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## In the Name of the Father

After generations of broken treaties and shattered lives, a new breed of warrior schooled in 'white man's law' is fighting today's Indian wars.

BY PAUL VANDEVELDER

PHOTOGRAPHS COURTESY OF THE CROSS FAMILY



**FAMILY TRADITION:** In confronting Washington officialdom, activist lawyer Raymond Cross joined a circle including the 1874 tribal delegates to the capital (top), his grandfather Chief Old Dog (middle, second from left) and his father, Martin (bottom).

(top) Corbis

decisions in the U.S. Supreme Court.

In all likelihood, they'll tell you about his feet. From the window booth that frames

**THE WAY THE** old boys in the Liars Club see the big picture of life from their window booth at the Redwood Cafe in Parshall, N.D., nothing is more essential to human well-being than the improbable miracles that befall citizens of a small town when a ball the size of a pumpkin takes flight from the hand of a teenager and, soaring in a dizzying arc against the backdrop of a thousand prayerful eyes, drops through a steel hoop at the sound of a buzzer. Out here in the Big Empty, where a million and a half square miles of short-grass prairie is home to fewer people than the borough of Brooklyn, Dr. Naismith's game has done for a thousand tiny villages what galvanized nails and tar paper did for the tidy little houses lining their bucolic streets. Against the ravages of crop failure, epidemics and turkey vultures, a hundred years of bad weather and the lure of city lights, basketball has held them together.

"That's how legends get made out here," says Willy Martens, a lifelong resident of Parshall, on the Fort Berthold reservation, and the town's unofficial sports historian. "From one generation to the next, those are the things that stick."

So when you ask Martens or any of the old boys at the Redwood what they remember about Raymond Cross, they probably won't tell you about how the great-great grandson of the Mandan/Hidatsa warrior Cherry Necklace went from a dirt-floor shack on the south side of town to Stanford University, and then to Yale Law and the Kennedy School of Government. Or about his father's epic battle with Congress that Cross, '70, finally took up and won, or his dogged campaign for treaty rights and Indian sovereignty that led all the way to landmark

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the bowling alley on Main Street, grain silos clustered beside the Soo Line spur, and an imponderable dome of sky, Cross's feet are things that stuck.

"It was the semifinal game of the state championship in 1966," says Martens, "and nobody in town would have missed that game." Parshall's best five were matched against an equally talented team from St. Mary's Catholic, a small school in New England, N.D. The score stayed close from the opening tip-off to the final heart-pounding moments, when a fourth Parshall starter fouled out with less than a minute to play in regulation. With four starters out of the game, coach Bill Fruwirth was down to prayers and miracles. He surveyed his options on the bench, then flicked a finger at the tall gangly kid with the big feet, and sent him into the game with one instruction: "Get the rebound!"

"And that's exactly what he did," exclaims Martens. "Then he got fouled when he went up for a shot. None of us could believe it! Raymond had these huge feet, and three or four times that year he got called for toeing the line when he put up his free throws. He couldn't keep those feet of his on the right side of the line!"

Down by two points in the final seconds, Cross had to drain both free throws to tie the game and send it into overtime. A miss would end the season. The St. Mary's fans erupted in hysteria when Raymond stepped up to the line.

"We were all watching his feet," chuckles Martens. "He set up for those free throws like he'd been there a thousand times. I don't mind saying it, he had a nice little jump shot from 12 feet out, but he was a terrible free-throw shooter."

Amidst the crescendo of yells and a sea of waving arms, Cross flexed his knees, cocked his arm and took flight into legend. Both shots went *swish*.

**The Parshall Warriors** lost that game in double overtime, but almost 40 years later, stories like this support Phyllis Old Dog Cross's theory about her youngest brother's tenacity in tough situations. Now in her mid-70s, Phyllis is the revered matriarch of the Cross clan. Martin and Dorothy Cross's oldest daughter had already left home for nursing school when Raymond was born in the town of Elbowoods, about 20 miles south of Parshall, in August 1948. Situated on a vast and fertile flood plain at a bend in the Missouri River, Elbowoods marked the heart of the world for the Mandan, Hidatsa and Arikara Indian nations, who had farmed and thrived there for nine centuries. But when Raymond was born, that storied history was coming to a close. Garrison Dam, a monolith proposed by the Army Corps of Engineers to control floods on the lower river, would soon back up the Mighty Missouri to the Montana border, 200 miles away, and put nine Indian communities and their aboriginal homeland under hundreds of feet of water.



"It's still hard to talk about," says Phyllis, sitting at the kitchen table in her home in Parshall. "We lost everything. Everything that told us who we were, for 30 generations, vanished. When a lot of us ended up here, Parshall went from being an idyllic little Norwegian community to a racial war zone. Raymond and Carol grew up thinking it was normal to see the parents of their friends passed out drunk in the streets at 20 below zero. Raymond never talks

about those years. He walled it off. That's how he survived as a little kid. He could walk through a burning house and not know it's on fire."

Until three devastating floods hit Nebraska and Kansas in 1943, life for the Mandan, Hidatsa and Arikara nations had been relatively idyllic since the end of the Indian Wars in the 1890s. Raymond's grandfather, Chief Old Dog, was born in 1850, a year before the tribes signed a treaty with the United States that recognized their perpetual ownership of 12 million acres between the Missouri and Yellowstone rivers. A distinguished warrior in battles against the Sioux, Old Dog mentored 26-year-old Theodore Roosevelt when the future president retreated to North Dakota after his mother and wife died on the same day in 1884. As Old Dog's stature grew, he assumed the mantle of leadership passed down from his legendary ancestors, the chiefs who had sheltered Lewis and Clark in the winter of 1805. And though Old Dog never learned a word of English, and respectfully declined an offer of citizenship from the Great White Fathers in Washington, his son Martin would play the saxophone and raise cattle, enlist in the Army in World War II, and become personally acquainted with five U.S. presidents.

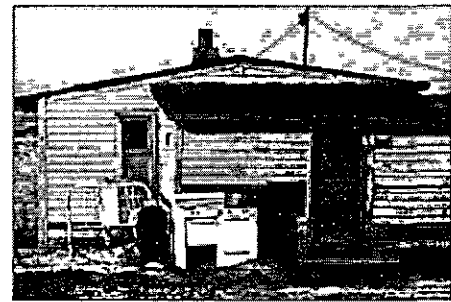
"Growing up in Parshall, I heard people talking about how wonderful our world was before the dam was built," says Raymond. "Communities were tight. People were happy and farming was profitable. Diabetes, cancers, heart disease—those things didn't exist. The dam changed all that in one generation."

As tribal chairman, Martin Cross had spent six tireless years lobbying Congress to stop Garrison Dam. When that battle failed, in 1949, he spent another seven years waging a losing campaign for "just compensation" for the Three Affiliated Tribes. His people looked to him for leadership, as the son of Chief Old Dog, but nothing in Martin's upbringing prepared him for the challenge of living in two worlds. "He shoved his canoe into the river on a beautiful, calm morning," says Raymond's brother Bucky, a college professor in San Jose. "The next thing he knew, the current had him and the river was boiling all around him. From then on, the only thing he could do was ride it out or fall in and drown."

"He was trapped between two eras," says Raymond's sister Marilyn Hudson, who remembers banging out hundreds of her father's letters to Washington on an old Underwood typewriter. "I can still see him sitting on the back porch on summer evenings. He'd light a cigarette and play Hoagy Carmichael's "Stardust" on his saxophone. An hour later, he'd be singing us lullabies in Hidatsa. It must have been very lonely being Martin Cross."

While Martin was wearing out the rails to Washington, Dorothy had 10 children to raise, a two-acre garden to cultivate, crops to harvest, and a barnyard full of animals to tend and butcher. As the daughter of Norwegian homesteaders, she was a stoic, hard-eyed realist. By 1954, the strain of the fight in Washington, coupled with Martin's long absences, left the couple estranged. Lake Sakakawea was rising by the day and would soon engulf the town. Exhausted by 26 years of raising children and running the ranch, in the spring of 1954 Dorothy filed for divorce, packed her bags, and arrived in Parshall with hundreds of other exiles from Elbowoods, carrying two suitcases and a child under each arm.

"That first year in Parshall, we lived in some abandoned shacks," Raymond remembers. "They weren't much more than chicken coops, really. For a while there, we moved from shack to shack. In my earliest memories, I'm completely alone in one of those shacks, looking out the window at a world that was utterly foreign to me."



**CHANGE:** Old Dog (top) rejected citizenship, but son Martin negotiated two worlds. At bottom, a Fort Berthold house, circa 1977.

Courtesy the Cross Family (top, middle); Ed Eckstein/Corbis (bottom)

Eventually, the family home from Elbowoods was moved to Parshall by truck and set on a new foundation on East 2nd Street. For the first time in her adult life, Dorothy Cross had electric lights and indoor plumbing. Phyllis remembers returning home from the Air Force in 1954 and quickly slipping into "a state of functional shock."

"We went from being a deeply integrated family and community in July 1954, to being a society of totally isolated individuals who went into social free fall for the next 50 years. This happened to thousands of people simultaneously. It seemed like every 10 minutes we were getting dressed to go to a funeral."

Due to the timing of their evacuation from the bottomlands of Elbowoods to the "on top" world of Parshall, Raymond and his sister Carol, two years older, were among the first children from the Fort Berthold reservation to attend a white public school. For many Indian children, the schoolhouse was a welcome sanctuary from the cruel ordeal they encountered in their homes and on the streets. And poverty being the midwife of dreamers, Raymond dreamed. His first hero was Werner von Braun, the father of the U.S. space program. The notion of escaping gravity enthralled Raymond's young imagination. Yet, as he grew older, he came to view his father's battles as heroic struggles for justice.



**COYOTE WARRIOR:**  
Raymond Cross.

Kurt Wilson/The Missoulian

"We all tend to bad-mouth our parents when we're kids," Cross reflects. "When I was little, Dad was pretty messed up. He was coping with his impotence as a man, as a leader, and his own sense of personal disintegration. When I was a sophomore in high school I began to understand just how extraordinary my dad had been in the fight over Garrison Dam. He overcame the limitations of his education by the sheer force of will. As the last of the old, he accepted the loneliness and isolation that came with leadership. As the first of the new, he was among the first to recognize that our survival would depend on stepping out of the isolation of our past. When things fell apart, he never lost his dignity. He taught me many things."

Those lessons continued to instruct him, years after Martin died in 1964. "He taught me that playing games against nature is always counterproductive," says Cross. He characterizes his own habit of "turning into the current" as a law of nature learned from his father. On the river, the strongest current always leads to the open channel, free-flowing water, possibilities.

It took time to find the currents that pointed toward home. In 1960, with members of their tribes scattered to urban slums across the country, Dorothy Cross and her two teenage children boarded a bus in Parshall for the long ride to California and a summer visit with her daughter and son-in-law, Marilyn and Kent Hudson. By the time Raymond and Carol were in high school the family was staying in Santa Clara year round. Raymond began thinking of the law as a way to carry on the family tradition of leadership. Guidance counselors steered him toward college, but the family was dubious. Where would the money come from? Then, just as his future appeared blocked by circumstances beyond appeal, his mother's decision to return home to Parshall at the beginning of his senior year proved fortuitous.

"Basketball was something Raymond had to work hard at," says Willy Martens, "but all those Cross kids are so bright. I remember one of Raymond's teachers saying it was embarrassing having a kid in class who was so much smarter than he was."

When administrators at the Bureau of Indian Affairs recognized Raymond's intellectual talents, the agency broke its own long-standing rules and awarded him a college scholarship. The door to a future that had seemed so remote now stood wide open. "At Stanford I started to enjoy myself, for the first time in my life," Cross says. "I loved the intellectual stimulation of the place, the quality of the teachers, surrounded by all those wonderful minds. It was a turning point in my life."

After earning a degree in political science, Cross turned into stronger currents and applied to four law schools. Harvard, Yale, Notre Dame and Stanford all admitted him, on full scholarship. He flipped a coin.

"The law is an imperfect discipline, but it's a tool with which we can address the fundamental flaws in our mythologies," says Cross. "My dad taught me that the Man versus Nature argument is a contrived dichotomy. He taught me that human culture is a project of nature, one of many ongoing projects."

When Cross got off the bus in New Haven, Conn., in September 1970, he was probably the poorest kid in the incoming class at Yale Law, and the tallest. Soon, he met up with another tall kid from an impoverished childhood, and on weekends they started playing basketball to break the tedium of study. "Bill is a great guy," says Cross, his memories of Clinton prompting a broad smile. "He had brains and personality to burn, but he couldn't make a jump shot if his life depended on it."

**As a young attorney** with the Native American Rights Fund, in Boulder, Colo., Cross soon found himself in the company of a new breed of Indians known as the Coyote Warriors, a far-flung band of well-educated young Native American leaders, like Winona LaDuke, Tom Goldtooth and Wilma Mankiller, who have reclaimed the ethic of their ancestors known as the "sacred trust." In this ancient cosmology, all natural things are holy and contribute to a balanced, harmonious universe. The coyotes are watchful guardians against the disruptions in that natural order.

Cross did not have long to wait to make his mark. While still in his 20s, he argued and won a landmark water rights case, *U.S. v. Adair*, for the Klamath tribe of Oregon. Simultaneously, he worked with members of Congress to gain federal recognition for the Pasqua Yaqui tribe of Arizona. By age 34, he had acquired the legal and legislative training he needed to return home and take up his father's dream of winning just compensation for the ancestral homeland taken from his tribes. Along the way, it would fall to him to challenge a law passed by Congress in the 1950s, Public Law 280, which stripped federal trust protections from treaty tribes and subordinated their governments to the states. In many respects, PL 280 attempted to undo a series of high-court opinions written by Chief Justice John Marshall in the early 1800s.

During his 33 years on the bench, Marshall established precedents that are with us today. In an attempt to patch a gaping hole in the Constitution, his opinions in three Cherokee Indian cases established the Federal Trust Doctrine by recognizing the sovereign status of Indian nations within the framework of federalism. A peerless student of human nature, Marshall recognized that conflicts would inevitably arise between the moral conscience of the courts and the political expediency of lawmakers. He preempted legislative temptation by putting the federal government and the tribes in a legally binding partnership, trustee and trustor. Henceforth, tribes would enjoy all the rights and privileges of "domestic dependent" sovereign nations.

Congress would soon validate Marshall's sober pragmatism. As the population marched westward, legislators grew less and less willing to honor their binding obligations to tribes. Between 1876 and 1900, Congress violated hundreds of treaties ratified only a few years before. The U.S. Supreme Court repeatedly reaffirmed Marshall's Trust Doctrine, but by 1950, state governments in the West had come to view Indian sovereignty with outright hostility.

The Republicans who took control of Congress during the Eisenhower years were determined to dismantle Marshall's Indian doctrine by "terminating" tribal governments and reservations altogether. Congress sought to accomplish this with PL 280, sponsored by Utah senator Arthur Watkins. By passing this law in 1952, Watkins and his allies hoped to put Washington "out of the Indian business once and for all" by

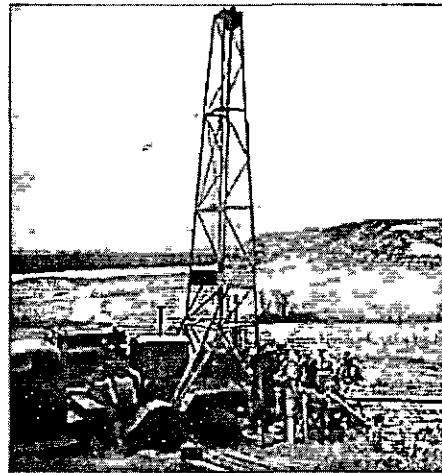
transferring federal jurisdiction over tribal matters to state governments. Martin Cross and the legendary Crow tribal chairman Robert Yellowtail led a fierce but unsuccessful effort to keep Watkins's Trojan horse out of Indian Country.

Although the "termination era" failed to achieve its major objectives, elements of PL 280 spread like a virus through state, county and municipal laws, where they would lie dormant until civil disputes brought them into the light of day. *Wold Engineering*, the case Raymond Cross would argue before the U.S. Supreme Court, was one such pivotal test. On one level, it asked whether an Indian tribe could seek a remedy in a state court for a breach of contract by a non-Indian enterprise. More profoundly, it asked whether Marshall's Federal Trust Doctrine was still intact.

On a fine spring morning in 1986, the great-great grandson of Chief Cherry Necklace mounted the steps that would bring him face to face with the nine men and women on the nation's highest court. After all the arguments were heard, Justice Sandra Day O'Connor, '50, JD '52, writing the opinion for the 6-3 majority, reaffirmed the principle of sovereign immunity and upheld Marshall's Trust Doctrine. The *Wold* ruling was a historic moment for the 552 federally recognized Indian nations, a momentous reversal of legislative malfeasance. The decision was scarcely mentioned in mainstream media.

After celebrating *Wold*, Cross turned his full energies to his father's unfinished business. In September 1992, acting on the recommendations of two federal commissions and testimony gathered in dozens of hearings both in Washington, D.C., and North Dakota, Congress responded to Cross's tireless lobbying over the previous eight years. Lawmakers in Washington awarded the Mandan, Hidatsa and Arikara nations \$149 million for "the unlawful taking" of their ancestral homelands, and established a trust fund from which the tribes will draw an income in perpetuity.

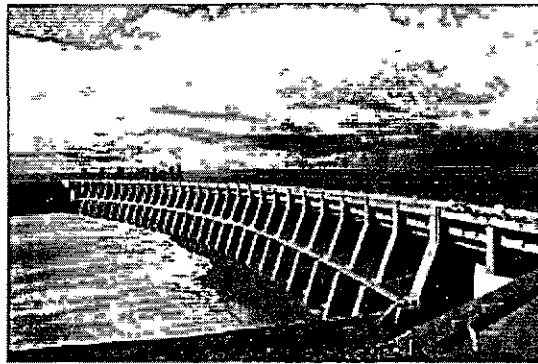
and Cade, reunite each year in the short-grass prairie of the high plains. Fort



**TOO LATE:** On May 20, 1948, tribal chairman George Gillette weeps as Julius Krug, U.S. interior secretary, signs the contract that will flood 155,000 acres of Indian land. Below, drilling for Garrison Dam begins.

AP Wideworld (top); Hans Wild/Time Life Pictures (bottom)

**Today, the members** of the Cross family are immersed in the "ongoing projects" of their lives. Marilyn is the director of the museum at tribal headquarters in Four Bears; Carol is a state senator in Montana. Five of Old Dog's great-grandchildren are lawyers, with more likely to follow. Only three of Raymond's siblings live at Fort Berthold, but the whole clan, including Raymond, his wife, Kathy, and their teenage children, Helena



**AFTER THE FLOOD:** Elbowoods lies swallowed by Lake Sakakawea, the 178-mile-long reservoir created by the four-mile-wide Garrison Dam.

Paul VanDevellder

Berthold may be a long way from Anywhere, but for members of the Three Affiliated Tribes, it is still the center of everything.

As a professor at the Montana School of Law in Missoula, Raymond is dedicated to serving his community, state and nation. He has a direct hand in training a new generation who will inherit a baffling docket of vexatious legal challenges. He knows that the great American Indian Wars did not end in 1890 beside a frozen creek called Wounded Knee. Armed with 371 active treaties, thousands of Indian lawyers trained in the white man's law will defend the interests of tribes

in the 21st century.

Native people own 40 percent of the nation's coal reserves, 65 percent of the uranium reserves, and untold ounces of gold, silver, cadmium and manganese, in addition to timber, oil, natural gas, and a treasure chest of copper and zinc. How the nation's dwindling natural resources will be divvied up is a question that is pushing both sides toward a colossal train wreck. To those who will join in this conflict, Cross issues a gentle, and mindful, warning.

"Non-Indians will never have Western eyes so long as they cling to the Man versus Nature dichotomy. Four hundred years of this thinking gets you a civilization of people lost in shopping malls, coast-to-coast take-out windows, a culture that has lost its connection to the natural world. That is the ultimate poverty for all men, and no amount of money can ransom that sadness."

The people of the Mandan, Hidatsa and Arikara nations know something about that sadness. By the late summer of 1954, the Missouri River was rising rapidly behind the floodgates of Garrison Dam. Day by day, the gooseberry woods around the village of Elbowoods disappeared beneath the river's turbid waters. Every Sunday morning for a year, the priest at the Catholic mission had led his congregation in singing "Plant Your Feet on Higher Ground," yet when The Flood finally came, the evacuation was a mad scramble. Many had waited too long to move their houses, and in the dash to higher ground, someone realized that all the school's athletic trophies had been left behind at the high school.

Armed with flashlights, a group of former basketball players assembled a small flotilla of rowboats, returned to Elbowoods on a moonlit night, and rowed down the school's main corridor to the trophy case. The Elbowoods Warriors state championship trophies were the last things rescued from the green depths of Lake Sakakawea.

Clouds scuttled across the face of the moon in a rising wind as the boatmen swung their sterns toward the drowning village and raced for shore ahead of the gathering storm. Familiar voices greeted the men at lake's edge. Flashlights crisscrossed in the leafless treetops and swirling flurries of snow. For the first time in 900 years, the winter moon would not rise on Mandan villages in the gooseberry woods of the Missouri River Valley. As the legends of their old world slipped beneath the waves, a new one, yet to be written, had begun.

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