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ANNOUNCEMENTS

Native American Rights Fund

NARF Celebrates Its Tenth Anniversary "A Decade of Progress and Perspectives For the 80s"

1970 — 1980

In 1980 the Native American Rights Fund celebrated its tenth anniversary as a national organization working for Native American rights throughout the country. Since its founding in 1970 NARF has worked on behalf of hundreds of Indian tribes, individuals and organizations in over forty states. NARF's work during this first decade has had a tremendous impact on Indian rights in areas of preserving tribal existence, protecting tribal resources, promoting human rights, holding the dominant governments accountable to Indian tribes, and developing and strengthening Indian law to help reserve Native American rights.

Following is a brief review of the origin of NARF and its goals, and on the two-day reunion and symposium held in July to commemorate NARF's tenth anniversary

Origin and Goals of NARF

NARF began as a pilot project of California Indian Legal Services in 1970. CILS is one of the government-funded legal services programs established as part of the "War on Poverty" which was launched in the 1960s under the Office of Economic Opportunity. These programs were intended to provide to poor and disadvantaged people access to lawyers and the legal process. Many of these legal services programs were established on Indian reservations and in Indian com-

munities. As these programs began working with Indian legal problems, they soon came to learn that Indians and their problems were, for the most part, governed and controlled by a specialized and little known area of the law known as "Indian law" — a complex body of law composed of hundreds of Indian treaties and court decisions, and thousands of federal statutes, regulations and administrative rulings. As the Indian legal services lawyers began to study and apply "Indian law" in representing their Indian clients, successes in the courts greatly increased.

In 1970, the Ford Foundation, instrumental in the development of the NAACP Legal Defense Fund and the Mexican American Legal Defense Fund, became interested in establishing a national legal program for Indians. The Foundation first sought an on-going program which had already proven itself successful in litigating Indian rights. The Foundation became interested in California Indian Legal Services and met with CILS to discuss the need for a national program to address major Indian legal problems around the country. With Ford Foundation funding, CILS agreed to institute a small pilot project enabling it to expand their services to Indians on a national basis. That project became known as the Native American Rights Fund. As planned, NARF separated from CILS in 1971, moved to a more central location in

Notice

The next issue of Announcements will be published in February 1981. Individuals wishing to continue to remain on the mailing list must return the enclosed card. Tribes, organizations, and governmental offices need to return the card *only* for address corrections.

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Native American Rights Fund

The Native American Rights Fund is a non-profit organization specializing in the legal protection of Indian rights. The organization's priorities, as established by the governing Steering Committee, are: (1) the preservation of tribal existence; (2) the protection of natural resources; (3) the promotion of human rights; (4) the accountability of governments to Native Americans; and (5) the development of Indian law.

Steering Committee

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Val Cordova (Taos Pueblo), Vice-Chairman.....New Mexico
Robert Bojorcias (Klamath).....Oregon
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Roger Jim (Yakima).....Washington
Bernard Kayate (Laguna Pueblo).....New Mexico
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Louis LaRose (Winnebago).....Nebraska
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Jerry Running Foxe (Coquille).....Oregon

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Susan R. Hart.....Corporate Treasurer
Lorraine P. Edmo (Shoshone-Bannock).....Development Officer

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Main Office: Executive Director, Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80203 (303/447-8760).
Other Offices: Washington, D.C.; Portland Maine.

Founded in 1970 and Incorporated in Washington, D.C.

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Suzan Shown Harjo (Cheyenne-Creek)

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Bryce Wildcat (Pawnee-Euchee).....Research Assistant
Joyce Gates (Seneca).....Secretary
Natalie Waukau (Menominee).....Clerk
Mary Mousseau (Oglala Sioux).....Assistant Librarian

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Law Clerks During 1980

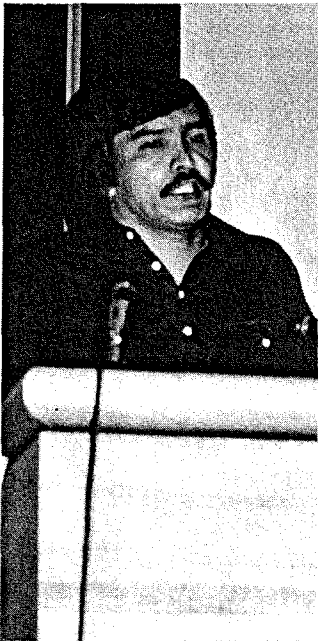
Kevin Anderson, Georgetown Law School
Leland N. Chisholm, University of Maine Law School
Martha Dunlap, University of Maine Law School
Theresa Gomez (Isleta Pueblo), New Mexico Law School
Kevin Griffin, New England School of Law
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Faith Roessel (Navajo), Univ. of New Mex. Law School
Ralph E. Simon (Kickapoo), University of Tulsa Law School
George Tah-Bone (Kiowa), Denver University Law School

Boulder and incorporated separately under an all-Indian Steering Committee. NARF grew rapidly from a three-lawyer pilot project to an eighteen-attorney firm in a few short years.

NARF's growth and success throughout these past ten years is attributable entirely to the validity of the original concept upon which it was founded — that there is a great need for a national Indian rights organization to provide legal representation to tribes to protect their rights and address their major legal problems. At the heart of this need is the common goal of all Native American groups to preserve their status as Indian tribes and to maintain their traditional way of life.

of cases in the tribal existence classification, and many of these cases have established strong precedents in the efforts to preserve tribal existence. NARF's activities under the tribal existence designation fall into at least four categories: (1) restoration and recognition for tribes; (2) tribal sovereignty issues, including tribal jurisdiction and taxation rights; (3) enforcement of treaty rights; and (4) upholding the federal trust responsibility.

The protection of Indian natural resources, the second priority, is the key to tribal economic development and self-sufficiency. Unfortunately, questions over tribal ownership and control occur more frequently with Indian resources than in the larger society. This is a result of the



"I think the need for the strengthening of the tribal institutions is very critical. Most people recognize that one institution of tribal government that needs a considerable amount of help is the tribal judiciary because, if the word sovereignty is going to become more than just a word in a book, a lot of work has to be done and that work has to be put forward not only by people actively involved in Indian law but also by those who are tribal leaders."

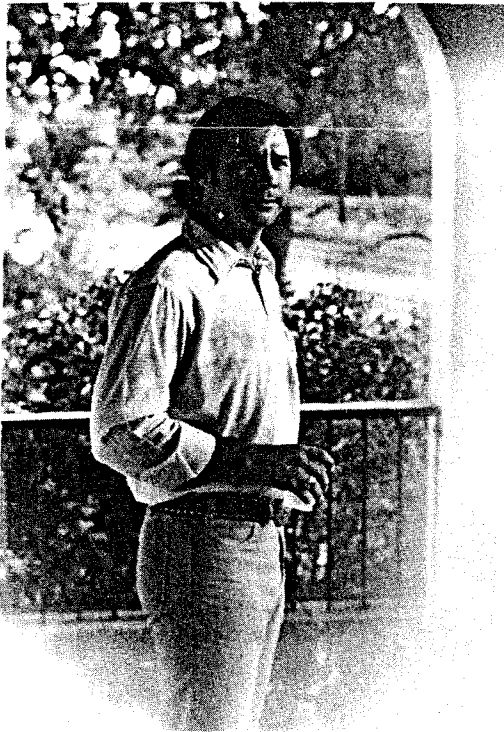
Richard Trudell, Director of the Indian Lawyer Training Program and former NARF Board member, addressed the Indian Law Symposium.

Consistent with the philosophy of Indian self-determination, NARF is governed by a 13-member Steering Committee composed entirely of Indian people. This all-Indian board controls NARF's activities by setting the priorities and policies. Members are chosen on the basis of their involvement in Indian affairs, their knowledge of the issues, and their tribal affiliation for wide geographical representation. It is the philosophy of the Steering Committee to keep NARF as apolitical as possible and to concentrate on issues which will be of lasting benefit to all tribes.

The Steering Committee, in setting the priorities governing NARF's involvements, has placed tribal existence as the first priority. Under this priority, NARF works to enable tribes to continue to live according to their live traditions, to enforce their treaty rights, to insure their independence on reservations, and to protect their land. Through the past ten years, NARF has had scores

failure of the federal government to fulfill its trust duty to protect the Indian tribes and their property rights. Natural resource ownership questions are therefore a legitimate concern to NARF in responding to major Indian legal needs. For decades, the federal government refused to deal adequately with protecting Indian resources. However, Indian tribes, contrary to the expectations of many in the last one-hundred years, are not disappearing but are becoming a permanent part of the American system; thus, these issues regarding tribal resources must finally be resolved for the benefit of all people concerned. Over the years that NARF has been involved in the Indian natural resource field, the four main areas of concern that NARF has been involved in are land rights, water rights, mineral rights, and hunting and fishing rights.

Third, NARF is concerned with securing basic human



Above. Ralph Simon, attending the University of Tulsa Law School, was a law clerk at NARF during the summer of 1980.

Below. Douglas Nash, a former staff attorney at NARF and now chief counsel for the Umatilla Tribe of Oregon, served as a panel member at the Tenth Anniversary's "Indian Law Symposium."



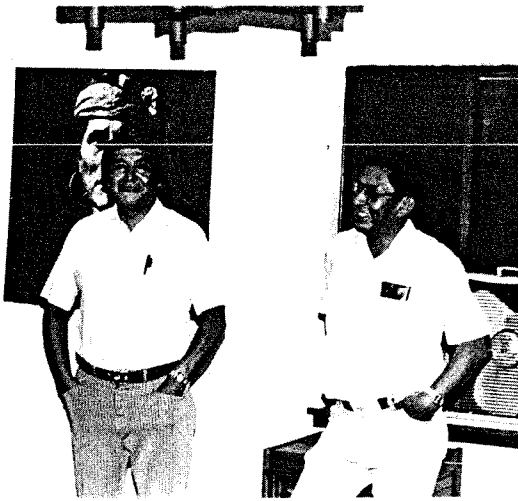
Above. Standing, left to right, are Bruce Davies, NARF staff attorney; Larry Manning, a member of NARF's Indian Law Support Center's advisory committee; and Joyce Gates, NILL secretary. Seated in front is Martha Grass, a former member of the NARF Steering Committee.



Above. Rick Collins, staff attorney; Reid Peyton Chambers, private attorney and former of-counsel for NARF; and Tom Fredericks, former NARF Director.

Below. Lare Aschenbrenner, staff attorney, and Ada Deer, Legislative Liaison for NARF.





Above. Steering Committee members Val Cordova and Roger Jim.



Above. Lorraine Edmo, Development Officer, with guest, Jerry Cordova, Tribal Government Specialist with BIA's Albuquerque Area Office.

Below. Former staff member Ava Hamilton with staff attorney, Jeanne Whiteing.



Above. Staff attorney Robert Pelcyger (left) and R. Harcourt Dodds (right), program officer of the Ford Foundation.

Below. Guests Kathy Echohawk and Pauline Echo-Hawk.



◁ From page 3

rights for Native Americans in areas of religious freedom, education, health, housing, welfare, and the rights of Indian inmates. NARF has worked on numerous students' rights cases, and receives regular requests for assistance from the emerging Indian community colleges around the country who need help in organizational development. In the area of Indian inmate concerns, NARF is now conducting an Indian Corrections project to study ways of meeting the neglected legal and cultural needs of Indian inmates in the Great Lakes and Northwest areas. The right of Native Americans to practice their traditional religious beliefs are constantly being interfered with or prohibited by federal and state officials who refuse to acknowledge the validity of Native religions despite the First Amendment and the recently enacted "American Indian Religious Freedom Act."

priority, is essential for the security of Indian rights. This involves not only the establishment of favorable court precedents in critical areas of Indian law, but the distribution of information and materials to all others working for Indian rights. Since 1972, NARF's National Indian Law Library project has been collecting, indexing and distributing Indian legal information in response to thousands of requests nationwide. Another major ongoing project since 1972 is the Indian Law Support Center, a national backup assistance center serving legal services programs around the country located on reservations, in Indian communities, and urban areas working with Indian clients.

Tenth Anniversary Activities

It was to commemorate these first ten years and to look to the issues that Indians will be facing in the 1980s

"We have the crucial task of keeping the issues of justice, equity and fairness to Indians high on the agenda of this country and its philanthropy. We have only begun to address the myriad problems of pluralism still unanswered in this society. NARF has responded especially well to the challenge of building an institution to press the special claims of Indian people and to work with tribes and organizations for this purpose. We must now work together for a future that will enable NARF to undertake the many tasks yet to be done. The historic claims of the Indian people requires nothing less than this commitment and our very best efforts to achieve it."

H. Harcourt Dodds, Program Officer of the Ford Foundation, addressed the meeting on the funding problems facing litigation programs in the 1980s.



The fourth priority is the accountability of the dominant society to Native Americans. Not only is the federal government accountable to Indians for carrying out its trust responsibilities, but states and local governments are equally bound to recognize and honor the unique federal rights and immunities of the tribes and Indians within their respective borders. For instance, during 1978-79, NARF, working in conjunction with other groups and tribes, work to help prevent the Justice Department from abandoning their trust responsibility duties to protect Indian lands and resources. Over the past few years, NARF, along with all Indians, has had to monitor Congress in order to counteract legislation which continually threatens the treaty rights of Indian tribes and of Indian rights generally.

The proper development of Indian law, the fifth

that NARF decided to hold a special two-day celebration last July. Approximately 200 participated in the "Indian Law Symposium" held the first day in Boulder, and the reunion activities held the following day in the Rocky Mountains in Estes Park. Present and former staff and Board members were joined by special guests active in the area of Indian affairs.

John Echohawk, NARF Director, addressing those attending the symposium, stated:

It is rare that an Indian program can last for ten years and achieve the success and stability that NARF has been able to. This view is shared by the staff and Board and we thought that this accomplishment was worth commemorating.

When I started working in Indian law, I could see the disparity between what the law said and what was reality for Indian people. The law said we should be sovereign; we should have control of our resources; we should be treated fairly. But this had not been my experience and it had not been the experience of many others who were looking at the same law. However, as a result of our work here at NARF and by others working for Indian rights, there has been significant progress in the last ten years in enforcing Indian rights in the courts. What Indians wanted is what we represented; they wanted to exist as tribes and they wanted their treaty rights recognized. Many issues were unpopular politically, but these were issues the Indian people wanted to pursue and that is what our program did.

After ten years, it is gratifying to stand here today, in 1980, to report that Indian tribes are alive and well; that the efforts of this country to eliminate Indian people and Indian tribes has not been successful and, moreover, will never be successful.

The keynote speaker of the symposium was Mr. Wendell Chino, Chairman of the Mescalero Apache Tribe of New Mexico and current President of the National Tribal Chairmen's Association. In his address, Chairman Chino emphasized the importance of tribes awakening to their rights as sovereign entities and to begin to exercise their full tribal powers.

Threats to our tribal governments are, in essence, threats to the existence of Indian people, our tribes and our way of life. The biggest threat is the uninformed and misinformed American public. Many non-Indian people in this country are sadly uninformed about our people, but even more so about our treaties and our tribal governments. The American public does not understand Indian treaty rights and the issues and subjects that our tribes negotiated in these treaties with the United States. Because the American public is misinformed, they are biased in their opinions and positions concerning Indian people, our treaties and our governments.

The American public forgets that we are the indigenous people of this country. Our governments are twice as old as this country. Long before the United States came into being, our people were self-governing entities and, as sovereign governments, made treaties on our behalf. These treaties stated categorically that tribes were promised that Indians shall maintain a separate life; they shall maintain a separate land; separate services; and separate governments. In exchange, we accepted the power of the United States for protection and for home lands for our people where we could maintain our own tribal governments.

Chairman Chino stated that so long as the American public remains uninformed about Indian rights, there will always be threats to Indian existence. "The Founding Fathers," he stated, "must have recognized the possibi-

ty of the coexistence of Indian tribes with the late-comers to this country. It is my belief that they accepted the permanence of Indian tribes and their governments and viewed treaties as the accepted means of dealing with Indian tribes. It was an effective method, good enough then and good enough today."

The "Indian Law Symposium" panels focused on five areas of Indian rights in which NARF has been very much involved during its first decade. Present staff attorneys were joined by former attorneys and Board members to present panel discussions on Indian water rights, land claims, religious freedom, tribal recognition, jurisdiction, taxation and hunting and fishing rights. The panels and the members were:

Jurisdiction, Taxation, and Hunting & Fishing Rights

Yvonne Knight, NARF Staff Attorney, Moderator
Richard Collins, NARF Staff Attorney
Douglas Nash, Tribal Attorney, Confed. Umatilla Tribes
Richard Trudell, Director, American Indian Lawyer Training Program

Indian Water Rights

Robert Pelcyger, NARF Staff Attorney, Moderator
Rodney Lewis, Tribal Attorney, Gila River Indian Community
Cipriano Manuel, District Chairman, Papago Tribe
Joseph Membrino, Attorney Advisor for Indian Affairs, Department of the Interior

Indian Land Claims

Tom Tureen, NARF Staff Attorney, Moderator
Reid Peyton Chambers, Atty., Sonosky, Chambers & Sachse
Lare Aschenbrenner, NARF Staff Attorney
John Stevens, Planner, Passamaquoddy Tribe

Restoration and Recognition

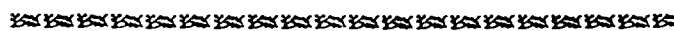
Jeanne Whiteing, NARF Staff Attorney, Moderator
Ada Deer, NARF Legislative Liaison
Arlinda Locklear, NARF Staff Attorney
Don Miller, NARF Staff Attorney

Indian Religious Freedom

Walter Echo-Hawk, NARF Staff Attorney, Moderator
Suzan Harjo, NARF Legislative Liaison
Roger Jim, Yakima Tribal Council Member
Janet McCloud, Chief Coordinator, Northwest Indian Women's Circle

A common theme running through the panel discussions* was that Indian rights are never permanently secured, and that tribes and Indian organizations such as NARF must always be vigilant in protecting those rights which have been fought for and recognized by the courts and Congress.

*Proceedings of the Indian Law Symposium will be available in January, 1981. Please contact the NARF corporate secretary for a copy (\$5.00, except to those who paid the registration fee).



Case Developments

Since the last issue of *Announcements* was published, there have been numerous developments in the approximately 200 major litigation and non-litigation matters in which NARF is involved. The following case narratives are of some of the more recent developments.

U.S. v. Michigan: Great Lakes Fishing Rights

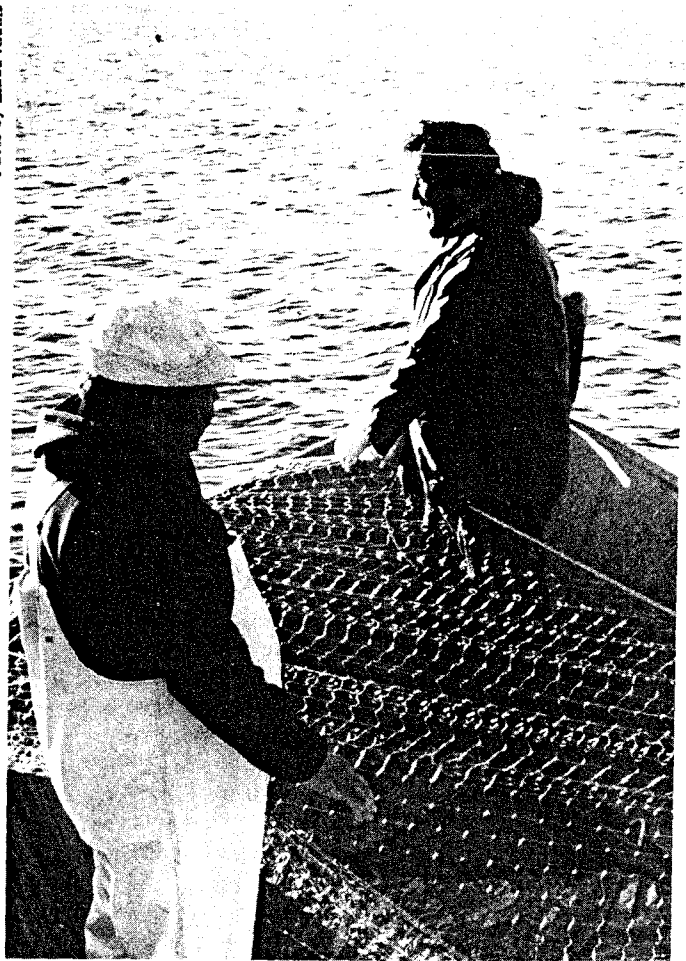
On May 7, 1979, a decision was handed down in this landmark Great Lakes Indian fishing rights case. In a 140-page opinion, Judge Fox, of the U.S. District Court for the Western District of Michigan, held that tribal members of the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians have the right to fish free of state regulation in the areas of Lakes Superior, Michigan and Huron which were ceded in treaties.

This case was originally filed in 1973 by the United States on behalf of the Bay Mills Indian Community and later on behalf of the Sault Tribe against the State of Michigan. The Tribes intervened in their own right and NARF represents the Bay Mills Indian Community and has acted as lead counsel throughout the proceedings. The

Photo by Linda Alaniz



Photo by Linda Alaniz



Pictured here are members of the Great Lakes tribes whose fishing rights, guaranteed under treaties with the United States, are being contested in *U.S. v. Michigan*.

Court was asked to declare that the tribes, as descendants to signatories to the 1836 Treaty, had reserved rights to fish in a substantial portion of the Great Lakes. Under the 1836 Treaty, the Indians ceded a large portion of the lower peninsula of Michigan, the eastern half of the upper peninsula of Michigan, together with approximately half of Lake Superior, most of Michigan's waters in Lake Michigan, approximately 20% of Lake Huron and the St. Mary's River system connecting Lakes Huron and Superior. The Indians contended that even though this area was ceded, they retained the right to go into the ceded waters and fish for commercial and subsistence purposes.

The case finally came to trial in 1978 after years of intensive research and documentation. The trial lasted for almost four weeks at different times during the year. The trial transcript is contained in ten volumes and totals nearly 3,000 pages. At trial approximately 300 exhibits were introduced by the United States, the Tribes, and the State of Michigan. The trial was characterized by extensive expert testimony of historians, ethnohistorians, archeologists, and

Left. Abe LeBlanc, tribal member of the Bay Mills Indian Community, one of the tribes involved in the *U.S. v. Michigan* suit.

anthropologists. In addition, tribal witnesses testified regarding oral tradition in their community as it pertained to the meaning of the treaties of 1836 and 1855.

The Indians' basic claim was that in the 1836 Treaty, they reserved the right to fish in their traditional fishing waters. In agreeing with this interpretation, the District Court stated that in Article Thirteen of the 1836 Treaty, the Indians reserved a right to hunt on the lands ceded, along "...with the other usual privileges of occupancy, until the land is required for settlement." The Court ruled that the reserved rights contained in this article included the right to fish in all of the ceded waters of the Great Lakes, wherever there are fish. It also ruled that even in the absence of the language in Article Thirteen, the Indians reserved by implication the right to fish in the Great Lakes. Central to this interpretation is the well-established principle of Indian treaty interpretation that the Indians are the *grantors* of the land and water. They had original title before the coming of the white man. It was this land title they conveyed to the United States — the *grantee* in the treaty transaction — and anything not explicitly granted away by the Indians was necessarily retained.

Thus, the lack of explicit reference to the relinquishment of their fishing rights gives rise to the implication that the Indians kept their fishing rights, not that they gave them up. Given the significance of the fishery to the Indians, the Court said, it was highly unlikely, indeed inconceivable, that they would relinquish this valuable right.

The State of Michigan has appealed the decision to the Sixth Circuit Court of Appeals, and also filed a motion to delay the implementation of the District Court's decision pending a review by the Appeals Court. The Appeals Court has remanded three questions back to the District Court for decisions. It is expected that whatever the decision of the Appeals Court, it will be appealed to the U.S. Supreme Court. Therefore, it will be at least two years before the case is settled. In the meantime, the Indian fishermen are exercising their fishing rights pursuant to federal regulations.



Siletz Reservation Established

When President Carter signed into law the Siletz Restoration Act in 1977, it restored the terminated Siletz Tribe of Oregon to status as a sovereign federal Indian tribe, and also made them eligible for federal services. The Act did not, however, establish a reservation for the Tribe. Instead, it directed the Tribe and the Secretary of the Interior to develop a reservation plan and submit it to Congress in the form of proposed legislation within two years of the enactment of the Restoration Act. NARF has represented the Tribe throughout the restoration and reservation development efforts and assisted the Department of Interior and the Tribe in the development of the reservation plan.

In November 1979, the Interior Secretary submitted to both Houses of Congress the proposed reservation plan which provided for establishment of a 3,600-acre reservation for the Siletz Tribe. Hearings in the Senate were held at the end of January 1980, and in February the Siletz Reservation bill passed the Senate. Following an agreement between the State of Oregon and the Siletz Tribe on the nature and extent of tribal hunting and fishing rights, Congressman AuCoin introduced the reservation bill in the House in early

May. Hearings before the full House Interior Committee were held May 29, and in August the bill was passed by the full House.

On September 4, 1980, President Carter signed the bill into law. On September 20, 1980, Tribal Chairman Bensell accepted the deed to the lands, as well as a deed to a 36-acre tract in the City of Siletz, and proclaimed those lands to be an "Indian reservation." Ceremonies, including a large pow-wow, were attended by Acting Assistant Secretary of the Interior, Tom Fredericks, representatives of the White House, Senator Hatfield, Representative AuCoin and Governor Atiyeh. The 3,600 acres, transferred from the Bureau of Land Management to the Tribe, contains timber valued in excess of \$45,000,000. Income from a sustained yield logging operation will make the Siletz tribal government self sufficient and provide the financing for much needed community recreation and health facilities.



Cheyenne & Arapaho Tribes v. Oklahoma

NARF has been representing the Cheyenne & Arapaho tribes of Oklahoma in a suit against the State of Oklahoma to establish the extent and nature of the Tribes' hunting and fishing rights on their present trust lands and former reservations lands located in western Oklahoma. The case presented one of the first attempts in Oklahoma to establish tribal authority over tribal members. Until recently, Oklahoma has been exercising almost complete jurisdiction over Indians. The U.S. District Court in Oklahoma upheld the Tribes' hunting and fishing rights on individual trust lands, but ruled against any rights on tribal trust lands and former reservation lands; the case was then appealed to the Tenth Circuit.

On March 25, 1980, the Federal Appeals Court upheld the Tribes' position on all issues. The Court held that the Tribes continue to possess hunting and fishing rights on all lands within their former reservation, except that permission of landowners must be obtained where private land is involved. The status of tribal trust land and individual Indian allotted lands as "Indian country" under federal law was also upheld. Oklahoma did not petition for review to the Supreme Court.

NARF attorneys have recently met with members of the Tribes as a first step toward drafting an agreement between the Tribes and the State which will serve to fully implement the decision of the Tenth Circuit. It is hoped that such an agreement will specify the terms and conditions under which the Tribes can directly regulate the hunting and fishing rights of its members.



South Dakota Water Suit

In March 1980, the State of South Dakota filed suit in State court to adjudicate all the water rights in the Missouri River system in the western two-thirds of the State. The water rights of seven Sioux Indian tribes are involved. It is anticipated that as many as 60,000 defendants eventually will be included in the action.

In May 1980, NARF was retained by one of the affected tribes, the Rosebud Sioux Tribe, to represent it in the

suit which could take five to ten years to settle. The United States is seeking to transfer the case to federal court, but the State of South Dakota has filed a motion to keep the case in state court. NARF attorneys assisted in drafting the briefs submitted by the United States and several of the tribes, and also filed an *amicus* brief on behalf of the Rosebud Sioux Tribe in support of federal court jurisdiction. The U.S. District Court has delayed a decision while the tribes and the State attempt to come to some agreement on either federal or State jurisdiction and other matters



U.S. v. Clarke

This case concerns the construction and use of a road across an Indian land allotment in Alaska. The road is maintained by the municipality of Anchorage but the Indian landowner (allottee) has fought against the grant of a right of way for more than 20 years and no right of way has ever been authorized. A federal law permits the condemnation of allotted Indian lands pursuant to state law, and Anchorage claims that it has exercised its power of condemnation by physically occupying the allotment and the lower courts agreed with this position. However, the position of the United States as guardian for the allottee was that the right of way cannot be obtained by mere physical occupation but that Anchorage must first file a condemnation lawsuit in federal court.

When the case was appealed to the U.S. Supreme Court, NARF attorneys prepared and filed a brief in support of the position of the United States, and advanced several arguments that the United States did not make, including the argument that the right of way could not be obtained without the consent of the Secretary of the Interior and the allottee. The case was argued in January 1980 and decided by the Supreme Court in March 1980. The Supreme Court, reversing the lower court's decision, held that the condemnation of allotted Indian lands requires the filing of a formal condemnation proceeding in federal court. If Anchorage's argument had prevailed, all Indian allottees and the United States would have had the burden of discovering encroachments on all allotted Indian lands and of bringing suits to recover compensation. The case has now been remanded back to the District Court for further proceedings. NARF attorneys are assisting the Indian allottee in working out suitable arrangements with local counsel.



Maine Land Claim Settlement

On October 10, 1980, President Carter signed an \$81.5 million bill which extinguished the Indian land claims to the State of Maine and authorized the expenditure of funds for purposes related to the settlement of the claims. The signing of the settlement bill represents the end of seven years of negotiations between tribal representatives, state officials and officials of the federal government.

The claims by the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians involved approximately 12.5 million acres of land covering 60% of the State of Maine. The legal basis for the land claims rested on the congressional failure to ratify

transfers of land from the Indians by the State of Maine during the late 1700s and early 1800s. The Settlement Act includes these major provisions:

- Establishes a \$27 million fund to be held in trust by the Secretary of the Interior and administered for the benefit of the Passamaquoddy and Penobscot Indians.
- Establishes a \$54.5 million land acquisition fund to be held in trust and administered for the benefit of all three Indian groups. Of this amount, \$900,000 will be apportioned to the Houlton Band, with \$26.8 million each apportioned to the Passamaquoddy and Penobscot.
- Requires that all land purchased by the Houlton Band be held in trust by the United States, and that no more than 150,000 acres each be held in trust for the Passamaquoddy and Penobscot tribes.
- Confirms federal recognition, with all attendant benefits and services, for all three Indian groups.
- Recognizes tribal jurisdiction over internal matters, hunting and fishing, and child welfare.
- Requires the Secretary of the Interior to report to Congress, by October 30, 1982, on federal and state funding for the Passamaquoddy and Penobscot compared with respective federal and state funding for Indian programs in other states.

NARF served as lead counsel for the Passamaquoddy and Penobscot Tribes in both litigation and negotiation processes. A more detailed report on the Maine Indian land claims settlement issue as well as other pending Eastern Indian land claims issues will be featured in the next issue of *Announcements*.



Sault Ste. Marie v. Andrus

Six bands of Chippewa Indians lived in the vicinity of the present site of the City of Sault Ste. Marie, Michigan at the time of first white contact. The six bands ceded the site to the United States in 1820, and the Chippewa and Ottawa tribes later ceded most of the rest of Michigan in treaties in 1836 and 1855. However, the Chippewa bands remained around Sault Ste. Marie but had very little land base.

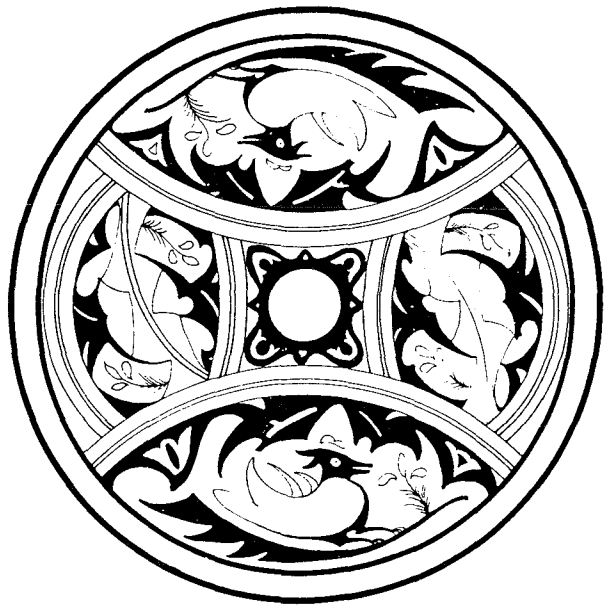
In 1972, the Interior Department allowed the present day successors to the six bands to organize under the Indian Reorganization Act (IRA) as the Sault Ste. Marie Tribe of Chippewa Indians. In 1977, the Secretary of the Interior accepted title in trust for the Sault Ste. Marie Tribe to a 79-acre parcel of land located within the boundaries of the City to establish a tribal housing project and to put the land in trust for the Tribe. The City opposed this project, sued the Secretary to have the trust title cancelled, and refused to supply water and sewer service to the tract. The United States then sued the City in a separate case challenging this refusal of services in federal court in Michigan. The case was eventually settled, the City agreeing to serve the tract.

The City's lawsuit on the trust land issue, however, is still active. One of the City's principal arguments is that the Tribe is not eligible to organize under the IRA and,

Upcoming Articles

Future issues of *Announcements* will carry articles on the following subjects, all of which NARF is involved in. Anyone interested in contributing items for publication should contact the editor (Ads are not accepted).

- *Indian Water Rights.* A major article on Indian water rights, including a status report on NARF's Indian water cases.
- *Eastern Land Claims.* The historic settlement of the Indian land claims in Maine and a report on pending land claims of other Eastern tribes.
- *Recognition & Restoration.* A report on the efforts of non-recognized and terminated tribes to obtain federal recognition, including NARF's work in this vital area.
- *Indian Child Welfare Act.* A report on this 1978 Act and on what tribes and others are doing to enforce and strengthen the Act.



therefore, not entitled to have land put in trust. The Tribe intervened in the case in 1978 with NARF as counsel and NARF, seeking to negotiate a settlement, met with City officials on a number of occasions. A tentative agreement was eventually reached, but in November 1979, the proposed settlement was rejected by the City. The City's attorneys then filed a motion for summary judgment. On August 29, 1980, the U.S. District Court ruled in favor of the United States and the Tribe on all issues. The City then filed a motion to reconsider part of the decision and NARF filed a brief in opposition, and the motion is still pending.

The National Indian Law Library

A major part of meeting NARF's commitment to Indian law development is the continued operation of the National Indian Law Library, a repository and clearinghouse for materials on Native American law. The Library was established by NARF in 1972 in response to a growing demand for materials on Indian law brought about by a resurgence of Indian rights activity beginning in the late 1960s and continuing today. At the time, there was no library or major collection devoted entirely to this area. With the aid of a three-year start-up grant from the Carnegie Corporation, and with continued support from the Administration for Native Americans (DHHS/ANA), the Library began collecting, indexing and distributing an ever-growing collection of materials on Indian law.

The Collection. The holdings of the Library, which now total nearly 3,500 items, consist of (1) Indian law case decisions and related pleadings and briefs; (2) articles on Indian law from law journals and other periodicals; (3) legal opinions and memoranda of federal and state solicitors on Indian affairs; (4) books, monographs, and dissertations on Indian affairs; and (5) various other types of collections and resource materials on Indian law.

The Services. The Library handles well over 100 requests each month. These requests come from NARF staff, legal services programs, Indian tribes and organizations, Indian individuals, private attorneys, students, scholars, law libraries, and state and federal government offices. Copying costs are presently being billed at ten cents per page for all requests except those from LSC-funded legal services programs serving Indian clients. Although all the materials are available at the Library for anyone to study, not all can be sent out, either because of copyright restrictions or excessive copying costs.

The NILL Catalogue. The Library disseminates information on its holdings primarily through publication of the *National Indian Law Library Catalogue: An Index to Indian Materials and Resources*. The Catalogue is designed for those who cannot visit the Library, but would like to know what the Library has available in any particular area of Indian law and to be able to request materials. In addition to an extensive "Subject Index," the Catalogue includes "Plaintiff-Defendant" and "Author-Title" indices. And a most useful feature is that the Catalogue is supplemented periodically. Nearly 1,000 copies of the Catalogue have been subscribed to since its publication in 1976. This first edition is out of print and the Library is now preparing for publication of a second edition in 1981. The exact publication date is dependent upon conversion of the Library's holdings from magnetic typewriter cards to a computerized system. After publication of the new edition, all additions to the collection will be entered in the data bank as they occur, thus assuring more accurate and up-to-date research at any time.

Contact. For further information on the Library or for requests for materials on Indian law, please contact the librarian. Those interested in purchasing a copy of the new edition of the Catalogue when it is published should write to the librarian and ask to be notified when the Catalogue is available.

The Indian Corrections Project

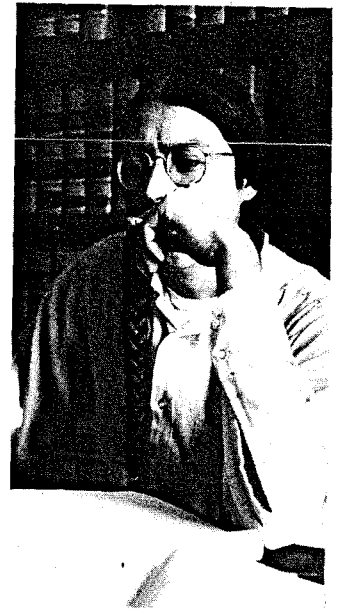
The Indian Corrections Project of the Native American Rights Fund has represented Indian prisoners in a number of proceedings challenging conditions and policies of state and federal prisons, parole boards, and local county jails. In December 1980, the Project will conclude a year-long study of Indian inmates in the Great Lakes and Northwest areas. The study, funded by the Law Enforcement Assistance Administration, is designed to research and identify the unmet legal and cultural needs of Indian inmates in federal and state institutions in these two areas and to develop comprehensive plans for addressing these needs.

Almost from its inception, NARF has been deeply involved with the special problems of Indians incarcerated in federal and state correctional institutions throughout the country. One of NARF's five major priorities is the protection of the human rights of Native Americans. Thus, the rights of Indian inmates to adequate medical care, rehabilitation and training programs, freedom from discrimination, access to courts, religious freedom, cultural rights and other human rights are valid concerns for NARF to become involved in.

The major goal of NARF in its Indian corrections work, in its early involvements and today, is to educate and "sensitize" prison officials to the unique cultural and social background of Indian inmates and of the importance of addressing their cultural needs in promoting the well-being and rehabilitation of Native American inmates.

Research has shown that Indians are over-represented throughout all components of the criminal justice system in the United States. This over-representation has been well documented in adult correctional facilities in several states. Prior to the establishment of NARF, there was no national Indian rights organization to which these Indian inmates could turn to for assistance. As NARF's existence became known, staff attorneys began to receive requests for assistance from Indian inmates who complained of poor prison conditions, the lack of cultural and religious programs geared to the special needs of Indian inmates, and a general insensitivity to Indian customs and beliefs. When it became apparent to NARF that there were no legal precedents for the protection of cultural rights of Indian inmates as there is for non-Indian prisoners, it established the Indian Corrections Project to address these issues.

Many of NARF's prison cases involve discrimination against Indian inmates and access to their native religion and culture while in prison. *Teterud v. Burns* was a NARF case involving the policy of the Iowa State Penitentiary requiring all inmates to wear short hair. The federal appeals court held that traditional Indian hair styles are a tenet of Indian religion protected by the First Amendment in the prison context. This particular aspect of Indian religion was successfully litigated in other NARF prison cases. In a related case, *Crow v. Erickson* resulted in a comprehensive order regarding Indian religion, culture, discrimination, affirmative action hiring, rehabilitation, medical treatment, and access to the courts on behalf of Indian inmates confined at the



Walter R. Echo-Hawk, staff attorney, has been heavily involved in Indian corrections work since joining NARF in 1973, and is the supervising attorney for the present studies.

South Dakota Penitentiary. In *Indian Inmates of the Nebraska Penitentiary v. Vitek*, a similar comprehensive decree was obtained at the Nebraska Penitentiary which provided for access to Indian religion, including a sweat lodge, Indian studies classes, and medicine men. *Calf Looking v. Richardson*, successfully resolved by consent order, involved the right of access of federal Indian inmates to their outside spiritual advisor.

More recently, NARF has become involved in a number of issues in Oklahoma, California and New Mexico. For example, *Little Raven v. Crisp* is a case against the Oklahoma State Penitentiary on behalf of Indian inmates seeking access to their Indian culture and religion while confined at that prison. *Bear Ribs v. Taylor* was a case against the Federal Bureau of Prisons on behalf of Indian inmates in the California penitentiary who successfully obtained access to an Indian sweat lodge for religious purposes. In the last three months, NARF has won court consent decrees in *McManus v. Marshno* (which calls for building an Indian sweat lodge in a Kansas penitentiary), and *Frease v. Griffin* (which calls for allowing Indians to grow their hair in traditional style and for a sweat lodge). In *Ross v. Scurr*, an action for a sweat lodge for Indians in an Iowa prison is pending.

In bringing the above cases and many others, NARF hopes to establish a body of law to protect the rights of Native American inmates in the practice of their religion and culture and at the same time to free them from racial discrimination. Additionally, it is hoped these cases will serve to sensitize correction officials to the unique needs of Indian prisoners.

In addition to the above litigation activities, NARF has represented Indian inmates in state prisons in negotiations with prison authorities in Montana, Oregon, Idaho, New Mexico, Arizona, California, Kansas, New York, and Massachusetts. NARF's work in this area has resulted in collection of data regarding Indian offenders and their problems, and the development of a body of experts

from various disciplines who are knowledgeable about Indian correctional problems.

Alternatives to Incarceration

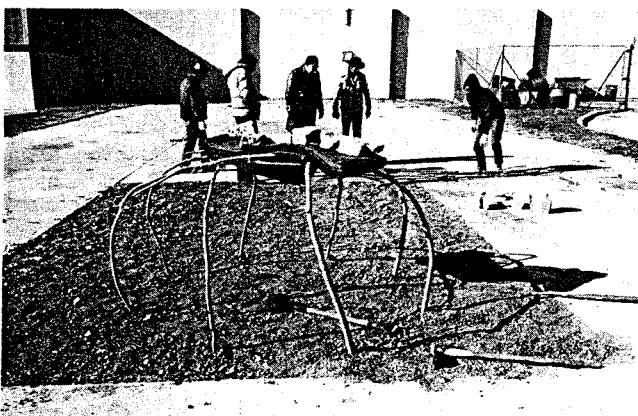
Because the traditional criminal corrections system has failed to adequately rehabilitate Indian inmates, the move toward alternative methods of rehabilitation was soon developed. Staff attorneys working in the Indian corrections field felt that there was only so much that could be accomplished through litigation. Although much relief for Indian inmates is secured through litigation efforts, NARF felt that ultimately it was futile to hope to permanently alleviate problems within the traditional criminal corrections system. More had to be done in changing individual attitudes and in getting Indian people involved in corrections administration. It was determined that NARF's resources would be better devoted in developing alternatives to the traditional Anglo incarceration system, alternative programs which would incorporate Indian rehabilitative techniques and concepts in Indian-controlled pre-release programs.

The Swift Bird Project, the first program responding to this need for alternative programs for Indian offenders, serves five states: North and South Dakota, Nebraska, Montana, and Minnesota. The Project was developed in response to a detailed feasibility study and extensive planning efforts assessing the needs of Indian offenders and the resources of the tribes in the five states. Now under the control of the Cheyenne River Sioux Tribe in South Dakota, the Project has a few Indian inmates who were transferred from state and federal institutions. It will be a few years before the success of such a tribally-controlled project can be accurately evaluated.

Great Lakes & Northwest Studies

In the current project, NARF is conducting similar feasibility studies for the Great Lakes and Northwest areas. The focus of this project is to assess needs of Indian inmates in the regions and develop detailed plans for alternative actions. The target population is defined as adult Indian offenders incarcerated in state and federal correctional facilities. Female as well as male offenders are included in this project, and the needs of Indian juveniles will also be evaluated.

The basic approach is to make a systematic study of the target populations of the two regions. The states



Richard Williams, Director of the Indian Offender Project, conducting an on site visit at the Nebraska State Penitentiary at Lincoln.

included in the Northwest region are: Alaska, Washington, Idaho, Oregon, and northern California. The states comprising the Great Lakes region are: eastern Minnesota (western Minnesota is in the Swift Bird region), Wisconsin, Michigan, and Iowa. These two regions were selected because of the number of tribes in the areas, the cultural similarity between the tribes, and the number and types of correctional facilities in those regions. The Project will evaluate the assessed needs of Indian inmates which are not currently being met by the state and federal correctional systems; identify resources to meet these needs; and develop alternative plans of action to respond to these needs. Ultimately, a master plan of action will be developed for each region. Such master plans may even serve as a basis for a national network of alternative native correction programs where-by tribal programs similar to the Swift Bird Project can work together to meet the needs of native inmates around the country.

Staff attorney Walter Echo-Hawk, a Pawnee Indian from Oklahoma, is the supervising attorney of the current feasibility studies, and Richard Williams, an Oglala Sioux, is the Director of the Project. Mr. Williams has worked in the area of Indian corrections for the past six years, and is the former director of the Swift Bird Project. Don Holman, a member of the Sisseton-Wahpeton Sioux Tribe, is coordinating the work in the Great Lakes and Northwest regions.

The benefits to be derived from this project will not be realized for many years. Hopefully, the Project will increase the effectiveness with which the Indian offenders are handled in the correctional system and increase the level of tribal involvement with Indian correctional rehabilitation. Among the ultimate benefits to be derived will be the reduction of crime through the reduced recurrent criminal activity by Indian offenders through a coordinated network of tribal corrections programs.

This project is in line with NARF's philosophy of trying to improve the criminal justice system and correctional facilities for Indians through the input of local and tribal people; and that the best way to accomplish this is by involving local Indian people, tribes and Indian organizations in the correctional process. NARF feels that this involvement will greatly improve the criminal justice system for Indian inmates around the country.

△ The right of Indian inmates to practice their native religion in prison is gradually being recognized. Shown here is the beginnings of a sweat lodge, used in religious ceremonies, being constructed by Indian inmates.

Indian Legal History...

The following article appeared in the *Central Law Journal* in 1916.

A strange scene was witnessed in 1881 at a session of the District Court of the State of Minnesota, held at Brainerd, in Crow Wing County. When the trial had been concluded, a verdict of guilty had been returned, and the presiding judge had sentenced the defendants, who had been convicted of homicide, to a long term of imprisonment in the state penitentiary at Stillwater. It is necessary to explain that in 1881, over ten thousand Indians of the Ojibway (sometimes called Chippewa) nation resided in northern Minnesota, having been placed by the general government of the United States upon reservations established in that region.

It was the custom of the Ojibways to wander far and wide not only upon the reservations but outside of them in the months of July and August for the purpose of gathering blueberries. Following this custom, a small band of Ojibways had made a camp near a railway embankment in Crow Wing County remote from any white settlement. One evening, the white defendants in this case were walking along the railway embankment, noticed the Indian encampment and wantonly fired into it killing one man and wounding several women and children. For this offense they were indicted and, as before stated, were convicted and sentenced to imprisonment.

The court room was crowded with Ojibways who assembled to watch the trial. Some of them had testified as witnesses. When sentence had been pronounced upon the defendants, the court interpreter communicated the result to several of the Indians; he then notified the presiding judge that an old chief who was present desired to address the court. Judge Stearns granted the request and the old chief came forward.

He was a man whose face was furrowed with many deep lines and his general appearance bespoke advanced age. However, his long black hair was but slightly tinged with gray and his black eyes were piercing. The upper part of his body was clad in an old, rusty, black frock coat, his legs encased in deer skin leggings fringed with the same material, and on his feet he wore elaborately beaded moccasins. As he came in front of the judge's bench he wore a gray blanket striped with black draped about his legs and held in the tight clutch of his left hand at the front of his waistline. From time to time in the course of his speech he removed this blanket, threw it about his shoulder, flung it over one arm, or held it aloft to emphasize or to illustrate what was said. He spoke in the sonorous Ojibway language. As interpreted by a member of the tribe, the chief said:

I wish to inform the gentlemen of the house that this is the 14th day that I have been here. I came here "blindfolded" and this is the first day that I have been able to see. To the lawyers here before me I will say that I am glad that you are here. I have heard a great deal about law, but I wish to speak a few words in behalf of my nation. I have been to Washington many times. I have seen passing by me seventy-five winters and sixty-five summers. At Washington I was told by the chief of the white nation that the white people were willing to do justice to my people. However, I have long doubted this.

At this point the old chief removed his blanket and spread it on the court room floor. Then, gathering it up by

the four corners and holding it thus suspended in his right hand, he resumed.

When the white man came to this country, all the land from the Great Lakes of the North to the Red River of the North belonged to my people. Then the white man came and took all the land into his possession as I have gathered up this blanket. He gave the Ojibways reserve pieces of land on which to live, but at the same time the white man came in great numbers, drove away the game, and even gathered the wild rice in the lakes which long ago fed not only the Indians but the wild fowl that fly from north to south and from south to north, and which the Indian captured for his food. So, we have lost our homes and can no longer wander as we would like to wander, and we cannot live well because the white man has taken our land away and we are too ignorant to learn his way of cutting down forests and tearing up the soil of the prairies, making farms, planting seed and making food grow out of the ground. When we trade with the white man we receive, many times, very little for what we sell and we cannot gain much for our families in buying and selling. We are very poor. In the spring time we go to the maple forests, draw the sap out of the trees and make sugar for ourselves. In the summer time we go, as our fathers did, to the open fields and there we gather berries and sometimes capture the animals which we use as food. Very often we are driven away from certain places where we try to make sugar and gather berries, as our fathers did, because some white man says that the land upon which we step is his land and that we must go away.

We have had so many sorrows in dealing with the white man that when these young men of the great white race (pointing to the convicted defendants) fired their guns into our camp, our young men and the women told me that they would go without punishment because they were white men, and that we might as well wander away somewhere and give ourselves up as lost beings for whom nobody cares. Then your head messenger (pointing to the sheriff) came and told us that the men who killed our people had been caught, that a council of white men would be held and if they were shown to have done this bad work they would be punished.

Now we have learned that the white man will punish these young men who shot at our people and I am no longer blind. I can see my way before me. I see hope for my people. I have found out that the white man can do justice to the Indian, and I give my thanks to the chief of this council and to all who have taken part in it for the justice of its decision.

The chief then slowly walked back to the benches at the rear of the court room and it was evident that his speech had made a profound impression. It may be interesting to state that in speaking, the old chief seemed to be entirely at ease. He gesticulated freely. When he spoke of being blind he closed his eyes and placed his right hand over them. Sometimes he knelt on the floor and sometimes sat on the floor. At all times he was graceful, and even in his strange attitudes appeared to be governed by a peculiar dignity. As he spoke of his doubts regarding the sincerity and justice of the white man, he shook his head slowly, and when he affirmed his belief that the white man was really governed by justice, he raised his head, shook his long hair, and his eyes sparkled with the delight of a spirited intelligence. Altogether, the speech of the Ojibway chief was a remarkable incident in the history of Northern jurisprudence.



Staff Profile:

**Arlinda
Locklear**

"Experiencing discrimination while growing up in North Carolina and seeing the effects of discrimination on my family" was one of the reasons given by Arlinda Locklear, a Lumbee Indian from North Carolina for choosing law as a career. Now in her fifth year as a staff attorney for the Native American Rights Fund, Arlinda has been devoting most of her time working on cases involving the rights of Lumbee Indians and other Eastern Indians. Born at Ft. Bragg, North Carolina, she grew up in several East Coast cities since her father was in the Navy. "But like most Lumbees," Arlinda said, "I've always considered Robeson County in North Carolina my home. I spent three years living there with my grandparents as a young child while my parents were overseas. I've always maintained close

contact with the Lumbee people — many of whom are related to me — and with the area."

After graduating from the College of Charleston in 1973 with high honors, Arlinda entered law school at Duke University. During her last year in law school 1975-76, she was chairperson of the Moot Court Team which was the winner of that year's prestigious National Moot Court Competition held in New York City.

Since joining NARF, Arlinda has been involved in a wide variety of Indian rights issues, such as land claims, education, water rights, and hunting and fishing rights. Working out of NARF's Washington, D.C. office, she is presently working on cases involving the water rights of Arizona's Mohave Apache Tribe; land and taxation rights of the Seminoles of Florida; railroad trespass claims and reservation boundary issues for the Pamunkey Tribe of Virginia; land claims of Oneida Indian Nation in New York; land rights of the Burt Lake Band of Ottawa Indians of Michigan; and several other cases.

Arlinda's work at NARF in just four years has been invaluable to the efforts of NARF in securing the rights of Native Americans throughout the country. For however long she remains at NARF and thereafter, her commitment to the cause of Indian rights was best expressed when she stated, "I believe in the American system of government and in a pluralistic society, but I am determined to help make that system work for my people and Indians generally."

Contributions to the Native American Rights Fund

The work of the Native American Rights Fund is supported by grants and contributions from private foundations, federal agencies, corporations and individuals. NARF is continually in need of funds to support its Indian legal efforts and would appreciate your contribution.

"Please accept my contribution to the Native American Rights Fund to help support NARF's work on behalf of Native Americans."

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Enclosed is my check for: \$100 \$50 \$25 \$15 Other \$.....

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Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302

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