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# • NARF LEGAL REVIEW

Native American Rights Fund

Spring 1985

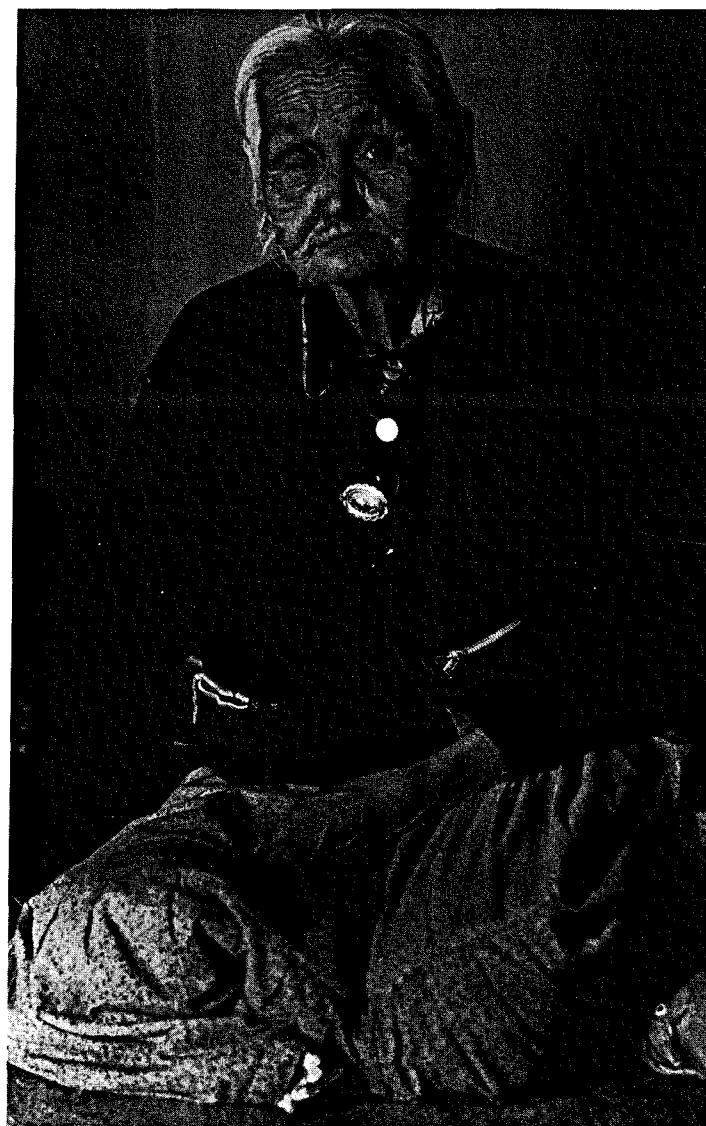
## Indian Cases: The 1984-85 Supreme Court Term

The U.S. Supreme Court, today, and during the last few decades, is playing a greater role in deciding the rights of Indian people. While the Court has consistently decided important Indian law cases, the number of Indian cases being decided by the Court has significantly increased. Professor Charles Wilkinson, a leading Indian law scholar, says in an upcoming book that the number of Indian law decisions since the 1960's is greater than the number of decisions in the fields such as antitrust, securities, and international law. Professor Wilkinson goes on to say that in the 1960's, there were ten Indian cases decided by the Supreme Court, thirty-three cases in the 1970's, and sixteen cases so far in the 1980's (through the 1983-84 term).

The present term of the Supreme Court adds to the developing trend. A total of seven Indian cases are now pending before the Court — an unprecedented number in one term. If the numbers continue, there could be as many as 45-50 Indian cases decided by the Supreme Court in the 1980's.

Indian people and Indian advocates are concerned about this trend because the make-up of the Court during this time has become more conservative, and it is unclear how Indian cases will be affected. Some of the concerns of Indian advocates have been borne out with devastating decisions in vital cases involving Indian water rights, and in certain cases involving the authority of tribes to regulate activities on reservations. On the other hand, Indians have won some very significant victories in the Supreme Court involving tribal authority to tax, the federal government's trust responsibility to Indians, and jurisdictional conflicts with states.

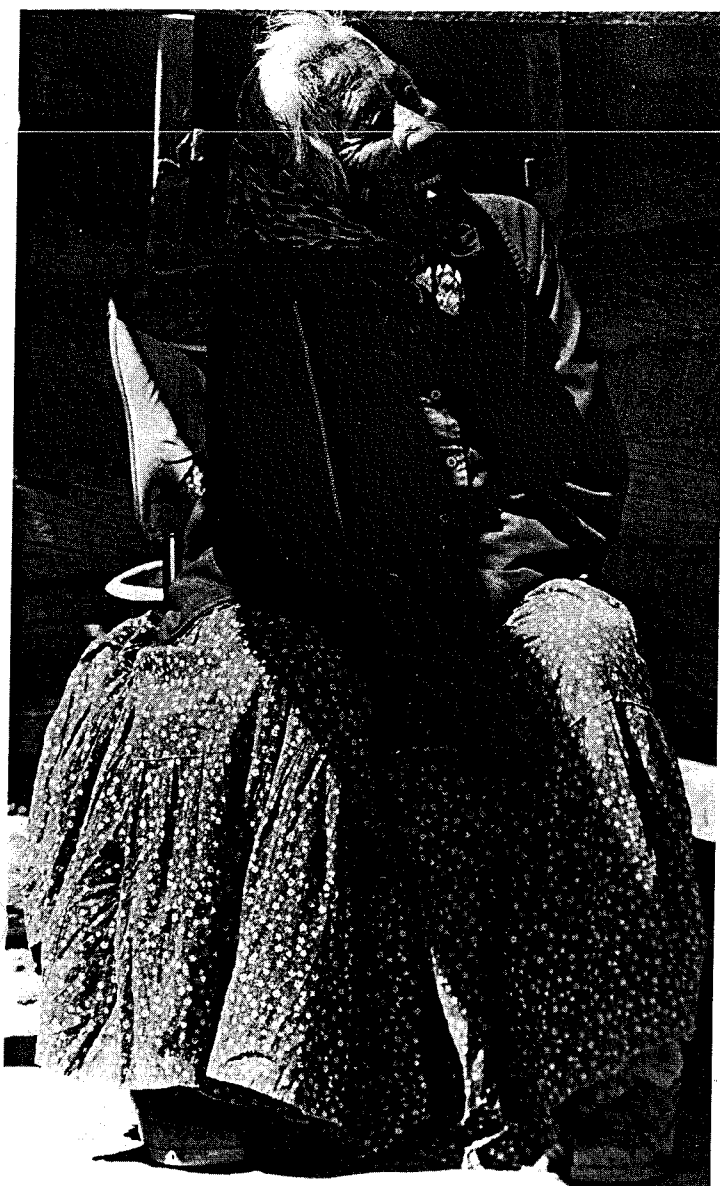
The issues in the cases in the present term cover nearly every significant area in Indian law — Indian land claims, hunting and fishing rights, tribal court jurisdiction, abori-



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NARF wishes to express its thanks to the "National Committee on Indian Work for the Episcopal Church" for its financial assistance with this issue of "The NARF Legal Review."

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**Oneida Indian Nation**, the Court in a 5-4 decision upheld the Oneida Indians' 175-year-old claim to land in New York. The land had been transferred in violation of the 1793 Indian Nonintercourse Act. The Court found no applicable statute of limitations to bar the claim and no legal basis to deny the claim.

NARF represents the Wisconsin Oneidas in the case. The New York Oneidas and the Oneida of the Thames Band are represented by separate counsel.

The Oneidas began the case in 1970 as a test case against the Counties of Oneida and Madison to establish legal principles involved in bringing their claim to over 250,000 acres of land in New York. Essentially, the Oneidas had to establish that: 1) they had a common law right of action to bring the claim; 2) they could maintain the claim in their own name; 3) no subsequent laws or legal principles barred the claim; and 4) the passage of time did not bar the claim. At issue in the test case was approximately 861 acres owned by the Counties, to which the Oneidas claimed title and sought damages for the period January 1, 1968 through December 31, 1969.

The Supreme Court already had held in 1974 in *Oneida I* that the Oneidas stated a claim under federal law and therefore the federal courts had jurisdiction to hear the case. On remand, the federal District Court in New York found the Counties liable to the Oneidas for wrongful possession of the land and awarded damages in the amount of \$16,694 plus interest. The Court of Appeals affirmed these rulings as well as a third ruling that the State of New York was required to indemnify the Counties for the damages owed to the Oneidas. The State and Counties then petitioned for Supreme Court review of the liability and indemnification issues. The Court, "recognizing the importance of the Court of Appeals decision not only for the Oneidas, but potentially for many Eastern Indian land claims," granted certiorari "to determine whether an Indian tribe may have a live cause of action for a violation of its possessory rights that occurred 175 years ago." In its March 4 decision, the Supreme Court held that the Oneidas *do* have a live cause of action for a violation of its possessory rights that occurred in 1795. The specific violation is that the State of New York acquired the land from the Oneidas in 1795 without the consent of the federal government which is specifically required by the 1793 Nonintercourse Act.

Four justices dissented from the opinion of the court on the ground that they would hold that the equitable doctrine of laches (undue delay in asserting a legal right) bars the Oneidas from bringing their claim. The justices cited the "common law wisdom that ancient claims are best left in repose."

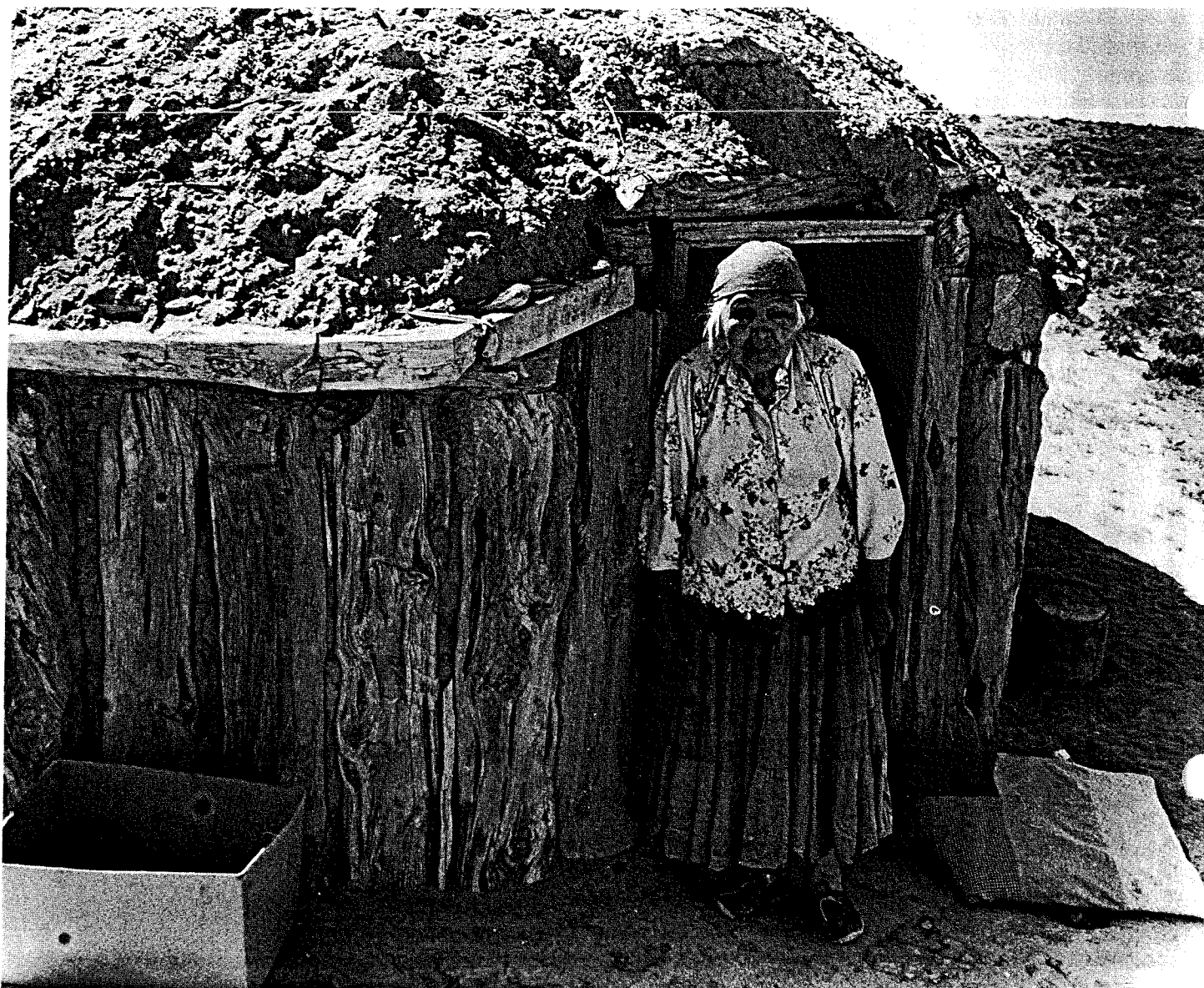
*Oneida* establishes legal principles which apply to nearly all pending Eastern Indian land claims and a few

ginal rights to land, state taxation of Indian property, and the authority of tribes to tax reservation activities. Concern is particularly heightened about how the court will decide the cases because in all seven cases the Court will be reviewing decisions which were favorable to the Indians in the courts below. This term therefore will be watched very closely by Indians and Indian law practitioners.

The Native American Rights Fund will also be monitoring the term closely. Three of the seven cases being heard by the Court are "NARF" cases. Although NARF attorneys have argued cases before the Supreme Court in the past, never before have three NARF cases been before the Court in one term. Recently, the Supreme Court decided two of the seven Indian cases, one of them a NARF case.

### **Victory in Oneida Land Claim**

On March 4, word of a major victory came in one of NARF's Supreme Court cases. In *County of Oneida v.*



claims outside of the East which are based on violations of the Indian Nonintercourse Act. The tribes involved in those cases will be able to maintain their claims in the courts, although the merits of each claim will depend on the specific facts in each case.

The significance of *Oneida* is particularly startling in light of the conservative nature of the Court. An historical claim to land by Indians was upheld by the highest court in the country because no federal law could be found which extinguished the claim, and no statute of limitations could be found which barred the claim because of its age. The 1793 law which Congress intended to protect the Indians in their possession of the land, continues to protect the land even today.

The *Oneida* case was argued by NARF attorney, Arlinda Locklear. This was her second Supreme Court argument, and her second Supreme Court "win." Arlinda is the first Indian woman to argue before the Supreme Court.

### Western Shoshone Aboriginal Rights

Only two weeks earlier, the Supreme Court in *United States v. Dann*, unanimously held that two Western Shoshone Indians were prohibited from grazing livestock on federal lands without a permit, because the tribes involved had received payment for the land from the federal government as a result of their claim before the Indian Claims Commission. In 1974, the federal government sued Mary and Carrie Dann, members of a Western Shoshone Band in Nevada, for trespass for grazing livestock on federal land without a permit. The Danns argued that their family had possessed the land since time immemorial and, that their aboriginal title to the land had never been extinguished.

In ruling against the Danns, the Court focused primarily on the question of whether payment had occurred so as to bar the Danns' claim to aboriginal rights to the land. (In the

Indian Claims Commission, the Tribes had asserted that their aboriginal title had been extinguished and asked for compensation for the land. Although the Tribes were awarded compensation, the Court never ruled on whether aboriginal title had been extinguished.) The Court said the purpose of the Indian Claims Commission was "to dispose of the Indian claims problem with finality," and to shift the responsibility of dealing with Indian claims from Congress to the Commission. The Court therefore held that the federal government's payment in its role as judgment debtor to itself in its role as trustee for the tribes, constituted payment for the extinguishment of tribal aboriginal title, and prevented the Danns from relying on that title.

The Court did note that the Danns also claimed individual aboriginal title and that payment of the tribal claim does not bar the individual claim. Because the lower courts did not address the issue however, the Supreme Court declined to express an opinion on it, and remanded the case to the lower courts.

The *Dann* decision demonstrates once again the deference the Supreme Court gives to prior judicial processes that have touched on the same issues. The Supreme Court has made it clear that the rule of finality is paramount. Although the actual issue in the *Dann* case was when, or if, "finality" had occurred (that is, whether payment had occurred), the Court seemed disposed to find such finality.

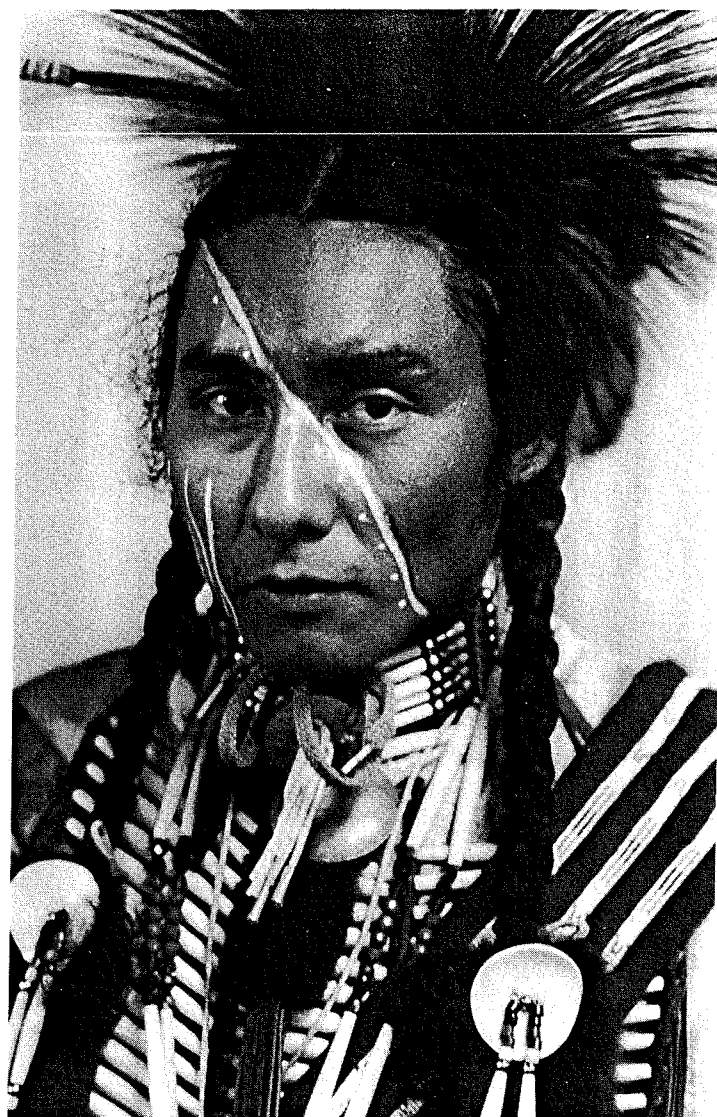
### Pending NARF Cases

Two other NARF cases are still pending before the Supreme Court. NARF represents the Blackfeet Tribe and the Klamath Tribe respectively in the cases which involve diverse tribal interests.

### State Taxation of Tribal Oil and Gas Royalties

In *Montana v. Blackfeet Tribe*, argued on January 19, the Blackfeet Tribe challenges the authority of the State of Montana to impose taxes on the Tribe's royalty share of oil and gas production on the Blackfeet Reservation in Montana. The rule of law is that states cannot tax Indian property. Thus the issue in the case is whether a 1924 Act which authorized state taxation of the Tribe's royalty interest was replaced by a later 1938 comprehensive Indian mineral leasing statute which does not authorize state taxation.

The issue is important to the Tribe because state taxation reduces the Tribe's return from mineral development, and makes it more difficult for the Tribe to achieve economic independence. The Tribe's royalty from leases on its reservation is usually 12.5%. Montana's taxes are about 17-18% of gross oil production and a somewhat

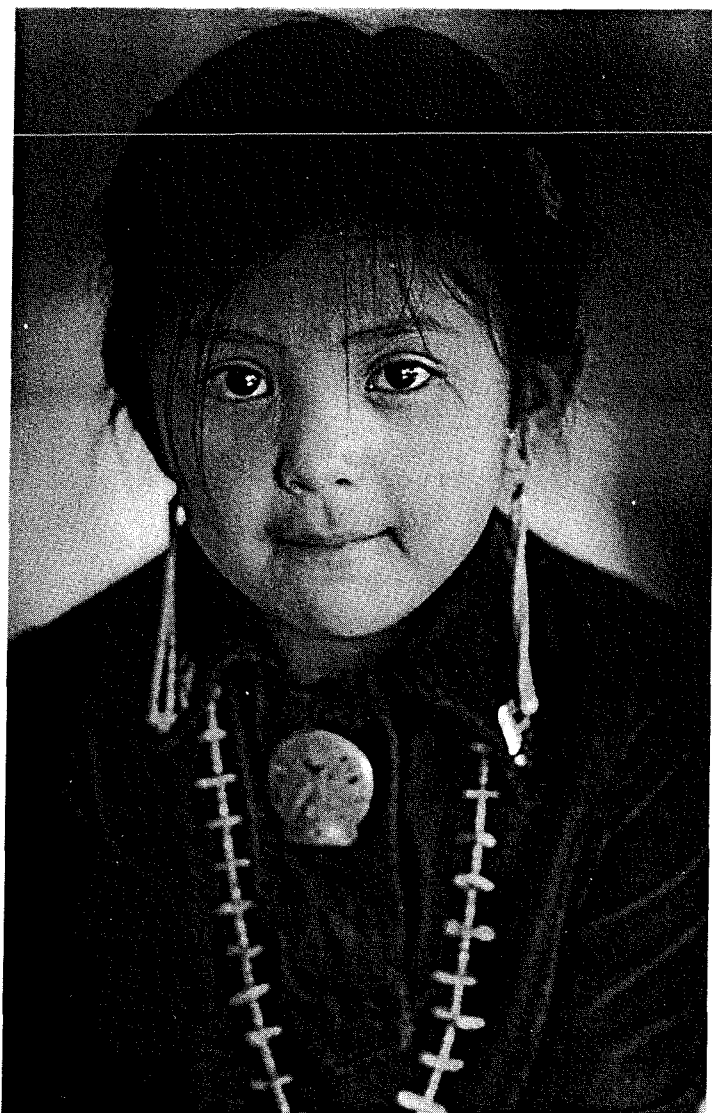


lesser amount of gross gas production. Thus Montana receives more income from the tribal leases than does the Tribe.

The Ninth Circuit Court of Appeals held in an *en banc* decision that leases made under the later 1938 act are not taxable by Montana. (In an *en banc* case, an eleven-judge panel hears the case rather than the usual three-judge panel.) The Court did find however, that leases made under the 1924 act are taxable. All but a handful of the Blackfeet Tribe's leases were made before 1938, and thus under the Ninth Circuit's decision, most of the Tribe's leases are not taxable. The case was argued before the Supreme Court by NARF attorney Jeanne Whiteing. The Supreme Court has recently requested a second hearing in this case. A second oral argument is scheduled for April 23, 1985.







Hunting, fishing and trapping are vitally important to the Klamath Indians for subsistence. Thus the Tribe will be anxiously awaiting the court's decision. The case was argued before the Supreme Court on February 27 before NARF attorney Don Miller. A decision is expected at any time.

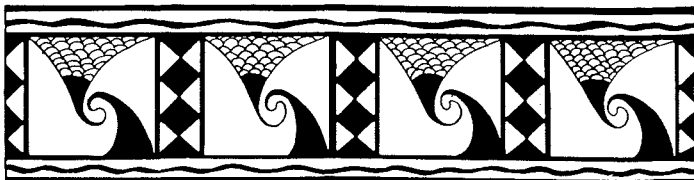
### Other Pending Cases

Three other Indian cases are also pending before the Supreme Court.

One of the cases, *Pueblo of Santa Ana v. Mountain States Telephone and Telegraph Co.*, involves a right of way acquired by Mountain States from Santa Ana Pueblo without congressional authorization. Santa Ana argued, and the Tenth Circuit Court of Appeals held, that such congressional consent is required by the 1924 Pueblo Lands Act. The Court thus held that Mountain States' right of way is void and the Pueblo is entitled to damages for trespass. The case was argued before the Supreme Court on February 19.

In *Kerr-McGee v. Navajo Tribe*, the Kerr-McGee Corp., a company involved in uranium mining and oil and gas production on the Navajo Reservation, sued the Tribe challenging the Tribe's possessory interest tax and business activities tax. Essentially Kerr-McGee argued: 1) the Tribe has no authority to tax; and 2) that any tax ordinance requires approval of the Secretary of the Interior. The Tribe's authority to tax was upheld based on a 1982 Supreme Court decision in *Merrion v. Jicarilla Apache Tribe*. The Tenth Circuit Court of Appeals also held that secretarial approval of the taxation ordinance is not required by any act of Congress. The Court said that secretarial approval is required only where tribes have chosen to place such a requirement in their constitutions or charters. The case was argued on February 25, 1985.

The last case which will be considered by the Supreme Court this term is *National Farmers Union Insurance Companies v. Crow Tribe*. The case raises the issue of whether federal courts can review decisions of tribal courts as to the extent of their jurisdiction. The case arose when a member of the Crow Tribe was injured in the parking lot of the local school district. The site is owned by the State of Montana but is within the boundaries of the Crow Reservation. The tribal member filed a negligence suit against the school district in tribal court and obtained a default judgment. National Farmers Union, the insurer of the school district, then filed suit in federal district court seeking an injunction against enforcement of the tribal



### Off-Reservation Hunting and Fishing Rights

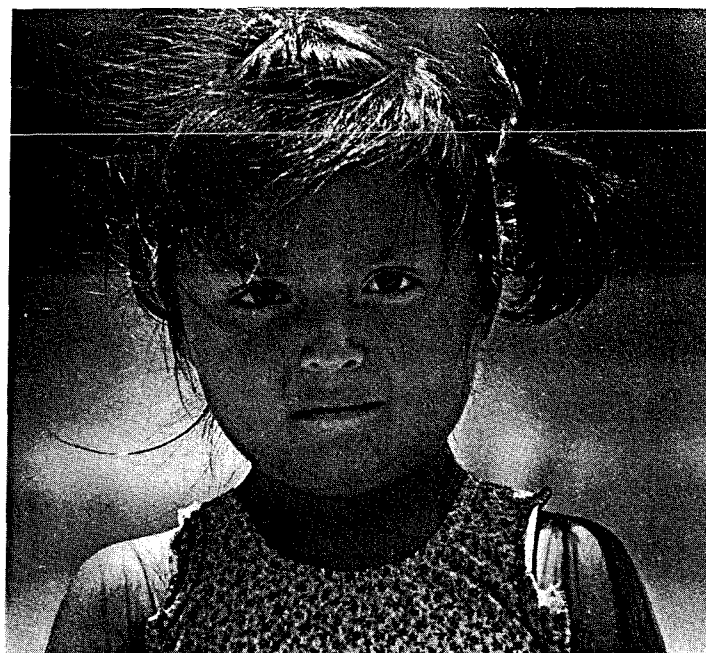
The treaty rights of the Klamath Tribe in Oregon to hunt, fish and trap on almost 700,000 acres of off-reservation land are at issue in *Oregon Department of Fish and Wildlife v. Klamath Tribe*, the second NARF case pending before the Supreme Court. The land was erroneously excluded from the Klamath Reservation established in 1864. The Tribe subsequently agreed to cede the land in 1901 to the federal government, and nearly all of the land was placed in national park or national forest status.

The Ninth Circuit Court of Appeals upheld the Tribe's rights to hunt, fish and trap on the ceded lands free from state regulation. The Court said that the rights were not abrogated and continue to be viable because the 1901 cession agreement did not specifically extinguish them, and no compensation was provided for the rights. The Court also said that use of the lands for national forests and parks was not diminished by exercise of the Tribe's rights.

court order on the ground that the tribal court had no jurisdiction in the matter. The district court held that the tribal court did lack jurisdiction and granted the injunction, but the Ninth Circuit Court of Appeals reversed. The Ninth Circuit held that the federal court has no jurisdiction to determine, at least in the first instance, the extent of tribal jurisdiction. The case thus raises important issues of tribal jurisdiction and the reviewability of tribal court decisions.

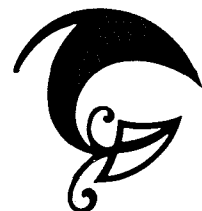
### Conclusion

With seven important Indian cases to be decided by the Supreme Court this term, Indian people will be watching the Court more closely than ever. The indications so far from the *Oneida* and *Dann* decisions are that the Court is not very predictable. With the victory in *Oneida* however, we do know that it is possible, at least in some instances, for Indians to achieve justice from the highest court in the land. But with the adverse decision in *Dann*, we also know that the rights of Indians can just as easily be lost.



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## UPDATE ON TEXAS BAND OF KICKAPOOS



The Texas Band of Kickapoo Indians began 1985 with a new hope for the future as a result of the successful implementation of the Texas Band of Kickapoo Act, P.L. 97-429. On January 8, 1985, the Texas Band culminated a three-year fundraising effort by making the final payment on a 125-acre tract of land to be placed into trust status, which will serve as a permanent homeland for the Kickapoo.

The Texas Kickapoo, who are among the most traditional of all Indian tribes in the country and who suffer some of the worst living conditions, now have a land base in which they can take pride.

This land base, located on the Rio Grande River about 8 miles down river from Eagle Pass, will allow the Tribe to escape the deplorable conditions in which they were previously forced to live under the International Bridge. On the new land the tribe will have adequate space for their traditional homes, burial grounds and some commercial activity. The Tribe plans to continue private sector fundraising until enough has been raised to build a multi-purpose community center/clinic on the new property.

The Kickapoo are a Native American people whose ancestors for centuries farmed, gathered and hunted throughout 19 million acres of present-day Wisconsin, Michigan and Illinois. The Kickapoo were forced to relinquish their homeland in the early 1800's and one Band eventually went as far south as Texas and then to Mexico. A part of this Band was later removed to

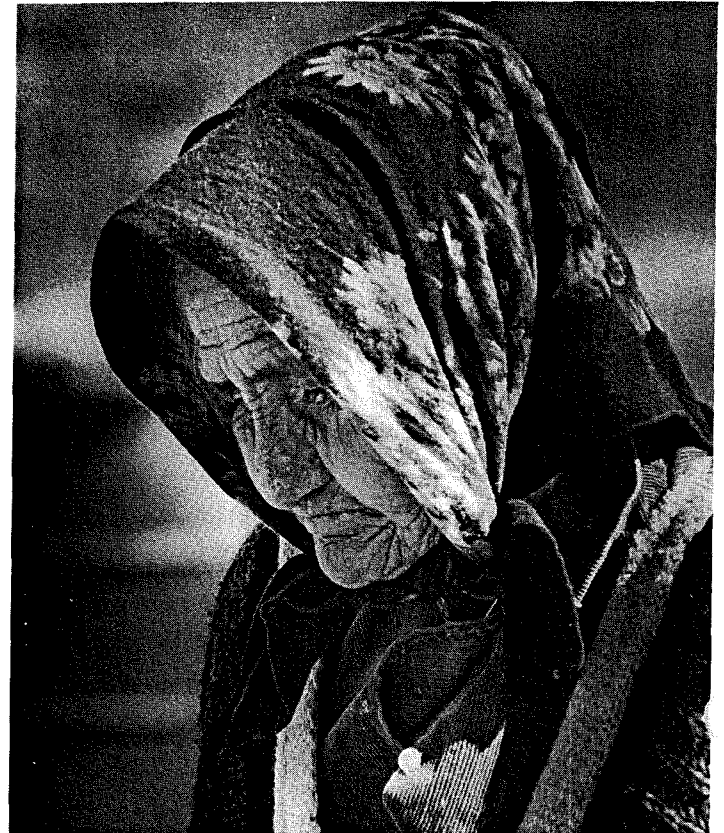
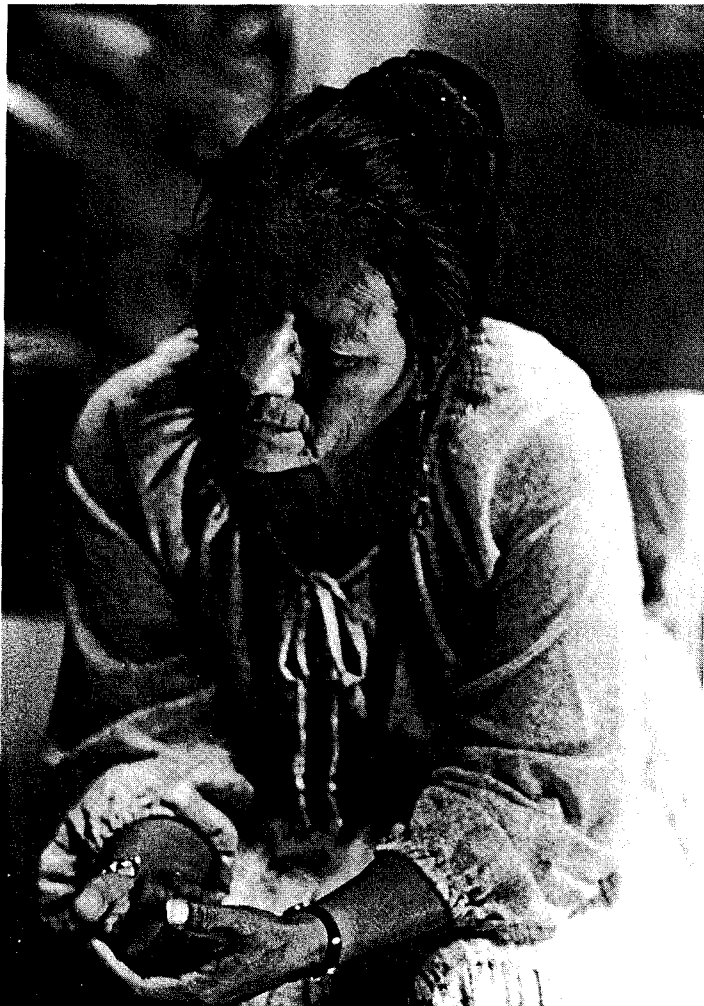
Oklahoma while the remainder of the Band stayed in Mexico. A reservation was established in Oklahoma in 1883 for all Kickapoo but the reservation was lost in 1893 by an act of Congress that opened surplus tribal lands for settlement despite the Tribe's opposition. Most of their remaining lands were blatantly swindled from them. As a result, many of the Kickapoo left Oklahoma in disgust and those Band members in Mexico continued to remain there. They later migrated back to Texas in the 1940's because of adverse conditions in Mexico and have continued to go back and forth across the border.

Without any land base, Texas Band members set up camp at Eagle Pass, Texas beneath the International Bridge where they lived much of the time, returning periodically to Mexico primarily for religious ceremonies. Until recently most of the Band members had no legal citizenship either in Mexico or in the United States. Because neither the United States nor Mexico have recognized them and provided them with any assistance, the health and living conditions of the Band declined greatly. The State of Texas has confirmed that the Kickapoo suffer an extremely high incidence of tuberculosis, diabetes, hypertension and cancer. Many of the children suffer from malnutrition and dehydration.

The Band continues to be profoundly traditional in their adherence to the ancient Kickapoo culture and religion. Most Band members speak no English, relying almost solely on their Algonquin dialect.

The Band selected January 8 as the date of closing on the property since that day has become doubly famous in their history. Two years ago on that date President Reagan signed The Texas Band of Kickapoo Act into law. But even more importantly, January 8, 1985 marks the day 120 years ago when the Southern Kickapoos (immediate ancestors to the Texas Kickapoo) successfully repelled a brutal surprise attack by a large force of Texans. Coming as it did, on the heels of a string of such altercations between the Kickapoo and the Texans, the Kickapoo viewed this Battle of Dove Creek as a Declaration of War by the Texans and they removed themselves to Mexico.

designed to (1) direct the Bureau of Indian Affairs to take land in trust for the Texas Kickapoo, (2) clarify Band members status such that each could opt to be automatically declared to be a U.S. citizen, and (3) provide federal services to the Texas Kickapoo.

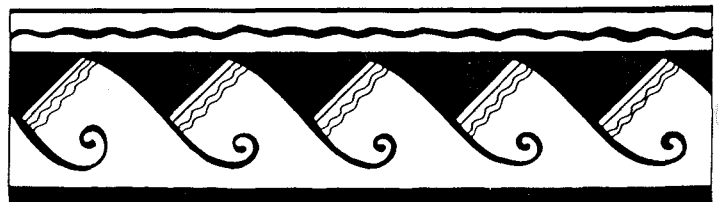


Since passage of the "Texas Band of Kickapoo Act," P.L. 97-429, on January 8, 1982, NARF has assisted the Band in properly implementing the new federal law. At this point, most federal services, including BIA, IHS, and others, are in place, and the U.S. Immigration and Naturalization Service has sworn in many of the Band members as U.S. citizens. With the recent purchase of the land base near Eagle Pass, Texas, NARF has essentially accomplished all it set out to do on the behalf of the Kickapoo.

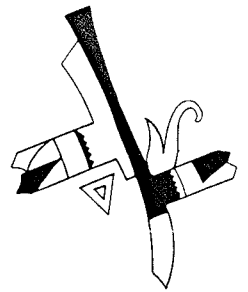
Raul Garza, also known as Makateonenodua, Chief Spokesman for the Texas Band of Kickapoo, stated through an interpreter that implementation of the new law and particularly obtaining the land base is important to all Kickapoo but is especially important to the children and to the generations of Kickapoo yet to come.

Therefore, the Tribal leaders felt that January 8, 1985 would be a day of special significance to seal this important transaction and 120 years later, bring the Kickapoos positive recognition by the United States and the State of Texas.

The Native American Rights Fund (NARF) first began representation of the Texas Band approximately six years ago. When all other proposed solutions to the myriad of problems facing the Kickapoo failed, NARF assisted in drafting and getting enacted in Congress legislation



## NARF LEGAL DEVELOPMENTS



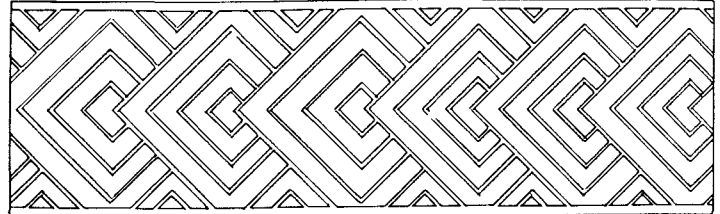
### AGREEMENT REACHED IN *UNITED STATES v. MICHIGAN*

On March 28, 1985, the parties in *United States v. Michigan* signed a 15-year agreement governing utilization of the fishery resource within the Treaty waters of the State of Michigan. Previously, the federal courts had held that three Indian Tribes, the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians, and the Grand Traverse Band of Ottawa and Chippewa Indians, retained their aboriginal rights to fish free from State regulation. The present agreement reflects that earlier decision and establishes a plan for the cooperative management of the resource. Under the agreement, treaty fishermen will have exclusive access to the whitefish stocks in certain parts of the Treaty waters. The Tribes agreed to refrain from commercial fishing in certain portions of the Treaty waters, as well as in certain areas where concentrated sportfishing occurs. The plan also recognizes the need for special restrictions on commercial and sportfishing harvests in areas of importance to the rehabilitation of lake trout. The plan provides for the gradual implementation of its objectives.

In addition, the State and the United States agreed to contribute over 5 million dollars to assist in the further development of the tribal conservation programs and to help the Tribes increase the financial returns obtained from commercial fishing. The plan also establishes procedures for sharing biological and other conservation-related information between the Tribes and the State.

Representatives of the three Tribes, the State, the United States, the Michigan United Conservation Clubs, the Grand Traverse Area Sportfishing Association, the Michigan Charter Boat Association, and the Michigan Steelhead and Salmon Fishermen's Association all signed the agreement which will be implemented through a consent decree to be entered in the near future in federal district court in Kalamazoo, Michigan.

Bruce Greene, of the Native American Rights Fund, who represented the Bay Mills Indian Community throughout the matter, stated: "While this agreement was long in coming and difficult to work out, we are pleased that it is fair and equitable. It eliminates many of the harmful fishery practices which treaty fishermen have opposed and will bring significant benefits to the Tribes and the treaty fishermen."







#### ST. REGIS CETA AUDIT CASE DECIDED

The Department of Labor recent issued a final decision in the St. Regis Mohawk CETA audit matter. The ALJ reduced the Tribe's disallowed costs to \$39,045 from \$68,334 but ruled against the Tribe on all legal issues. Those issues include: the authority of the Department of Labor to collect disallowed costs; whether failure of DOL to meet its trust obligations to the Tribe precludes collection; whether statutory and regulatory time limits preclude the claims against the tribe; and whether DOL failed to meet its burden of proof in the case. NARF appealed the decision to the Second Circuit Court of Appeals. *In the Matter of St. Regis Mohawk Tribe, New York*, decided January 4, 1985 (DOL).

#### VOTING RIGHTS CASE DECIDED

The federal district court for South Dakota recently held that the Sisseton at-large school board election process does not violate the 1982 amendments to the Voting Rights Act. Citing no case law and with almost no reference to the record, the court said that the totality of the circumstances do not show a violation of the Voting Rights Act. However, the Court failed to make the detailed findings necessary under the Act and may have misperceived the intent and purpose of the 1982 amendments to the Voting Rights Act. NARF intends to appeal the decision to the Eighth Circuit Court of Appeals. *Buckanag v. Sisseton Independent School District*, No. 84-1025 (decided March 5, 1985).

## FINAL DECISION ON SISSETON-WAHPETON EDUCATION COMPLAINT

After three years of administrative proceedings, the Department of Education issued a final decision on the Sisseton-Wahpeton Sioux Tribe's Impact Aid complaint. The administrative complaint was filed against the Sisseton School District in 1983 because of the District's unwillingness to allow meaningful input by Indian parents in the basic school program. Such input is required by the Impact Aid law and regulations.

The recent decision represents the culmination of the proceedings, and upholds the right of the Tribe and Indian parents to obtain objective data from the school district showing the educational level of Indian children as a group. This data is vital to the development of a school program which will meet the needs of Indian children.

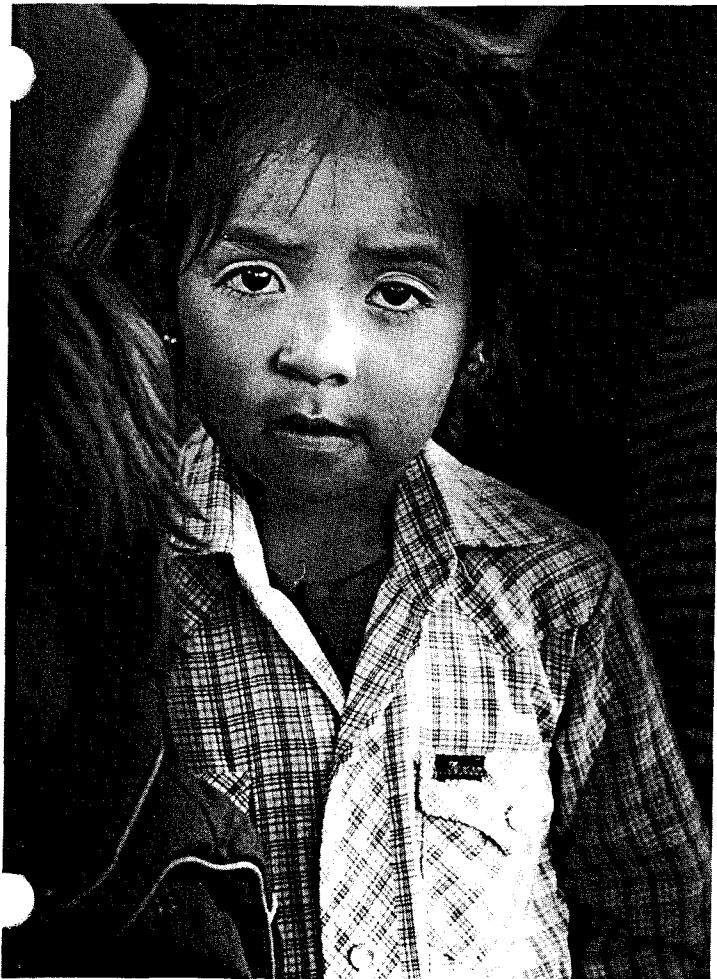
As the proceeding progressed, the right to objective data on the educational achievement of Indian children emerged as the key issue. A series of five decisions issued prior to the final decision directed the school district to revise its policies and procedures to facilitate Indian input, and established a method of providing information to the Indian parents.



## LOUISIANA LACKS JURISDICTION ON COUSHATTA RESERVATION

The federal district court in Louisiana recently held that the State of Louisiana lacks criminal jurisdiction over offenses committed by Indians on the Louisiana Coushatta Reservation. Individual members of the tribe initiated the action to restrain state officials from prosecuting them for criminal charges relating to the tribe's bingo and gambling operations and for other criminal charges. The Louisiana Coushatta Tribe sought to intervene, represented by NARF.

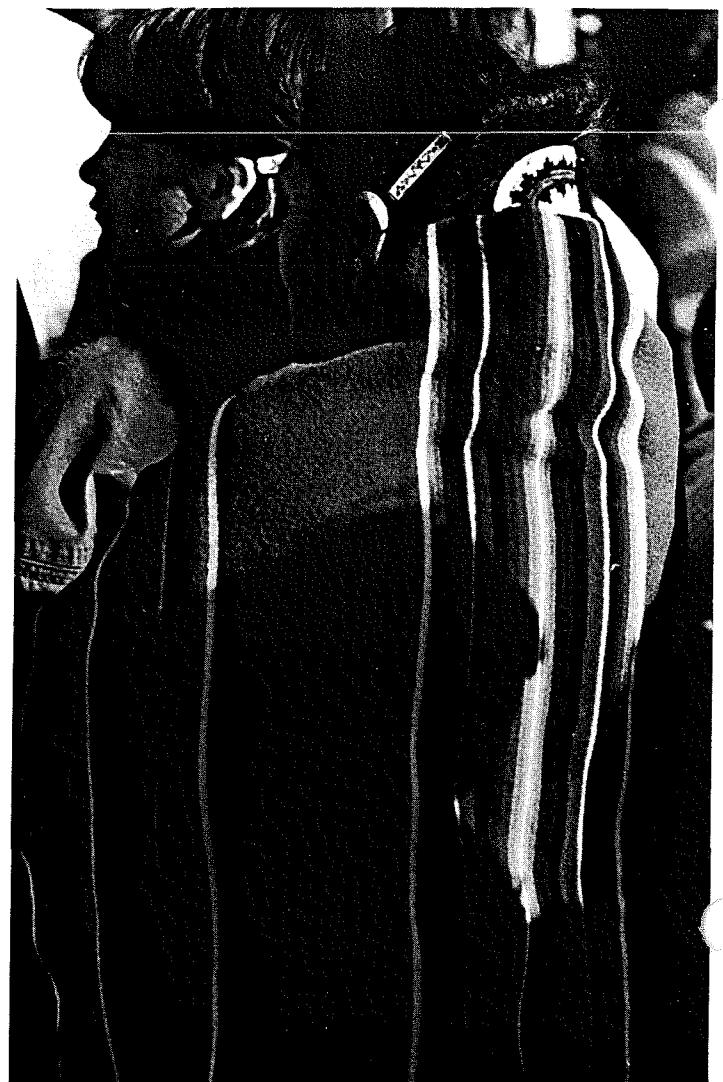
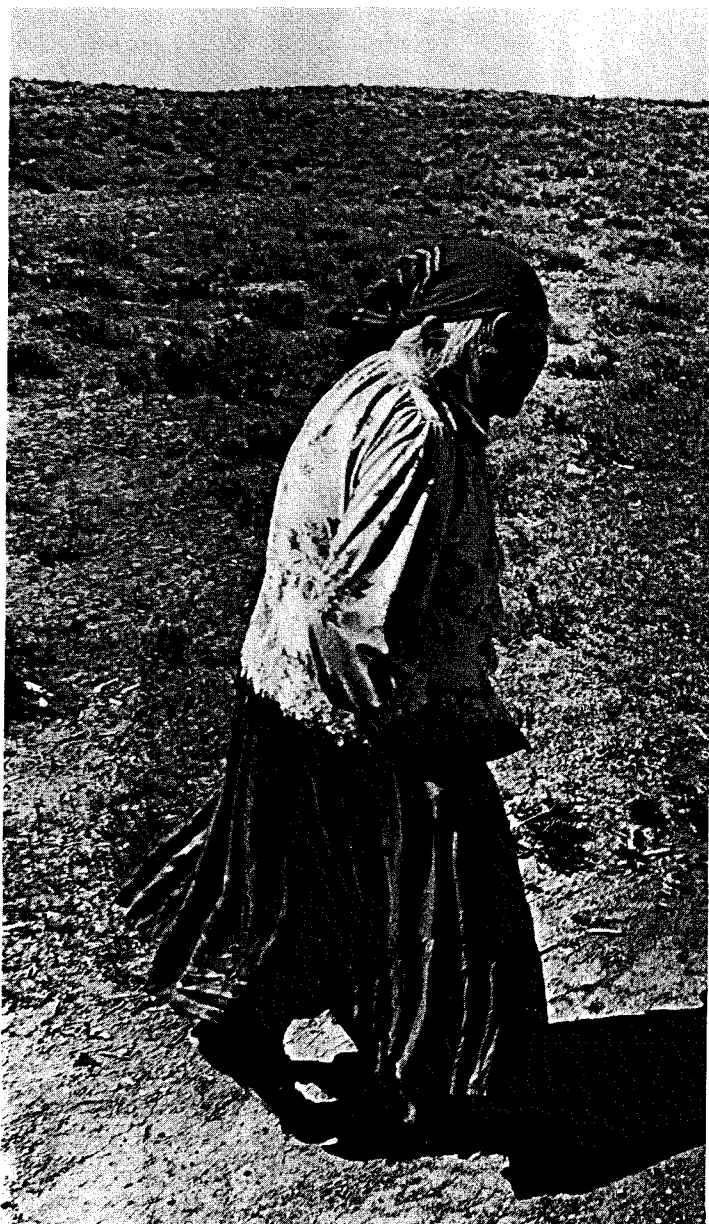
The Court held that it could restrain the state officials from prosecuting the individual Indians because state criminal proceedings were not in fact pending at the time the federal complaint was filed, and therefore the Anti-Injunction statute does not apply. The court went on to hold that Louisiana has no jurisdiction over the gambling offenses because the Tribe's sovereignty by virtue of the negative implications of the Indian commerce claim in the U.S. Constitution preempts state jurisdiction. Other crimes were found to be exclusively within federal jurisdiction.



## SUPREME COURT ARGUMENTS GIVEN BLACKFEET AND KLAMATH TRIBES

In addition to the Oneida case which was argued by NARF in the Supreme Court in October of 1984 and which recently received a favorable decision, NARF attorneys have argued two other cases in this term of the Supreme Court.

*Montana v. Blackfeet Tribe* was argued on January 19, 1985 by NARF's Deputy Director, Jeanne Whiteing. The case involves the authority of the State of Montana to tax tribal oil and gas royalties. NARF's third case in this Supreme Court session is *Oregon v. Klamath Tribe*. Argued on February 27, 1985 by NARF staff attorney Don Miller, this case concerns the Tribe's hunting, trapping and fishing rights on almost 700,000 acres of off-reservation land which was ceded in 1901.



## MONTANA SUPREME COURT WILL DECIDE ISSUES IN MONTANA WATER CASE

The Montana Supreme Court recently granted a writ of supervisory control in the Montana water adjudication proceedings to address the issues left open by the U.S. Supreme Court in its June 1983 decision. The U.S. Supreme Court decision held that state courts are the preferred forum for the adjudication of Indian water rights. The issues left open, and which the Montana Supreme Court will address are: 1) whether the state court has jurisdiction over Indian water rights in light of the disclaimer of jurisdiction in the state constitution; and 2) whether the state court proceedings are adequate to adjudicate Indian water rights. NARF represents the Northern Cheyenne Tribe in the proceeding which involves all seven Montana Indian tribes. Oral argument was held in the Montana Supreme Court on March 25. *State of Montana ex rel. Greely v. Water Court of the State of Montana*, writ issued December 18, 1984 (Montana Supreme Court).



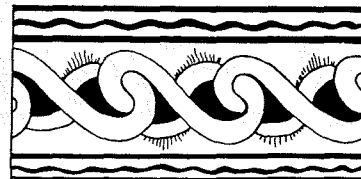
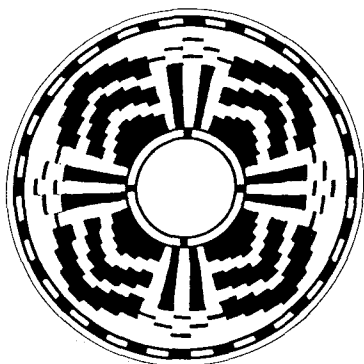
## ATTORNEYS FEES DENIED IN FOIA CASE

NARF was recently denied attorneys fees for a 1981 Freedom of Information Act request seeking correspondence concerning the Department of Justice's decision not to appeal the decision in *U.S. v. Alpine Land & Reservoir Co.*, a case related to the Pyramid Lake water litigation. A letter from Senator Laxalt to Attorney General William French-Smith was withheld, and NARF sued under the FOIA to compel its release. The letter was subsequently released and the case was dismissed as moot and fees were denied. The D.C. Court of appeals recently affirmed the district court's denial of fees on the ground that there was no "causal nexus" between the FOIA suit and release of the letter.. *Pyramid Lake Paiute Tribe v. Dept. of Justice*, decided December 14, 1984 (D.C. Cir.).



## INCOME FROM REINDEER HERDS WILL BE TAXED

NARF appealed to the Ninth Circuit Court of Appeals a U.S. Tax Court decision which held that Alaskan Natives are liable for federal taxes on income earned from the sale of reindeer and reindeer products. Essentially, NARF argued that the income is exempt from federal taxation because reindeer are restricted property which, if not expressly exempt from taxation, is impliedly exempt. Tax exemption is consistent with the federal government's policy of preparing Indians to become independent citizens. Reliance was placed on a Supreme Court decision exempting timber cutting from federal taxation, and an Interior Department opinion which also held such income to be exempt. The Ninth Circuit Court of Appeals, however, concluded that the income is taxable because it found no clearly expressed intent in any act to exempt the income. A petition for rehearing was denied. *Karmun v. Commissioner of Internal*, decided December 12, 1984 (9th Cir.).





## SUPREME COURT ARGUMENTS GIVEN BLACKFEET AND KLAMATH TRIBES

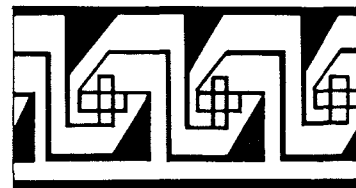
In addition to the Oneida case which was argued by NARF in the Supreme Court in October of 1984 and which recently received a favorable decision, NARF attorneys have argued two other cases in this term of the Supreme Court.

*Montana v. Blackfeet Tribe* was argued on January 19, 1985 by NARF's Deputy Director, Jeanne Whiteing. The case involves the authority of the State of Montana to tax tribal oil and gas royalties. The Supreme Court has recently requested another hearing in this case. A second oral argument is scheduled for April 23, 1985. NARF's third case in this Supreme Court session is *Oregon v. Klamath Tribe*. Argued on February 27, 1985 by NARF staff attorney Don Miller, this case concerns the Tribe's hunting, trapping and fishing rights on almost 700,000 acres of off-reservation land which was ceded in 1901.



## ATTORNEYS FEES DENIED IN CARSON-TRUCKEE CASE

In early 1983, NARF and other attorneys were awarded attorneys fees and costs in *Carson-Truckee v. Watt*, a case which upheld the use of water from Stampede Reservoir primarily for the benefit of the Pyramid Lake fishery. NARF represented the Pyramid Lake Tribe in the case along with the Tribe's private counsel. Upon reconsideration, the district court decided that an award of fees was inappropriate under provisions of the Endangered Species Act, and NARF appealed. On appeal, we argued that the district court had applied the wrong standard. The Ninth Circuit Court of Appeals disagreed and upheld the district court's conclusion that fees were not appropriate because the Tribe's participation in the case did not substantially contribute to the goals of the Endangered Species Act. NARF recently filed a petition for certiorari in the U.S. Supreme Court seeking review of the Court of Appeals decision.



## Native American Rights Fund

The Native American Rights Fund is a nonprofit 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.

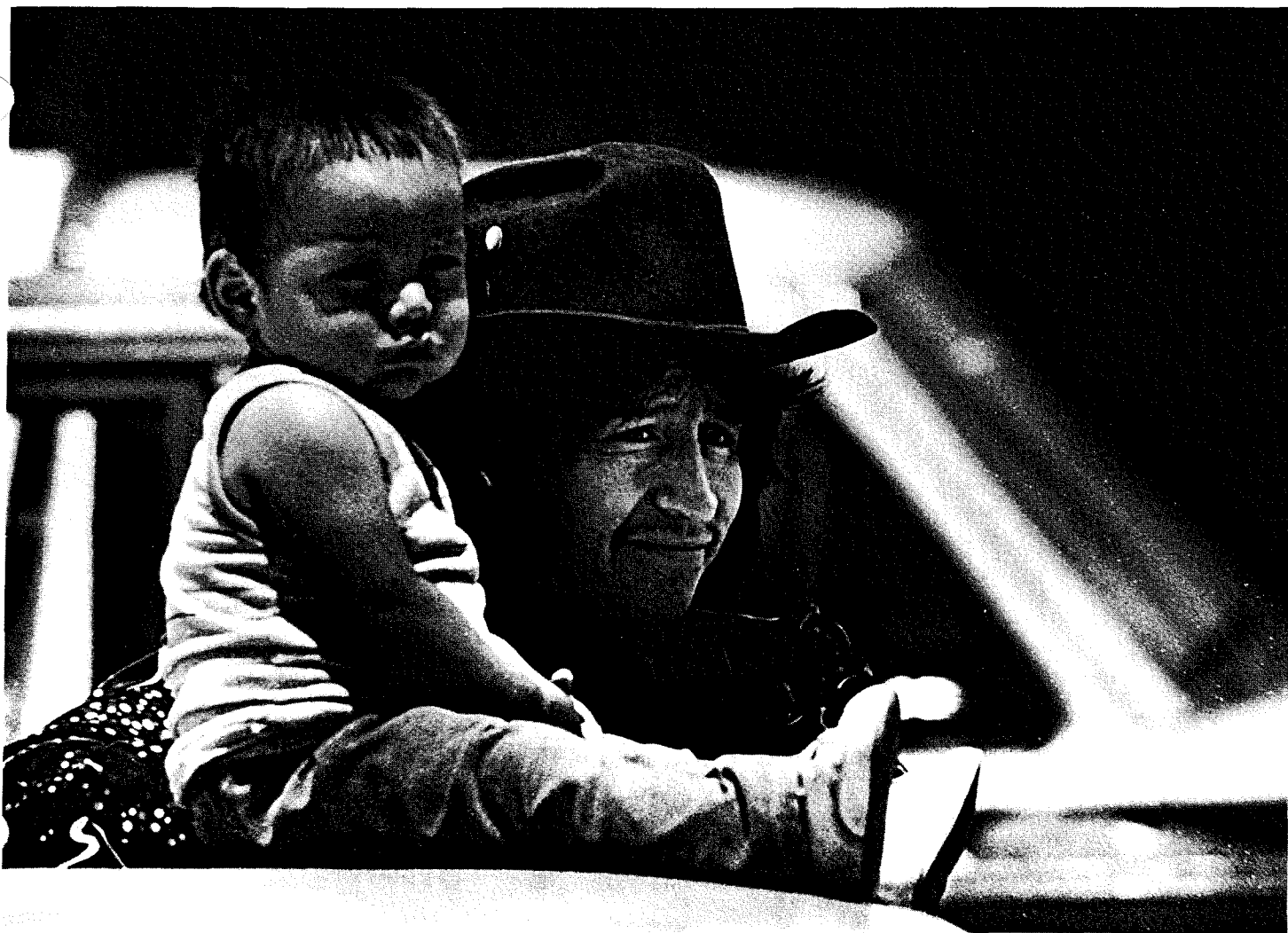
Our work on behalf of thousands of America's Indians throughout the country is supported in large part by your generous contributions. Your participation makes a big difference in our ability to continue to meet the ever-increasing needs of impoverished Indian tribes, groups, and individuals. The support needed to sustain our nationwide program requires your continued assistance.

Requests for legal assistance, contributions, or other inquiries regarding NARF's services may be addressed to NARF's main office: 1506 Broadway, Boulder, Colorado 80302. Telephone: 303-447-8760.

## Steering Committee

Chris McNeil, Jr., Chairman	Tlingit
George Kalama, Vice-Chairman	Nisqually
Kenneth Custalow	Mattaponi
Gene Gentry	Klamath
Bernard Kayate	Laguna Pueblo
Wayne Newell	Passamaquoddy
Leonard Norris, Jr.	Klamath
Norman Ration	Navajo-Laguna
Lois Risling	Hoopla
Caleb Pungowiyi	Inupiat
Ada Deer	Menominee
Harvey Paymella	Hopi-Tewa
Wade Teeple	Chippewa

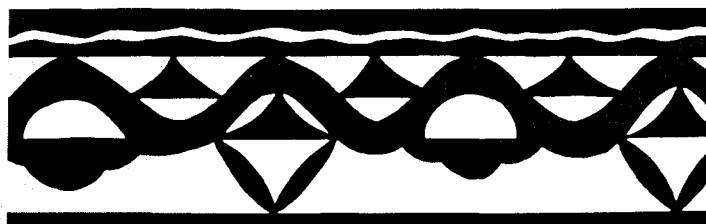
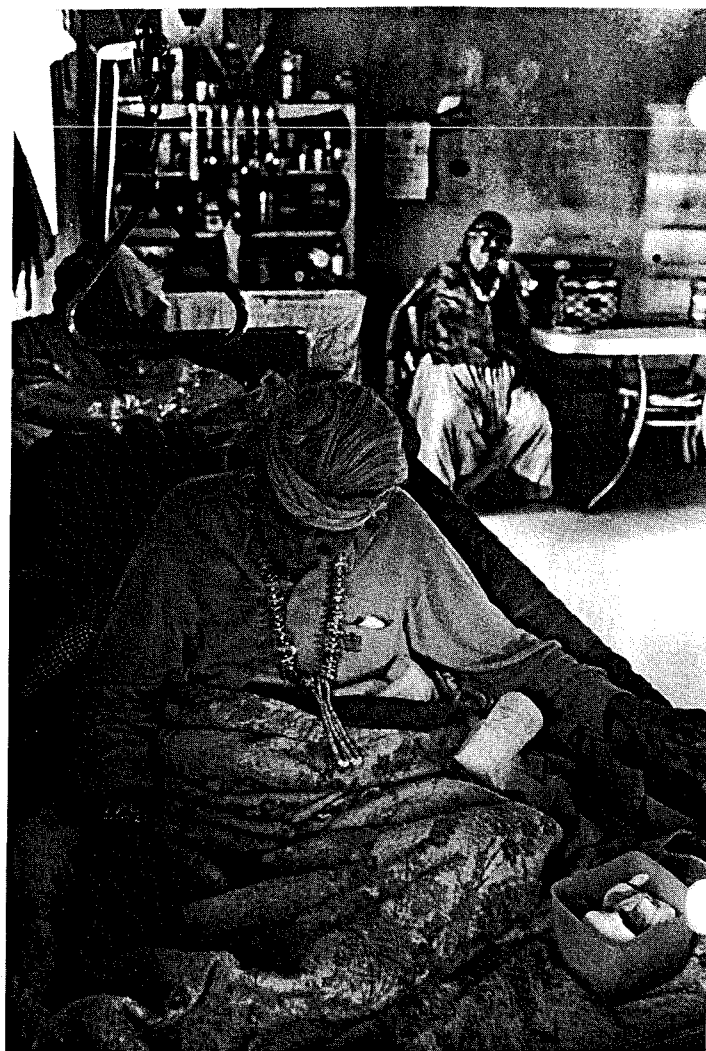
Executive Director: John E. Echohawk (Pawnee)  
Deputy Director: Jeanne S. Whiteing  
(Blackfeet-Cahuilla)



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## VACANCY ANNOUNCEMENT

- POSITION:** Grant Writer/Editor
- LOCATION:** Native American Rights Fund  
1506 Broadway  
Boulder, Colorado 80302
- CLOSING DATE:** June 1, 1985
- STARTING DATE:** August 1, 1985
- DESCRIPTION:** The Native American Rights Fund (NARF) is a nonprofit national Indian legal organization providing direct representation to Indian law cases throughout the country. NARF is seeking an individual with good writing and creative communication skills to serve as Grant Writer/Editor in the Boulder office. Experience with Indian people and issues is preferred.
- The Grant Writer/Editor has primary responsibility for developing all of NARF's funding proposals and grant reports under the supervision of the Executive Director. The Grant Writer/Editor also serves as editor of NARF's quarterly newsletter and prepares NARF's Annual Report.
- QUALIFICATIONS:** College degree in Journalism or related social science field or three years experience in the communications field.
- SALARY AND BENEFITS:** Approximately \$23,000 up, depending on experience. Liberal vacation, health insurance and other benefits.
- APPLICATION PROCEDURE:** Submit application letter, resume (including three references) and writing samples to: John E. Echohawk, Executive Director, Native American Rights Fund, 1506 Broadway, Boulder, Colorado 80302.



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Photographs by Monty Roessel are featured in this issue of *The NARF Legal Review*.

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## OF GIFTS AND GIVING

### OTU'HAN

Otu'han, a Lakota word meaning "give-away," describes the age-old Sioux custom of giving gifts in the names of those they wish to honor. The Native American Rights Fund has developed the Otu'han memorial and tribute program to encourage our donors to continue this Indian tradition by recognizing and honoring friends and loved ones through gifts to NARF.

We have received recent contributions in memory of:

Pete Medicine—by Nona A. Schwartz  
Mr. Rudolph D'Agostino—by Staff of Memorial Sloan-Kettering Cancer Center  
Antonio Cook—by Mr. & Mrs. Conrad Schmidt  
George P. Hussey—by Lana Hussey Abbott  
Tom W. Echohawk—by Lucille Echohawk  
Kimberly Ann Kingsbury—by Wm & Mary Wilcox  
Gerald I. Feit—by Eugene Feit

Ethel L. Dupuis—by Delphis J. Dupuis  
Fairlie Dalton—by Suzanne Abruzzo, S.C.,  
Sisters of Charity

Lois Lockhart—by Charles D. Ladner  
Hannah Roundface—by D. Michael & Jean Eakin  
Russ Wright—by Alexander Blain III, M.D.  
Carolyn E. Stear—by David R. Stear

NARF is also receiving large numbers of gifts in honor of friends or relatives on birthdays and special anniversaries.

For further information on the Otu'han memorial and tribute program contact Marilyn Pourier c/o NARF or return the attached business reply envelope with the appropriate box checked.

NARF has recently received a substantial bequest from the estate of Elizabeth Franch Babbott (Mrs. Frank L.). Mrs. Babbott was a long-time supporter of the Native American Rights Fund—both financial and otherwise.

Native American Rights Fund  
1506 Broadway  
Boulder, CO 80302

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