Somewhere along the flanks of the great river, not far from a valley once flush with buffalo, beaver, bald eagles, and yellow-shafted flickers, where two centuries ago the captain explorers looked out and saw both America's past and future, somewhere near these rugged chalk bluffs lie the bones of a father and son.

For as long as anyone could remember—before the horses, fur traders, whiskey, fever, and the pus-filled spots; before the steamboat, glass beads, and another god—their people had lived in this ancient river valley straddling the border of what would become Nebraska and South Dakota. Inside this expansive territory, there lived dozens of Indian nations, clustered in villages along some of the tens of thousands of miles of creeks and streams and rivers.

One of those rivers was well known to the father and son. The Niobrara begins as a small stream in the high plains of Wyoming and flows clear and swift 535 miles east, growing steadily as it meanders across arid Sandhills, rugged canyons, rolling prairie, forests of pine and hardwood, and moist, fertile valleys before emptying into the Missouri near the high chalk bluffs.

In 1804, the occupant of the White House had long harbored dreams of westward expansion. At the core of Thomas Jefferson’s vision was an almost mystical belief in the powers of ordinary, salt-of-the-earth citizens who could harness the nation’s potential. How exactly the people living in their Niobrara River homeland—and the many more like them—would share in this new reality had vexed the nation’s leaders for a long time. The native people possessed enormous tracts of land that needed to be transformed into industrious American farms if the restless, young republic was to fulfill its destiny.

Jefferson had long advocated buying Indian lands in an orderly, friendly fashion. But when romantic push evolved into pragmatic shove, he came to see the native people as an entrenched impediment in civilization’s path—one that would have to be removed, ruthlessly if necessary—views that would set in motion policies that led to removal, reservations, assimilation, and the end of one age-old way of life.

The Ponca were avid horticulturists and dedicated farmers. In rich bottomlands near the mouth of the Niobrara lay fields of squash, pumpkins, beans, tobacco, and a variety of corn. At river's edge, channel cat, carp, bluegill, grass pickerel, and trout nourished the food supply. By the middle of the eighteenth century, the Ponca had settled into a comfortable seasonal rhythm.

But in the winter of 1800-1801, a smallpox epidemic swept through their village, wiping out half the tribe. The captain explorers estimated that only about two hundred had survived. Decimated by smallpox, terrorized by Lakota war parties, the Ponca were forced to seek refuge with their friends the Omaha the winter after Lewis and Clark left.

In 1829, the father had been born along the banks of the Running Water. In their language he was called Ma-chu-nab-zha. By the time he was a young man, Standing Bear saw that the old and new ways were on a collision course. Throughout Standing Bear’s childhood, the squeeze from the Lakota to the west, an infusion of whites from the east, and the specter of disease all around never let up. Fifty years into the new century, the wild game began to disappear and it wasn’t long before the only buffalo on the plains lay in piles of bleached, white bones.

In 1876, seven weeks after the Little Bighorn, President Ulysses S. Grant authorized $25,000 to move the Ponca from the Niobrara to the Indian Territory, lands that would one day become Oklahoma.

**GOING HOME**

On January 2, 1879, thirty Ponca men, women, and children finished loading their belongings. The morning came in at nineteen below zero with a steady north wind. They hadn’t much in the way of winter clothing and it was coming down harder as the two worn-out horses stood motionless in the blinding snow. The boy was dressed in his best clothing and the chief gently placed him in a box and carefully lowered it into the back of one of the wagons. Then the father and mother turned their faces north and began walking away from the Warm Country, heading toward the Running Water. Their boy was going home.
Six days passed before Agent Whiteman discovered the Ponca had left. He sent an urgent message to his superiors, asking them to alert agents at the Omaha and Otoe reservations. Standing Bear and his group had left without permission. If the agents saw them, they should arrest them, march them back south to Indian Territory.

After a journey of sixty-two days, Standing Bear and the Ponca were camped west of the Omaha Reservation, just a few days’ journey from their Niobrara homeland. Some of the Omaha went to visit Standing Bear’s camp. They were shocked at what they saw—faces hollowed from hunger and skin blackened from frostbite, gaunt children, ragged clothes, emaciated horses, and so many sick. The Omaha held a council with their agent, asking him to let Standing Bear have some land, to let his group become a part of their tribe. The agent said he would not give advice; Standing Bear could continue on to the Niobrara or come to the Omaha—the choice was his.

Standing Bear chose to stay awhile, to get his sick and hungry people back on their feet. The Omaha gave them some land and some seed and the Ponca began to break ground and plant.

The Omaha agent immediately telegraphed the Commissioner of Indian Affairs. As ranches throughout the American West grew larger, as more tribes settled in the Warm Country, no one in Washington wanted to see a group of disgruntled Ponca break free, actions that might encourage others to do the same. Six days later, Lieutenant William Carpenter and six men of the Ninth Infantry arrived in the Ponca camp.

Standing Bear spoke to the soldier chief. He told him they had separated from the rest of their people, had come away to live in peace, to support themselves by working on their own land, just like the white settlers. The lieutenant decided to let the chief speak to his superior, the commander of the Department of the Platte. After a two-day march, Standing Bear and the Ponca arrived at Fort Omaha, where they set up camp just south of the entrance. The government seized their belongings, forbade the Omaha to offer them sanctuary, and cut off their annuities. Standing Bear gathered the splintered remnants of his small band and told them they had gone as far as they could, it was useless to resist any more.

In the dark, early morning hours, a visitor quietly made his way to the offices of the local newspaper. After a long talk, the assistant editor of the Omaha Daily Herald bid goodnight to his visitor and finished putting the paper to bed. After a few hours’ sleep, he set off on a brisk four-mile walk, thinking there might be a decent story in the Indian lodges. In his thirty-eight years, Thomas Henry Tibbles had walked a good many roads. After the Civil War, he married, became an ordained Methodist preacher, and set out on horseback to spread the word. Later, he spent a few winters among several Indian tribes along the Missouri. Tibbles retired from the ministry and turned to pen and paper as a way to achieve social justice.

Tibbles and an Omaha Indian interpreter, Charles Morgan, sat and talked with several Ponca gathered in the chief’s lodge. The newspaperman asked a lot of questions and patiently recorded the answers in his notebook. Standing Bear recounted how the Ponca were taken from their lands and marched to the Indian Territory, where they had nothing to do but sit still, be sick, starve, and die. His son, he said, was a good boy. He had done all he could to educate him in the other ways, so that when he himself was gone the boy would know how to read and write and earn a living from the land, skills to survive in the new world.

“My boy who died down there, as he was dying looked up to me and said, ‘I would like you to take my bones back and bury them where I was born.’ I promised him I would. I could not refuse the dying request of my boy. I have attempted to keep my word. His bones are in that trunk.”

The preacher turned newsmen put the notebook in his pocket. At 11 p.m., Tibbles made it back home and sat down at his writing desk, transcribing the words he had heard until shortly after 5 a.m.

The next day, Brigadier General George Crook, the commander of the Department of the Platte, summoned Standing Bear to a meeting. Charles Morgan arrived to interpret and Tibbles, the only civilian, came with his notebook.

Crook had long been regarded as the Army’s most experienced Indian fighter, a distinction derived from more than twenty years of military campaigns against western tribes. And for many of those years, he held firmly to the popular belief that the enemy was a roadblock in civilization’s path. But in recent years, Crook had grown weary of the broken treaties, the unprovoked massacres of women and children, the moral bankruptcy of the reservation agents. He began to see the Indian as a person whose beliefs and culture had sustained him for centuries, someone who could not be forced to adopt radically new values in a few short years. Yes, he was a soldier first, but he was becoming bolder in trying to resolve the inner conflict between humanity and military duty.
Standing Bear asked the officers to take pity on them, to help them get their land back, to help him save the women and children. They had nowhere else to turn. The general said he sympathized with them. The best he could do was to let them stay a few more days, let them rest up for the long trip south. He promised they would have plenty of food until it was time to leave. After three hours, the Ponca stood and shook hands with the officers.

On the morning of April 1, readers of the Omaha Daily Herald awoke to find “Criminal Cruelty, The History of the Ponca Prisoners Now at the Barracks” covering most of page four. Tibbles recounted his interviews and the meeting with General Crook. In an adjacent column—“The Last Indian Outrage”—he used his editorial as a pointed forum, pleading the Ponca case and Indian reform.

“Is it not a strange commentary upon this professedly religious and humanitarian policy of the Indian department? … Here is a band begging to be allowed to support themselves, and the government will not allow them to do it.”

Tibbles kept it up, day after day, imploring the citizens of Omaha to do a good deed, to send food and clothing to the Ponca, to right a wrong. Soon, his message spread to local pastors and lay leaders, who formed the Omaha Ponca Relief Committee. It went up the Missouri—to Niobrara, Sioux City, and Yankton. Farther up river, senators sent petitions to Washington to let the thirty homesick Ponca stay on the old lands or stay with the Omaha, sentiments that neither the Commissioner of Indian Affairs nor the Secretary of the Interior responded to.

Tibbles knew that any day now the Ponca would again be forced to turn their faces south. In earlier years he had studied the law some, so one afternoon he went to a law library and sat down to carefully read the Fourteenth Amendment.

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” He kept reading, “… nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” He began to wonder how far the promise of “equal protection” went. Did it go far enough to include Indians? Had the government deprived Standing Bear of basic freedoms guaranteed by the law?

The only way to find out, Tibbles knew, was to file a lawsuit, to bring these questions to a federal court. He went to see a young Omaha lawyer, an old friend, John Lee Webster. He, too, was intrigued by the idea. But he cautioned it would be a tough, complex case, a long shot. Still, he said, it would do no harm to try. And it was the right thing to do. Given the magnitude of the case, the intricate web of constitutional issues, they would need help. Someone with political savvy and consummate courtroom skills.

Andrew Jackson Poppleton was smart, shrewd, stubborn, and proud, a wealthy power-broker whose ancestors had fought in the Revolutionary War. He became the first lawyer to practice in Omaha, a member of the first territorial legislature, and the first president of the Nebraska Bar Association. He was elected Omaha’s second mayor and became the Union Pacific Railroad’s general counsel. “I believe you have a good case,” Poppleton said. He would be pleased to assist—and he would do it for free.

Time was now the enemy. The editor knew the general could stall for only so long. He desperately needed a judge.

Elmer Scipio Dundy was appointed a territorial judge by President Abraham Lincoln and, in 1868, became the first judge of the U.S. District Court in Nebraska. He was a rugged man, a superb hunter, who counted Colonel William F. Cody among his closest friends, and he ventured out into the wild at least once a year to look for bear.

After an exhaustive review of the issues, the lawyers arrived at a straightforward request: They wanted the United States government to prove it had the legal right to arrest Standing Bear and the twenty-five Ponca under guard at Fort Omaha. They wanted the judge to grant a writ of habeas corpus, a Latin phrase for “you have the body.” If granted, the prisoners would appear in court where the judge would determine whether they had been unlawfully jailed. As far back as the Magna Carta in 1215, habeas corpus had been a fundamental hallmark of justice, a safeguard against arbitrary and unlawful arrests. In the 103-year history of the United States, no writ of habeas corpus had ever been filed on behalf of an American Indian. Tibbles and Lieutenant Carpenter witnessed the application for the writ, which was filed in Nebraska Federal Circuit Court as Ma-chu-nah-zha v. George Crook.

Four days later, Judge Dundy signed the application and it was served on General Crook that same day.

For a long time afterward, the assistant editor of the Omaha Daily Herald and the two prominent local attorneys would be grateful to the man who had tipped them off to the Ponca’s plight, who initiated the idea of an American Indian suing an Army officer, the one who had first suggested using a writ of habeas corpus to get the case before a federal judge.

They would all be indebted to the defendant—Brigadier General George Crook.

**The Color of Blood**

The government was unwavering in its view. It was certain Standing Bear had “gone wrong” by leaving his assigned reservation. And they were equally certain that a judge would confirm its legal rights to uphold their policy, to keep the reservation system intact. They were certain, too, of one other thing: that an American Indian had no legal standing in a federal courtroom.
General Crook’s evolving philosophy on America’s “Indian problem” had been forged from personal contact and intimate observation. His sympathetic views placed him at odds with superiors. It's what had prompted him to tip off the reporter after the arrest orders came down, to suggest applying for a writ of habeas corpus when he was told to turn the Ponca faces south. It also triggered an angry response to an official court document above his signature. The government’s lawyer had amended the document—unbeknownst to Crook—to claim the Ponca were “not pursuing the habits and vocations of civilized life,” were on the Omaha Reservation illegally, where the government had the legal right to arrest them and return them to Indian Territory “where they belong.”

When Crook discovered the amended document, he complained bitterly to the military judge advocate, then took his complaint to the trial judge, arguing he could not allow his name to support alleged facts he did not agree with. The judge patiently explained his signature did not appear as a private citizen, but simply as a government official, as a U.S. Army brigadier general. The legal distinction was lost on Crook and he continued to protest to no avail.

At ten o’clock on the morning of May 1, 1879, U.S. District Court Judge Elmer Dundy’s gavel smacked the wooden bench and the trial of *Ma-chu-tab-zha v. George Crook* was underway. They had read about it for weeks in the local papers and heard about it in their churches and discussed it around town, and so on that Thursday morning the courtroom was unusually crowded. Newsmen and curious lawyers and several judges and some of the town’s leading citizens jockeyed for a better position in the boisterous room. General Crook had arrived on this unusually warm spring morning in the full dress of a brigadier general.

When the crowd temporarily parted, they saw something that no one had seen before: an American Indian seated at the plaintiff’s table in a federal courtroom.

The judge asked the attorneys to call their first witness. Willie W. Hamilton, the agency store clerk on the Omaha Reservation, approached the stand. He spoke both Omaha and Ponca fluently and had met the prisoners two months earlier. The younger of Standing Bear’s two attorneys, John Lee Webster, asked the witness to describe the condition of the prisoners. Hamilton testified they were in bad shape.

*What did they do after they arrived?* Attorney Webster asked.

*All the healthy ones began to break ground and sow crops,* the witness replied.

Genio Lambertson had questions on behalf of the government and his client, General Crook. Young and brash, he was trying his first case as the newly minted district attorney.

*When the prisoners were on the Omaha Reservation,* Lambertson asked, *who was their chief?*

*Standing Bear was the head chief,* the witness replied.

Lambertson asked if they depended on the government for their wagons, clothes, and blankets.

*Yes, for the most part.*

Lieutenant Carpenter, the arresting officer, was the second witness. When the plaintiffs announced their third witness, the government lawyer jumped to his feet.

*“Does this court think an Indian is a competent witness?”* Lambert asked.

“They are competent for every purpose in both civil and criminal courts,” the judge replied. “The law makes no distinction on account of race, color, or previous condition.”

Standing Bear took the oath and the store clerk, Hamilton, translated.

*How bad things been for them on their old reservation on the Niobrara?* Webster asked.

“We lived well,” Standing Bear said. “I had my own land, and raised enough to get along nicely. My children went to school.”

*How were things in the Warm Country?*

“I couldn’t plow, I couldn’t sow any wheat, and we all got sick, and couldn’t do anything. . . . They died off every day. From the time I went down there until I left, 158 of us died.”

The witness looked up at the judge.

“I thought to myself, God wants me to live, and I think if I come back to my old reservation he will let me live. I got as far as the Omahas, and they brought me down here,” he said, his voice getting louder and stronger. “What have I done? I am brought here, but what have I done? I don’t know.”

The judge told the interpreter to tell the witness not to get too excited. Standing Bear sat back down. His lawyer turned to the interpreter.

*“Ask him how many of his children died in the Indian Territory before he came away?”* Webster asked.

“He says two died down there. He says his son could talk English and write, and he was a great help to him . . . and whenever he thinks of it, it makes him feel bad.”

*Does he still consider himself the chief of his people?*

“He says he didn’t consider himself a chief . . . He says he felt himself to be as poor as the rest of them.”

The district attorney wanted to know why he left the Indian Territory.

“He says he wanted to go back to his own land . . . that his son when he died made him promise if ever he went back there that he would take his bones there and bury him, and that he has got his bones in a box, and that if ever he goes there he will bury his bones there; that there is where he wants to live the rest of his life, and that there is where he wants to be buried.”

When Standing Bear finished, his lawyers rested their case. The government offered no witnesses and no testimony. The closings were postponed until the following day.

The next morning, Standing Bear’s younger lawyer, Webster, began to lay out his case. For three and a half hours, Webster roamed far and wide across the oratorical landscape, alternately quoting William Cullen Bryant, Alexis de Tocqueville, and Frederick Douglass. If Standing Bear and the Ponca had broken away from the rest of the tribe, he argued, if they had declared their commitment to a new way of life, then they had come out from under the government’s yoke. They had the right to return to the lands they owned, or to share the Omaha land, and the government had no legal right to restrain, detain, or return them. Wasn’t that the point of the Fourteenth Amendment—to promote and protect individual liberties? That the Indian prisoners qualified for its protection, he told the judge, there could be no doubt. As proof, he cited an 1870 U.S. Senate report specifically stating that when tribal relations are dissolved, the Fourteenth Amendment applies. And when the amendment applies, it made “an Indian who was born in this country and who did not owe allegiance
to any other form of government, a citizen beyond all dispute.” So if these prisoners were not citizens, then what were they? “Are they wild animals, deer to be chased by every hound?” He said it came down to a matter of fundamental civil rights, of basic human liberties. Webster spoke until three o’clock.

For the next three hours, Lambertson laid out the case for the government. The 1871 federal law forbidding any more treaties with Indian tribes abdicated the government from needing Ponca consent to move them to the Territory. U.S. laws did not apply to Indian tribes. To be included, Indians had to be either foreign subjects or citizens—and the Ponca were neither. And he recounted the history of Indian atrocities, implying they were a people too savage to be given legal rights. The court had grievously erred in granting Standing Bear a hearing for a writ of habeas corpus and the opportunity to sue an Army general. This was a legal right available only to American citizens. Furthermore, the Ponca retained tribal ties, an allegiance to their chief, and depended on the government for their survival. So, clearly, they were not entitled to Fourteenth Amendment protection.

To support his main argument—that only American citizens had access to U.S. courts—the district attorney relied on a case decided twenty-two years earlier. In 1845, a slave named Dred Scott offered his master’s widow three hundred dollars for his and his wife’s freedom. When she refused, he asked the courts to set him free—a test case his supporters hoped would lead to the freedom of all slaves. After a decade of appeals and reversals, his case landed in the United States Supreme Court. In a 7-2 vote, Chief Justice Roger B. Taney issued the court’s opinion: Anyone of African ancestry—slaves and those set free by their masters—could never become a U.S. citizen and therefore could not sue in federal court. Slaves were the private property of their owners, and the court could not deprive owners of their property. To do so would violate the Fifth Amendment. According to the law, Scott would remain a slave.

Lambertson did not want the present court to forget: Judge Taney’s decision remained the guiding legal principle. If a Negro did not have access to federal court, then surely an Indian didn’t either.

When the district attorney finished at six o’clock, the judge ordered a dinner recess. The last summary would begin in an hour.

---

Andrew Jackson Poppleton had been scheduled to have the final say, and so on the warm May evening, the dean of the legal community made his way to the front of the courtroom. For the next three hours, he fused history and philosophy, religion and politics, humanity, literature, and the law—isolating each of the district attorney’s arguments with a focused rebuttal.

**No Ponca consent needed**

The district attorney had cited the 1871 resolution banning further treaties as justification for removing the Ponca without their permission. But he neglected to mention that the law was not retroactive. The original treaty still applied—the government needed Ponca consent.

**U.S. laws don’t extend to Indian tribes**

Then why had the government entered into numerous treaties with the Indian people—treaties ratified by Congress. The government, he told the judge, can’t have it both ways.

**The Indian—as neither citizen nor foreign subject—has no rights?**

If the government no longer sees them as tribes or Indian nations, what are they? “Are we to say that the Ethiopian, the Malay, the Chinaman, the Frenchman, and every nationality upon the globe without regard to race, color or creed, may come here and become a part of this great government, while the primitive possessors of this soil … are alone barred from the right to become citizens?”

He did not believe that this government—his government—would do such a thing. “Is it possible that this great government, standing here dealing with this feeble remnant of a once powerful nation, claims the right to place them in a condition which is to them worse than slaves, without a syllable of law; without a syllable of contract or treaty? I don’t believe, if your honor please, that the courts will allow this; that they will agree to the proposition that these people are wild beasts; that they have no status in the courts.”

**And were they really dependent government wards?**

The prisoners had established families and communities throughout their Niobrara homeland. They had become skilled farmers and peaceful neighbors. And just as they were well on the way down civilization’s path, the government illegally pulled them from lands they owned and shipped them to strange, barren ones where they died in droves.

Poppleton then began to drive a legal wedge between the slave of yesterday and the Indian who sat before them. *Dred Scott*, he said, was strictly a citizenship issue. The only question the case resolved was that since Scott was not a citizen of Missouri, he could not sue in federal court. It had also confirmed that a slave at that time in American history had no civil rights. But in his haste to justify slavery, Chief Justice Taney had strayed far from the legal question at hand and now—twenty-two years later—his ruling was out of date. In 1879, there were no slaves. The Fourteenth Amendment had seen to that. This case now before the court was simply about who had a legal right to a writ of habeas corpus. And the law on this particular point was quite clear. It said nothing about being a citizen. It said only that “any person or party” had the legal right to apply for a writ.

So there was really but one question, and one question only, before the court: Was Standing Bear a person? To deny his legal right to the writ, the court would have to conclude that he and the other Ponca prisoners were not people. They were not human beings.

The lawyer paused and turned, glancing at Standing Bear.

“That man not a human being? Who of us all would have done it? Look around this city and State and find, if you can, the man who has gathered up the ashes of his dead, wandered for sixty days through a strange country without guide or compass, aided by the sun and stars only, that the bones of that kindred may be buried in the land of their birth. No! It is a libel upon religion … to say that these are not human beings.”

---

It was well after nine o’clock. The judge made an announcement. One last speaker had asked permission to address the court. He supposed it was the first time in the nation’s history such a request had been made, but he had decided to grant it.

The crowd saw Standing Bear rising slowly from his seat, and they could see the eagle feather in the braided hair, the bold blue shirt trimmed in red cloth, the blue flannel leggings and deer-skin moccasins, the red and blue blanket, the Thomas Jefferson medallion, the necklace of bear claws. When he got to the front,
he faced the audience and extended his right hand, holding it still for a long time. After a while, he turned to the bench and began to speak in a low voice.

“That hand is not the color of yours, but if I pierce it, I shall feel pain. If you pierce your hand, you also feel pain. The blood that will flow from mine will be of the same color as yours. I am a man. The same God made us both.” He turned and faced the audience, staring in silence out a courtroom window, describing after a time what he saw.

“I seem to stand on the bank of a river. My wife and little girl are beside me. In front the river is wide and impassable.” He sees steep cliffs all around, the waters rapidly rising. In desperation, he spots a rocky path to safety. “I turn to my wife and child with a shout that we are saved. We will return to the Swift Running Water that pours down between the green islands.” They hurriedly climb the path.

“But a man hurs the passage … If he says that I cannot pass, I cannot. The long struggle will have been in vain. My wife and child and I must return and sink beneath the flood. We are weak and faint and sick. I cannot fight.” He stopped and turned, facing the judge, speaking softly.

“You are that man.”

In the crowded courtroom, no one spoke or moved for several moments. After a while, a few women could be heard crying and some of the people could see that the frontier judge had temporarily lost his composure, and that the general, too, was leaning forward on the table, his hands covering his face. Some people began to clap and a number of others started cheering, and then the general got up from his chair and went over and shook Standing Bear’s hand, and before long, a number of others did the same.

The bailiffs asked for order and when it finally grew quiet, the judge said he would issue his decision in a few days. Then he adjourned the court.

Ten days after hearing about the rising flood waters, about the color of blood, Judge Elmer Dundy delivered his decision in a lengthy written opinion to the Indian prisoners, the Army general, and their lawyers.

“During the fifteen years in which I have been engaged in administering the laws of my country,” he began, “I have never been called upon to hear or decide a case that appealed so strongly to my sympathy as the one now under consideration.”

If sympathy were the only issue before the court, the judge said, the prisoners would have been freed the moment closing arguments ended. But in a nation where law determines liberty, sympathy alone cannot guide the courts. Instead, fundamental legal principles must decide this case.

The judge broke down the government’s legal arguments and—one by one—systematically addressed them. Who could legally apply for the writ? The law, Dundy said, clearly states “persons” or “parties” can do this—it says nothing about citizens or citizenship being a requirement. And the most natural and reasonable way to define a “person,” the judge wrote, is simply to consult a dictionary. “Webster describes a person as ‘a living soul; a self conscious being; a moral agent; especially a living human being; a man, woman or child; an individual of the human race.’” This, he said, “is comprehensive enough, it would seem, to include even an Indian.”

Judge Dundy wrapped up his opinion with a five-point summary. First, “an Indian is a PERSON within the meaning of the laws of the United States, and has therefore the right to sue out a writ of habeas corpus in a federal court.” Second, General Crook had illegally detained the Ponca prisoners. Third, the military has no legal authority to forcibly remove the Ponca to Indian Territory. Fourth, “Indians possess the inherent right of expatriation as well as the more fortunate white race, and have the inalienable right to life, liberty, and the pursuit of happiness.” And fifth, since they have been illegally detained in violation of their constitutional rights, the Ponca “must be discharged from custody, and it is so ordered.”

With a stroke of his pen, Judge Dundy had declared for the first time in the nation’s history that an Indian was a person within the meaning of U.S. law.

Andrew Jackson Poppleton remembered something else about the case. “General Crook was the first person to suggest the remedy of habeas corpus,” Poppleton wrote six years after the general’s death. “I believe him to have been the first person who conceived of the idea that the great writ would lie at the suit of a tribal Indian. This, in my judgment, is not the least of his titles to the affection and gratitude of his country.”

Readers of the Omaha Daily Herald awoke Tuesday morning, May 13, to find “Standing Bear’s Victory—An Indian has Some Rights Which the Courts will Protect.” Tibbles had reprinted the entire text of the judge’s opinion.

One week after the judge’s decision, the orders from Secretary of War G.W. McCravy made their way down the military chain to General Crook. Standing Bear and the other twenty-five Ponca men, women, and children were now free, free to go, shielded from the Army’s grasp by the Fourteenth Amendment.

In the short term, Dundy’s ruling would trigger far-reaching changes in federal Indian policy. In some ways, it had also begun to chart the headwaters of a much larger issue: The rights of blacks, women, Indians, and other minorities to vote, to own property, to live where they wanted, to engage in the full democracy.

JOE STARITA is a former investigative reporter and New York bureau chief of The Miami Herald, where one of his stories was a Pulitzer Prize finalist. He is now a professor at the University of Nebraska’s College of Journalism and author of The Dull Knives of Pine Ridge, which garnered a second Pulitzer Prize nomination and won the Mountain and Plains Booksellers Association Award. The preceding text is excerpted from I Am a Man by Joe Starita. Copyright © 2009 by the author and reprinted by permission of St. Martin’s Press, LLC.

DONEL KEELER is a self-taught artist, working in Omaha, Nebraska. His award-winning artwork is held in private collections and has been on loan at the University of Nebraska. Although enrolled Dakota, Keeler also has Ponca ancestry. His father was Winfred “Babe” Keeler and his grandmother was Lilly Birdhead, daughter of Chief Joseph Birdhead of the Ponca tribe of Nebraska. Art titles in order of appearance: Good Old Buffalo Days, Chief Standing Bear, Trick or Treaty, and Still Here.