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**KENT FRIZZELL: LAWYER, PUBLIC SERVANT, LAW
PROFESSOR
1929–2016**

Gregory K. Frizzell* & Blaine G. Frizzell**

During his time as Solicitor at the Department of the Interior, our father, Kent Frizzell, had the great judgment and good sense to hire Reid Chambers, then a professor of Indian Law at UCLA, as his Associate Solicitor for Indian Affairs. Though their party affiliations differed, they shared a commitment to President Nixon's new policy of tribal self-determination. Together they established a new structure for the Department – as Reid fully describes in the following article – that protected Indian property rights and advanced tribal self-government. As good lawyers, they shared a common understanding of their duties to enforce the Department's trust responsibilities to Indians.

One of the enduring legacies our father left for us was his ability to forge deep and lasting friendships with persons who were on the opposite side of the political spectrum. Having spent most of his life in politics, it was no secret that he held strong political opinions. However, we can both point to numerous friendships he developed with persons who held equally strong but opposing opinions. These friendships were born of mutual respect for the character, intellect, personality, and accomplishments of the other person and an ability to value and enjoy the things that they held in common. Reid Chambers was one of those friends.

Over the four decades since his work at Interior, Reid Chambers has been widely recognized as one of the nation's foremost experts in federal Indian law. He has taught that subject at UCLA, Yale, Georgetown, and The University of Tulsa. Most importantly, he was and is a true friend to our parents and family. Our family is grateful to Reid for his efforts in writing this excellent article.

Kent Frizzell lived a fascinating life in the law and public service. Upon graduation from law school, he practiced law in his hometown of Wichita, Kansas as a solo practitioner, then as a partner in a small firm. His first race for public office was for a seat on the Wichita School Board. He was subsequently elected President of that board, then Kansas State Senator, and finally Attorney General of Kansas in 1968. He won every election he entered, except for the Governorship of Kansas when, in 1970, the incumbent narrowly prevailed.

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In January of 1972, upon the recommendation of U.S. Senator Bob Dole, Kent Frizzell was appointed Assistant Attorney General for what was then known as the Land and Natural Resources Division of the U.S. Department of Justice. Less than two months later, in February of 1972, he directed the Division to file suit in federal court in Minnesota on behalf of the recently created Environmental Protection Agency against the Reserve Mining Company. The suit sought to prevent Reserve Mining from dumping taconite tailings into the waters of Lake Superior. The eventual ruling in that case, *United States v. Reserve Mining Company*,¹ was a landmark decision giving the EPA broad powers to regulate corporate pollution. Under our father's watch, the Division quadrupled the number of cases filed under the Refuse Act of 1899, which prohibits "dumping of refuse" into navigable waters, except by permit.² In the fall of 1972, Solicitor General Erwin Griswold, former Dean of Harvard Law School, invited him to argue a condemnation issue to the U.S. Supreme Court on behalf of the United States. Members of our family were privileged to have had front row seats during that oral argument.

In early 1973, Kent Frizzell attained national prominence when he negotiated a conclusion to the violent conflict between Oglala Sioux factions at Wounded Knee, South Dakota. He and Russell Means, leader of the American Indian Movement, are the subjects of an iconic picture of the peaceful conclusion they fashioned, shaking hands while seated in front of a Sioux teepee.

From April 1973 through October 1975, Frizzell served as Solicitor (General Counsel) of the Department of the Interior. The move from Justice to Interior allowed him to have a more direct hand in policy making. From late in 1975 to 1977, he served as Under Secretary, where he played a major role in the development of the Trans-Alaska Pipeline System. He also served for a time as Acting Secretary. Upon leaving full-time government service in 1977, he moved our family to Claremore, Oklahoma, and became a law professor and director of the newly established National Energy Law and Policy Institute at The University of Tulsa College of Law. He loved teaching law students about the practice of law in the "real world" and helping them find their first jobs. From 1980 to 1981, he served as a member of the Reagan-Bush transition team. Upon his retirement in 1995, the College of Law honored him with the title of Professor Emeritus of Law.

As previously mentioned, Kent Frizzell is best known for his role in peacefully ending the seventy-one-day occupation of Wounded Knee. Although his perspective of that incident is not well known, we believe it important to share that perspective, as conveyed to us on many occasions, because it sheds light on the firm but patient way in which he was able to bring the occupation to a peaceful end.

Although the occupation began in late February of 1973, disputes between Oglala Sioux Tribal Chairman Dick Wilson and the American Indian Movement (AIM) had been brewing for months. Wilson had been elected tribal chairman in 1972. His opponents justly criticized him for favoring mixed-blood over full-blood Oglalas and for practicing

1. 408 F. Supp. 1212 (D. Minn. 1976), *supplemented by* 423 F. Supp. 759 (D. Minn. 1976).

2. Act of Mar. 3, 1899, ch. 425, § 13, 30 Stat. 1121, 1152 (codified as amended at scattered sections of 33 U.S.C.).

nepotism. In late 1972, Wilson established a “tribal ranger group” named the Guardians of the Oglala Nation, but referred to by most as Wilson’s “GOONs.” Opponents charged that when traditionalist Oglalas complained, Wilson would dispatch his GOONs. AIM, led by Oglala tribal member Russell Means, allied itself with the traditionalists. Wilson publicly criticized AIM for taking over the Bureau of Indian Affairs building in Washington, D.C., in November of 1972 and publicly threatened to cut off Means’ braids if he dared come to the reservation. On November 20, 1972, the Oglala Sioux Tribal Court issued a restraining order against Means prohibiting him from joining in any assembly on the reservation for the following thirty days and from bothering, molesting, or threatening Wilson or his immediate family.³ Wilson then ordered Means’ arrest when Means spoke at a meeting on the reservation later that month. On February 9, 1973, three tribal councilors brought eight charges of impeachment against Wilson, but Wilson avoided the charges when a majority of the council voted on February 22 to close the proceedings.

On February 13, 1973, Secretary of the Interior Rogers Morton wrote the Attorney General requesting “a sufficient number of United States Marshals be dispatched to the Pine Ridge Indian Reservation to protect the peace of the reservation. . . .”⁴ Some fifty U.S. Marshals were dispatched to Pine Ridge, the most populous community on the reservation and the location of the Oglala Sioux tribal headquarters.⁵

On February 27, 1973, five days after Wilson’s impeachment trial ended, AIM leaders and approximately two hundred armed members and supporters seized and occupied Wounded Knee, which was a small village of approximately three hundred and fifty residents. AIM leaders demanded, among other things, the removal of Wilson from office and the reinstatement of treaty talks with the U.S. government. Most of the AIM occupiers were not Oglala Sioux or residents of the Pine Ridge Reservation. They broke into buildings, including private homes, destroyed property, and committed armed assaults, thefts, and burglary. Some two hundred and thirty-one residents of Wounded Knee fled, and twenty-two families, consisting of one hundred and four persons, remained.⁶ At the request of Wilson and the Oglala Tribal Council, and as required by its obligation to support the duly-elected tribal government and to keep the peace, the Department of Justice dispatched additional U.S. Marshals, FBI agents, and a negotiator to Wounded Knee.

For weeks, the conflict continued to escalate despite the efforts of two successive chief negotiators from the Department of Justice. Both sides violated a temporary cease-fire and firefights occurred day and night. Negotiations were called off and AIM took down the teepee that had been erected for negotiations in no-man’s land between AIM’s and the government’s lines. During the third week of March, at the Attorney General’s

3. KENT FRIZZELL WOUNDED KNEE PAPERS, 1971–1981, at 1978.008.1.3 (Univ. of Tulsa, Dep’t of Special Collections and Univ. Archives).

4. *Id.* at 1978.008.1.7.

5. Pine Ridge had 2768 residents in 1970. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, NINETEENTH CENSUS OF THE UNITED STATES: REPORTS BY STATES 815 (1970).

6. For typed lists of the individuals who remained at Wounded Knee and the individuals who fled Wounded Knee, see KENT FRIZZELL WOUNDED KNEE PAPERS, *supra* note 3, at 1978.008.1.7.

weekly luncheon with his assistant attorneys general, Attorney General Richard Kleindienst asked each of the assistants what should be done to improve the situation. Frizzell opined that he felt it was necessary to “change their lifestyle,” and that AIM was “thoroughly enjoying seeing themselves on national network television atop a pony waving an AK-47 at the United States government.” In response, Kleindienst told him to pack his bags because he was heading to Wounded Knee the next morning.

Frizzell did change their lifestyle. He could not understand why the U.S. government was paying AIM’s utility bills, including their telephone bills for calls to the national and international press. As Frizzell put it, Russell Means was good at public relations, and AIM was having great success at it. The day after Frizzell arrived at Wounded Knee, the telephone and electric lines were cut and the water was shut off. On March 25, he directed that “only a few legitimate newsmen would be permitted inside Wounded Knee on 26 March” and that there could be further limitation in the future.⁷ AIM then raised the teepee again, indicating a willingness to restart negotiations.

On Monday, March 26, shortly after his arrival, Frizzell flew by helicopter to inspect a bunker the Marshals Service had erected along its seventeen-mile perimeter. With him on the trip was Deputy U.S. Marshal Lloyd Grimm of Nebraska. Frizzell related that, as they exited the helicopter and ran toward the bunker, they came under gunfire from an AIM bunker. Grimm was hit in the chest and Frizzell drug him to the bunker. Grimm was permanently paralyzed from the waist down.

On Tuesday, March 27, a small airplane landed at Wounded Knee and unloaded weapons and ammunition for AIM.⁸ At a news conference that day, Frizzell said that AIM had made several forays toward government lines, coming within one hundred and fifty yards at one point. “The fun and games are over,” Frizzell said. “This is senseless. It has got to stop, one way or the other.” Federal agents guarding the perimeter of Wounded Knee estimated that 4000 or more rifle shots had been exchanged the night before.⁹

Army Colonel Volney Warner, who was Chief of Staff for the 82nd Airborne Division, was a military advisor at Wounded Knee. Warner advised Generals Haig and Abrams by memorandum that

the situation is grave and the margin for error great. . . . AIM has increased fortifications on their road blocks and announced that FBI agents will be shot on sight. The U.S. Marshal and Senior Agent present agree that walking away from the situation is unacceptable from a law enforcement point of view.¹⁰

At the request of the Deputy Attorney General, presumably Ralph Erickson, the government’s first chief negotiator, Warner developed a two-phase plan, the second phase

7. *Id.* at 1978.008.1.11.

8. The unconfirmed rumor is that the weapons, ammunition, and delivery were funded and arranged by a certain cable news executive.

9. Martin Waldron, *Firing Stepped Up at Wounded Knee*, N.Y. TIMES, Mar. 28, 1973, at A1.

10. Memorandum from Army Colonel Volney Warner to General Alexander Haig and General Creighton Abrams (Mar. 12, 1973), KENT FRIZZELL WOUNDED KNEE PAPERS, *supra* note 3, at 1978.008.1.8 (discussing possible military action to be taken at the Pine Ridge Reservation).

of which was to drop leaflets advising personnel at the Wounded Knee Church to depart and that CS/CN gas (used in riot control) would be used until the population evacuated the area.¹¹ Warner says he was thereafter informed of the danger of CS gas to children and withdrew that advice. Frizzell concurred, stating that he was not going to preside over the second massacre at Wounded Knee. He and Warner also agreed on another critically important matter, and Frizzell issued a directive to all federal officers who carried guns to shoot-to-wound, not shoot-to-kill, and then only if provoked.

When negotiations resumed, AIM asked how many AIM negotiators could come to the teepee. The previous negotiations had been limited to two or three on each side. Frizzell told AIM they could bring as many as they wanted. As a result, twenty-three came to the negotiations. The benefit to the government, Frizzell believed, was that the lead negotiators would not be able to go back and spin their own interpretation of the negotiations, or indicate that the government negotiator was being unreasonable or acting in bad faith. Told in the presence of more participants, and in particular more of the traditional Oglala Sioux, the government's side of the story began to be heard.

AIM also asked how many issues could be placed on the agenda. Again, Frizzell allowed as many as AIM wanted. And AIM took him up on the offer. AIM first demanded a new negotiator—U Thant, formerly Secretary-General of the United Nations. After that idea was dispelled, they demanded President Nixon, then Secretary of the Interior Rogers Morton, and then Secretary of State Henry Kissinger. Frizzell explained to Means that, with all the problems going on in Washington due to the Watergate affair, he was the best they would get, and Means accepted it. They discussed many other issues, including alleged civil rights violations by Wilson's GOON squad. Frizzell contacted Washington and had representatives of the Department of Justice's Civil Rights Division flown to Wounded Knee to receive their complaints.

On April 5, they reached an agreement. No amnesty was to be given. The government promised a meeting with White House and Interior officials to discuss the possibility of a presidential investigation into the violation of Indian treaties. Means was to submit himself to arrest, but would be allowed to fly to Washington for the meeting. Once in the meeting room, Means was to call his associates at Wounded Knee and an immediate laying down of arms would take place.

Unfortunately, no call came from Means. Why? Because, as an FBI informant later revealed, in an AIM meeting held in Rapid City the night before Means was to fly to Washington, lawyers William Kunstler and Mark Lane advised Means that "Frizzell gave you nothing and you should disavow the Agreement."

Frizzell returned to Washington on April 11 to attend his Senate confirmation hearing to be Solicitor at Interior. After being sworn in as Solicitor on April 18, he returned to Wounded Knee as the government's chief negotiator on April 24.

Upon his return, he experienced the unrestrained malice of Wilson's GOONs firsthand. He and the Director of the U.S. Marshals Service, Wayne Colburn, were riding

11. *Id.*

in Colburn's car when they stopped at a GOON roadblock. A GOON, perhaps incensed at Frizzell's efforts to negotiate a ceasefire with AIM rather than unleashing force against them, put the barrel of his weapon under Frizzell's chin and threatened to blow his head off. Colburn got out of his car and levelled his own weapon at the GOON, telling him to "go ahead and shoot Frizzell, and then I'm going to kill you." The GOON backed down.

Two AIM activists were killed after Means disavowed the first settlement agreement. On April 17, Frank Clearwater, a Cherokee, was shot during a firefight shortly after his arrival at Wounded Knee while lying on a cot in the AIM-occupied church. Lawrence "Buddy" Lamonte, a local Oglala, was shot on April 27. Many Oglala Sioux mourned his death and thereafter called for an end to the occupation. On May 5, the negotiators reached a ceasefire, and the occupation ended three days later on May 8. From the government's perspective, it could not have occurred at a better time. The new Deputy Attorney General, Joseph Sneed, had instructed Frizzell to get it settled before the colleges and universities emptied out in May and supplied new activists.

When the settlement was reached, Frank Fools Crow, a full-blood Oglala and a leader of the traditionalist faction opposed to Wilson, asked if he might have a ride in one of the government's helicopters. Frizzell agreed, with one condition. A young Indian had just arrived riding bareback on a pony. Frizzell asked if he could ride the pony. Both enjoyed the benefit of their bargain.

Following the peaceful conclusion at Wounded Knee, President Nixon sent Frizzell the following words of thanks:

No one knows better than you how much rested on the successful conduct of the negotiations at Wounded Knee. That this difficult confrontation ended in an atmosphere of relative calm is a tribute to your superb skills and wise judgment, and I just wanted to tell you of my admiration and deep appreciation for your extraordinary efforts.¹²

Deputy Attorney General Joseph Sneed, previously Dean of Duke University School of Law, and later a judge on the U.S. Court of Appeals for the Ninth Circuit, concluded his letter of thanks with the following words:

We have experienced an unprecedented event from which we must learn important lessons. One which your actions indicate you need not learn is that of patience. Your service indicates that that is a lesson you mastered long ago. The people often do not applaud the avoidance of disaster; but those of us who know of its proximity do, and I join them in applauding you.¹³

Those with whom Frizzell worked observed that his experience at Wounded Knee had made an impact upon him. Wally Johnson, who succeeded him as Assistant Attorney General in the Land and Natural Resources Division, observed in remarks delivered at the Division's 107th birthday celebration that the "experience [at Wounded Knee] affected Kent and the manner he governed and lived his life thereafter. He became quite affected

12. Letter from President Richard M. Nixon to Kent Frizzell (May 14, 1973), *id.* at 1978.008.4.3.

13. Letter from Joseph Sneed, Deputy U.S. Att'y Gen., to Kent Frizzell (May 17, 1973), *id.* at 1978.008.4.6.

by the poverty and lifestyle of our native people.” No doubt the experience influenced his subsequent decision-making as Interior’s Solicitor. Less than a month after returning from Wounded Knee, Frizzell interviewed Reid Chambers for the position of Associate Solicitor for Indian Affairs. In the following article, Reid ably details what they did to strengthen the Department of Interior’s enforcement of its federal trust responsibilities to Native Americans.