordered the confiscation of federally protected bird feathers but ordered the charges dismissed due to the plaintiff's participation in religious ceremonies.

***Crow v Gullet (1982)***

This court ruled that development of a State park in an area sacred to Lakota and Cheyenne does not violate their free exercise of religious rights.

***United States v Dion (1985)***

In this case, the plaintiff was not successful in claiming protection through the First Amendment. The court instead held that Dion had killed "protected birds" for commercial gain and not religious purposes.

***Thirty eight Golden Eagles (U.S.) v Thirty eight Golden Eagles (1986)***

In 1986, a Nevada District Court alluded directly to AIRFA's scope of upholding the forfeiture of eagle parts by Chippewa natives who had violated the Eagle Protection Act. The claimants had argued that the forfeiture would violate their AIRFA rights. Citing *Crow v Gullet* the court ruled that AIRFA created no private cause or action and that only rights were those guaranteed by the First Amendment allowing further protection of rights, the court wrote, "could involve an excessive entanglement of the state and religion."[1]

***Bowen v Roy (1985)***

In *Bowen v Roy*, the court held that requiring a father to obtain a social security number for his daughter did not violate the Free Exercise Clause, "notwithstanding belief that the use of numbers could impair the child's spirit." According to the court, the First Amendment could not be interpreted to "require the Government itself to behave in ways that the individual believes will further his or her spiritual development or that of his or her family."[1]

***Sequoyah v Tennessee Valley Authority (1980)***

Two bands and several members of the Cherokee nation filed suit to obtain an injunction against the completion of Tellico Dam on the Tennessee River The plaintiff's argued that flooding by the Dam would prevent access to their sacred birthplace, Chota, their ancestral burial grounds and a ceremonial area important for the collection of medicinal herbs, thereby interfering with their religious practices. The Cherokees lost on the grounds that they lacked title to the area precluding advancement of a First Amendment right.[1] In the Sixth Circuit court, the ruling was similar but for different reasons. The court here ruled that proprietary interest was unnecessary and that the other plaintiff had failed to prove the geographical location as imperative for religious practice. It also underscored the importance and power of congressional legislation that directed the TVA to complete the dam.[1]

***New Mexico Navajo Ranchers Association v The Interstate Commerce Commission (1983)***

Navajo property owners requested the Circuit Court to order the I.C.C. to review its approval for the building of a railroad line over their lands by the Star Lake and Santa Fe Railroads. The court ruled that the I.C.C. had failed to ensure adequately that the Railroad Company would comply with the requirements of AIRFA and the National Historic Preservation Act. In keeping with the AIRFA, the I.C.C: must reconsider plaintiffs claim that land on which the railroad is sacred to the Navajo.

***Wilson v Block, Hopi Indian Tribe v Block, Navajo Medicine Men Association v Block (1983)***

The Hopi and Navajo were met with a setback in the aforementioned consolidated cases. Both sought to prevent expansion by the Forest Service and Department of Agriculture of a ski area in the San Francisco Peaks. Located on federal lands, the area had a religious significance to both tribes. The court acknowledged the Peak's importance stating, "the Navajos pray directly to the Peaks and regard them a living deity" *(Wilson, 738)*. The Hopis, likewise, hold the Peaks sacred, as home of the Kachinas where, "They have may shrines on the Peaks and collect herbs, plants and animals from the Peaks for use in religious ceremonies."[1] The District of Columbia Circuit Court acknowledged the former but distinguished between "offending" and "penalizing" adherence to religious beliefs. It ruled that the plaintiffs had not proven the "indispensability" of the area to their religious practices that is the government's actions had merely "offended" their religious practices, therefore, it was permissible.

***Peyote Way Church of God v. Smith (1983)***

In this case, we have non-Indian plaintiffs challenging the State's law as violating the Establishment Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. The court ruled that special protections were established to afford Native American's use of peyote in their religious practices but not non-Indians and those of less than 25% Native American blood. The same rationale was used for *United States v. Warner* (1984) reiterating the use of peyote to preserve the Native American culture. Similarly, in *United States v Rush (1984)* the state law forbade the use of marihuana for the Ethiopian Zion Coptic Church. The court supported the peyote exception to Native Americans "finding that religion is an integral part of Indian culture and that the use of …peyote (is) necessary to the survival of Indian religion and culture". (*Rush, 513*)

***Oneida Indian Nation of New York v Clark (1984)***

The Oneida Indian Nation suit was directed against the Secretary of Interior with the charge of tribal elections. The issue concerned the Bureau of Indian Affairs' failure to extend a deadline to accommodate an individual's attention to religious responsibilities. The court ruled against the plaintiffs stating the denial of an extension did not constitute a violation of the First Amendment, nor of the AIRFA stating further that this act does provide natives with a separate cause of action.

***Shabazz v Barnauskas (1985)***

Similarly, this case like the previous ones reiterate the view that the AIRFA provides no statutory protection. The native plaintiff incarcerated in the Florida State Penitentiary charged that the prison's regulation against long hair violated his First Amendment's rights and AIRFA. The court acknowledged the existence of the native religion and the importance of long hair as part of the religion. While there was First Amendment constitutionality and AIRFA protection of religious rights, the court in the final analysis ruled that the public's interest in maintaining penal security outweighed the plaintiff's First Amendment rights.[1]

***Indian Inmates of Nebraska v Grammer (1986)***

A year later a Nebraska District Court applied similar reasoning to dismiss Native requests to use peyote during Native American Church services. The court acknowledged the role of sacramental peyote in religious services but established that prison security superceded the First Amendment right to use peyote in the religious services of the Native American Church.

***Smith v Employment Division (1986)***

Denial of unemployment compensation for use of peyote in a bona fide service of the Native American Church violates plaintiff's free exercise of religious rights. Remanded by the U.S. Supreme Court, 1988, for determination on whether use of peyote is unlawful in Oregon under any circumstances.

***Employment Division v Smith (1988)***

On remand, the use of peyote does violate Oregon law, but that law violates plaintiff's free exercise of religious rights.

***United States v Means (1985, 1987, 1988)***

At the lower court level the Lakota nation was successful in asserting their rights as participants from Yellow Thunder Camp in the Black Hills. The Lakota nation charged that the Forest Service's refusal to provide them with a special use permit for their camp violated the First Amendment AIRFA. The court agreed with the plaintiffs but on appeal it met resounding defeat largely because of the devastating Supreme Court decision in the *Lyng* case.

***Northwest Indian Cemetery Protective Association v Peterson (1983)***

The court ruled that the Forrest Service proposal to develop a road through an area sacred to northwest California. The court ruled that this was a violation of the Native American's free exercise of religious rights.

***Lyng v Northwest Indian Cemetery Protective Association (1988)***

Previously, Native Americans notably the Yurok, Karok and Tolowa tribes had won a significant victory halting the construction of a road and logging in sacred areas near Chimney Rock. In a devastating decision for Native American religious rights, the Supreme Court overturned the Ninth Circuit Court's decision in 1988. After lower court's had adamantly established the necessity to conduct ceremonies in isolation and without interference as necessary for the tribe's exercise of religious rights. Moreover, it has established that the government's interest in revenue and increased recreational activities did not supercede the tribes' free exercise rights. Despite the admission on the part of the Supreme Court regarding the severe adverse effects on the practice of religion, the Court concluded that the government's activities did not prohibit the tribes from exercising their religious rights. Using the *Roy* case, the Court ruled that "the Free Exercise Clause simply cannot be understood to require the government to conduct its own internal affairs in ways to comport with the religious beliefs of particular citizens. Arrogantly, it stated that "whatever rights the Indians may have to use of the area those rights do not divest the government of its right to use what is, after all, *its* own land." (Emphasis is in the original). As a result of the conservative interpretations by the government, Representative Morris Udall of Arizona, in response to the decisions of the Lying case, introduced a bill that would put more teeth into the AIRFA "to insure that the management of federal lands does not undermine and frustrate traditional Native American religious practices."[1]