

Take charge of legal guidelines

By Steven M. Tullberg

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In a recent article, Robert T. Coulter and I showed how attorneys representing Indians are making legal arguments which play into the hands of opponents of Indian sovereignty. That article, "The Failure of Indian Rights Advocacy — Are Lawyers to Blame?" printed in the Tundra Times, has been widely printed and disseminated through the Indian press.

The article's message is that Indian people must begin to review carefully what their lawyers are doing and must take steps to direct and control their lawyers' work. It is, after all, the right of the Indian people — and not the lawyers — to decide whether Indian rights to land, resources and self-government will be asserted, compromised or abandoned.

There has been a recent development within the Navajo Nation which shows how positive, concrete action can be taken to bring the work of Indian rights lawyers under strict Indian control. That development is a formal resolution of April 9, 1982 by the Select Committee on the Department of Justice of the Navajo Tribal Council.

The resolution spells out in detail the legal principles upon which the Navajo Nation stands. And it requires that all lawyers representing the Navajo Nation be informed of these principles and be fully committed to maintaining them in any legal matter involving the Nation.

All Indian governments should be given an opportunity to study this resolution. Many Indian leaders will view the Navajo resolution as a model for action in their own tribes and nations.

If Indian peoples begin to

take careful charge of their legal affairs, the result could be a dramatic reform in the law governing Indian affairs. Such reform is necessary if fundamental Indian rights are to have the legal protection they deserve.

We hope you will help distribute information about this encouraging development.

Sincerely,

Steven M. Tullberg

Staff Attorney

RESOLUTION OF THE SELECT COMMITTEE ON THE DEPARTMENT OF JUSTICE OF THE NAVAJO TRIBAL COUNCIL

Adopting a Philosophy and Statement of Principles to be used in Selecting an Attorney General of the Navajo Nation and to be Followed by the Attorney General and the Department of Justice.

WHEREAS:

1. Navajo Tribal Council Resolution CF-8-82 authorized and directed the Select Committee on the Department of Justice, in conjunction with the Chairman of the Navajo Tribal Council, to implement a model for the creation of a Department of Justice, structure funding for such department, and initiate a transfer of legal affairs to the department; and

2. The said resolution also requires the Select Committee on the Department of Justice to assist the Chairman in overseeing the implementation of the Department of Justice; and

3. The Select Committee and its members have a great deal of experience in observing the actions and conduct of tribal attorneys, and it finds there is a need to set forth basic principles and a philosophy to be applied in the selection of attorneys for the Department of Justice and

to be followed by them; and

4. It is necessary for any attorney representing the Navajo Nation to understand the basic principles this committee finds are fundamental to the sovereignty and nationhood of the Navajo People.

NOW, THEREFORE, BE IT RESOLVED THAT:

The Select Committee on the Department of Justice adopts the following philosophy and principles to be used as a measure in selecting an Attorney General of the Navajo Nation and as a mandate for the work of the Department of Justice. The committee also urges the Chairman of the Navajo Tribal Council to concur in this philosophy and these principles.

1. The Navajo Nation is a state as defined by international law in that it has a permanent population, a defined territory, self-government and the capacity to enter into relations with other governments.

2. The Navajo People and the Navajo Nation have certain basic rights secured by moral law and international law, including:

- a. The right of self-determination;
- b. The right to existence as a state with sovereignty and dignity;
- c. The right to be protected from genocide, whether caused by conscious and specific policy or effected by actual practice;
- d. The right to be accorded honor and reputation;
- e. The right to be free from discrimination based on national origin, race, ethnic membership, tribal affiliation or otherwise;
- f. The right to be free from inhuman and degrad-

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ing treatment;

g. The right to obtain the

means and resources for an adequate living;

h. The right to an ade-

quate education;

i. The right to public services;

j. The right to religious freedom;

k. The right to participate in the government of the country;

l. The right to have effective legal remedies in the national courts;

m. The right to a fair determination of disputes before courts, agencies and other judicial bodies; and

n. Other unenumerated rights necessary to human dignity and the preservation of the community of the Navajo People.

3. The Treaty of 1868 with the United States was not a legal document which gave sovereignty and governmental authority to the Navajo People, but it was a nation-to-nation agreement under which the Navajo People granted certain concessions and privileges to the United States while fully retaining sovereignty and nationhood.

4. The United States is without authority to unilaterally abrogate, modify or otherwise impair the Treaty of 1868 or the sovereignty of the Navajo Nation, for such changes can only be made with the consent of the Navajo Nation.

5. The source of sovereignty, self-government and nationhood of the Navajo Nation is its own independent status as a state under international law, and the source of such powers

is not the United States.

6. The Navajo Nation has plenary authority over its people, lands and affairs, and that plenary authority cannot be removed or eroded without consent of the Navajo People.

7. The Navajo Nation retains and will not compromise or surrender its fundamental right of self determination and it will guard and protect its right to fully control its own lands and resources.

8. The Navajo Nation retains and will exercise all governmental powers and authority which it does not specifically give up to another nation or government with the consent of the Navajo People.

AND IT IS FURTHER RESOLVED THAT:

1. All attorneys representing the Navajo Nation must have a thorough knowledge of the law of Indian affairs, be well-versed in those principles of law necessary to defend the sovereignty and nationhood of the Navajo People, and have a genuine personal philosophy in

favor of the foregoing principles such as to assure a personal commitment to the full defense and protection of those principles.

2. No attorney representing the Navajo Nation shall knowingly or negligently concede, compromise or otherwise act to impair the foregoing principles in his or her representation of the Navajo Nation, and no such attorney shall knowingly or negligently fail to assert them in any matter affecting the Navajo Nation.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Select Committee on the Department of Justice of the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 3 in favor and 0 opposed, this 9th day of April, 1982.

/s/ JOHN BROWN, JR.
Chairman,
Select Committee on the
Department of Justice