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*Vincent Schilling*

*Ray Halbritter on Suzan Shown Harjo: "Suzan Shown Harjo has been one of the greatest civil rights heroes in the last few decades."*

# The Fight Against Pro Football, Inc.: 25 Years of Reversing Injustice and Raising Awareness

An interview with Suzan Shown Harjo on the eve of the 25th anniversary of start of a legal battle to end the racist nickname of the Washington football team

Alex Jacobs • September 4, 2017

*Editor's Note: September 10, 2017 marks the 25th anniversary of the combined years of active litigation of* Suzan Shown Harjo, et al v. Pro Football, Inc., *and* Amanda Blackhorse, et al v. Pro Football, Inc., *identical cases to cancel the existing trademark licenses of the Washington NFL team* (Harjo, et al, *filed September 10, 1992, ended in December 2009 after 17 years of active litigation;* Blackhorse et al, *was filed August 11, 2006, but held in abeyance pending outcome of the Harjo case, so its 8 years of active litigation span 2010 to 2017); and the different matter of* Harjo, et al, Letters of Protest *of new requests for the same name (the protests were accepted by the U.S. Patent and Trademark Office, which held them in abeyance pending outcome of the Blackhorse case – 2010 to 2017).*

**ICMN**: *Suzan, there is an argument out there that Native Peoples have not objected to these racist mascots and logos until recent times, and most aren't bothered by them. Of course, these racist mascots themselves are recent phenomena. Can you provide some historical context for them?*

**Harjo:** When the Washington football team's assaultive name and cultish caricature of the 'Indian head' moved near to the Capitol in the District of Columbia (a place of federal symbols, some of which honor Indian killers), the "Civilization Regulations" still were in place after more than a half-century (issued by Interior Secretaries in 1880, 1884, 1894 and 1904, and carried out by Bureau of Indian Affairs Commissioner Circulars until withdrawn by President Franklin D. Roosevelt's new deal Interior Secretary in 1936). The regs were published every ten years, bound in a slim hardback volume, *Civilization*, and sent to all federal agents to control the Indians and keep them from "roaming away from the reservation." Banned were the Sun Dance and other religious ceremonies, give-aways, dancing and "pagan" and "heathen" "medicine men." The regs criminalized those who used "arts of a conjurer" to interfere with "progressive education" (read: Indian spiritual leaders, doctors and relatives taking too long with their children as they were wrenched from families, homes, lands and ways, and taken or sent to English-only/Christian-only boarding schools of corporal punishment, cut hair, lye soap, scrubbed tongues, hard shoes and free labor for the 'civilized'). The regs provided for violators to be starved and/or imprisoned, and often were the 'authority' for killing "Hostiles." This was a time of monumental and profound injustice and upheaval, so many deaths that there was little or no time to mourn the theft of much that belonged to Native Peoples.

This sorry chapter in American history spawned 'Indian' mascotting in sports, over a period roughly tracking the "Civilization Regulations." The boarding schools used 'Indian' imagery and pan-Indian names, in order to bolster their goals of deculturizing and detribalizing the hostage-students and influencing their families and nations in the direction of 'civilization.'


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Carlisle Industrial School was the first federal Indian boarding school; it started in 1878 and set the strict military style, tone and methodology for those schools that followed. Carlisle's founding head was Captain Richard Pratt, who hand-picked and recruited the first hostage-students from families of those he fought or wished he had in the Red River War and other campaigns led by General Phillip Sheridan and Colonel George Armstrong Custer, whose specialties were attacking camps at dawn, killing as many as possible, violating women and children and slaughtering ponies and buffalo. Pratt drew from the outfits of Cheyenne, Dakota, Lakota and other Native Nations in the Great and Southern Plains for Carlisle's school and sports identities, which is how their Eagle Feather headdresses were popularized and became the symbol of 'Indians' in sports and popular culture.

This is history that is unknown to most Americans, while some others are trying to make sure it is or stays erased. It's no wonder that some Native Peoples don't know it, especially if they came from the same education system that wrote us out of history. There were many in my extended families and circles of friends who prepared as many people as they could influence for lives of cultural and historical reclamation and advocacy. Many of those who did not encourage us (the influenced for justice) are changing their minds. As the Miami Nation stated, when it asked Miami University in Oxford, Ohio to drop the awful R*dsk*ns team name, after decades of approving it, "Times change and sensibilities change."

**ICMN:** *Can you tell us about early opposition by Native people to the Washington NFL team name?*

**Harjo:** Clyde Warrior (1939-1968, Ponca) was the main organizer in Oklahoma of what has become the movement to end racial stereotypes and cultural appropriation in sports. He was the first person to specifically inform and energize many Native students on the importance of ridding sports of 'Indian' names and portrayals. He often referred to R*dsk*ns as the "worst in a crowded field" and the Washington pro team's name as being a "national insult."

The widespread low opinion of the R-word held by Native young people in 1962 was noted in a 1963 American Speech journal article, "American Indian Student Slang," by Alan Dundes and C. Fayne Porter, who interviewed students at Haskell (one of the first federal boarding schools; now, Haskell Indian Nations University), in Lawrence, Kansas. Their survey found that "almost all the students resent being called R*dsk*ns." The article was cited by Dr. James Riding In (Pawnee) in his 2015 expert witness report in the *Blackhorse, et. al.* case. That report and all the complaints, declarations, testimony, briefs, exhibits and decisions in the three Harjo, Blackhorse and Harjo matters are essential reading for all students, activists, researchers, experts, reporters and future litigants in these issues. Riding In is a prominent American Indian Studies scholar and professor, is Interim Director, Department of AIS and History at Arizona State University, and a long-time movement activist.

Warrior, a dynamic speaker and a champion fancy dancer, was leader of the Southwest Regional Indian Youth Council when he spoke at Harding High School in Oklahoma City in 1962, and gave us ways to articulate issues and take stands, particularly unpopular ones. As an organizer of the National Indian Youth Council, which began in 1963, he emphasized ending the long run of the University of Oklahoma's mascot, "Little Red," which most Native students called the "Dancing Idiot." Little Red was 'danced' and 'woo-woo-woo'd' by a stream of white male students. OU tried to appease growing opposition by finding Native men to be the mascot. Many student committees of color and women fought Little Red alongside the majority of Native students at OU—including Warrior's wife, Della (Otoe-Missouria & Creek), who later was elected leader of the Otoe-Missouria Tribe in Oklahoma and now is Director of the Museum of Indian Arts and

Culture in Santa Fe— as well as faculty and administrators, such as Maggie Gover (1934-2005), who worked at OU and with Oklahomans for Indian Opportunity's Iola Hayden (Comanche) and was mother to Kevin Gover, Esq. (Pawnee), now Director, National Museum of the American Indian, Smithsonian Institution.

**ICMN:** *Student opposition drove much of the change in the 1960s and 1970s, akin to other cultural awareness shifts. Can you give us a brief chronology of how the move to get rid of racist mascots gathered momentum?*

**Harjo:** OU's Little Red became the first mascot to fall in American sports, but not until 1970, after Warrior's passing and an NIYC protest sit-in at the OU Chancellor's office. Warrior and others from OU and NIYC coordinated with Native leaders and students on campuses across the United States, such as Dartmouth College, in Hanover, New Hampshire, where Duane T. Birdbear (Knife Clan, Mandan-Hidatsa), an early organizer to end the school's "Indians," coined the term "cultural drag" for the way some mascots, symbols and fans "dressed like Indians" and played the fool. Some Dartmouth faculty, advisors and staff supported the students, including Author Michael Dorris (Modoc) and Educator N. Bruce Duthu, Esq. (Houma).

At Stanford University in Palo Alto, California, Native students and staff also led the campaigns to jettison the "Indian" mascot. Among them were Gwen Shunatona (Pawnee), an advisor who went on to be a tribal council member in Pawnee, Oklahoma; Chris McNeil, Jr., Esq. (Tlingit), later, Sealaska CEO in Juneau; and W. Richard West, Jr., Esq. (Southern Cheyenne), Founding Director of the Smithsonian's NMAI in Washington, D.C., and now, President and CEO of the Autry Museum of the American West in Los Angeles. Educator and Medicine Woman Lois J. Risling (Hupa, Yurok and Karuk) was part of the movement to end the Indian, while her cousin was the mascot, whose "Indian name" was "Prince Lightfoot."


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Stanford dropped the Indian in 1972 and reverted to "Cardinal," the color. Dartmouth ended the "Indians" in 1974 and went back to "Big Green." (Initially, sport teams' identities were only their colors.) When OU retired Little Red, it simply continued as "Big Red," without the literally belittling mascot.

Syracuse University dumped its symbol, "The Saltine Warrior," and mascot, "Big Chief Bill Orange," in 1978, sticking with "Orange," the color, and adding "Otto the Orange," the fruit. Saltine, the warrior, and Orange, the chief, were the invention of two non-Native students' hoax in the campus paper that an Onondaga Chief's burial was unearthed by construction and the mascot name 'honored' him). The change

was the result of the leadership of Onondaga Nation Chiefs Leon Shenandoah (Haudenosaunee Tadadaho), Lloyd Elm and Oren Lyons, who had been the University's earlier ('58) All-American in lacrosse; Clan Mothers Alice Papineau and Audrey Shenandoah; and Native students, including Doug George (Mohawk).

Marquette University in Milwaukee abandoned its mascot, "Willie Wampum," in 1971. Also known as "The Head," Wampum started in 1961 and was a living adult who wore a giant red, papier-mâché head, which was ugly, grinning, reminiscent of the hideous "Wahoo" caricature. However, Marquette would not lose its "Warriors" name and dancing mascot, the "Warrior," until 1994, 23 years later, after a Native student who portrayed Warrior joined the movement to end such stereotypes.

St. Bonaventure University is in Bonaventure, New York, a neighbor of Allegany village and the Seneca Nation. The University's dancing mascot and logo, "Brown Indian," was joined in 1967 by a "Brown Squ*w" dancing mascot, which became the symbol for the women's teams. After a visit by a Seneca Chief and Clan Mothers, the women players and coach were appalled to learn that the word meant a woman's private parts in their Haudenosaunee language and was popularized as a derogatory term for all Native women by Euro-American men. The Brown Squ*w mascot and name were discontinued, without fanfare, in 1972, but the Brown Indian was Bonaventure's logo and dancer until 1992.

**ICMN:** *The motivation for using the worst words and imagery for mascots to further the agenda of subjugating Native Peoples is clearly established in the historical record, but how is the resistance to the understanding of what these words actually mean manifested today?*

Women who speak several of the many Algonquian languages (which are different from the Haudenosaunee and Iroquoian languages) also say that 'squ*w' translates as genitalia in their languages. A non-Native federal 'expert,' disagrees, saying the word simply means 'wife,' because English and French fur-trappers called their Native wives by that word. And a Native woman today, who is doing noble work to reconstruct her long dormant tribal language, agrees with the non-Native 'expert,' who is helping her.

The 'expert' seems to have made a life work of attacking me (often for the Washington NFL franchise and a *Washington Post* reporter who sometimes consults for the 'expert'). In 1992, before we sued the Washington team owner, I was a guest on the first *Oprah Winfrey Show* featuring Native issues and the second one to include them. Off camera during the taping, Oprah Winfrey told me that her 25-million viewing audience were good people who wanted tips on what terms to avoid using and why. I raised points about the use of both the S-word and the R-word, and got lots of positive feedback for years from all kinds of people in airports, restaurants and stores all around the U.S. who had seen one or both of those programs. And, I only heard from one Native person who disagreed with my points; the rest confirmed them.

The 'expert' claims that Native Peoples invented the word 'R*dsk*n' because the first time it appeared in the written record was a mention of a Native man of no reported Nation or language who described himself in that way. So, the 'expert' goes with a non-Native's rumor of a presumably English word spoken by a person of an origin not mentioned by or known to the 'expert.' What we have here is a modern day white guy vouching for an old-time white guy who wrote that an Indian guy called himself by that word.

While there are some heritage languages that would fit both time and place of the recorded incident, none has that word and people of Native Nations would not introduce themselves in that way. In some Muscogee languages, for example, a person might use the term or gesture for red or blood, meaning 'relative' (not skin color). Most non-Natives and 'the literature' of the day were informed by bounty-

hunting, taking trophy body parts from battlefields and massacre sites and by digging up Native burial grounds and finding that some Native Peoples used red as one of the colors used to paint remains or to prepare for possible death in battle. Of course, some Native Peoples today may use the R-word to make a political point, or out of ignorance—particularly those who rely solely on dictionaries that are written by 'experts'—but only the biggest fools would introduce themselves as either 'Squ*ws' or 'R*dsk*ns.'

**ICMN:** *How about offensive mascots derived from names with non-derogatory meanings?*

The University of Utah used "R*dsk*ns" and "Utes" interchangeably, until 1972, and its logo was "Hoyo," a stereotypical cartoon of an 'Indian' boy child. A Utah Indian Affairs official, Forrest Cuch (Ute), Executive Director of the state's Division of Indian Affairs, worked quietly with the Northern Ute Tribe and the University to drop R*dsk*ns and keep Utes. Utah also traded Hoyo for "Crimson Warrior." Utah later changed the mascot to "Swoop," a human-sized, stuffed animal version of a Red-tailed Hawk, in an effort to strike its current agreement with the Tribe to use the Ute name.

Several schools besides Utah were trying to gain tribal approvals, in order to get off the National Collegiate Athletic Association's 2005 list of schools with "hostile and abusive" identities and practices. The NCAA policy gave a pass to offending institutions, if they gained approval of "namesake" tribes; if not, or if they refused to give up their toys of racism, the schools were not allowed to compete in championship games. Agreements were reached between Utah (Utes) and one of the Ute Nations; Catawba College ("Indians") and the Catawba Tribe; and the Central Michigan University ("Chippewa") and one of the Chippewa Nations, the Saginaw Chippewa Tribe.

Dr. Cornel Pewewardy (Comanche-Kiowa) was one of the Native scholars who helped to develop the NCAA policy. Until 2017, he was the Professor and Director of Indigenous Nations Studies. His research and leadership, and that of W. Rogers Buffalohead (1939-2016, Ponca)—who was the first Chair of the first Indian Studies Department in the U.S., at the University of Minnesota—were important to the development of the National Indian Education Association's policy to remove all 'Indian' identity references in sports. NIEA's position led to the similar policies of other Native educational organizations and the National Education Association.

Florida State University ("Seminoles") forged a settlement with one of the Seminole Nations, the Seminole Tribe of Florida. Governor Jeb Bush and some Florida legislators made rude public remarks about the Seminole Nation in Oklahoma lacking standing because it left Florida, as if its citizens' and national names were not Seminole, and as if they forced themselves to move to Indian Territory and President Andrew Jackson and the southern states and territories were innocent bystanders watching traffic along the Trails

of Tears. FSU had made a deal in 1972 with the Seminole Tribe in Florida that FSU would drop “Sammy Seminole” and “Chief Fullabull,” but continue to use Seminoles. By 1978, FSU was using “Osceola” and “Renegade,” official mascots. FSU also trademarked Seminole.

Although Osceola has come to refer to a single historical figure and a great symbol of Native resistance, it is a ceremonial title, Yahola (Ase-Yahola), used in many Muscogee languages, including Seminole, of the Muscogee Confederacy, which once was comprised of more than 60 Nations, Tribal Towns and Ceremonial Grounds, including Seminole Nation. The vastness of the Muscogee (Creek) Nations and Confederacy helps explain why, in addition to greed for the land and wealth, Jackson and Georgia, Florida and other states and their settlers were anxious to kill off and wrench survivors from their homes. Many of those who were hunted or moved at gun- and bayonet-point gave agents their religious or warrior titles, rather than their personal names, as a sign of resistance or for safety, and this (plus agents’ misspellings) is the main way titles, such as Yahola (and Micco, Fixico, Harjo and others), became personal names, such as Osceola.

This also is a reason that many Seminole and other Muscogee languages' speakers and ceremonial people do not want these names belittled by being used for recreation or entertainment. Many other Native Peoples also take offense at the FSU mascots because of the spectacle of Osceola taking aim at an image of an 'Indian' head, symbolically burning and killing Native Peoples, to the great satisfaction and roar of the fans.

**ICMN:** *There was some long-running resistance to NCAA mandates, was there not?*

**Harjo:** The NCAA did not approve the dancing mascot, "Chief Illiniwek," because the University of Illinois at Urbana-Champaign could not find a "namesake" to approve. Illinois and federal policies had killed off, run off and hauled off Native Nations, with many removed on the Potawatomi Trail of Death.

The first Native student to oppose the mascot publicly was Artist Marcus Amerman (Choctaw). His letter to the campus newspaper was printed and resulted in death threats and racial terror. When other Native art students did not back him up, he said he left UIUC for less anti-Indian environments. Amerman is a master in the Arts of Beads, Glass, Painting, Fashion and Performance. Native students, most notably Debbie Reese (Nambe Pueblo) and Joseph Gone (Gros Ventre), carried on the fight for removal of the anti-Indian symbology and improved treatment of and conditions for the Native students. Dr. Reese, who went on to teach at UIUC, now has a website and blog devoted to eliminating stereotypes of Native Peoples in children's literature. Dr. Gone is now a research psychologist and Professor of Psychology, University of Michigan College of Literature, Science, and the Arts. While a student at UIUC, he filed a complaint of racial discrimination with the U.S. Department of Education, which rejected his claim.

DOE is known in Indian Country for seeing racial issues primarily as Black and White, and not as Indian. It is true that Native Nations have political, not racial, relationships with other nations and with their citizenry, but discrimination against Native Nations' citizens because they are Native persons almost always involves racial discrimination and anti-Native prejudice. These are not points or conclusions DOE is known for making or reaching. During the Obama Administration, as the President spoke against demeaning names and imagery in sports, focusing on the Washington NFL franchise, some DOE employees internally opposed action, but did conduct hearings before the clock ran out on the Administration.

Another well-known, anti-mascot activist at UIUC, Charlene Teters (Spokane), is prominently featured in the film *In Whose Honor* by Jay Rosenstein (a UIUC faculty member). Teters is an Installation Artist and Academics Dean at the Institute of American Indian Arts. She was a co-Founder of the National Coalition on Racism in Sports and the Media, with Founding President Vernon Bellecourt (1939-2012, White Earth Band of Ojibwe). Bellecourt, a long-time activist and American Indian Movement leader, Teters and others started the NCRSM in 1989 to get rid of the UIUC mascot.

The NCAA pressed UIUC to officially stop using Illiniwek, which it did in 2007. Unofficially, the mascot still appears for UIUC fans, who continue to look for a way to let the 'Chief' dance again for UIUC games.

The NCAA was sued by the University of North Dakota in a drawn-out fight to hang on to "Fighting Sioux." The case was settled in 2007. In 2011, the North Dakota Legislature voted to keep the UND team name, logo and imagery. In 2012, voters in a statewide referendum opted to change it.

Fighting Sioux was opposed by all except one of the Sioux Tribes, Oyates and Nations, and by all the Nations and Tribes in North Dakota, except one (the same one), Spirit Lake Nation, which tried but failed to keep Fighting Sioux through litigation. Much of the struggle to end the UND sports identity was led by the Standing Rock Sioux Tribe, which has lands neighboring both North and South Dakota. Former UND hockey player, Ralph Engelstad, financed much of the fight to keep Fighting Sioux, including the hockey arena that carries his name and has embedded imagery and logos of the objectionable mascot. Engelstad made a fortune from his Las Vegas casino, where he threw birthday parties for Hitler, until the gaming commission stopped the practice.

Native students filed a lawsuit opposing the UND sports identity, but the judge dismissed it, saying the pending change rendered it moot. UND dropped Fighting Sioux in 2012 and changed it to "Fighting Hawks" in 2015. Many UND fans wear the memorabilia to show their displeasure with the change.

**ICMN**: *Even though pro sports leagues appear obdurate to the calls for change that are only increasing in volume, so much—as we've seen from your examples above—has been accomplished. Has anyone been able to gauge the magnitude of the disappearing racist mascots?*

**Harjo:** Movements grow in many directions, with gains in one influencing progress in others. In this one, progress and no progress lead to change or news about the status of change, which lead to publicity, news and change and more spotlights and additional changes. This occurs spherically, and not in a linear or circular way, so most who think they know what happens and how either know next to nothing or way too much. Also, very little happens by chance, but not much is totally calculated. Many things happen simply because a very few people start something and it snowballs. Many people are looking for better ways to articulate issues and highlight progress, while others are on the lookout for slogans they can voice and photos they can lean into, which is good for a movement, but it makes it easy for hucksters, oral plagiarists and con-artists to capitalize on the work of others. And this feeds into and is on top of undermining by actual opponents.

In 1970, when OU's Little Red became the first of the once-mascots, Native and non-Native coalitions and campaigns gathered data as best we could (without benefit of the great technology of this time). By our count, there were a little more than 3,000 'Indian' stereotypes and stereotyping of actual Native references in American sports. We, collectively, eliminated stereotypes at more than 2,000 elementary, middle (junior

high, before the term middle was used) and high schools, as well as community colleges, four-year colleges, universities and pro teams. This would leave 900-plus to go. There now are many different counts, but the more reliable seem to be in the 900-1,100 range of those remaining, still putting the changes at two-thirds. No counts have started with perfect baselines or consistent categories. Change can be counted as one per school or pro team, or as increments of change within each schools and pro teams. The two types of counts are mashed together in all counts to date. Since most change and policy is incremental, it seems that the count in increments is the most in keeping with the change that has been attained to date.

The counts in some states and school districts have ranged from excellent to exact; for example, in Oklahoma, California and Minnesota, and in Los Angeles and Louisville. And undercounts and double-counts may have cancelled out each other. The Tulsa Indian Coalition Against Racism organized to get rid of the "R*dsk*ns" at one high school in Tulsa. Building on counts and lists from the 1960s and 1970s, TICAR's Board of Directors and President Louis Gray (Osage) coordinated with others to do a 1990s statewide list of 'Indian' stereotypes in school athletics. Concerned Indian Parents in Minneapolis kept a true count for the city and state in the late 1980s and 1990s. In both cases, the counts for dates certain are reliable.

The changes in the L.A. Unified School District are documented in a chapter in *Team Spirits* by one of the organizers, Amber Machamer. I interviewed her on a few other changes in California that her family helped bring about, for my chapter on some campaigns initiated or led by Native young people, in *For Indigenous Eyes Only: A Decolonization Handbook*, which includes a poem by my daughter, Adriane Lynn Shown (Muskogee/Cheyenne). Various coalitions maintained statewide lists and counts for California, noting changes as they happened, starting in the 1970s. These lists and counts were used by the Legislature and Governor Jerry Brown for their 2015 state law banning the use of R*dsk*ns for sports in the public schools. The law was the result of efforts by Native Peoples and Native and non-Native organizations and educators, including Dahkota Kicking Bear Brown (Wilton Miwok), of NERDS (Native Education Raising Dedicated Students).

A citywide coalition in the mid-1990s changed the five schools in the two school districts in Louisville, Kentucky, which used so-called 'Native' sports names and symbols. The Kentucky Departments of Education and of Human Rights (the latter no longer exists) brought me in to work with the coalition of school coaches, teachers, administrators and community people, and to meet with students, athletes, parents, alums and others. I was there for the "Just Good Sports" project of The Morning Star Institute. The schools were told in 1993 to stop using the 'Indian' references in their sports programs, and the coalition had secured the support of Louisville's most well-known and esteemed athlete, Muhammad Ali, who was said to have blessed the goal to eliminate 'Indian' stereotypes from the school sports.


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Long conversations in 1994 and 1995 involved the usual points and counterpoints, with two additional ones. Louisville is arranged around parks and some of the schools carry the same names as the parks. People were respectful regarding the school names, because there is dignity in that kind of name, but there is no dignity in a recreational name, particularly when half of the fans are rooting for the other's defeat and even death: Here come the epithets that make 'Scalp 'em' and the 'Tomahawk Chop' seem tame. We talked about possible schools named after an African Nation or African-Americans or Reverend Martin Luther King, Jr., and discussed whether or not their teams called "Fighting Zulus" with a mascot throwing a flaming spear, or the N-word or "Darkies" (fill in your own art) would bring dishonor to the dignified school namesake.

This was the case with one of the schools, which was named Seneca, after the Nation and the Park, and the team name was (you guessed it) "R*dsk*ns." Here's the departure from the norm: The logo/mascot was "Lonesome Polecat," a hideously ugly, wahoo-ish figure, slouching and low-to-the-ground cartoon character by Al Capp in his *Li'l Abner* comic strip. One of two makers of "Kickapoo Joy Juice," Polecat lived in a cave with his Cro-Magnon partner, "Hairless Joe." Polecat is from the "Fried Dog Indian Tribe," the "one tribe who has never been conquered."

Capp gave the school permission to use his Polecat and, when a Native person from Louisville would say, 'That isn't right,' his fans would waive copies of the letter and say, 'No, we have the right.' The other four schools were 'less racist,' but the state and local governments and the coalition were in agreement that all had to go, because bargaining for pieces and degrees of racism only serves the interests of the racists. And, in the end, what's left still is racism, even if just a little bit of it. All were discontinued by 1995.

**ICMN:** *So, given the documentation you've provided, which admittedly is a brief survey of this wide-scale resistance, what's left of the arguments, 'Why now after all this time?' and 'Most Natives don't mind'?*

**Harjo:** In my experience since the early 1960s (and to the best of my knowledge and research about others' experiences in this movement), the common argument—'Indians never objected before' or 'Most Indians aren't bothered'—is used against Native Peoples who try to eliminate racist stereotypes and false 'Indian' identities in sports. The argument usually is accompanied by these kinds of claims: 'We honor Indians.' 'Most Indians are honored.' 'It's our team's tradition.' And the ever-popular, 'Our team was named by (or to honor) so and so' (insert a Native or so-called 'Native' name and find that the origin history is made up and almost all 'honorees' and the majority of the 'honored' are pseudo-Indians).

This is so in all but a handful of the 2,000-plus changes to 'Indian' references in sports by Native Peoples and friends—including, all the major national Native organizations, most Native Nations, hundreds of thousands of Native individuals and millions of our friends and allies—and in myriad other struggles that have not resulted in change, yet.

We, collectively, have changed over two-thirds of the offensive names and symbols in educational athletic programs. We have made great strides in dealing with these issues in professional sports, but owners of pro teams with "Indian" names or imagery cling to these power symbols of racial commodification, objectification and domination as if their very lives depended on them.

When I was Executive Director of the National Congress of American Indians in the 1980s, the then owner of the local pro-ball team, Jack Kent Cooke, would not meet with us and declared to a UPI reporter that there was no chance his team's name would be changed, because it was a tradition, wasn't offensive and would cost too much money.

Of course, it is up to the offended to say what offends and why, and not up to a repeat offender to define what offends others; and something may be a tradition and still be offensive, mercenary, injurious and even murderous. Skinning of 'Indians' generally and of specifically-named Native Nations comes to mind. The skins would be presented as "proof of Indian kill" for bounties, which were issued or sanctioned by European and Euro-Americans companies and colonies and by individual U.S. territories and states. Some used the term 'scalp' interchangeably with or as a genteel way of saying genitalia, without which bounty-hunters could not collect on the bounties that set a sliding scale for killed men, women and children. On the money question, it was clear that his ball club would continue to make fortunes off anti-Native racism, as it has; and, if the name were changed, his and the other NFL teams would make a fortune off the skyrocketed sales of the new name and imagery, as well as the memorabilia, at least for a short time. Cooke, who wasn't the first owner who did not meet with Native people who wanted a name change, but he became the first team owner we sued.

Every part of the argument you first posed was used against the case that seven of us filed a quarter-century ago, in 1992, in the U.S. Patent & Trademark Office: *Harjo et al v. Pro Football, Inc.* We sought cancellation of existing federal trademark registrations for the vile name and imagery of the NFL's Washington football team, R*dsk*ns. We did not seek to force the team owners to end their club's name—they can and do call themselves any racist thing they want, but the federal government should not sanction that racism or reward it with the exclusive privilege of making money off racial slurs.

These six marks were issued between 1967 and 1990. The team's owners did not try to get a trademark before the late-1960s, even though it used that disparaging name and moved to D.C. in the early and mid-1930s, when skinning Native people for bounties, for "proof of Indian kill," for museums and science, for souvenirs and for fun were not so distant memories, and when desecrating burials and Native people for their heads and other body parts, and their precious funerary objects is an open wound of history and continues to the present day.


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**ICMN:** *Suzan, could you break down your part of this quarter-century lawsuit, litigation and battleground of public opinion? And how it started on Sept. 10, 1992?*

**Harjo**: While I was Executive Director of the National Congress of American Indians in the 1980s, several of us from NCAI's leadership, issues and organizational committees and staff would meet with different groups of lawyers to think out loud about potential litigation that we could initiate or that we might have to defend against. We kept going back to questions about a lawsuit to keep the dreadful R*dsk*ns from continuing to harm our children, our Peoples and our reputations, but there always were good reasons to reject certain approaches.  In the meantime, we tried to meet with the then-owner of the ball club, Jack Kent Cooke, who blew us off and answered us through rude remarks to a reporter.

The last owner to meet with Native Peoples who wanted an end to the racist name and symbol was Edward Bennett Williams, a big-time lawyer who also represented the *Washington Post* and kept our voices against the team name out of the paper. In 1972, NCAI President Leon F. Cook (Red Lake Chippewa) assembled a group representing 15-plus Native organizations, NCAI being the oldest and largest with a membership of Native Nations and their individual citizens, and NIYC being the second oldest. LaDonna Harris (Comanche), President and Founder (1970), Americans for Indian Opportunity, and Dennis J. Banks (Anishinaabe), CoFounder (1968), American Indian Movement, were among the representatives who asked asked Williams to drop the name. Reacting to a meeting prep letter from one of the groups, he told a reporter it was "silly," and raised the slippery slope argument: "Suppose blacks got together and demanded that the Cleveland 'Browns'...?"

I handled press relations for the 1973 NCAI Convention in Tulsa (while still working for WBAI-FM Radio in New York City), where Native American Church Roadman Reuben A. Snake, Jr. (1937-1993, Winnebago) and Leon Cook led a Native rights demonstration and protested all sports mascotting and the worst, the name of the Washington team. Reuben Snake and I couldn't get a meeting with the team's owner when we represented NCAI together.

The following are NCAI Presidents and Executive Directors who tried to meet with the team's owners or otherwise get rid of the name: Vine Deloria, Jr. (Standing Rock Sioux), 1964-67, John Belindo (Navajo-Kiowa), 1968, Leon F. Cook (Red Lake Chippewa), 1971-72, Hon. Joseph B. DeLaCruz (1937-2000, Quinault), 1981-84, Suzan Shown Harjo (Cheyenne & Hodulgee Muscogee), 1984-89, Hon. Reuben A. Snake, Jr. (1937-1993, Winnebago), 1985-87, Hon. John Gonzales (San Ildefonso Pueblo) 1988-89, Hon. giashkibos (Lac Courte Oreilles), 1992-95, JoAnn K. Chase (Mandan/Hidatsa/Arikara), 1994-99, Hon. W. Ron Allen (Jamestown S'Klallam), 1996-99, Hon. Tex Hall (Mandan/Hidatsa/Arikara), 2000-05, Hon. Joe A. Garcia (Ohkay Owingeh), 2006-09, Hon. Jefferson Keel (Chickasaw), 2010-13, Jacqueline Johnson Pata (Tlingit), 2001- present and Hon. Brian Cladoosby (Swinomish), 2014-present.

In 1990, I became Executive Director of The Morning Star Institute (Founding President, 1984-present), which friends of my late-husband and partner, Frank Ray Harjo (1947-1982, Wotko Muscogee), started in his memory. Vine Deloria, Rick West and other MSI Board Members continued to look for ways to address the Washington team's disgusting name. When our family moved to D.C. at the end of 1974, we were appalled to see and experience the results of decades of objectification by the pro football team's helmets and uniforms of the players, cheerleaders and fans. On some sidewalks and street corners of Capitol Hill, DuPont Circle and other D.C. neighborhoods were large decals of the team's 'Indian head' logo attached to all four sides of sky-blue mailbox-sized trash bins. We visited various people in D.C. government about the dehumanizing message being sent, associating Native Peoples with garbage and before too long, the logo decals were being removed. We were happy to know that District representatives got it and got rid of the trashy offenses.

In 1992, a patent and trademark lawyer in Minneapolis, Stephen R. Baird, interviewed me for a law review article he was writing. He asked why we at NCAI and at Morning Star had rejected the U.S. Patent & Trademark Board as a forum and Section 2 of the Lanham (Trademark) Act of 1946 as a cause of action for potential litigation. I told him I had no idea what he was talking about. He explained his theory to cancel the trademarked slurs of the Washington team for violations of the Lanham Act, which did not allow registration of marks that disparaged, held up to contempt, held up for ill-repute or were scandalous. (Opponents of federal approval of trademarks need only prove one of these and we later won on the first three, and three outta four ain't bad.)

This is the part of the Trademark law the U.S. Supreme Court struck down as unconstitutional in June 2017 in a completely separate case, *Lee v. Tam*, about the PTO rejecting a license for an Asian band wanting to to call itself the "The Slants." The R*dsk*ns franchise filed a brief on the side of The Slants, claiming that its commercial free speech was being violated by the Lanham Act, the PTO and the Native young people in *Blackhorse et al v. Pro Football, Inc*. Tam's band case is about self-expression by some Asian people about themselves and is like "NWA," the band of African-Americans, and not like the NFL franchise, which oppresses, defames and threatens the overwhelming majority of Native Peoples.

Our cases are about the NFL franchise's name-calling from the outside and not about the 'self-expression' of the mega-millionaire owners. The Native young people's case is pending before the 4th Circuit, but ultimately it could be tossed out as moot because the Supreme Court didn't know the difference between the money free speech of The Slants and the money name-calling speech of the R*dsk*ns. But, the Supreme Court has been wrong before—especially in cases involving public racial bias and in many complex Native rights cases dealing with issues of our national or group rights and with our individual rights, as with our religious freedom cases—and often grasps at loopholes like "laches" to decide or to keep from deciding whether or not descendants of treaty violating land thieves get to keep the stolen land because the Indians waited too long to sue. It takes a long time, but sometimes Courts find a way to support justice for Native Peoples, too.

We have not lost our cases on the merits. Over the course of a quarter-century, we have won important victories and made significant progress in the court of public opinion; in legal, legislative and international forums; in actual changes and increased awareness of racist stereotypes and cultural appropriation already achieved and set in motion; and the record assembled, which will well serve and instruct Native Peoples and our lawyers and allies in what we all did right and, importantly, what we did wrong. But, that is a reflection for another day, because the shoutin's not over on this day.

It is important to say now that the strength of any movement can be measured by progress made for the people and whether or not it is made in a good way. And there are people to be acknowledged and appreciated in this moment.

In 1992, after Steve Baird explained his theory, I asked him to represent me and began thinking of other Native people to ask to join (the latter because it's wise and empowering to go into dangerous situations with others). The Morning Star Board Members, including Vine Deloria and Rick West, approved of my participation as a Petitioner. (MSI was organizational sponsor of the lawsuit for its first seven years.) We liked the approach of a pocketbook incentive case that did not force a name-change, but counted on the greed of the team owner to drop the name if exclusive federal trademarks were cancelled. The owners all insisted that they didn't need federal protections, because state-protected marks would do, but they dragged their feet and tried to bully and berate us every step along the way.

The pocketbook approach put things squarely where pro sports differed from educational sports: money. In most name and symbol changes made in educational sports, we had a way of discussing the issues and solutions, because there almost always were educators and officials who genuinely cared about the well-being of the students. In pro sports, even the health and safety issues seemed focused on liability and not on human beings, and some paid fans seemed physically provocative, while others seemed orchestrated online to attack and defame those of us who were challenging the NFL franchise in orderly legal forums.

Another reason I liked the pocketbook approach was that it didn't impede anyone's free speech. I was at WBAI-FM in 1973, when the "seven dirty words" case started down the road to the Supreme Court's 1978 ruling against free speech. The free speech flagship station of the Pacifica network, WBAI aired a cut from Comedian George Carlin's "Class Clown" album and a listener complained to the Federal Communications Commission that his young son was wrongly exposed to dirty words. George Carlin's "Seven Words You Can Never Say on Television" was based on an earlier routine by Comedian Lenny Bruce that was an excuse for one of his many arrests and jailings for using dirty words. The upshot of *FCC v. Pacifica Foundation* was that the federal government can restrict free speech in certain instances, the opposite of the Court's 2017 ruling in The Slants case against the PTO, which rendered part of the trademark law unconstitutional as violative of the First Amendment. We never thought we were violating the NFL's freedom of expression by using the same section of the trademark law.

Steve Baird was an Associate at Dorsey & Whitney in Minneapolis, and Partner Michael A. Lindsay became Managing Partner for the case, later taking over as lead attorney when Steve Baird went to another firm after we won the landmark decision to cancel federal protection, on April 2, 1999. Daniel Snyder was buying the NFL franchise then and it would have been a good time to settle. We weren't seeking money or anything except agreement to change the team name and imagery. The only 'settlement' we could have discussed was a date certain for the franchise to stop selling memorabilia. We did want the new owner to meet and hear from us why we were pursuing this case. I wrote to him on behalf of all the Petitioners, with a welcome and offer to meet. He never even sent an acknowledgement and did what Jack Kent Cooke had done—ignored us and sent the same rude message through the media: It's not offensive, it's a tradition, it would cost a fortune, so no change. Then Pro Football, Inc., appealed the unanimous opinion of the three-judge panel Trademark Trial and Appeal Board.

When we had filed our Petition for cancellation with the PTO on September 10, 1992, Jack Kent Cooke was the owner of PFI, until he died in 1997. His son, John Kent Cooke, then bid for the team, but lost to Daniel Snyder, who paid a whopping $800 million to own his dream—since boyhood he's worn a belt buckle sporting the disparaging name.

Vine Deloria, Jr., was the first person I asked to be a co-plaintiff. He said yes, which gave me great confidence that we should go forward. He was our greatest public intellectual, an excellent writer and a fine historian and legal scholar, even before he earned a law degree and litigated. He also was wicked funny, and you can't go on any long journey with anyone who's humorless.

We knew it would be a long journey because serious lawsuits can take a long time, unless they are frivolous. The team owners claimed in 1992 that our case was frivolous, but the PTO ruled in 1994 that it wasn't and ordered a trial on the merits. The PTO had not cancelled a trademark license before—until deciding for the Native side in our case in 1999, and canceling the trademark registrations, pending appeals. The PTO said in our case that it should have rejected the Washington NFL franchise request for registrations to begin with; however, we didn't even know the franchise owners filed for federal sanctioning of their six trademarks between 1967 and 1990, let alone that there might be federal recourse.

Below, in alphabetical order are the other people I asked. Happily, they all said yes. Those with asterisks also joined in the 2010 Letters of Protest for new requests for marks that stacked up over the course of litigation. (Jeffrey Lopez of Drinker Biddle Reath LLP made the list and filed the letters of protest; laches was not a factor because these were not cancellation cases.) Raymond D. Apodaca (Ysleta Del Sur), Governor of the Pueblo Ysleta Del Sur near El Paso and an NCAI Area Vice President, worked with us on a joint NCAI-Morning Star effort to achieve a renewed call by members of the D.C. Council for the team name to change.

*Manley A. Begay, Jr. (Navajo), Ed.D, Professor, Applied Indigenous Studies, Northern Arizona University, who specializes in Indigenous Nation-Building, Education and Dine' History and Philosophy. A longtime scholar and activist, we worked together on anti-mascotting, repatriation and museum issues when he was working toward his doctorate at Harvard University, as he directed the Harvard Project on American Indian Economic Development.

Dr. Norbert S. Hill, Jr. (Oneida), is area director of education and training for the Oneida Tribe of Indians of Wisconsin and Co-Editor with Kathleen Ratteree of *The Great Vanishing Act: Blood Quantum and the Future of Native Nations*. We have worked on racial stereotyping in sports and raising self-esteem of Native youth.

*William A. Means, Jr. (Oglala Lakota, Wicahpi Koyaka Tiospaye), is a founder and first President of the International Indian Treaty Council and a current IITC Board Member. He has served as Executive Director, AIM Grand Governing Council, and Heart of the Earth Survival School, and as a veteran of Wounded Knee 1973 and a Vietnam combat veteran.

*Mateo Romero (Cochiti Pueblo) is a Painter and a Printmaker known for his narrative scenes and social commentary. Highly collected and awarded, he is a Muralist and has done monumental works for several Native Nations. He has authored a book with examples of his art, entitled, *Painting the Underworld Sky: Cultural Expression and Subversion Art*. He has said that in order for most people to see us and our images, "We have to clear out the underbrush of stereotypes."

Two others who joined the 2010 Letters of Protest are far from new to the mascotting issues. Robert I. Holden (Choctaw/Chickasaw) is the NCAI Deputy Director and serves several of its important committees. We worked together at NCAI during the 1980s and he has the distinction of being the staff member with the greatest longevity in the organization. Duke Ray Harjo II (Muscogee/Cheyenne) is my son and the father of two sons, and the President of the PTA representing three schools in Portland , Oregon. He grew up in the movement to end 'Indian' mascotting, having fought many battles to keep the R*dsk*ns from imposing its pejorative name and imagery on students in D.C. schools, including one he attended, Sidwell Friends, which banned such paraphernalia two years ago and has been joined by two additional schools in the Washington metro area.

Dorsey & Whitney represented us until our TTAB victory was overturned by the District Court Judge, who came up with the unique interpretation of laches, saying that each of us waited too long after turning 18 to file our case, *Harjo et al v. Pro Football, Inc*. The Court of Appeals later asked the Judge if she meant that laches ran against the youngest of us, Mateo Romero, who was in diapers when the team owners got the first federal trademark in 1967. After only three years, she answered: yes, even Mateo Romero. I had selected him as a Co-Petitioner because he was young, an artist and he had been earning his BFA at Dartmouth, when the Native students defeated an ugly attempt to bring back the Indians, so he knew the kinds of thing to expect.

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We searched for another firm to handle an appeal, but two candidates with pro bono groups that wanted to represent us were conflicted out by others in their firms having represented the NFL franchise in small matters. (The husband of the trial Judge worked at another firm that handled some PR matters for the NFL franchise. And the Judge's opinion is PR-ish itself—low on facts, high on propaganda, featuring the team owners' big lie, for example, that the team was named in honor of William "Lone Star" Dietz, a "beloved coach" and a "full/blooded Sioux." Actually, I bought the big lie, too, but then I wasn't palming it off in a judicial opinion as fact. Writer Linda Waggoner corrected my misimpression and shared her research finding that Dietz was an impostor, and Eileen Maxwell with the NMAI found additional evidence that Dietz was a full-blooded German from Wisconsin, who met Carlisle student James One Star, stole his

identity and wrote to his sister pretending to be her brother. Dietz tried to take allotted land, his false identity and to evade the draft as an Indian. He did get away with his impersonation in sports, first brought to Carlisle by Pop Warner as a ringer for the football team.

We were beginning to think that the team owners had engaged every firm in town. Michael Lindsay was in touch with an attorney in D.C. who taught our case in his law class at Cornell University: Norm D. St. Landau, a Partner at Drinker Biddle Reath, LLP advocated for the firm to represent us at the appellate level. Philip J. Mause was lead counsel for our case, and Jesse Witten, Jeffrey Lopez and others were on the legal team.

When the Court of Appeals asked the lower court Judge if Mateo Romero, too, was barred by laches, it almost mused about whether or not laches would bar young or unborn Native people. It seemed to me that the NFL franchise would escape through the loophole of laches in our case, and in 2005 I started talking with young people or their friends and relatives to see if they wanted to find a litigation path and to try to prepare and caution them about the perils and work of protracted litigation. Several lawyers agreed on the best age range, 18 to 24 at the time of filing, in order to avoid the laches problem as the Judge interpreted the defense. I reached out to several people who were older or would be unless filing could take place sooner than it seemed possible. I thought that Rhonda LeValdo (Acoma Pueblo), an educator and radio producer, whose leadership in the Native American Journalists Association was admirable, would have been an excellent candidate to take the lead, but she was just outside the age range. She had led a protest by Native students and activists from Haskell Indian Nations University and the University of Kansas at a football game of competing stereotypes between Kansas City and Washington at the "Chiefs" stadium. I had a news article about the protest and it mentioned Rhonda and Amanda Blackhorse (Navajo) as the organizers. "Amanda is dedicated and responsible," Rhonda LeValdo said, and I soon shared her assessment.

Coordinating with Phillip Mause, I recommended that Amanda be the lead Petitioner. The Drinker Biddle team made the *Blackhorse, et al* case identical to ours, except for the ages of the plaintiffs. We did the same kind of media rollout for the filing of this case as we had done in 1992, by the plaintiffs and lawyers announcing the filing of the Petition in simultaneous news conferences.

Jesse Witten took over as lead attorney in the second case when his fellow partner Phil Mause retired from Drinker Biddle. Paul Moorehead of the Powers law firm represented me and Morning Star in our efforts to achieve legislation to address these issues, and Larry Gondelman of Powers represented me for my expert witness deposition and declaration in the second case, as well as the many Native groups' amici brief. And the Native American Rights Fund represented NCAI, NIEA and others throughout the litigation.

# Comments