Native American Rights Fund
The National Indian Law Library
ANNOUNCEMENTS
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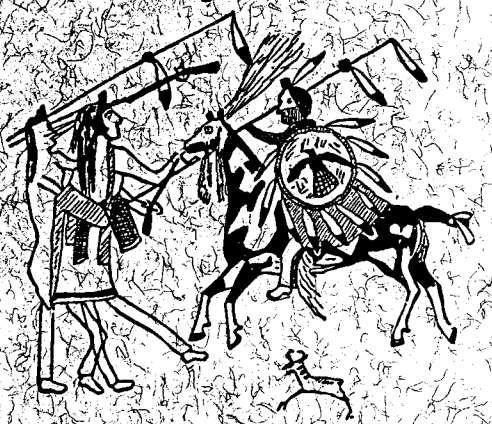
July, 1972

Education v. Destruction

In many schools that Indian children are attending today, it would be better if the word "Indian" were never mentioned. In addition to shabby and overcrowded situations (which in many instances lack even the basic resources), the children are run through a system designed and run by white men which leads to personal, cultural and ethnic annihilation. By almost every standard they receive the worst education of any children in the country. The Indian drop-out rate is twice that of all other children in the country, and the average educational level for all Indians under federal supervision is five school years.

From the beginning in almost every treaty or negotiation between American Indian people and the United States government, one of the first conditions specifically asked for by tribes was education. The quality of the product which the government has ultimately produced has been abysmally poor. Rather than being a catalyst for self-realization and betterment, Indian education has been an instrument of destruction and a further example of the continuing string of broken promises by the government and other institutions of the dominant white society.

The Bureau of Indian Affairs operates boarding schools, day schools and in recent years, has begun to transfer by contract much of its responsibility for the education of Indian school children to local school districts. More than fifty percent of Indian children attend public school classes with non-Indians under these contracts between the Bureau and the states. About two-thirds of the remaining children are sent to boarding schools (often enormous distances from their homes). The remaining children, about fourteen percent, are served by the BIA day schools.



From the autobiography of Running Antelope showing his killing of two Arikarees

Because of the bureaucratic chain of command within the BIA itself, those persons who control Indian education policy are for the most part neither Indians nor educators. This, combined with the mediocrity of the entire educational system, has led to unbelievable abuses of Indian children whose parents have been deliberately excluded from the process. Only in the last few years have Indian parents, with the support of private foundations and the Office of Economic Opportunity, been able to begin to seek changes in Indian education.

OEO Indian Education Support Project

In July 1971, the Native American Rights Fund, in conjunction with the Harvard Center for Law and Education, embarked on a two-year special program to provide research and legal assistance to Indian parents, tribes, and other organizations seeking to improve the quality of education available to Indians. Funding for this program, known as the Indian Education Support Project, has come from the Office of Economic Opportunity.

Lawyers can furnish significant and necessary research and support to communities engaged in improvement of Indian education through technical assistance as well as legal representation in lawsuits. In many instances, litigation, the more traditional function of lawyers, is not always the best approach or solution to Indian education problems. For this reason the Fund and the Center use a variety of vehicles in their attempts to turn Indian education programs in this country into vehicles of support rather than destruction.

The Fund and the Center have consulted widely as to the priorities which they should be giving to their work under this special Indian Education Project. They have worked with Indians whose duties are primarily nationally oriented in the educational field, as well as with those Indians involved in "grass root" community efforts. Priorities under this project have also been discussed on several occasions with the all-Indian Steering Committee of the Fund.

Improper Use Of Federal Indian Education Funds

Recently there has been considerable documentation of widespread misuse of federal funds which should be spent for the education of Indian students. In many instances, the problem can be corrected by a vigorous involvement of Indian parents. The Fund has worked with several parent groups in establishing parent advisory councils to advise school districts on the use of Title I and Johnson-O'Malley funds. These and other special federal Indian education programs are explained in detail on page 5.) Such parent groups are now springing up for the first time in communities where they have not existed before, even though they have been required by federal law for many years in some cases.

The Fund has held several "Know Your Rights: Indian Education Workshops" with the support of the Norman Foundation and has distributed materials which explain in detail the rights of Indians under federal education finance programs. A packet of these materials can be obtained by writing to the National Indian Law Library.

The Fund is preparing to litigate two major misappropriation cases, *Natonabah v. Gallup-McKinley Board of Education* and *Denetclarence v. Indepe dent School District No. 22.*

Natonabah involves allegations major abuses by the Gallup-McKin School District in the expenditure Title I, Johnson-O'Malley, and Imp Aid funds. The alleged abuses inclu using Title I funds as general a spending for ineligible children, fail to make periodic evaluations, and f ure to involve parents in the decisi making process. The school board made many adjustments as a resul the litigation, but the case will still to trial based upon continuing abu The trial will begin on July 18, 19

The *Denetclarence* case arises the Shiprock school district. The iss are similar to the issues in the *Nato bah* case, and the action will be t in August. In both cases, the Fun working with DNA, the Navajo Re vation legal services program, and the Harvard Center on Law and I cation.

The Fund is presently analy similar misappropriation cases North Dakota and Oklahoma. A mal complaint by the Fund has alr resulted in an investigation by the fice of Education into practices ir schools in St. John, North Dal Decisions will soon be made a whether the other situations wa court action.

Student Rights

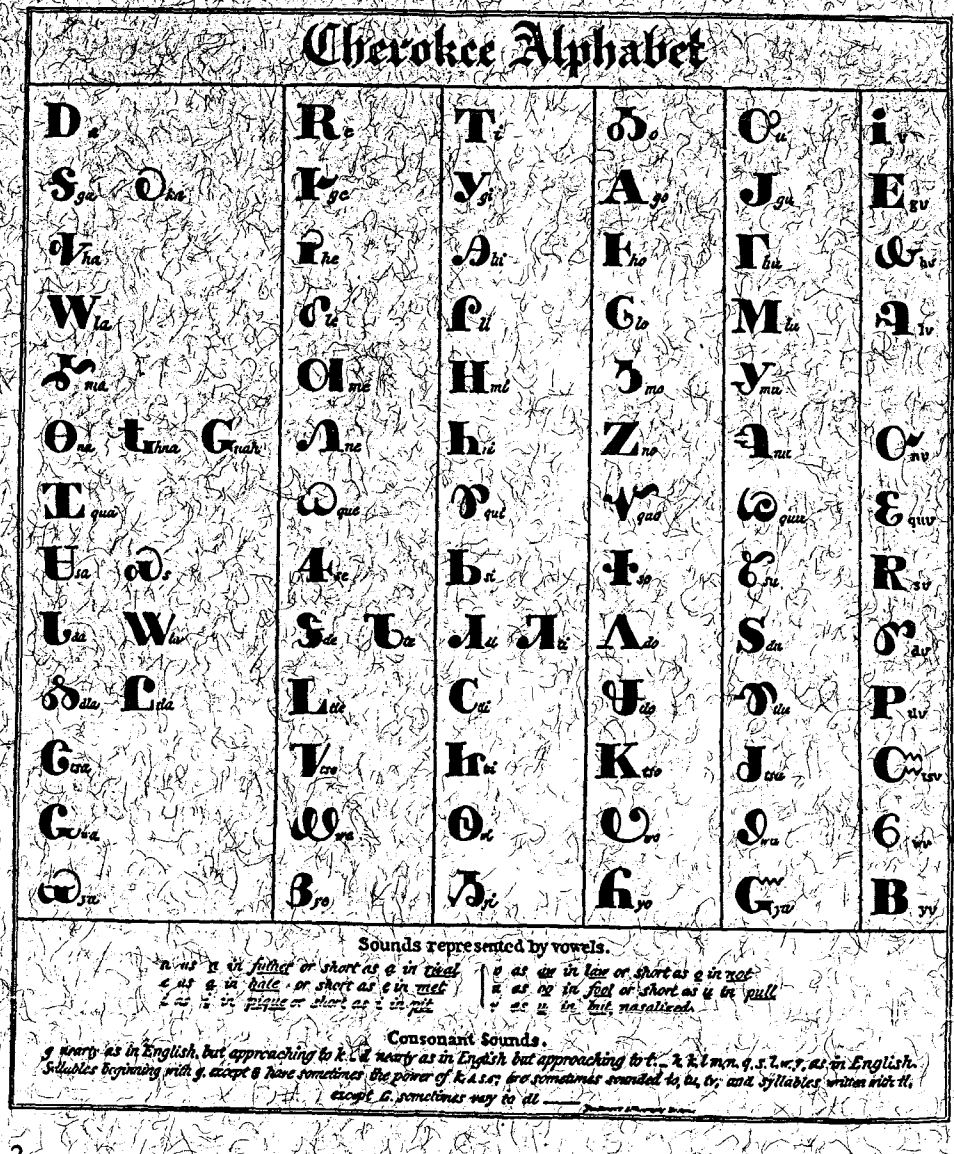
Discrimination Against Menomin

The Fund has recently filed an a which alleges wide-spread discri tion in the schools attended Menominee Indian children. The alleges improper "tracking" of Indian children, disproportionate ing of the elementary schools atte by Indian children, and extremel ious classroom discrimination a the Indian children. The Fund ha tained extensive documentation porting the students' claims. A D ment of Health, Education and fare investigative report of the tion confirms many allegations case, *Wilbur v. Board of Educat* being prosecuted by Fund att Daniel Taaffe and Charles Wilk

Winnebago Student Expulsions

The Fund recently filed *Fiel Board of Education*, an action sought to reinstate two Winn students who had been expelle

Sequoyah's Cherokee Syllabary



school. The Nebraska District Court issued a preliminary injunction directing that the students be reinstated in school; the Court found that the school board has unconstitutionally expelled the two students by failing to give them a fair and impartial hearing. The action will be tried in August, 1972, by Fund attorneys Daniel Taaffe and Charles Wilkinson.

Protection of Indian Customs

Several Indian communities have been faced with school board orders which threaten to expel Indian students who wear their hair in traditional fashion, supposedly in contravention of school regulations which limit hair length. Chief Howell, a Pawnee Indian living in Ignacio, Colorado, was suspended by school board officials. The school board was advised by Fund attorneys and by DNA attorneys that an action would promptly be filed if Chief Howell were not returned to school; the school board rescinded the suspension and permitted Chief Howell to continue in school.

The issue of traditional hair is also involved in *New Rider v. Board of Education*, a case arising in Oklahoma. The judge of the U. S. District Court originally issued a preliminary injunction preventing the suspension of three Pawnee boys from school. The court held that the boys' right to wear their hair long was protected by the United States Constitution.

In early June, 1972, however, the court reversed its order and dismissed the action. Fund attorneys Yvonne Knight and Charles Wilkinson are continuing to prosecute the action. A motion for rehearing was filed in the trial court and on June 21, 1972, the court vacated its Order of Dismissal and scheduled a hearing on plaintiffs' request for a permanent injunction for July 5, 1972.

Indian Tuition at Fort Lewis College

Prior to 1970, any qualified Indian student could attend Fort Lewis College in Durango, Colorado, free of charge of tuition. This right is based on a 1910 agreement between the United States and the State of Colorado through which federal land containing an Indian school was transferred to the state for educational purposes. Colorado has recently sought to limit tuition free Indian education at the school in violation of the agreement.

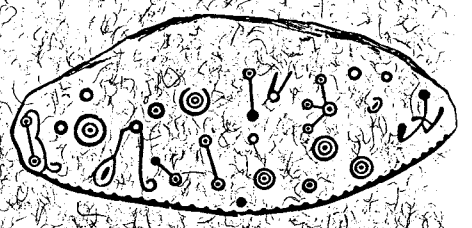
A suit on behalf of several Indian students was filed against the State and college officials last July in Denver Federal Court by a private law firm in Denver with the assistance of the Fund. Entitled *Tahdooahnippah v. Thimmig*, the case seeks to force the State to honor its commitments to Indians at the college. After a long delay, the United States recently sued the State of Colorado over the same issue. A decision in the case is expected before the fall term begins.

John E. Echohawk and David H. Getches of the Fund are assisting the firm of Sherman, Quinn and Sherman in this case. Financial support has been provided by the Akbar Fund.

Federal Policy And Regulations

In April, 1972, the Fund commented on a policy statement on Indian education prepared by the United States Office of Education. The statement dealt specifically with Indian self-determination in education and Indian "control" of Indian education. The Fund's position was that the Office of Education must necessarily have a "special" relationship with the American Indian; this "special" relationship is justified by case law and by the complex statutory framework dealing with American Indians. The Fund emphasized that the "special" relationship will often mean that American Indians must be treated *differently* than other minority groups in the field of education. The most dramatic example, of course, is in the area of community-controlled schools, where the "special" relationship requires that Indian communities which so desire be given the right to form their own school districts, even if other federal goals, such as integration of public schools, must suffer. It is hoped that the USOE final draft statement of Indian education policy will reflect the basic truth that Indian schools must ultimately be run by Indians, not by non-Indians.

The BIA is in the process of revising the regulations for the administration of the Johnson-O'Malley Act. The new regulations should emphasize the need for parental involvement, as well as the need for programs which emphasize Indian culture, history, and languages. Most important, the new Johnson-O'Malley regulations should specify that funds can be used only to meet the special educational needs of Indians, and not for general aid to the school district.



Petroglyph in Georgia

Many Indian groups are also seeking a change in regulations which would no longer prevent use of funds for Indians away from reservation areas. This would make the regulations consistent with the intent of the Act. The question of entitlement of off-reservation Indian children to Johnson-O'Malley aid is presently litigated by California Indian Legal Services in *California Indian Education Association v. Morton*.

Community Control Of Schools

Much of the Fund's work in this area has been in conjunction with the Coalition of Indian Controlled School Boards. The Coalition is a mutual, self-help organization composed of Indian schools that have gained control over educational processes within their communities. The chief and primary purpose of the Coalition is to help strengthen the movement of educational reform and to assist Indian communities in establishing local control.

The Coalition has a membership of school boards who are in actual control of the respective schools and facilities. Those Indian schools who are in the process of getting control of their school operations, and the communities who are responding to local control and self-determination, and representatives of higher education Indian centers have also been participating in the Coalition. Any committee or group of Indian people, school board, organization or corporation committed to the goals and functions of the mechanism of local control are eligible for membership.

The Coalition has been working on the loosening of the bureaucratic log

jams and the contracting policies between Indian schools and the BIA, and in the organization of the Congressional watchdog group on Capitol Hill. In addition, they have been called as witnesses in Senate hearings regarding funding for all Indian schools throughout the country and have assisted in the revision of federal regulations and contract procedures.

The Coalition was formally organized in December, 1971, and has established temporary headquarters at the Fund's offices in Boulder.

Rocky Boy

Both the Fund and the Coalition were contacted by parents at the Rocky Boy Reservation in Montana concerning the establishment of a new Indian controlled school district. The reservation had already established a separate elementary school district, pursuant to state law. Because of the success of the elementary school district, the tribe has made the decision to attempt to establish a high school district; this step is necessary because the present high school district is completely controlled by a non-Indian school board. Leland Pond and Daniel Taaffe of the Fund have met with tribal leaders and are now in the process of determining which alternatives are available. A major problem will be the construction of a new educational facility on the reservation; Fund attorneys and Coalition personnel are now in the process of seeking funding for that purpose.

Busby

Fund research associate Leland Pond and Harvard Center attorney Daniel Rosenfelt successfully completed negotiations concerning a community-controlled school in Busby, which is located on the Northern Cheyenne reservation in Montana. The BIA agreed to increase its original funding figure of $615,000 to $795,000, an increase of $185,000 which is satisfactory to the Busby School Board. Of equal importance is the fact that the Busby negotiations resulted in the BIA redrafting its form contract to reflect more accurately the needs of the Busby community. Hopefully, the Busby negotiations will serve as a precedent for the BIA's continuing to permit innovative contractual features which will meet the individual needs of community controlled schools.

Coalition Positions Open

The Coalition has openings for the following positions and persons should submit their resumes to Birgil Kills Straight, President of the Coalition, at 1506 Broadway, Boulder, Colorado 80302. Positions are available for a Program Director, Administrative Assistant, a Staff Attorney, an Education-Community Development Specialist, and a Secretary-Bookkeeper.

Further information about the Indian Education Community Support Project and legal assistance may be obtained by writing to:

Mr. Charles Wilkinson
Native American Rights Fund
Indian Education Community
Support Project
1506 Broadway
Boulder, Colorado 80302

or:

Mr. Daniel Rosenfelt
Harvard Center for Law and
Education
38 Kirkland Street
Cambridge, Massachusetts 02138.

Dighton Rock, Massachusetts

Other Recent Native American Rights Fund Case Developments

Progress for the Passamaquoddy Tribe

Since the early part of the nineteenth century, the Passamaquoddies in the state of Maine have been regarded as "state Indians." The federal government has not recognized the existence of the tribe, nor has it protected tribal resources or provided any federal services. The tribe has suffered many wrongs at the hands of the state including taking its land without compensation and mismanagement of its funds.

Earlier this year, the tribe wrote to Commissioner Bruce seeking acknowledgement of the federal government's long neglected responsibility to the Passamaquoddy Tribe, and more specifically, urging the United States to bring suit against the State of Maine to redress the tribe's grievances. Commissioner Bruce agreed with the tribe's position and recommended that the Department of the Interior request the Justice Department to file suit immediately since a statute of limitations would bar filing the suit after July 18, 1972. Since then, nothing has happened.

Early in June, the Passamaquoddy Tribe filed suit in the U. S. District Court in Maine against the Interior

and Justice Departments to require that the Federal government act in its behalf against the state of Maine. On June 16, 1972, the District Court ordered the government to decide what it was going to do by June 22, 1972. The government adamently refused to file suit and on June 23, the District Court ordered the Secretary of the Interior and the U. S. Attorney General to file a protective action by July 1. It is believed to be the first time a court has ordered the government to file suit on behalf of Indians.

The suit is being handled by Fund attorneys Thomas N. Tureen (working with Pine Tree Legal Assistance in Calais, Maine) and Robert S. Pelcyger. Stuart Ross of the Washington, D. C. law firm of Hogan and Hartson is also representing the tribe on a *pro bono* basis.

Davis v. Warden, Nevada State Penitentiary

An amicus curiae brief on behalf of the Pyramid Lake Paiute Tribe has been filed by the Fund in the Nevada Supreme Court supporting a writ of habeas corpus for two Pyramid Lake Paiute Tribal members. The tribal members were convicted of attempted murder for beating a white person within the boundaries of the Pyramid Lake reservation. The State of Nevada has been asserting jurisdiction over tribal members on the basis of Public Law 280 which gives the state jurisdiction over most Indian country in Nevada. However, when Public Law 280 was applied to the State of Nevada, the Pyramid Lake reservation was excepted from the extension of jurisdiction by the governor.

The State has argued that the exception for Pyramid Lake was improper. As amicus curiae the tribe, represented by the Fund, has asserted that the Nevada State Court had no jurisdiction to try and convict the two petitioners. The case was taken under consideration by the Nevada Court on June 6, 1972, and a decision is now awaited.

The brief was prepared by Fund attorney Daniel Taaffe.

Brief Filed Against Federal Court's Attempt to Relitigate Issue Resolved by Tribal Court

At the request of the Eighth Circuit Court of Appeals, Native American Rights Fund filed an amicus curiae brief in a criminal case arising on the Rosebud Sioux Reservation. After an auto accident which resulted in one death, an Indian driver was acquitted by the tribal court of driving while intoxicated. He was later convicted in federal court for manslaughter "as a result of driving while intoxicated."

The Fund argued that although a tribe has inherent power to punish offenses, federal statutes have regulated Indian criminal justice so completely that the tribal court and the federal court are arms of the same sovereign. Thus, the federal court was bound by the tribal court's findings on driving while intoxicated.

Brief Filed in Supreme Court Tax Case

Recently, the United States Supreme Court granted certiorari in the Mescalero Apache personal property tax case. The New Mexico State Court of Appeals held that personal property owned and used by the tribe in the operation of a ski resort on land leased from the U. S. Forest Service was taxable by New Mexico.

Fund attorney L. Graeme Bell III has filed an amicus curiae brief arguing that the Mescalero Apache Tribe is an instrumentality of the federal government for the economic development of the Indian people, and, as such, is exempt from state taxation.

Secretary of Interior Aids San Luis Rey Bands

The Secretary of the Interior and five Indian bands (La Jolla, Rincon, San Pasqual, Pala and Pauma) along the San Luis Rey River are allied together against the Escondido Mutual Water Company in a proceeding that is pending before the Federal Power Commission. Mutual has had an F.P.C. license since 1924. The current license expires in 1974, so Mutual has applied to the Commission for a new fifty year license. The Indians and the Secretary oppose the new license, principally on the grounds that the license enables Mutual to take the Indians' water away from their reservation. In addition, the Indians and the Secretary are seeking damages and cancellation or revision of Mutual's current license.

The Indians' case got a big boost last month when the Secretary of the Interior recommended that the United States take over or recapture the project when the current license expires or, in the alternative, that the Commission issue a non-power license to the Indian Bands. This was only the second time that the Secretary recommended recapture of a F.P.C. license and the Bands' competing application for a non-power license was the first one filed with the Commission. The Secretary also insisted on the immediate imposition of nine conditions in the operation under the existing license to make more water available to the Indians and to protect their resources.

The Fund represents the Rincon and La Jolla Bands. Robert S. Pelcyger and Bruce R. Greene are handling the case

Information On Federal Indian Education Programs

THE JOHNSON-O'MALLEY ACT

The Johnson-O'Malley Act of 1934 is the only federal education program which uniquely benefits Indians. The law, as currently administered, is intended to provide federal money to states to enable them to educate eligible Indian children. Children of at least one-quarter Indian ancestry whose parents live on or near an Indian reservation under the jurisdiction of the BIA are eligible for assistance

The Johnson-O'Malley Act has been the federal government's primary means of transferring responsibility for Indian education to the public schools. It is designed to accomplish three things: To get the federal government out of the business of educating Indian children; to further the long established practice of turning over responsibility for Indian education to the states and local districts through financial inducement; and to "civilize" Indians, the historical goal of Federal Indian legislation. It was thought that in public schools "daily contacts" with the white children would facilitate their "civilization" and thereby contribute to the "enlightenment" of adult Indian parents.

TITLE I FOR INDIAN CHILDREN

Apart from the Johnson-O'Malley Act designed specifically to benefit Indian children, poor and educationall

deprived American Indian children are also entitled to aid under Title I the Elementary and Secondary Education Act.

Title I is a discriminatory act. It provides benefits to one category of children and denies benefits to all others. Such discrimination in the allocation and educational resources has been a common occurrence in the history of American education. What makes Title I significant is that for the first time discrimination favors *poor* and *culturally deprived* children. To Indian children, this means that Title I funds should be spent on supplemental programs designed to meet their special and different needs.

Under Title I, the United States Commissioner of Education makes lump sum payments to state departments of education, which in turn approve and fund projects for educationally disadvantaged children proposed by local school districts. The federal government does not require particular projects or administer any projects; rather, local school administrators have broad discretion to select and implement those programs which, in their view, will achieve the purposes of the Act. Title I is not supposed to be used for general aid.

Approved projects must conform to regulations and program guides promulgated by the U. S. Office of Education. The state educational agencies must give assurances to the Federal government that Title I funds are being spent in conformity with the law. The state is responsible for paying funds, approving project applications, monitoring, auditing, and evaluating the effectiveness of the projects. Similarly, the U. S. Office of Education must insure that Congressional and Federal administrative policies are being carried out by state and local education officials. The Commissioner of Education may suspend payments to any state which fails to meet its statutory and administrative obligations.

"UNDER NO CIRCUMSTANCES SHALL THOSE UNABLE TO PAY BE CHARGED FOR THEIR LUNCHES"

The new School Lunch Act (P.L. 91-24), signed into law on May 14, 1970, is now in full effect. It makes major reforms in the national school lunch program and establishes the right to free or reduced price meals for every child whose family income is below the poverty level or whose family cannot afford to pay. This law must be obeyed by every school district that receives commodities or money from the Department of Agriculture for its lunch program.

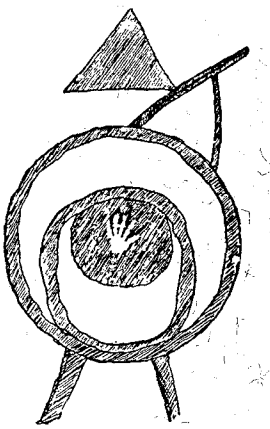
The new law and regulations reemphasize the laws against discrimination and making children work for their lunch. Both practices are strictly illegal. Indian children receiving free and reduced price lunches cannot be made to:

a) work for their meals;
b) use a separate lunchroom, serving line or entrance;
c) eat a different meal or eat the meal at a different time;
d) use tickets, tokens or any other means of paying to identify them as needy children; or
e) have their names announced, posted, published or revealed in any way to other teachers or students.

IMPACT AID AND INDIAN CHILDREN

The presence of Indian children qualifies a public school district for federal money under the Impact Aid legislation because their parents live and/or work on federal property. The two Impact Aid laws—P.L. 874 and 815—were passed by Congress in the 1950's primarily as a result of military and defense activities of the federal government. Their purpose was to provide federal financial assistance when federal activities, mostly related to the military installations, created a financial burden on local school districts. Congress' intent was to compensate school systems for the loss of part of their tax base from federal installations which were established in the community.

There are two categories of Impact Aid assistance: P.L. 874 provides funds to local school districts for general operating expenses paid in lieu of local taxes, and P.L. 815 provides for school construction in districts where there are federally-connected children. Indians were not included in P.L. 874 when it was first enacted into law. They were excluded at the request of state directors in Indian education who feared that districts in their states would lose Johnson-O'Malley funds if they used Impact Aid money. In 1958 Congress decided to permit "dual funding," a concept which allowed a school district to receive payments from both Impact Aid and Johnson-O'Malley, on the theory that Impact Aid would provide general operating funds in lieu of taxes and Johnson-O'Malley would support special programs for Indians.



Painted Petroglyph, Southern Utah

National Indian Law Library Educational Holdings

The following is a list of the present holdings of the National Indian Law Library which relate to Indian education cases or other education matters. The complete catalogue of the documents available in each case is too lengthy to be included in this newsletter. If you are interested in receiving the Catalogue of Current Holdings, the Catalogue of Documents, or the Subject Catalogue please fill out the Subscription and Catalogue Request Form on the last page of this issue. The number shown in the upper left hand corner is the Library's acquisition number. Please include this number when ordering. Copying costs of $.03 per page are charged, except to legal services programs, Indian clients and tribes, and public interest law firms. When requesting materials, please direct your inquiries to:

Melody MacKenzie, Librarian
National Indian Law Library
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1506 Broadway
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1972, and will be working primarily on a study of termination and remed available to terminated tribes.

NEW SUPPORT STAFF OF THE FUND

Connie M. Benoist, Cheyenne River Sioux, Legal Secretary.

Francis Lee Brown, Cherokee, Summer Law Clerk.

Elaine Eagle, Oglala Sioux, Research Assistant, National Indian Law Library.

Bernadine Quintana, Oglala Sioux, File Supervisor.

Staff Positions Open

The Fund has immediate openings for experienced attorneys. With the exception of Indian law graduates, only candidates with three or more years of litigation experience will be considered.

The Fund is interested in applicants with expertise in Indian law, education law, taxation, and economic development. Federal court litigation experience is especially valuable.

Resumes and inquiries should be directed either to David H. Getches or John E. Echohawk at the Fund's offices in Boulder.

Legal services programs serving Indians are invited to publish notices of staff openings. The publication deadline is the 20th of each month.

Native American Rights Fund Offices

Requests for assistance and information may be directed to the **main office,**

Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302
Telephone (303) 447-8760

or to the **Washington, D. C. office,**

Native American Rights Fund
1712 N Street, N.W.
Washington, D. C. 20036
Telephone (202) 785-4166

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