

# Echo-Hawk wows in Portland

Author discusses book about development of Indian law

By Ron Karten

Smoke Signals staff writer

PORTLAND — About 350 people almost filled Smith Memorial ballroom at Portland State University on Friday, May 4, to hear lawyer Walter Echo-Hawk talk about his new book, "In the Courts of the Conqueror," and the challenges of fighting the long, uphill battle for Native rights.

Echo-Hawk was a staff attorney for the Native American Rights Fund from 1973 through 2009.

With modest good humor, this man who has tried 90 cases before the U.S. Supreme Court disarmed the audience, opening his talk with the observation, "If I had known this was going to be such a crowd, I would have worn my girdle."

"I have had the very best clients in the entire world," he said, "and have represented the living and the dead as well." With regard to the dead, he was referring to his defense of Native American Graves Protection and Repatriation Act legislation for the Pawnee Nation.

Across the brief span of 45 minutes, Echo-Hawk covered the wide range of his experiences, provided a succinct history of Indian law, described why the legal winds may now be at the backs of American Natives and insisted that the coming generation will "complete the American Revolution."

"This is not just about me," he said, but about a whole generation or two generations who have fought in the courts, literally creating the body of Tribal law. "My work started with the Tribal sovereignty



Photo by Stuart Isett

Echo-Hawk

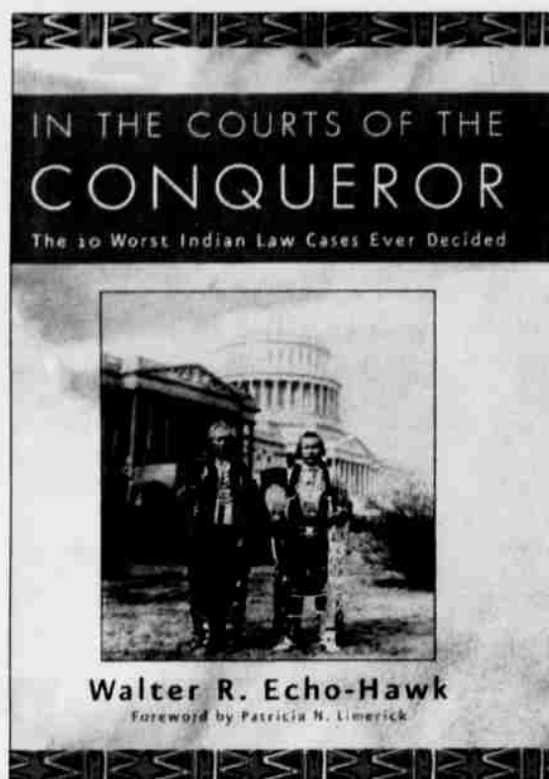
movement beginning in the 1970s." It continued through the rise of modern Indian Nations, "one of the great American social movements, rivaling the civil rights and women's movements."

He fought to bring sweat lodges into penitentiaries and worked with "profound religious leaders" representing the Native American Church to protect the spiritual use of peyote.

"The peyote religion is 10,000 years old," he said.

He took aspects of that case to the Supreme Court twice, with the court ultimately giving states the right to decide what religious practices to allow. The decision was a loss for Native Americans and a win for mainstream religions.

He fought for Klamath water rights seeking to quantify how much water it takes to support fishing rights and the plants important to Native culture, and to make sure the Klamath people had that amount.



"Judges in Oregon are awarding all of the claims of Native American Tribes, recognizing the needs for water," he said. "It's a huge step for the courts to take. It's real healthy and a good sign."

In fact, he said that until the Rehnquist Court took over in 1986, Native Americans had "a good, winning track record. It seemed like we couldn't lose a case."

Since then, however, the Supreme Court has been on an anti-Indian trend to trim back hard-won Native American rights. "In that period," he said, "Indian nations have lost 80 to 88 percent of the cases that come before the court. Prisoners fare better at the Supreme Court than Native Americans."

"This has led many of our legal scholars and Tribal leaders to ask, 'Is federal Indian law dead?' That is what led me to think about writing this book: to explore federal Indian law on a deeper level. It took four years, and is a study of the dark side of the law affecting Native Americans."

"These essays are attempts to understand the forces at work. I picked 10 very unjust cases that are still the law today, and then looked for threads of lessons to be learned, and pathways to reforming and strengthening the law. It has ruined my social life and almost my marriage, but these are very gripping tales of epic encounters of two societies. These tales show how the West was won in the American courts."

The findings detailed in the book, he said, are threefold.

There has been a heavy use of race — racism — in these decisions.

• There has been support for "unfettered colonialism — rejected as policy throughout the world now," to sustain the many legal systems in place.

• There has been a heavy use of "legal fictions, assumed to be fact," underpinning the decisions. He gave as an example the legal fiction that Indians are inferior.

"Every now and then, the court will use a legal fiction for good pur-

poses," he said, "but they are also used in cases where the results are unjust."

"There is a need to strengthen Indian law," he said. "Can it be done? Yes, but it will take a generation."

He presented five reasons he remains an optimist:

- The Supreme Court, he said, is rowing against the tide. "The other two branches of government want to support Native rights."
- Indian nations are poised to defend Native rights.
- Justice costs money, but Tribal communities have prospered from gaming and they now have the means to strengthen Indian law.
- With more Indians attending college, Tribes have more "human resources" now.

• The world has changed, he said. "We are no longer an abject British colony." There is an increased appreciation of Native life, he said, and the international community has repudiated colonialism, realizing that it is "hard on people and hard on the land."

He cited the 2007 U.N. Declaration on the Rights of Indigenous Peoples that set forth "a comprehensive set of human rights standards" that four nations at the time refused to ratify: the United States, Canada, New Zealand and Australia. "All four," he said, "have now reversed their positions." The Obama administration reversed the U.S. position in 2010.

"We will complete the American Revolution, founded on these human rights precepts," he said. "Each time we are detoured, our core values have helped us self-correct."

"I'm very optimistic. Indian education on this campus will play a critical role in what may be the greatest adventure that Native Americans have ever gone on. We have to gird ourselves for this challenge."

"There are 34 Tribal colleges that are not funded to the level they need to be funded. Our public school systems need to be culturally appropriate."

Asked in a question-and-answer session how he deals with all the setbacks, he said, "I was taught by my mentors — standing on the shoulders of giants — and learned early on that attorneys don't cry. It undercuts the trust of your clients. We have to take a warrior's stance. We have to be courageous and never falter."

Echo-Hawk was introduced by Robert Miller (Eastern Shoshone), who is a law professor at Lewis & Clark College, the chief justice for the Grand Ronde Court of Appeals and the author of two books on the Native experience, and is now finishing a third, "Battlefields and Burial Grounds."

"Walter Echo-Hawk is a legend in Indian Country," he said. "The NAGPRA law has his handprints all over it." ■

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In 2012, the Northwest Portland Area Indian Health Board will launch a companion website: [www.wernative.org](http://www.wernative.org). The site is being designed for Native youth, by Native youth, to encourage healthy behaviors, share youth-friendly media and current events, increase cultural identity and pride, and share the positive impacts Native youth are having on their communities.

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