

# ANNOUNCEMENTS

Native American Rights Fund

## THE INDIAN LAW SUPPORT CENTER: Federal Budget Cuts Threaten Ten-Year NARF Program

Since 1972 the Native American Rights Fund has operated the Indian Law Support Center which provides backup legal assistance to legal services programs serving Indians on reservations, in rural communities and in urban areas throughout the country. During these ten years, literally hundreds of requests for assistance in all areas of Indian law and general law have been answered annually. The Support Center program has enabled NARF to reach out and help more Indians and Native Alaskans than any other program could possibly do.

Unfortunately, this program will almost certainly come to an end at the close of this year, for the Support Center is funded by the Legal Services Corporation (LSC), which is itself fighting to survive the new Administration's budget cuts. Initially, the Administration wanted to eliminate LSC

entirely. However, the protest that arose against this soon forced Congress to consider legislation to continue the program, although there will still be drastic cuts in the LSC's budget for 1982.

### LSC Funding For 1982

When Congress adjourned in August, not to reconvene until after Labor Day, there were various appropriation bills for LSC pending in the House and Senate. During 1981 the Legal Services Corporation was funded for \$321 million for its entire national program. The proposed House bill, however, cut this back to \$240 million for 1982, while the Senate version provided for only \$100 million. Where they will compromise on next year's appropriation for LSC is uncertain. But whatever the new budget is for 1982, LSC will be faced with making drastic changes in its national program.

Although Congress itself will probably not act to eliminate the national support Centers, it may still accomplish this indirectly since the cuts in the LSC budget may leave LSC no alternative but to cease all funding for national Centers. What Congress will almost certainly do in the final LSC bill regarding the Centers is to put certain restrictions on their activities and a limit on how much of the total budget the LSC Board of Directors can grant to support Center activity.

Assuming that Congress passes and the President signs legislation funding LSC for 1982, the LSC Board will be faced with having to make immediate decisions on how to allocate its funds for next year. Since the funding will probably be no more than 50% of this year's \$321 million, the Corporation will not only have to decide how to cut back the hundreds of local legal services programs, but whether or not to continue its funding, even though greatly reduced, for national Center support.

During the last several months, various suggestions have been proposed in order to continue the support Centers in some form or another. One idea is to keep the 17 Centers, but to reduce their budgets to a fraction of their present grants. Another is to have them merge into ten or less national Centers. The probability, of course, is that the LSC Board will decide to eliminate all funding for support of the

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The Native American Rights Fund is a non-profit, Indian-controlled organization supported by private foundations and companies, federal agencies, Indian tribes, individual donors and other sources. NARF works exclusively for Indian rights by providing legal representation in such major areas as tribal sovereignty and self-determination cases, tribal resources, and the preservation of tribal existence and Native American cultures. Requests for assistance should be directed to Jeanne Whiteing, Deputy Director. NARF requests expenses and attorney fees from those clients with ability to pay.

## Native American Rights Fund

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

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Centers. The anticipated 50% or more cut in the LSC budget has led many to argue that LSC simply cannot afford to support the Centers at any level; that LSC's first priority is to support the field programs; and that the Centers can and should seek funding from foundations and corporations.

This argument, of course, is understandable for the Centers were established with the purpose of providing backup assistance in ways that would improve the services of the field programs. However, during the past 15 years, the unique services of the Centers have come to be relied upon by the local programs and, in some areas, are indispensable to the local programs. Legal representation will, therefore, naturally suffer if some or all of the Centers are abolished.

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**"If the California Indian Legal Services and other specialized Indian legal service programs are abolished, the private bar will simply not be able, in any realistic way, to provide the necessary legal services. Legal problems of Indians are unique, and frequently must be dealt with through special types of proceedings at locations remote from the places where the problems arise." – Professor Edward Halbach, Jr.**

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In 1973, the Evaluation Division of Legal Services ordered an extraordinary evaluation of all the national support Centers. The evaluators found that the Centers were providing excellent support, performing with a high degree of professional competence, and responding rapidly and thoroughly to thousands of requests for service from local legal services attorneys. The Centers were found to be operating completely within their grant guidelines and succeeding in their mission to effectively backup local legal services programs. And again in 1975 and 1976, the Corporation and the private bar exhaustively reviewed the functions and accomplishments of the support Centers. Each concluded that the continuation of the support Centers and their diverse programs was vital to a strong and efficient legal services program.

### National Support Centers

The Legal Services Corporation presently funds 17 national support Centers located throughout the country. Each year, these Centers respond to thousands of requests for assistance from legal services attorneys in the field. Center services range from giving a local attorney brief advice over the phone to actual involvement in a major litigation on issues of national concern. This assistance from the national Centers enables field attorneys to better manage their huge caseloads as well as provide their clients with better legal representation.

**"Non-Indians often discriminate against us; infringe upon our rights in matters which they have no legal jurisdiction; trespass and use our land and natural resources without just payment and permission. If the Legal Services Corporation is not adequately funded, it will be disastrous to our Indian people. The non-Indian will take what little of anything that we have left." – Thomas Hanover, Chairman, Covelo Indian Community of California.**



Anita Remerowski (left), Director of the Indian Law Support Center, and Gloria Cuny, ILSC Administrative Assistant

The principal functions, by service area, of the Centers are: (1) consultation with legal services attorneys; (2) representation of eligible clients (usually as co-counsel or of counsel); (3) providing information and materials; and (4) training. The 17 national Centers are either "subject" Centers (specializing in specific areas of the law), or "client" Centers (serving a certain group of the national population). The areas covered by the "subject" Centers include the most important areas of legal services practice, such as housing, welfare, health, employment and education. The "client" Centers address the special legal needs of certain client populations, such as older Americans, migrant workers, Native Americans and other groups with special legal problems (See box).

Support centers represent eligible clients principally as co-counsel or "of counsel" to a local legal services attorney. Such center participation in litigation with local attorneys enables the local program to handle cases of a complexity they might otherwise be unable to undertake. Center

*Continued on page 13*

### LSC National Support Centers

National Housing Law Project	Berkeley, Calif.
National Center on Women and Family Law	New York, N.Y.
Center For Law and Education	Cambridge, Mass.
National Consumer Law Center	Boston, Mass.
Mental Health Law Project	Washington, D.C.
National Center For Immigrants' Rights	Los Angeles, Calif.
Access to Justice Project	Washington, D.C.
National Health Law Program	Los Angeles, Calif.
National Employment Law Project	New York, N.Y.
Center on Social Welfare Policy and Law	New York, N.Y.
National Economic Development and Law Center	Berkeley, Calif.
National Social Science and Law Project	Washington, D.C.
National Center For Youth Law	San Francisco, Calif.
<b>Indian Law Support Center</b>	<b>Boulder, Colo.</b>
National Senior Citizens' Law Center	Washington, D.C.
National Veterans Law Center	Washington, D.C.
Migrant Legal Action Program	Washington, D.C.

### Announcement Of New Limited Fee Policy

This month the Native American Rights Fund celebrates its eleventh anniversary. Much has been accomplished during the past eleven years and many changes have occurred



John Echohawk

within our organization. With this issue of our newsletter, I would like to announce that we have adopted a new policy of charging fees to represent those tribal and individual clients who have the ability to pay. From its inception in 1970 the Native American Rights Fund has focused on the concept that this country's legal system could be used to the Indians' advantage, and that

some measure of justice and fairness could thereby be achieved for American Indians. Toward that end, we have tried to provide the very best legal representation to our Indian clients regardless of their ability to pay and we have a hope of continuing to do so in the future.

However, in the past several years, raising adequate funding has become increasingly difficult. Just at a time when more and more tribes are attempting to protect their rights and take their grievances through the justice system, NARF's ability to represent them becomes more uncertain. Therefore, we are taking every step possible to develop a broad, comprehensive base of financial support in order that we can continue to represent those Indian clients who are unable to pay. At the same time, we recognize that some of our tribal and individual clients are able to pay some or, in a few cases, all of the cost of legal representation.

As an organization incorporated under the nonprofit provisions of the Internal Revenue Service, NARF is subject to specific rules regarding what we can and cannot charge our clients. For instance, under these rules we have been allowed to ask our clients for reimbursement for our out-of-pocket expenses for such costs as travel, court fees and expert witness expenses. And many tribes, who were financially able, have assisted us by reimbursing NARF for these expenses.

However, up until very recently, NARF could not charge for attorney fees. Now, under a new IRS policy, nonprofit organizations such as NARF are allowed to charge for attorney fees on a limited basis. Strict limitations are imposed as to the percentage of their total budget that nonprofits can derive from charging fees. Because of the funding situation and because we want to continue to be able to provide the possible representation to the greatest number of Indian clients, we have adopted this limited fee policy.

Under this policy, NARF will begin requesting reimbursement of attorneys fees at our present rate of \$45 per hour

[negotiable downward] from those clients *who have the ability to pay*. I want to emphasize that no case will be rejected solely on the basis of a client's inability to pay. Guidelines have been developed to administer the policy fairly and uniformly. As we receive each new request, we will discuss reimbursements for out-of-pocket expenses and attorney fees on a case-by-case basis.

This new policy will not affect present, on-going NARF cases; it will only be applied to new litigation and other legal work which NARF undertakes after the first of June. Nor will the fee policy change NARF's role of working exclusively for Indian rights. We will continue to review requests for legal assistance according to the same priorities and guidelines as we have in the past. Only after a case meets our priorities will we then decide whether NARF will accept the case and what costs, if any, the client might be able to pay.

The decision to adopt a limited fee policy was made with great reluctance. While we have always been proud of the fact that we have provided our services to tribes and others regardless of their ability to pay, we are now concerned about our own ability to survive. If we wish to continue to help protect the rights of Native Americans, we need to take every measure possible to plan responsibly for our continued existence. This limited fee policy represents but one part of our plan to assure our future survival in order to serve Native Americans in the best possible manner.

#### 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*. Part II of the historic land claims of the 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.

# **The Texas Band of Kickapoo Indians: An Opportunity for Progressive Congressional Action**

The Texas Kickapoo, among the most traditional of all American Indians, are existing in a debilitating state of limbo. Although most are members of the Kickapoo Tribe of Oklahoma, they have been denied citizenship by both the United States and Mexico. They have no land base in the United States and live on land owned by the City of Eagle Pass, Texas, located on the U.S.-Mexico border. Jobs are few and virtually all tribal members live far below the poverty level. Health officials have documented extraordinary medical problems among the Kickapoo. Nevertheless, tribal members are denied desperately-needed federal health, housing, and other social services available to other Indians who are members of federally-recognized tribes. The Associated Press has reported that the Texas Kickapoo are "the lost tribe of America" who must "walk an aimless trail of poverty."

For the past two years, NARF has been working on behalf of the Texas Kickapoo. Initially, NARF attorneys studied the Band's history and legal status to see if it could qualify for federal recognition. However, it was soon discovered that most Texas Kickapoo are enrolled as members of the Oklahoma Kickapoo Tribe and, therefore, they could not qualify for federal recognition\* under the regulations established by the Bureau of Indian Affairs. NARF has since turned its efforts to obtaining a land base and social services for the Band.

Recognizing the gravity of the Kickapoos' situation, several members of Congress seem ready to take corrective action. The time is ripe for Congress to enact legislation that will eliminate the injustices they have lived with for years. This article summarizes the history of the Texas Band of Kickapoo, their current conditions, and their proposal for reform.

## **History**

The Kickapoo are an Algonquin-speaking people who settled in what is now present-day Wisconsin and Illinois. The 17th, 18th, and 19th centuries were marked by foreign invasions into the tribal heartland by the French, British, and finally, the Americans. Then, as today, the Kickapoo were resolute in their refusal to submit to outside cultures. They engaged in a protracted military effort to resist the advancing tide of settlement. Ultimately, the Kickapoo were forced to relinquish their homelands, totalling some 13,000,000 acres, for minimal payments in a series of federal treaties signed in 1803, 1809, 1816 and 1819.

The 1819 treaty promised a permanent and substantial reservation in Missouri, but the forced removal caused deep policy disputes within the tribe. Two bands refused to leave Illinois and conducted a series of raids on white settlements.

Another band removed to the Missouri lands and was later pushed further west to Kansas as the result of the 1832 Treaty of Castor Hill.

Yet another band eventually went south to Texas, in the vicinity of Eagle Pass. Hostilities developed in the area and the Kickapoo sided at various times with the United States, the Republic of Texas, and Mexico. Finally, due largely to conflicts with non-Indian residents of Texas, the Band migrated still further south, below the United States-Mexican border. This Band is variously referred to as the "Texas Band of Kickapoo," the "Eagle Pass Kickapoo," the "Traditional Kickapoo," or the "Mexican Kickapoo."

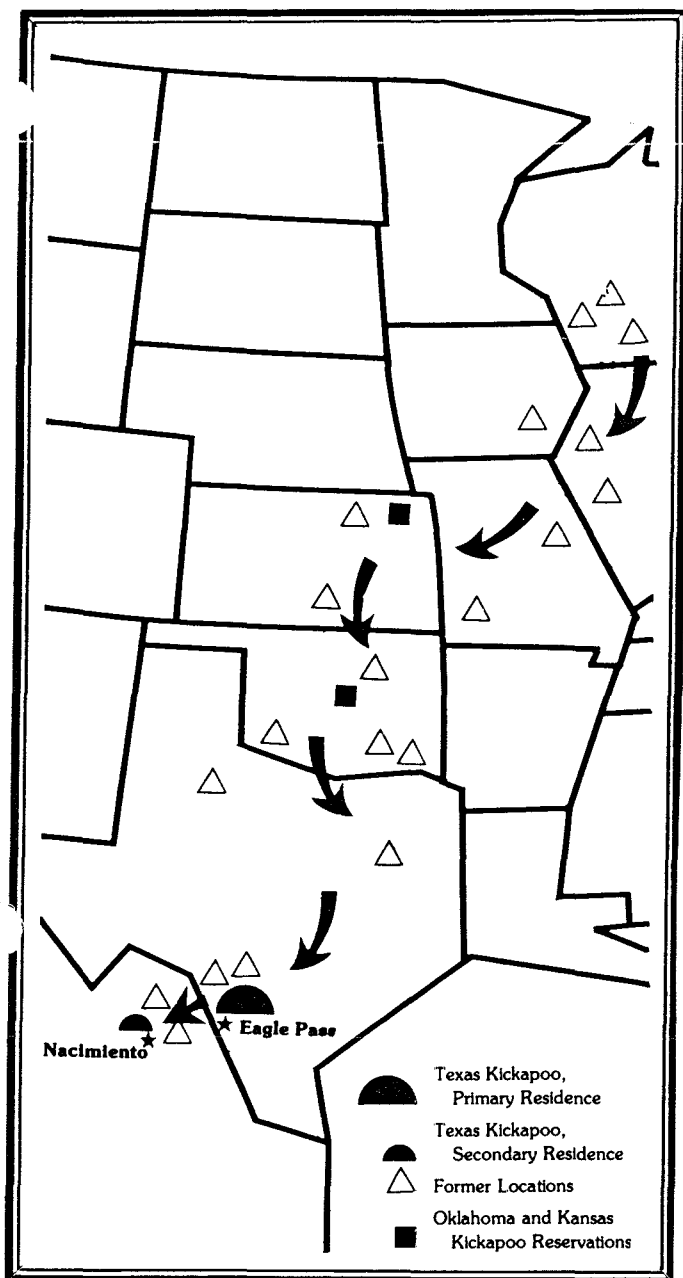
In the mid-19th century, the Band negotiated an agreement with Mexico for a land base and hunting grounds near Nacimientto, Mexico. Some Kickapoo from Kansas joined their tribal members in Mexico. Hostilities continued with citizens of Texas, now admitted as a state.

In 1871, the United States, seeking to end the border raids and to clarify the status of the Kickapoo, sent a State Department delegation to Eagle Pass to conduct an investigation. Before the State Department could negotiate a peaceful settlement, the Department of War took independent action. In 1873, with no authority from Mexico and in violation of international law, Colonel Ranald S. Mackenzie led his Fourth Cavalry in the infamous "Mackenzie's Raid" on a Kickapoo village in Mexico. Most able-bodied men were on a hunting expedition and only elders, the infirm, and women and children were in the village. All were either killed or taken prisoner and the village was utterly destroyed. "Ruin and desolation now marked the spot—a cyclone could not have made more havoc or a cleaner sweep," read one account. The hostages taken at Mackenzie's Raid were used to entice other traditional Kickapoo to move to "Indian Territory," now the State of Oklahoma. Again the Kickapoo were split, as some 300 were marched to Indian Territory while about the same number remained in Mexico.

Thus by the 1880's, various bands of Kickapoo lived in Oklahoma, Mexico and Kansas. The United States continued its efforts to consolidate the tribe in one location. In 1883, a reservation of approximately 200,000 acres was established by President Arthur in Oklahoma for the Kickapoo. Although the land was designated in the executive order as being "set apart for the permanent use and occupation of the Kickapoo Indians," the familiar pressures for Indian lands soon began to be felt by the Oklahoma Tribe. In 1891 an agreement was negotiated that purported to provide for 80-acre land allotments from the Oklahoma reservation for individual Kickapoo tribal members. All other tribal lands would be opened for settlement by non-Indians. Although two-thirds of the tribe disavowed the agreement, Congress enacted it into law in 1893. Surplus tribal land was opened for settlement through a major land rush in 1895. In fact, the "surplus" land amounted to 90% of all tribal land and was among the richest timber and bottom land in Oklahoma.

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\* "Federal recognition" means that the United States acknowledges its trust responsibility to a specific Indian tribe or Native Alaskan group. Federally-recognized tribes are entitled to certain protections and services from the federal government.



*The forced migration of the Kickapoo began in Wisconsin and Illinois in the 17th Century and ended at their present locations at Eagle Pass, Texas, and Nacimient, Mexico.*

The breakup of the reservation caused many Oklahoma Kickapoo to leave in disgust and join the Band in Mexico. A few years later, after the government had lifted restrictions against sales of individual Kickapoo allotments, a major scandal occurred when the Mexican Kickapoo were swindled out of their Oklahoma land. Professor A.M. Gibson, a leading historian of the traditional Kickapoo, has decried the Kickapoo land scandal as "a monument to evil genius and deceit."

During the early 20th century, the Kickapoo kept their tribal ties alive in spite of being dispersed in Mexico, Oklahoma and Kansas. The communities visited back and forth and there was considerable intermarriage among the bands.

The Mexican Kickapoo continued to live at Nacimient during the first several decades of the 20th century. In the 1940's, however, events altered their year-round residence in Mexico. There was a long and severe drought and a mining company's use of groundwater lowered the water table. Subsistence hunting was decimated by fencing of nearby ranches and by overhunting on adjoining lands. The Kickapoo received no support from the Mexican government, whose officials did not consider them Mexican citizens. With Nacimient no longer capable of providing a viable homeland, the traditional Kickapoo were forced to migrate again and returned to Eagle Pass, Texas.

### **The Texas Kickapoo Today**

Since World War II, the Texas Band of Kickapoo has resided for the greater part of the year in Eagle Pass. They use their land at Nacimient primarily for religious ceremonies. Eagle Pass itself has religious significance to the Kickapoo because several tribal burial sites are located in the area. In the summer months, because of the lack of jobs, many of the Kickapoo do migrant farm work, traveling to northern states to follow the harvests.

In spite of the several forced migrations, totalling thousands of miles, Kickapoo culture and traditions have undergone remarkably little change over two centuries. All members of the Texas Band of Kickapoo speak their native tongue, a dialect of the Algonquian language stock. Most Kickapoo are monolingual, although some adults speak broken Spanish or English. Kickapoo is thus one of the few living Native American languages used to the virtual exclusion of all other tongues.

The Kickapoo are a profoundly religious people. Their native religion, practiced universally among members of the Texas Band, is based upon a belief in Kitzhiat, the Great Spirit. Although the Kickapoo hold many religious ceremonies throughout the year, religion cannot be separated out for them. It permeates their lives. As explained in a leading anthropological study of the tribe: "Religion is the principal force integrating all Kickapoo society . . . Kickapoo culture is so integrated and so concerned with the religious theme that it is impossible to separate facets of culture into strictly unrelated categories."

The Kickapoo continue to live in their time-honored homes. Their houses in Mexico are oval, haystack-shaped wickiups, facing east, made with saplings and tule mats. The homes in Eagle Pass, which also face east, are rectangular with hipped roofs and, since there are no tules near Eagle Pass, cardboard has been substituted to construct walls and roofs.

That the traditional Kickapoo have been able to retain so much of their culture is greatly respected by scholars. Professor William Madsen concludes that the Kickapoo culture "stands as a beautiful testimonial to those who choose to maintain their cultural ties to the past." Professor Gibson, who has authored the definitive history of the tribe, writes: "The result of their proud independence is that a pure Indian culture, or as pure as can exist among the tribes of the United States today, resides among the Kickapoos." Angie Debo, one of the preeminent historians of American Indians, considers the Kickapoo "the most culturally conservative of Indian tribes."





*A member of the Tribe at Eagle Pass, with the International Bridge in the background overlooking the Kickapoo Village.*



*Although the materials used to build the huts at Eagle Pass have changed, they are still built in the traditional style.*

The Kickapoo live in squalor in Eagle Pass. Some 600 tribal members must share one outdoor toilet and one water faucet. Diseases are epidemic. In 1978, the Texas Department of Health found that over 50% tested positive for tuberculosis. There was also a high incidence of diabetes, hypertension, and cardiovascular diseases. The report concluded: "We are of the opinion that an imminent threat to public health exists in the Kickapoo community." Since then conditions have worsened.

The Kickapoo are beset by massive unemployment. Few jobs are available in Eagle Pass. As mentioned above, the chief source of employment is migrant labor in northern states during the summer months. Some travel as far as North and South Dakota and into Montana and Wyoming to follow the harvesting.



*A Traditional Kickapoo pauses briefly during meal preparation at Eagle Pass.*



*Shown here is a member of the Traditional Kickapoo visiting NARF's Boulder office while travelling south through Colorado with other tribal members on their annual migration through the midwest following the harvesting as migrant laborers.*

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## Legal Barriers

Even their tenuous existence in Eagle Pass is in constant jeopardy. Legally, the tribal members are squatters because their home at Eagle Pass, the land under the International Bridge at the U.S.-Mexican border, is owned by the city. There appears to be no question that they can be evicted at any time.

Kickapoo leaders, proud though they are of their historical independence, have recognized that they must turn to public agencies for at least minimal assistance. They have been met, however, with the following technical objections at every turn:

- Mexican officials have refused them services during the four months that they reside in Mexico on the ground that they are not Mexican citizens.
- United States citizenship is denied by some federal agencies. The U.S. Immigration and Naturalization Service apparently considers the Kickapoo to be aliens. They are allowed to cross the border on a special "parolee" status, but that status must be renewed annually. Questions as to citizenship have also meant the denial of AFDC, welfare, and social security benefits for many Kickapoo.
- Most of the Texas Band of Kickapoo are enrolled members of the Kickapoo Tribe of Oklahoma. Nevertheless, they are denied Bureau of Indian Affairs' services while in Texas because they do not live "on or near" the tribe's Oklahoma reservation. In May 1981, the BIA concluded that "there is no possibility" that the BIA could provide basic education and social services to tribal members in Texas.
- The Indian Health Service refuses health care. The IHS first refused services on the basis that tribal members were not U.S. citizens. This rationale was later disapproved by the IHS, but the agency now denies health care on the ground that the Texas Kickapoo do not reside on or near a reservation. Technically, they remain eligible for federal health care, but they must travel 800 miles to Oklahoma to receive it.
- In 1978, the Department of Housing and Urban Development approved a community block grant of \$1.5 million for the Texas Band of Kickapoo. This grant was intended to attack a broad range of problems. It would have provided for the purchase of land; upgrading of sanitation facilities; housing; a community center; and a health clinic. Three alternative parcels of land, ranging from 90 to 300 acres, had been identified for acquisition. But the Texas Attorney General concluded in a 1979 opinion that the Texas Indian Commission could not act as the agent for the grant because the Texas Kickapoo are not recognized as a separate tribe by the United States. Without a public housing agency designated by the state, the HUD project cannot go ahead.

Taken together, these objections have stymied each avenue of relief sought by the Kickapoo.



## Proposed Congressional Reform

Whenever the Texas Kickapoo have been denied assistance by state and federal agencies, the basis for each objection was either that the Kickapoo are not U.S. citizens or that they do not reside "on or near" a federally-recognized reservation. The lack of a land base also means that these traditional people are continually in flux, always at the whim of a municipal landlord that can terminate the Band's temporary residence at will.

These legal problems can be corrected by a congressional act that would at once be comprehensive, inexpensive, and just. The Kickapoo appreciate that such an act would be no automatic panacea, no magic. To them, ultimate values are in their traditions and their religion. But fair and prompt federal action would allow the 600 members of the Texas Band to meet their basic human needs: health care, minimal social services, and a small land base. The proposed "Texas Band of Kickapoo Reservation Act" would do nothing more than move them into the mainstream of federal Indian policy and provide them the basic benefits to which all federally-recognized Indians are entitled. It would end their present state of limbo. The Act would cover these areas:

(1) **Citizenship.** Though administrative denials of U.S. citizenship seem clearly wrong, the Act would remove the uncertainty. Congress has the power to grant Indians group citizenship, as it has done in several instances in the past.

(2) **Land Base.** The Act would provide for the creation of a small federal Indian reservation. Suitable land would be purchased from willing sellers in the vicinity of Eagle Pass. Funds would be provided by the federal government and by the many individuals and organizations that have offered assistance to the Kickapoo.

(3) **Federal Services.** The Act would provide that, immediately upon passage of the Act, all members of the Texas Band of Kickapoo living in the Eagle Pass area would be eligible for all services to which members of federally-recognized Indian tribes are eligible. After the reservation is formally established, members would be eligible for services if they reside "on or near" the new reservation, the applicable requirement for most Indians.

(4) **Tribal Membership.** The members of the Texas Band would continue to remain members of the Oklahoma Kickapoo Tribe. This historic relationship is one that the Texas Kickapoo Band wishes to continue. Thus the Act would not create a "new" tribe. Rather, it would recognize the existence of a band, or subgroup, of a larger tribe. The Band's relationship to the Oklahoma tribe would be similar to arrangements between several other bands and tribes that are federally recognized.

This emergency situation is now being seriously considered by Congress. Because of the urgency, it is realistic to expect that favorable action may be taken soon. It is anticipated that bills will soon be introduced in the House and Senate, and that hearings will be held later this year. The Kickapoo have received widespread public support for their cause, but still more help is needed. This is the crucial time for citizens to let their views be known.

## The National Indian Law Library

The National Indian Law Library (NILL) is a repository and clearinghouse for materials on Indian law. It was established by NARF in 1972 in response to a growing demand for materials on Indian law and is a major part of meeting NARF's commitment to the development of Indian law.

• **The Collection.** NILL collects, indexes and distributes an ever-growing collection of materials on Indian law. The holdings, which now number over 3,500 items, consist of: (1) court decisions, including some pleadings and briefs; (2) articles from law journals and other periodicals; (3) books, monographs, and government documents; (4) solicitors' opinions and memoranda; and (5) numerous other resource materials on Indian law.

• **The NILL Catalogue.** The library disseminates information on its holdings primarily through its *National Indian Law Library Catalogue: An Index to Indian Legal Materials and Resources*. The NILL Catalogue is designed for those who cannot visit the library but would like to know what is available in any particular area of Indian law and to be able to request materials. In addition to a comprehensive Subject Index of 400 headings and subheadings, the Catalogue includes a Table of Cases, an Author-Title Index, and is supplemented periodically. The first cumulative edition is now out of print and a second cumulative edition is scheduled for publication later this year. The library is in the process of converting its holdings to a computer system to enable it to update case files more quickly and to improve research into the collection. (Please see enclosed coupon)

• **The Services.** NILL's resources are available to anyone interested in Indian law. Copying costs are ten cents per page; this fee is waived for LSC-funded legal services programs and Indian parties. Although all the holdings are available at the library for anyone to study, not all materials can be sent out, either because of copyright restrictions or excessive copying costs. Information for obtaining these restricted materials directly from the source is given in the Catalogue. Until the computer system is operational, the library cannot accommodate requests for extensive research into the collection. Requests for NILL materials should be limited to ten items per request.

• **Donations.** NILL welcomes donations of books, articles and other materials on Indian law. Briefs and pleadings from Indian law cases, usually difficult and expensive to obtain, are especially welcome because of their value to the library's clients. Please contact the librarian, Diana Lim Garry, regarding donations.

**(1) Court Upholds Pyramid Lake Water Rights.** On June 15th, a Federal appeals court issued a landmark decision upholding the Pyramid Lake Paiute Tribe's claim to sufficient water to maintain its fishery, the major source of livelihood to the Nevada Tribe. Pyramid Lake lies in the center of the Pyramid Lake Indian Reservation located in northwestern Nevada, about 30 miles north of Reno. The Lake is the remnant of a vast inland sea which once covered nearly 9,000 square miles of western Nevada, and is fed by the Truckee River which begins at Lake Tahoe 100 miles to the southwest.

The Paiute Indians have, for as long as they can remember, depended on the Lake's vast fisheries resources as their primary food source. But the once thriving and world famous fisheries has been decimated because of upstream diversions, principally the Truckee-Carson Irrigation District, a federal reclamation project, which have caused a decline in the Lake level of 70 feet, and cut off the fishes' access to their Truckee River spawning grounds. The cui-ui, which is found only in Pyramid Lake, is classified as an endangered species, while the Lahontan cutthroat trout, the largest trout in the world which grew to more than 60 pounds in the rich waters of Pyramid Lake, is listed as threatened.

These diversions began around the turn of the century and with each new diversion, the very life of the Lake, the fisheries and the Paiute Indians themselves are threatened. Since its inception, NARF has been working in association with other attorneys to stem the diversions and protect the tribal fisheries.

The decision is a significant victory, not only for the Pyramid Lake Paiute Tribe, but for Indian water rights generally. First, the Court found that the Secretary of the Interior is not authorized to take Indian water rights for the benefit of reclamation projects. Second, the Court also ruled that when the United States represents Indians in litigation, it is obligated to act as a trustee and not to compromise the Indian's interests owing to its conflicting responsibilities.

According to NARF attorney Robert Pelcyger, "The Court's landmark decision maintains the Tribe's prior and paramount water rights against the government's water reclamation project. This should allow the Tribe sufficient water to maintain its lake and livelihood." Pyramid Lake Tribal Council Chairman Roy Garcia stated, "This decision is a victory for us here. What's also important is that the Court's decision says that the justice system in this country can work for, not just against Native Americans."

**(2) Pawnee Smoke Shop Held Exempt From State Sales Tax.** An Oklahoma District Court has ruled that the state of Oklahoma may not apply its cigarette sales tax to sales within the Pawnee Reserve. The Oklahoma Tax Commission had sought to prevent an Indian operator of a smoke shop located on the Pawnee Tribal Reserve from selling cigarettes to anyone without first collecting the state sales tax. In the District Court of Pawnee County, NARF, along with co-counsel George Tah-Bone of Legal Aid of Western

Oklahoma, filed an *amicus curiae* ("friend of the court") brief on behalf of the Pawnee Tribe.

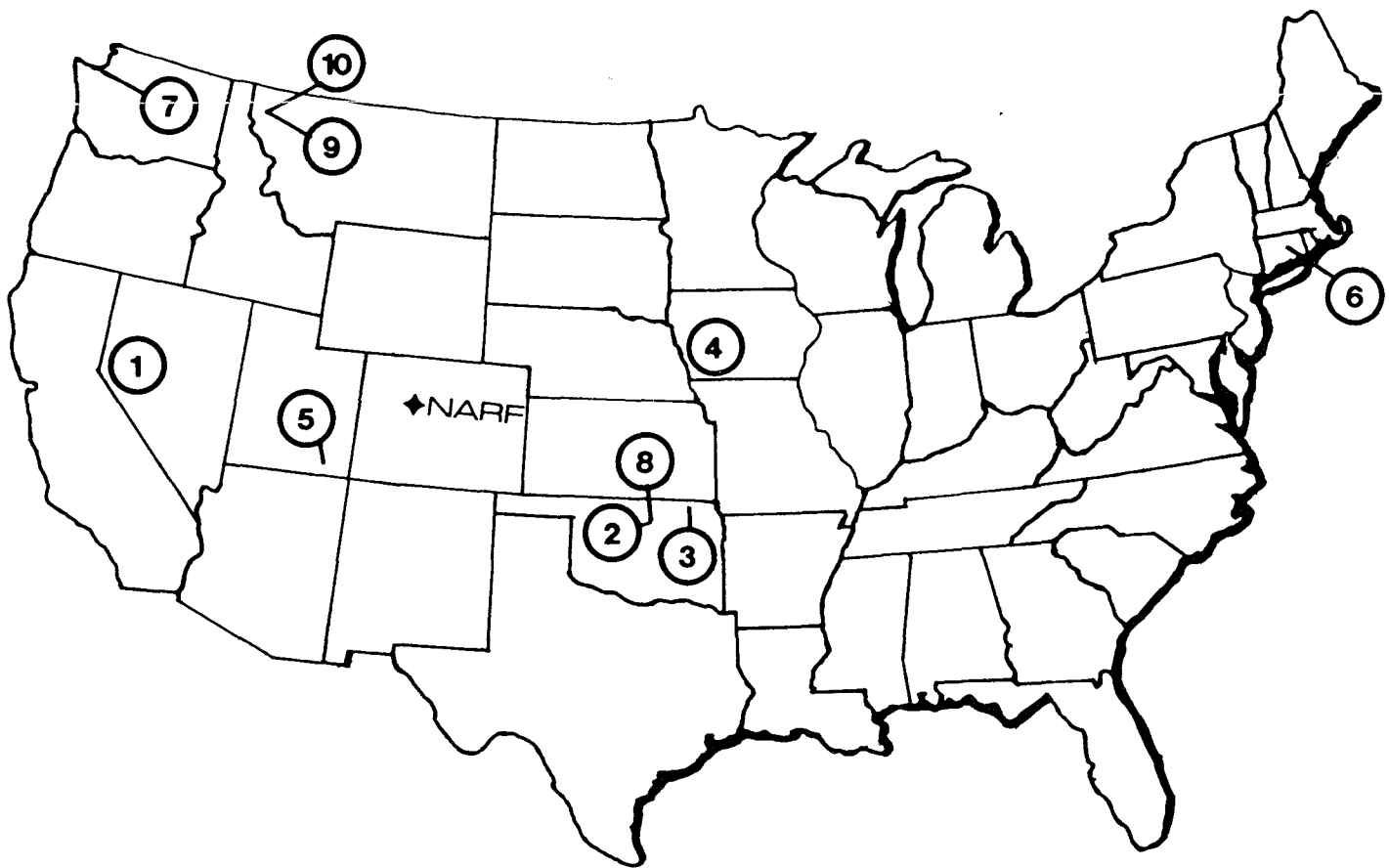
On July 9th, the Court ruled that the 700-acre Pawnee Tribal Reserve was "Indian Country" under federal law (18 U.S.C. 1151), and as such Oklahoma lacked jurisdiction to enforce its sales tax on cigarette sales to "properly identified and documented Indian customers." This decision is not only important as the first Oklahoma ruling in favor of an exemption for on-reservation cigarette sales to Indians, but is also significant for its holding that the Pawnee Tribal Reserve is "Indian Country" — one of the few judicially-recognized Indian reservations in Oklahoma.

**(3) Osage Tribal Council Case Petitioned to U.S. Supreme Court.** NARF is representing a group of Osage Indians who are seeking to clarify the nature and extent of the governmental powers of the Osage Tribal Council. The Council was created in 1906 when Congress passed the Osage Allotment Act under which the surface land was parceled out to members of the Tribe, but leaving the subsurface mineral estate reserved to the Tribe to be managed by the Osage Tribal Council.

However, the plaintiff-members believe that for a number of years the Council has been expanding its powers into areas unrelated to the reserved mineral estate, and therefore, beyond the scope of authority granted to it by Congress. On February 3rd, a federal appeals court held that the Osage Tribal Council was not limited in its power solely to the administration of the Osage mineral estate, but has the authority to participate in and represent the Tribe in various federal programs available to Indian tribes. The case is now on petition for review before the U.S. Supreme Court (*Logan v. Andrus*, 640 F.2d 269 (10th Cir. 1981)).

**(4) NARF Awarded Attorneys' Fees.** The Native American Rights Fund recently received an attorney's fees award of \$6,000 from the State of Iowa for its successful litigation in the *Ross v. Scurr* case. A Federal law provides that the prevailing party in actions brought under the Act are entitled to attorney's fees and expenses. In the *Ross* case, NARF successfully represented Indian inmates at the Iowa State Penitentiary in Fort Madison by compelling the prison authorities to allow the Indian inmates to build a sweat lodge for their religious ceremonies (See *Announcements*, Vol. 7, No. 1).

**(5) Court Denies Navajos Special Religious Rights to Rainbow Bridge Site.** On June 16, the U.S. Supreme Court declined to review a lower court decision which rejected the religious freedom claims of members of the Navajo Tribe. Certain religious leaders of the Tribe claimed that when the federal government impounded the water to form Lake Powell in southern Utah, they had destroyed some of the Indian gods and denied tribal members access to a prayer site held sacred by them. They also claimed that



allowing tourists onto the site has resulted in desecration of the sacred area and denied them their right to conduct religious ceremonies at the prayer site.

In ruling against the tribal members, the Tenth Circuit held that the public interest behind the building of the Glen Canyon Dam and Reservoir outweighed the Indians' religious interests. The Court also ruled that giving the Indian plaintiff the relief they were asking, such as excluding tourists during times when Indian religious ceremonies were being held, would violate the Establishment Clause of the First Amendment. NARF filed *amicus curiae* briefs on behalf of several tribes and church groups in support of the Navajo claims. (*Badoni v. Higginson*, 638 F.2d 179 (10th Cir. 1980), *cert. denied*, June 16, 1981, 49 U.S.L.W. 3931).

**(6) U.S. Supreme Court Declines Review In Mohegan Land Claim.** Although NARF is not counsel in the land claims suit filed by the Mohegan Indians of Connecticut, NARF did file *amicus curiae* briefs on behalf of its Wisconsin and Thames Band Oneida clients since the *Mohegan* case could affect the Oneida land claims pending in New York. In *Mohegan v. Connecticut*, the Second Circuit Court of Appeals held that the Nonintercourse Act of 1790 applies to *all* land throughout the United States — including Connecticut and the rest of the original 13 colonies. On June 22nd, the U.S. Supreme Court refused to review

this decision. Thus, the land claims suit, filed in 1972 for 600 acres, will now proceed in the U.S. District Court for Connecticut on the merits of the claims under the Nonintercourse Act.

**(7) Muckleshoot Tribe Wins Major Case Toward Protecting Fishery Rights.** In 1911, a hydroelectric project was completed on the White River which flows through the middle of the Muckleshoot Reservation in Washington. The Project diverted substantially all of the River's flow away from the Reservation and into a series of flumes and canals and to the power plant. The water was returned to the River *below* the Reservation, and consequently, the Tribe's treaty-secured, on-reservation fishing rights were effectively destroyed.

Over a period spanning several decades, Puget Sound Power & Light Company, successor to the 1911 original operators of the power project, has consistently denied that the federal government, through the Federal Power Commission (now the Federal Energy Regulatory Commission, FERC) has jurisdiction over its project based on its contention that the White River is not a navigable stream.

In the early 1970s, the Federal Power Commission held proceedings to determine the navigability of the White River, and the Muckleshoot Tribe, represented by NARF, intervened in those proceedings. An Administrative Law

Judge (ALJ) found the stream not to be navigable, but, based primarily on new evidence submitted by the Tribe, the Commission reversed the ALJ and found the stream to be navigable and, therefore, under its jurisdiction. The Company then appealed the decision to the Ninth Circuit Court of Appeals.

On May 4, 1981, the Ninth Circuit ruled in favor of the federal government and the Tribe and found the project to be under the jurisdiction of the federal government. The Tribe will now participate in the licensing proceedings and attempt to convince FERC to place conditions in Puget Power's license which will ensure a sufficient stream flow to protect tribal fishing and other treaty rights. (Puget Sound Power & Light v. FERC, No. 78-3211 (9th Cir. May 4, 1981)).

**(8) Pawnee Indian Hospital Closed.** The Pawnee Indian Hospital serves six Indian tribes in northcentral Oklahoma. In the Fall of 1980, Congress directed the Indian Health Service to close the in-patient and emergency room facilities of the hospital and to institute a contract care medical delivery system. The directive was made without any prior notice or consultation with the affected tribes and was based upon questionable data supplied by the Oklahoma Blue Cross and Blue Shield.

The Pawnee Tribe retained NARF to represent the Tribe in requesting Congress to reconsider its decision, and also to research the possibility of bringing a law suit to contest the closing. After conducting a review, NARF concluded there were no viable legal grounds to successfully challenge the congressional action in court. Accordingly, NARF's efforts were spent on representing the Tribe in meetings with the Oklahoma congressional delegation in Washington, D.C., and other Congressmen and Senators, but unfortunately these efforts proved unsuccessful.

**(9) Blackfeet Tribe Challenges Montana's Oil and Gas Production Taxes.** The State of Montana imposes four taxes on oil and gas production in that State and has claimed that production from Indian tribal lands is subject to the taxes, either because of federal statutes consenting to state taxes or because the taxes are imposed on non-Indian lessees of the tribes and not on the tribes themselves. In 1978 the Blackfeet Tribe brought suit in federal district court to contest the taxes. The Court ruled against the Tribe and it filed an appeal. NARF was retained to assist with the appeal and the case is pending in the Ninth Circuit. (Blackfeet Tribe v. Montana 9th Cir.).

The issues in this case may be affected by the outcome of the *Merrion* case now pending before the U.S. Supreme Court. Several years ago the Jicarilla Apache Tribe of New Mexico imposed a severance tax on oil and gas production from its reservation lands. The producers, who are liable for the tax, brought suit in federal court to contest it. The U.S. Court of Appeals for the Tenth Circuit upheld the tribal tax, holding that "...the Tribe has the inherent power to levy a privilege tax on the occupation of severing oil and gas from reservation land even though the tax falls on non-members." (*Merrion v. Jicarilla Apache Tribe*, 617 F.2 537 (10th Cir. 1980); Pet. for Cert. granted (Nos. 80-11, 80-15)).

## Urban Indian Pro Bono Project

There are an estimated 500,000 Indians living in urban areas throughout the country. Many of these urban Indians qualify financially for legal assistance from urban legal services programs. However, some of their legal problems involve such issues as Indian child welfare and custody, Indian lands, Indian wills and probate, and other legal problems involving questions of "Indian law." These issues seldom fall within case priorities that must be established by urban legal services. Consequently, many urban Indians either forego legal representation altogether, or are referred to members of the private bar who shy away from Indian cases involving special Indian acts, rules, regulations and jurisdictional issues. The result is often less than adequate legal representation for urban Indians.

The Legal Services Corporation, recognizing this gap in legal representation of financially eligible urban Indians, recently awarded the Native American Rights Fund a five-month grant to establish an "Urban Indian Pro Bono Project." Under this grant, NARF is now in the process of establishing an information and advice network that will encourage private attorneys in urban centers to accept Indian law cases on a *pro bono* basis with backup assistance from NARF.\*

The Project has targeted 30 urban areas which have significant Indian populations where it will focus its efforts. Working with Indian centers, legal services offices, and *pro bono* projects in these urban areas, NARF will provide legal assistance on cases which: (1) involve Indian law issues, and, (2) where legal assistance is being provided free of charge to the urban Indian clients.

Anyone wanting more information on the Project should contact staff attorney, Anita Remerowski, who is the Director of NARF's Indian Law Support Center.

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\* *Pro Bono Publico* (For the Public Good) services refer to the practice of providing legal assistance free of charge to those unable to afford it. Many attorneys and law firms devote a certain portion of their services for *pro bono* work.

**(10) Tribe Sued By Member Over Loan Program.** For many years, the Blackfeet Tribe in northwestern Montana has conducted a loan program for its members under which tribal members may pledge as security for the loan lease payments from their land allotments or other individual funds. This arrangement is authorized under regulations approved by the Bureau of Indian Affairs (BIA).

When the Blackfeet Tribe was unable to collect a loan from one of its members, it asked the BIA to pay over his lease rentals which were pledged as security. The member initially challenged this to local BIA officials, and it was then referred to the Interior Board of Indian Appeals which upheld the BIA regulation. The member then filed suit in the U.S. District Court attacking the regulation for alleged lack of statutory authority and violation of due process of law (*Kennerly v. Blackfeet Tribe*).

NARF has agreed to represent the Blackfeet Tribe because the decision in this case will have far-reaching implications for many Indian tribes since the Tribe and four of its officials were named as defendants, thus raising issues of tribal sovereign immunity and exhaustion of tribal remedies.

(Continued from page 3)

participation also permits skillful but less experienced local attorneys to provide a higher quality of representation than their level of experience would otherwise suggest was possible.

Support Centers also provide local programs with a variety of information services that are not available to local programs because of cost. These services include newsletters, manuals, legal references for attorneys practicing in the Center's specialty area, and distribution of library materials otherwise unavailable to the legal services office. Centers also assist in substantive law and attorney skills training organized by the Legal Services Corporation, local programs, or by the Centers themselves. Training materials for these events are prepared by Center specialists.

Centers received less than 2.5% of the Corporation's 1981 budget, which supports approximately 175 attorney and non-attorney professionals. Even this relative low financial commitment to national support has decreased since 1975 when the Corporation took over administration of the program. At that time, 5.2% of the legal service budget was devoted to the national support.

The National Centers have attracted attorneys and other professionals of extremely high quality. Approximately 42% of Center attorneys graduated from the highest-rated law schools, and 72% were in the top 25% of their classes. In

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**"I have noted on television the cost of a Trident submarine and that the interest on the cost of a Trident submarine would pay for the legal services program forever. I would hope that the legal rights of the poor of our country are worth one cost overrun for a Trident submarine." — Mark Meierhenry, Attorney General of South Dakota.**

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many Centers, attorneys average more than ten years of legal experience. Many have held responsible positions in the courts, and in government, and in private practice with major law firms throughout the country. Most previously worked in neighborhood legal services and are therefore, familiar with all the problems and frustrations that the field attorneys and staff must confront daily.

Most of the 17 Centers, like other legal services programs, are non-profit organizations, run by boards of directors. Some Centers, such as the Indian Law Support Center, are part of organizations that have an independent base, and these have established advisory boards with delegated authority to oversee the legal services activities. Boards of the 17 Centers include substantial numbers of clients and practicing and former legal services attorneys from various regions of the country. Attorneys in private practice and from universities also sit on Center boards.

### **The Indian Law Support Center**

It was stated above that the 17 support Centers were either "subject" Centers or "client" Centers. The Indian Law Support Center, however, is actually both a *client* and *subject* Center for it helps to provide legal backup assistance exclusively to Native Americans, and it is the only Center which specializes in the area of "Indian law." Although the

Native American population is less than one-half of 1% of the total national population, it is a segment of the country in great need for legal services.

Even before NARF began to receive any funding for the specific purpose of providing backup assistance to legal services serving Indian clients, it was providing assistance to field attorneys. In 1972, NARF received its first grant of \$65,000 from the Office of Economic Opportunity (OEO), the agency which originally operated the federal program. Even though the funding for the Indian Law Support Center has increased over the last ten years, NARF has always spent funds from its other general support funds to help support legal services work.

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**"In California, in the area of water rights, Indian legal services attorneys helped tribes define much more clearly what rights they had to water, an absolutely indispensable condition to independence, to meaningful tribal progress, and to participation in the national economy." — Monroe Price, Professor of Law, UCLA.**

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During the past ten years, the average number of requests handled by the Indian Center has been approximately 250 per year. These requests come from field programs in 22 states, and concern every issue of Indian law. Fortunately, the Center Director, Anita Remerowski, is able to call on other NARF attorneys for assistance in answering such requests as reviewing briefs of field attorneys, conducting training sessions in Indian law, serving as co-counsel in litigation, and providing legal advocacy before agencies in Washington.

Since the local programs will undoubtedly all receive reduced funding next year, the probability is that the field attorneys will be asking NARF for even more assistance than at present. However, with its own Center in jeopardy, it is questionable as to how much help NARF will be able to provide in the coming years.

### **Conclusion**

Several of the national Centers are already approaching foundations for grants in anticipation of being cut off completely by LSC. It is probable that NARF will also soon have to request support for the Indian Law Support Center project. Even if, as it is expected, LSC ends all support for the Indian Law Support Center, requests from the legal services programs for assistance will not stop. NARF has a permanent commitment to Native Americans throughout the country and will continue to assist Indian legal services programs. However, without LSC funding, alternative funding will have to be found. In any case, it appears that NARF's services may have to be cut back beginning in 1982. The losers, of course, are the Native Americans who have come to rely on these services and in receiving quality legal representation.





### Deputy Director Appointed

At their regular spring meeting in Boulder last May, the Steering Committee approved the recommendation that staff attorney Jeanne Whiteing be appointed Deputy Director. In addition to assuming other duties, and continuing as a staff attorney, Ms. Whiteing will also serve as coordinator for NARF's litigation, advocacy and other legal assistance work. Ms. Whiteing, a Blackfeet-Cahuilla Indian, from California, joined NARF as a staff attorney soon after her graduation from the University of California (Berkeley) School of Law in 1975. She was one



of two Indian law school graduates selected by NARF for its "Indian Lawyer Intern Project," which is funded by the Carnegie Corporation of New York. During the past six years, she has worked on a great variety of Indian law cases involving such issues as Indian water rights, hunting and fishing rights, federal recognition, natural resources, and other matters. All requests for assistance from NARF should now be directed to Ms. Whiteing.

### New NARF Board Member

At the same meeting, the Steering Committee elected Lois Jane Risling, a member of the Hoopa Tribe of California, as the newest member of NARF's Steering Committee. Ms. Risling received her M.A. in education from Stanford University in 1974 and is now a doctoral candidate in education at Stanford. For more than ten years she has been actively involved in a wide variety of Indian education programs and activities in California. Ms. Risling has taught courses in Indian education at several California colleges and universities and she presently is a faculty member at D-Q University in the Indigenous Studies Department.

### Former Attorney Returns for Summer

Charles Wilkinson, a former staff attorney, has returned to NARF briefly for a couple of months this summer. During his four years at NARF, from 1971 to 1975, he worked on several major successful NARF cases. Some of his education cases included *Natonabah v. Board of Education*, *Denetclarence v. Board of Education*, *Sinajini v. Board of Education*, and *Fielder v. Board of Education*. His Indian land litigation cases included *United States v. Winnebago Tribe* and *Cocopah v. Morton*, and he represented a coalition of some 40 Indian organizations in the 1974 revision of the Johnson-O'Malley education regulations. He was also involved with the Menominee



Law clerks for NARF this summer are Christine Zuni (left), Greg Lee and Gail Small. Not pictured is Jeannette Wolfley who is the law clerk in NARF's Washington, D.C. office

Tribe of Wisconsin concerning the passage of the Menominee Restoration Act of 1973 and the later transfer of all Menominee land back into trust in 1975.

After leaving NARF, he continued as a consultant to NARF and represented the Siletz Tribe of Oregon, along with staff attorney Don Miller, in the successful passage of the Siletz Restoration Act of 1977 and the Siletz Reservation Act in 1980. Charles is now on a one-year sabbatical leave from the University of Oregon School of Law. In 1981-82, he will be a visiting professor at the University of Minnesota School of Law.

### Summer Law Clerks

During this summer four Indian law students are working for NARF as law clerks -- one in our Washington, D.C. office and three in Boulder. Gregory Lee, a member of the Minnesota Chippewa Tribe of the Leech Lake Reservation, is a graduate of UCLA and will graduate from Harvard Law School next year. Gail Small, a member of Montana's Northern Cheyenne Tribe, is a graduate of the University of Montana and is attending law school at the University of Oregon. Jeannette Wolfley, Navajo-Shoshone is the summer law clerk for the Washington office. She graduated from the University of Minnesota and is attending the University of New Mexico School of Law. Christine Zuni, a Isleta Pueblo from New Mexico, is a graduate of Stanford University and is now attending law school at the University of New Mexico.

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## **Contributions to the Native American Rights Fund**

The work of the Native American Rights Fund is supported by grants and contributions from private foundations, corporations, federal agencies and individuals. NARF is continually in need of funds to support its efforts to protect the rights of Native Alaskans and American Indians throughout the United States. Those who would like to make a contribution should see the enclosed coupon. Anyone interested in knowing more about NARF may contact the development officer, Mary Hanewall, at the Boulder office.



### **Remember NARF With a Bequest**

A bequest to NARF will not only help us to continue defending Indian rights in future years, but can be of benefit to you in your present tax planning. For information on this method of giving, please check the box on the enclosed "Contributions" coupon.



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## **Requests for Assistance**

Any work undertaken by the Native American Rights Fund, whether it be litigation, advocacy or other legal assistance, must come within the priorities and guidelines established by the NARF Steering Committee. NARF's resources, both financial and attorney staffing, also determine NARF's ability to accept legitimate requests. All requests for legal assistance or inquiries regarding NARF's services must be addressed to the Deputy Director at the Boulder, Colorado office:

Jeanne S. Whiteing  
Deputy Director  
Native American Rights Fund  
1506 Broadway  
Boulder, Colorado 80302  
(303-447-8760)

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