

National Indian Law Library
1522 Broadway
Boulder, CO 80302

First Annual Report

For the year ending
December 31, 1972

Director
David H. Getches
Deputy Director
John E. Echohawk

Steering Committee

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Charles Lohah, Chairman (Osage)
David Risling, Jr., Vice-Chairman (Hoopa)
LaNada Boyer, Executive Committee
(Shoshone-Bannock)
John Stevens, Executive Committee
(Passamaquoddy)

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Curtis Custalow (Mattaponi)
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Janet McCloud (Tulalip)
Francis McKinley (Navajo-Ute)
Joseph Upicksoun (Inupiat Eskimo)

FOREWORD

The end of Native American Rights Fund's first calendar year provokes a realization of two important facts. First, the rapid development and remarkable successes of the Fund are the product of many hands and minds. Second, the work that lies ahead means a permanent commitment by the Fund to the work on which it has embarked.

Special thanks to many are in order, but are hard to give when so many are deserving of them. The concept of a national legal program for Indians was developed by a few of the present staff attorneys - notably Bob Pelcyger and John Echohawk - when we were at California Indian Legal Services (CILS). CILS gave birth to the Fund and helped it to become independent. Monroe Price's assistance to us in those early days was invaluable. Dave Risling, who was then chairman of the CILS Board of Trustees, gave us guidance and put us in contact with Indians throughout the country who could give us help in knowing what legal assistance Indians wanted and needed. The Indian advisory council gave us similar advice. They also helped us to get the views of Indians nationally. Leonard Ryan of the Ford Foundation advised and criticized, but always encouraged us in those formative days. His special interest in what we were doing was a tremendous help.

If the willingness of the initial staff to pull up roots in California and to move to Colorado was not enough proof of their dedication, the months of seven day weeks of eighteen hour days which they worked after getting here was. As the staff grew we were able to add attorneys and support staff of similar high caliber and enthusiasm for the Fund's work. As director of the Fund, my warmest appreciation is for the excellent staff of attorneys and other committed people who are here. Anyone familiar with the Fund knows that the present style and efficiency of office operations is the product of Joan Carpenter's labors and ingenuity. My job was tremendously facilitated by her efforts and support as Assistant to the Director.

The quest for funding was difficult, but we were able to gain the confidence of many institutional and individual givers. The Ford Foundation's strong support of Native American Rights Fund from the start made our fund raising easier. As special projects were required

by our representation of client interests, we were able to find supporters for the most significant ones. Thomas Banyacya, whose counsel has been extremely important to us, brought to our attention the egregious situation in which a network of power plants in the Southwest threatened the homelands of a large portion of all reservation Indians. Leslie Dunbar of the Field Foundation responded with financial assistance to support our efforts. The National Indian Law Library was made possible with a grant from the Carnegie Corporation, and the first concentrated attention to the special legal problems of Eastern Indians was made possible by a grant from the Clark Foundation. The federal Office of Economic Opportunity funds our functions as an Indian law backup center and our special education project. Other foundations which have supported our work include the Akbar Fund, the Norman Foundation, the Edward Elliott Foundation, Ann Maytag Shaker Foundation, Espous Foundation, Tamler Foundation, and Seacoast Foundation. Support has also been obtained from the Joint Strategy and Action Committee, the Sierra Club, Frontera Del Norte Fund, and numerous individuals. The generous gifts of Maya Miller and Mr. & Mrs. Roland Sahn deserve special mention. To each of our donors we owe great thanks. We think that their confidence in our work has been and will continue to be justified.

The Steering Committee members, under the leadership of Chairman Charles Lohah, have been constant and unwavering champions of the Fund's work. They have played a significant role in all major decisions; their ideas, criticisms, and imaginations have been of inestimable value in guiding the Fund's development and operations.

The diversity of the Fund's caseload and the magnitude of Indian legal problems tell us that, in spite of our tangible progress, we have much work to do in the future. Importantly, we also have learned that many of the conditions and deeds which account for the plight of American Indians can be attacked by use of the law.

To continue to do our work as it should be done, we must continue our close contact with clients. The Fund should never become an "ego trip" for lawyers. Rather it must continue to be a strong advocate for Indian legal rights and interests as Indians define them. The Steering Committee, I am confident, will keep us on the track in this regard. The presence on the staff of an increasingly large number of Indian attorneys hopefully will provide additional assurance that Native American Rights Fund will continue to be responsive primarily to its clients' interests.

To carry out our work in the future, more money is needed. A diverse funding base is desirable to avoid

financial dependence on any single source or control of policy by any. Further diversification and strengthening of the Fund's financial support will be a challenge in the coming year.

To those who have helped Native American Rights Fund get started, we are grateful. To our clients we all pledge that our efforts will persist on their behalf.

David H. Getches
Director

TABLE OF CONTENTS

	Page
NARF COMES OF AGE	1
ACCOMPLISHMENTS DURING 1972	2
AREAS OF SPECIAL CONCENTRATION.	5
NARF AS A RESOURCE FOR INDIANS AND LAWYERS.	9
THE FUND'S INTERNAL MANAGEMENT AND OPERATIONS	13

APPENDICES

A. SUMMARY OF CASES.	APPENDIX A.
B. ANNOUNCEMENTS	APPENDIX B.
C. PROFESSIONAL STAFF.	APPENDIX C.
D. MANUAL OF POLICIES AND PROCEDURES	APPENDIX D.

NARF COMES OF AGE

As 1972 began, Native American Rights Fund had just received major funding from the Ford Foundation assuring its existence for the next three years. A staff of attorneys was being assembled and a number of lawsuits were already on file. Just a few months earlier, the Fund had separated from California Indian Legal Services which had been the recipient of an initial planning grant from the Ford Foundation. which provided the basis for the development of the Native American Rights Fund. Some additional grants had also been obtained by the Fund.

With the Ford grant several weeks old, the Boulder office was alive with activity. New litigation was being pursued and more was in the planning stages. Recruiting for experienced attorneys was proceeding as was a concentrated effort to find Indian lawyers to expand the staff. The building which houses the Fund was undergoing a metamorphosis from a run-down fraternity house to a comfortable and efficient office.

A Steering Committee composed of Indians from different tribes across the country had been selected and had met for the first time. They had been chosen by the Board of Trustees of California Indian Legal Services with the advice of an ad hoc Indian advisory council to Native American Rights Fund. Selection was based upon the Steering Committee members' familiarity and interest with issues which confront Indians throughout the country.

As 1972 progressed, the staff of attorneys grew to thirteen, four of them Indian. At year's end, the total staff, including attorneys and support staff approaches forty. Every inch of the renovated office is in use. Nearly one million dollars has been raised from a dozen foundations and private contributors, in addition to the 1.2 million dollar Ford grant. What had begun as no more than a concept for a few attorneys in California and a hope for many Indians has at last become a reality. Approximately 40 significant cases in 18 states have been filed and already impressive results have been achieved in many of them.

ACCOMPLISHMENTS DURING 1972

The accomplishments of Native American Rights Fund during 1972 have been significant. They are especially important when it is kept in mind that most of the cases in which the Fund is involved require not merely months, but years to investigate and litigate. Protracted litigation over land and water rights, environmental problems, and complex education cases do not normally produce immediate or even short term results.

Some of the important developments during the year in the Fund's litigation have been:

- The Secretary of Interior was ordered to revise departmental regulations which had for years robbed the Pyramid Lake Paiute Indians of water need to preserve Pyramid Lake in Nevada (the tribe's only resource) as a fishery and a viable body of water.

- The Interior Department was moved to reverse its position of some 17 years standing which deprived the Cocopah Tribe of Arizona of valuable land which it had accreted to its reservation.
- A water company in Southern California has for years utilized water from the San Luis Rey River to which two tribes represented by the Fund are legally entitled. Distributions of the company's earnings to its stockholders was halted by court order in a lawsuit brought by the Fund pending an outcome to litigation involving the tribes' water rights.
- Fund attorneys assisted in bringing to light the facts surrounding the murder of Raymond Yellow Thunder by white youths in Gordon, Nebraska, and played an important role in revealing the facts in a tense situation which was marked by racial hostilities on both sides.
- A Fund lawsuit resulted in a federal court injunction against the Army Corps of Engineers preventing the construction of dam modifications in Oregon which would have flooded out traditional Indian fishing sites and hindered fish propagation, thus interfering with the livelihood of Indians who depend upon fishing.
- A federal court in Nebraska ordered the reinstatement in public school of Indian students who had been suspended or expelled for alleged infractions of school rules without appropriate hearings or procedural safeguards.
- Children were returned to school in Oklahoma by court order after they had been suspended for violation of school rules against long hair. The students, who wore their hair in braids, which is the traditional style for men of their tribe, are appealing a lower court order which upholds the school district ban on long hair, but have been reinstated pending the appeal.
- The wholesale destruction of large stands of pinon juniper trees in Nevada on which many Western Shoshone Indians in the area depend for pinon nuts which they harvest has been halted, at least temporarily, pending an assessment of the impact of the project by the Bureau of Land Management and negotiations with the affected Indians.
- The United States Attorney General has been ordered by a federal court in Maine to file suit on behalf of the Passamaquoddy Indians against the State of

Maine for past acts by the state which were detrimental to the Passamaquoddys. This Fund case is the first instance in which the United States has been ordered to sue on behalf of a tribe.

- Eskimos on the North Slope of Alaska represented by Fund attorneys have established a borough (county) which will enable them to exact taxes from oil companies operating in the area and to establish municipal services, such as schools, which do not now exist in the vast area. In a law suit brought by the oil companies and defended by the Fund, the oil companies' attempts to prevent elections and otherwise frustrate the operations of the borough have been thwarted.
- In a lawsuit in which private attorneys are assisted by the Fund, Indian students at Fort Lewis College successfully asserted their right to free tuition under an old agreement which was being repudiated by the state of Colorado.
- A temporary stay on the construction of power lines by Arizona Public Service Company, planned to pass over Indian lands in Manuelito Canyon on the Navajo Reservation, was obtained in a Fund lawsuit.
- In a comprehensive lawsuit concerning many questionable practices of the South Dakota State Penitentiary which has a large Indian inmate population, a temporary restraining order preventing the censorship of inmate mail was granted by a federal court.
- The National Clearinghouse on Drug Abuse has been persuaded to drop a television commercial based on the theme of "ten little Indians" which was offensive to many Indians.
- After presentations prepared by Fund attorneys, the Los Angeles City Council decided not to approve contracts with power plants in the Southwest which are on or near Indian reservations until the plants meet pollution control standards comparable to those in effect in Los Angeles.
- The Navajo Tribe has frozen all approval on power line construction across the reservation until existing disputes between Navajo tribal members and the power companies have been resolved.
- The United States has been moved to file at least four cases on behalf of Indian tribes against private parties who had been violating the tribes' rights.

- The United States, largely through the efforts of the Fund and pressures brought by it, has filed an original action in the United States Supreme Court on behalf of Pyramid Lake Paiute Tribe in order to protect its water rights.
- Nine amicus curiae briefs have been filed by the Fund. Five of the briefs were filed in the United States Supreme Court, three were filed in the United States Courts of Appeal and two in state supreme courts.

The Fund has become widely known for its legal representation of Indians. During the past year, 83 tribes and over 640 individuals were represented or otherwise assisted by Fund attorneys. In addition, assistance was given to at least 33 legal services programs funded by the federal Office of Economic Opportunity which represent Indian clients. A summary of the major cases on which Fund attorneys worked during the year follows as Appendix A.

AREAS OF SPECIAL CONCENTRATION

The Fund has generally pursued cases which will be of major significance to Indians throughout the country. These are cases which affect a large number of persons or which may lead to a change in laws affecting Indians generally. In carrying out this mandate, several areas of special emphasis have developed within the Fund's diverse caseload.

Natural Resources

From the beginning of Native American Rights Fund, there has been an emphasis on cases which have as their objective the preservation of an Indian land base. It is well known that the existence of viable Indian communities as well as a continua-

tion of traditional Indian culture often depends upon a land base with sufficient water and other resources. The exploitation of Indian resources by outside interests, aided by the government, and made attractive to many Indians often by inadequate financial inducements, has threatened not only the size and beauty of Indians lands, but the very survival of Indians.

One of the most important projects of Native American Rights Fund is the Southwest Indian Environmental Project which seeks to protect the resources of several Indian reservations in the Southwest which are threatened by the development of a complex of six coal-burning plants and associated strip mines, all of which are on or near Indian land. The network of power plants and mines will affect some thirty-nine Indian reservations. The Fund has filed several cases which attack the power complex and the lack of environmental controls over it. These efforts have been supported with grants from the Field Foundation and the Akbar Fund.

Education

The Fund has a major emphasis in the area of Indian education. Education for Indians has been termed "a national tragedy" by a Senate subcommittee. Assisted by a special grant from the Office of Economic Opportunity which the Fund shares with the Harvard Center on Law & Education, a number of litigation and non-litigation activities are being carried out.

Besides several lawsuits, the Fund has assisted in the drafting of proposed new Johnson-O'Malley Indian education regulations and has hosted a series of workshops for Indians throughout the country on the subject of Indian education. The Fund has aided the development of a Coalition of Indian Controlled School Boards which is now an active and significant force in bringing about the establishment of schools controlled by the Indian communities they serve.

The Fund recognizes that the long-term solution to Indian education problems will not be through litigation but through the assumption of control of the education of Indian children by Indians themselves. Thus, the Fund places a high priority on assisting the Coalition of Indian Controlled School Boards and individual school boards and communities where Indians are attempting to exert their influence in the educational system. At the same time, a vigorous program of litigation to solve immediate problems which cannot await the transition to Indian control is being pursued.

Taxation

The Fund has become increasingly active in the area of Indian taxation problems. Three cases are now pending before the United States Supreme Court concerning Indian taxation; the Fund is amicus curiae in each of them. A session was held with attorneys in each of the cases immediately prior to the oral argument in the Supreme Court. At this session, Fund attorneys consulted with and advised the other attorneys in order to prepare them for a coordinated presentation of the cases. The Fund has published a study of Indian taxation

problems which has been made available to lawyers and legal services programs throughout the country.

Eastern Indians

The United States government refuses to recognize as Indians nearly one-quarter of the Indians in the country. These are the Indians living in the Eastern part of the United States. This lack of recognition stems from the fact that relations with the Eastern tribes began before the federal Constitution was adopted and treaties and other agreements were entered with the states and not the federal government. On this basis, the government denies responsibility for Eastern Indians. No Bureau of Indian Affairs' services or assistance are rendered to these "unrecognized" tribes.

The Fund, with a special grant for the purpose from the Edna McConnell Clark Foundation, planned and hosted the first conference of Eastern tribes. The Conference was attended by over one hundred representatives of these groups and has led to the formation of the Coalition of Eastern Native Americans. The Fund continues to assist this group.

The Fund is active in a number of cases on behalf of the Eastern tribes to enforce government responsibilities to them or to redress their grievances against others.

Prisoner and Civil Rights

The Fund is becoming more active in the areas of prisoner and civil rights. It is anticipated that during the next year a special grant will be sought to enable the Fund to become more active in these areas. The special problems

of Indians in prison simply have not been addressed in the past. With a developing body of law supporting prisoners' rights and the severity of the problems of Indian inmates, it is essential that the Fund become more actively involved in their representation.

Traditional civil rights problems must also be addressed. The problems of individuals in towns bordering reservations and in large cities as well, cannot be ignored. Furthermore, with increasing activism on the part of Indians throughout the country, there will be increasing demands upon the Fund to provide legal assistance and guidance to activist leaders and to the Indian communities whose causes the activists support.

NARF AS A RESOURCE FOR INDIANS AND LAWYERS

The greater general awareness of Indian problems throughout the country and of the existence of NARF has resulted in added demands upon the Fund's resources. The acceleration of new business for the Fund has been greater than the Fund's rapid growth during the year. Cases are obtained largely through referrals, direct telephone or letter inquiry, and through legal services programs. Each of these sources produces approximately three times the number of requests for assistance as they did a year ago. Because the Fund will never be able to handle all of the matters which come to its attention, it is important that an attempt be made to assist and interest others in Indian legal representation. In this way, the Fund has a leverage which far exceeds its own capability

to represent clients.

One of the most significant projects of NARF is the development of a National Indian Law Library. The Library collects and catalogues pleadings and briefs, and other materials related to Indian law, in both pending and decided cases throughout the country. These materials are made available to lawyers representing Indians, scholars, law students, tribal leaders, and others having an interest in the field. The Library also has a collection of all law review articles dealing with Indian law and is making a comprehensive index of all cases both decided and pending, the law review articles, and other matters which relate to Indian law. This index will provide a ready access to all such sources. The Library has been developed with a special grant from the Carnegie Corporation of New York.

In mid-1972 publication of NARF's newsletter, "Announcements" began. "Announcements" is published ten times a year by Native American Rights Fund. It is an important source of information on developments in Fund cases and in Indian law generally. It is mailed regularly to thousands to persons interested in the subject. The issues produced during 1972 are attached as Appendix B.

A Washington, D. C. office of the Fund, besides having a caseload of its own, assists with numerous Fund cases in which discovery, investigation, or negotiations are required or in which appearances must be made in the nation's capitol. In addition, the office is a base of operations for Fund attorneys, as well as others working in the field, who travel

to Washington. The Washington office keeps track of important developments affecting Indians and coordinates with the leaders of national Indian organizations.

Indian Law Backup Center

The Fund serves as a national backup center, furnishing technical assistance to legal services programs funded by the federal Office of Economic Opportunity which serve Indians. In 1972, advice and assistance was given in over a hundred matters brought to the Fund by legal services programs. Two meetings were held during the year which were attended by representatives of the programs. The Fund has used these meetings to concentrate on special areas of interest to the legal services attorneys and to brief them on current developments in the Office of Economic Opportunity and in the law as it affects Indians. A communications system among all the programs has been developed and the Fund acts as a clearinghouse for information to be disseminated to each of them.

Some Fund cases have been obtained through referrals or through co-counsel arrangements with legal services attorneys. At least four major Fund cases are being handled in conjunction with OEO legal services programs.

The Fund is concerned with the development of an interest in Indian law and Indian legal problems. A Fund attorney taught at the University of New Mexico in its special summer program for Indians about to enter law school. In addition, the Fund assisted in the teaching of a course in Indian law at the University of Colorado and is going to teach a course at the

University of Colorado's Denver Center on Indian legal problems beginning after the first of the year. To the extent Fund attorneys are able to do so without interfering with their demanding litigation schedules, they act as speakers to community groups, college classes, Indian clubs, law schools, and others interested in learning more about Indian law and the legal problems which confront American Indians.

Indian attorneys on the staff of the Fund have been instrumental in forming an American Indian Bar Association. The Fund has assisted with administrative support in the formative stages of this association. One of the association's objectives is to bring together and establish a communication network among Indian lawyers throughout the country and to promote a greater role on the part of Indians in representing their own people.

The Fund has been asked to speak at many national conferences. Notable among them are the National Legal Aid & Defender Association Conference at which Fund attorneys presented a panel discussion on Indian taxation problems. At the National Congress of American Indians convention NARF attorneys participated on at least three panels.

The Fund is developing a publications program. Besides publishing the Indian taxation study already mentioned, a compilation of cases relating to Indian law entitled "Indian Legal Problems" has been prepared and distributed to all legal services programs in the country. This is also used as the basic text in a course to be taught by the Fund attorneys at

the University of Colorado. The Fund recently obtained a printing press and, is reproducing all decisions of the Indian Claims Commission. The twenty-seven volume set is going to be made available to libraries and others throughout the country at cost. Other publications will be produced by the Fund during the next year depending upon funds which are obtained for that purpose.

The Fund is increasingly consulted by groups, agencies and individuals interested in Indian legal issues. The Bureau of Indian Affairs, the White House, the Department of Justice and other government offices have asked for the Fund's assistance from time to time. A Fund attorney was asked to act as coordinator of the Impact Survey Team which is looking into the consequences of the recent Bureau of Indian Affairs takeover by Indians. Although the primary function of the Fund is to speak on behalf of clients in the context of legal representation, Fund attorneys are often called upon to share their specialized knowledge of Indian problems and Indian law. To the extent that the Fund represents, in a sense, the legal interests of the Indian community in general, there is an obligation to assist in this way.

THE FUND'S INTERNAL MANAGEMENT AND OPERATIONS

The Fund's attorney staff is comprised of thirteen attorneys belonging to the bars of some nine states. In addition, three attorneys are "of counsel" to the Fund on a part-time basis. Although the staff is young, it represents a total of nearly 60 years of legal experience. Nine of the staff attorneys have had previous experience ranging from four to eight years of law practice. Most of them

have a background either in private practice or Indian legal services. Resumes of the staff attorneys are attached as Appendix C. There is a tendency to specialize in particular areas of Indian law. It has been found that this is advantageous both in the handling of Fund cases and in the advising of other attorneys.

Because all of the Fund's attorneys except for one are located in the Boulder office, there is frequent and profitable exchange among the attorneys on the cases that are being handled. The great advantage of having resources which can be concentrated on particular cases in an emergency situation in one central office, as well as the presence of attorneys with expertise in nearly any area in which a legal problem might arise, adds greatly to NARF's effectiveness.

The NARF Steering Committee, made up of twelve Indians from throughout the country, meets at least semi-annually to discuss and decide on Fund policy. The matters considered by it include major management decisions and policy determinations. The Steering Committee is especially looked to for guidance in setting priorities and making decisions about the direction of the Fund with respect to the type of matters in which it becomes involved. Decision-making concerning management matters is usually referred to the Executive Committee of the Steering Committee which meets as needed. In order to keep Steering Committee members up to date on NARF case developments and internal affairs, a weekly mailing of materials is made and a regular monthly memorandum called "Recent Items of Interest to the Steering Committee" is sent.

The selection of staff attorneys has been delegated by

the director of the program to the entire staff of attorneys who discuss new attorney hiring among themselves. A staff recommendation is then conveyed by the director to the Steering Committee for its views before an offer is extended. Recruitment is largely unnecessary as the Fund has received during the past year over one hundred applications from outstanding attorneys and law students throughout the country. It has been the policy of the Fund to hire only attorneys with at least three years of experience in practice. An exception is made in the case of Indians. It is the policy of the Fund to recruit as many outstanding Indian attorneys to its staff as possible. It is hoped that two or three new Indian lawyers can be added to the staff during the forthcoming year.

The recruitment program for Indian lawyers includes a special counsel program for experienced Indian attorneys. This program, besides giving the Fund the advantage of having such attorneys present in the office for temporary assignment, hopefully will develop their interest in Indian legal problems and perhaps in practicing with NARF. All Indian law students are on the regular Fund mailing list and special letters have already been sent to next year's graduating class soliciting their application to the Fund. Follow-up by Indian lawyers already on the staff urging these students to apply will also be done.

Administratively, the Fund operates very smoothly. Under the guidance of Assistant to the Director, Joan Carpenter, administrative functions and procedures have been developed so

that there is a careful and accurate system of bookkeeping, a central file system so that there is easy retrieval of documents and records on all matters upon which the Fund is working, and a coordinated system of office management, purchasing, inventory, and maintenance. The manual of policies and procedures is attached as Appendix D in draft form. It is expected that it will be placed in final form shortly after the first of the year.

The Future

The Fund has passed through the most difficult period of growth. It is now about to reach its optimum staff size and at this point, decisions have to be made as to how many attorneys the Fund will ultimately have on its staff, whether or not the policy of having a central office shall be departed from, and what kind of balance there should be among the cases handled by the Fund on a subject matter basis. Priority setting becomes especially important when the Fund reaches its capacity in terms of the number of cases lawyers are handling because very few new cases can be taken. The Steering Committee has set a special meeting of the attorneys and Steering Committee members which will be held this winter to discuss such matters.

Another matter of importance to the Fund's future is that of long-range funding. The Fund intends to embark on a public solicitation drive after the first of the year. In addition, the possibility of establishing an endowment is being explored as well as other alternatives to continued

reliance primarily upon foundation funding. Although the Fund has been quite successful in raising funds from foundations, it is unrealistic to expect that dependence on this source will assure the Fund's permanent existence. The possibility of charging fees of clients who are able to pay them or in cases where funds are produced from which a fee could be had is being explored as well.

SUMMARY OF CASES

TABLE OF CONTENTS

	Page
Protection of Natural Resources	1
<u>Pyramid Lake Paiute Tribe of Indians v. Morton</u>	1
<u>United States v. Nevada & California</u>	2
<u>Cocopah Tribe of Indians v. Morton</u>	3
<u>Jicarilla Apache Tribe of Indians v. Morton</u>	3
<u>Lomayaktewa v. Morton</u>	4
<u>Chemehuevi Tribe of Indians v. Federal Power Commission</u>	5
<u>Rincon & LaJolla Bands of Mission Indians v. Escondido Mutual Water Company</u>	6
Project No. 176, Relicensing Proceedings Before the Federal Power Commission	7
<u>Begay v. New Mexico Public Service Commission</u>	7
Lease of First Mesa Lands on Hopi Reservation to Church of Jesus Christ of the Latter Day Saints	8
Western Shoshone Pinon Harvesting	8
Water Resources Council Testimony	9
Central Arizona Project Review	9
<u>Walker River Paiute Tribe v. Southern Pacific Railroad</u>	10
<u>Muckleshoot Tribe v. Puget Sound Power & Light Company</u>	11
Alaska Pipeline Permit	11
<u>Arizona Public Service Company v. Environmental Protection Agency</u>	11

	Page
California Indian Land Claims	12
Treaty Rights	13
<u>United States v. Winnebago Tribe of Nebraska</u>	13
<u>United States v. Washington</u>	14
<u>Confederated Tribes of Umatilla Reservation</u> <u>v. Froehlke</u>	14
Fishing Rights in Michigan	15
Termination	15
<u>United States v. Committee to Save the Remain-</u> <u>ing Klamath Lands</u>	15
Menominee Termination	16
<u>Affiliated Ute Citizens v. United States</u>	16
Klamath Falls, Oregon: Economic & Civil Discrimination	17
Termination Research Project	17
State Indians	18
<u>The Passamaquoddy Tribe of Indians v. Morton</u>	18
<u>Oneida Nation v. Oneida & Madison Counties</u>	19
Eastern Indians Conference	19
Education	20
Johnson-O'Malley Regulations	21
<u>Tahdooahnippah v. Thimmig</u>	21
<u>Fielder v. Board of Education</u>	21
<u>Odegaard v. DeFunis</u>	22
<u>New Rider v. Board of Education</u>	22

	Page
<u>Wilber v. Board of Education</u>	23
Rocky Boys' Community Controlled School	23
<u>Natonabah v. Board of Education, Denetclarence v. Board of Education</u>	23
<u>Brigman v. Inchelium Board of Education, Washington v. Brigman, Vanderbol v. Inchelium Board of Education</u>	24
Onondaga Reservation Education Problems	25
Winnebago Johnson-O'Malley Contract	25
Oklahoma Johnson-O'Malley Problems	26
United States Office of Education Policy Statements	26
Teaching at New Mexico Summer Program for Indian Students	26
Jurisdiction and Sovereignty	27
<u>Mobil Oil v. Local Boundary Commission</u>	27
Maintenance of Tribal Jurisdiction	
<u>Rincon Band v. County of San Diego</u>	28
<u>Bad Bear v. Fall River County Subcommission for the Mentally Retarded</u>	29
<u>United States v. Kills Plenty</u>	29
Indian Criminal Jurisdiction in the Proposed Federal Criminal Code	30
<u>Natewa v. Natewa</u>	30
Taxation and Business.	31
<u>McClanahan v. Arizona Tax Commission</u>	31
<u>Tonasket v. State of Washington</u>	32

	Page
<u>Mescalero Apache Tribe v. Jones</u>	32
<u>Bissonette v. Shannon County Commissioners</u>	33
Individual Indian Rights	33
<u>Skeet v. Tucson Gas & Electric Co.</u>	33
The Death of Raymond Yellow Thunder	34
Bureau of Indian Affairs Welfare Programs	35
<u>Schryver v. South Dakota Employment Security Department</u>	35
Osage Tribal Elections	36
Rapid City Flood Relief	36
<u>Crowe v. Erikson</u>	36

APPENDIX A
NATIVE AMERICAN RIGHTS FUND

SUMMARY OF CASES
JANUARY, 1973

The primary objective of the Native American Rights Fund is to seek solutions to major Indian problems through the legal process. As illustrated by the following summary, the Fund is active in several areas of great concern to Indian people.

Protection of Natural Resources

The protection of Indian land and water rights is crucial to the present and future development of the reservations. Without an adequate land and resource base, Indians will never realize the goal of economic self-sufficiency in their homelands. The record of the United States in its capacity as trustee of Indian resources is unimpressive at best. This explains the alignment of the federal government as a defendant in many of the cases as Fund attorneys seek further legal definition of the trust relationship.

Pyramid Lake Paiute Tribe of Indians v. Morton,
United States District Court, District of
Columbia (filed August 1970)

This is a lawsuit against the Secretary of the Interior in his capacity as trustee, seeking judicial review of the course of conduct of the Secretary which has resulted in the

decline and partial destruction of Pyramid Lake in Nevada which is owned by the Pyramid Lake Paiute Tribe. At issue are the Secretary's regulations which allocate the waters of the Truckee River between Pyramid Lake and the Newlands Reclamation Project. Several months ago, the court ruled that the Indians have made out a prima facie case that the Secretary's previous regulations violate his trust responsibilities to the tribe to preserve the lake. The court then ordered the Secretary to come forward with proof justifying any departures from the new regulations proposed by the tribe. Trial was held in October, 1972, and a sweeping decision in favor of the tribe was handed down in November ordering the Secretary to revise his regulations and emphatically recognizing the trust obligations of the Secretary to the Indians.

United States v. Nevada and California, United States Supreme Court (filed September 1972)

The government has filed an original action in the Supreme Court against the states of Nevada and California seeking to rectify past mistakes by establishing a water right for the Pyramid Lake Paiute Tribe sufficient to maintain the level of Pyramid Lake and the fishery in the lower Truckee River. Fund attorneys, on behalf of the tribe, worked closely with attorneys from the Justice Department in framing the lawsuit and were successful in convincing the government to take a position favorable to the tribe on the critical legal issues

involved in the case. The Fund plans to file an amicus curiae brief in support of the Supreme Court's taking jurisdiction of the case which promises to be the most important Indian water rights case of the decade. If the Supreme Court takes jurisdiction as expected, Fund attorneys will seek to intervene in the case on behalf of the Pyramid Lake Paiute Tribe.

Cocopah Tribe of Indians v. Morton, United
States District Court, Phoenix, Arizona
(filed October 1970)

This action on behalf of the Cocopah Tribe of Arizona challenges the United States' position that it owns substantial land which the tribe believes it owns. A 1955 legal opinion by the Interior Department Solicitor gave the Bureau of Land Management nearly 1,000 acres of accreted land formerly considered to be Cocopah Reservation land. The original 1917 reservation bordered on the Colorado River and, as the course of the river shifted, the additional acreage accreted to the reservation land. After successfully resisting the government's motion to dismiss over a year ago, Fund attorneys have urged a review of the 1955 opinion by the Interior Department Solicitor. A revised opinion, supporting the tribe's position has been rendered and the Fund intends to have it embodied in a judgment.

Jicarilla Apache Tribe of Indians v. Morton,
United States Court of Appeals, Ninth Circuit
(filed June 1971)

Federal compliance with the 1969 National Environmental

Policy Act is sought in this action by the Jicarilla Apache Tribe and several individual Navajos. At issue is the role of several federal agencies in approving the construction of a network of six giant, environmentally destructive, coal-burning electrical power plants and attendant strip-mines on or near Indian reservations in the Southwestern United States. After the case was transferred by District of Columbia courts to the United States District Court in Arizona, Fund attorneys sought judgment from the court that the environmental impact studies released by federal agencies were defective and that a regional cumulative assessment of environmental impact was required. From an adverse decision of the court in March, Fund attorneys appealed to the Ninth Circuit Court of Appeals in San Francisco. The Fund's motion for an expedited appeal was granted and oral argument on the case was heard in July. A decision is expected soon.

Lomayaktewa v. Morton, United States District Court, Arizona (filed May 1971)

Fifty-nine Hopi traditional and religious leaders, including the four Hopi Kikmongwis (chiefs), seek to set aside the approval by the Secretary of the Interior of a lease of Hopi land to Peabody Coal Company by the "Hopi Tribal Council." The lease is for the strip mining of coal from Black Mesa, a sacred Hopi area, to fuel two of the power plants in the network of six plants planned in the area. The

suit is based on the Secretary's duty to insure compliance with the Hopi Constitution, which was violated in two different ways by the tribal council in leasing Black Mesa lands. Defendants Secretary of Interior and Peabody Coal moved to transfer the case to Arizona. The motion was granted last November, and affirmed by the Court of Appeals for the District of Columbia in February. Upon the strong insistence of the Hopi clients, Fund attorneys filed a petition for a writ of certiorari with the United States Supreme Court on the issue of transfer which was recently denied. A motion to dismiss brought by the power companies based upon the failure to name the Hopi Tribe will be heard soon. The case is now before a new judge in Arizona, following the success of Fund attorneys in setting aside an erroneous assignment of the case this past summer, resulting in its reassignment.

Chemehuevi Tribe of Indians v. Federal Power
Commission, United States Court of Appeals,
District of Columbia (filed September 1971)

This is an appeal from an order of the Federal Power Commission dismissing a complaint by the Chemehuevi Tribe, the Cocopah Tribe and individual Navajos against all of the power companies in the Southwestern power consortium to compel the FPC to take licensing jurisdiction over the six coal-fired power plants in the Southwestern complex. The FPC traditionally has taken jurisdiction over only hydroelectric plants, although the Federal Power Act does not preclude steam plant jurisdic-

tion. Such jurisdiction would insure consideration of environmental, recreational, esthetic, historical, and cultural values in licensing the six power plants. The FPC disclaimed jurisdiction last November and denied a petition for rehearing in December. In January, a petition for review of the FPC order was filed in the Court of Appeals in Washington, D. C. After submission of briefs, oral argument was heard in September and a decision is awaited.

Rincon and LaJolla Bands of Mission Indians v.
Escondido Mutual Water Company, United States
District Court, San Diego, California
(filed July 1969)

This action for declaratory and injunctive relief and for damages seeks to invalidate contracts for the use of Indian water from the San Luis Rey River in southern California on the ground that the contracts violate federal Indian contracting laws. Originally filed by California Indian Legal Services, the case is now being handled primarily by the Fund, and discovery has been proceeding. In July, the Fund filed a similar suit on behalf of the Rincon and LaJolla Bands against the Vista Irrigation District which has also been diverting waters away from Indian lands. Also in July, the United States, in its capacity as trustee for the Indians, finally filed suit on behalf of the Rincon, LaJolla, San Pasqual and Pala Bands of Mission Indians against Escondido Mutual and Vista for damages and reformation of the contracts. All three cases have been consolidated and trial is expected in spring, 1973.

Project No. 176, Relicensing Proceedings
Before the Federal Power Commission

In this administrative proceeding before the Federal Power Commission, Escondido Mutual Water Company seeks to renew its license for the facilities which divert the flow of the San Luis Rey River in southern California. The application for renewal is opposed by the Rincon and LaJolla Bands of Mission Indians, represented by the Fund, and the Secretary of the Interior on the grounds that the water contracts are defective and the original FPC license has been violated by Escondido Mutual. The Indians, with the support of the Secretary, also seek a non-power FPC license to take over the facilities on the San Luis Rey River now held by Escondido Mutual. The proceedings, which present questions of first impression to the FPC, will be heard within the next few months.

Begay v. New Mexico Public Service Commission,
New Mexico District Court, Gallup, New Mexico
(filed April 1972)

This case began as an administrative proceeding in which Tucson Gas & Electric Company applied to the New Mexico Public Service Commission for permission to construct a power line from a power plant in northwestern New Mexico to Tucson, Arizona. Navajo Indians who opposed the routing of the power line across their lands were represented before the Commission by Fund attorneys and attorneys from D.N.A., the Navajo legal

aid program. After lengthy hearing, the Commission approved the application in March. Fund attorneys filed a petition for review in New Mexico state court but the court affirmed the Commission's decision in September.

Lease of First Mesa Lands on Hopi Reservation
to Church of Jesus Christ of the Latter Day
Saints, Appeal to Secretary of the Interior

This administrative appeal to the Department of Interior of a lease to the Mormon Church by the Hopi Tribal Council on behalf of the Hopi Kikmongwi (chief) and other traditional and religious leaders of the First Mesa villages raises the issue of the tribal council's jurisdiction to lease land held by First Mesa clans. Fund attorneys contend the Hopi Constitution preserves the jurisdiction of the Kikmongwi over this land and that the tribal council's action was illegal. The appeal, instituted over a year ago, was summarily dismissed by the Secretary of Interior in March on the grounds of improper substitution of parties. The Kikmongwi, although opposed to the lease, was pressured by the Bureau of Indian Affairs to drop his appeal which was continued by his sub-chiefs. In May, in response to the Fund's criticism of the March decision, the Secretary of Interior agreed to reconsider his decision.

Western Shoshone Pinon Harvesting

An investigation by Fund attorneys of complaints by Western Shoshones in Nevada began after receiving information

that their access to pinon nuts (a traditional food) on the public domain was being endangered by a Bureau of Land Management practice of destroying pinon and juniper trees in order to upgrade the range yield for grazing. Finding legal action inadvisable, Fund attorneys began negotiations with the B.L.M. in an effort to secure some pinon areas for the use of the Indians. The council is hopeful of reaching a reasonable solution of the problem with the B.L.M.

Water Resources Council Testimony

The National Water Resources Council establishes the standards which federal agencies must use in determining whether to construct water and water-related projects. The council held hearings on its proposed standards and requested the Fund to testify last spring. The Fund advocated a relaxed benefit-cost analysis for projects that would benefit Indians and a veto for Indian tribes of any federal water project using reservation lands while conveying benefits to others. The Fund, in conjunction with the Water Rights Office of the Bureau of Indian Affairs, has sent a packet of materials on the proposed standards to Indian leaders and communities, urging them to make their views known to the Water Resources Council.

Central Arizona Project Review

Over the past year, at the request of the Chemehuevi

Tribe, the Fund has been analyzing draft environmental impact statements prepared on the Central Arizona Project (CAP), a Bureau of Reclamation project to be constructed soon. The CAP will divert nearly 2 million acre-feet of water from the Colorado River, where the Chemehuevis and other tribes are located, to the Phoenix-Tucson area. Upon reporting serious defects in the draft statements, the Fund was authorized by the Confederation of Lower Colorado River Tribes to bring an action on their behalf under the 1969 National Environmental Policy Act to halt the CAP if the final impact statements were deficient. The final statement was issued and reviewed in late September and found by Fund attorneys to be legally sufficient, thus foreclosing this avenue of a legal action.

Walker River Paiute Tribe v. Southern Pacific
Railroad, United States District Court,
Reno, Nevada (filed July 1972).

This is a suit seeking to have the Southern Pacific declared a trespasser with respect to its right-of-way across the Walker River Reservation and for damages. The suit claims that the 1882 agreement between the Indians and the railroad was never ratified by Congress as required by federal law. The United States, in its capacity as trustee, has filed a similar suit. In a related case, the Fund is participating as of counsel in a suit by the Pyramid Lake Paiute Tribe against the Southern Pacific for damages occurring when the railroad abandoned its right-of-way

across the reservation.

Muckleshoot Tribe v. Puget Sound Power and
Light Company, United States District Court,
Seattle, Washington (filed July 1972)

This action was filed to protect the water rights of the Muckleshoot Tribe in the White-Stuck River by avoiding the bar of the statute of limitations which was about to run. At issue is a utility company dam on the river above the reservation which diverts water around the Indian lands. Studies and investigation are proceeding and settlement may be possible. Fund attorneys are cooperating with Seattle Legal Services on the case.

Alaska Pipeline Permit

Last spring the Secretary of the Interior announced he would be approving a permit for the construction of the controversial trans-Alaska pipeline. The Fund, on behalf of the Arctic Slope Native Association, is asking the Secretary to include in the permit a provision holding the pipeline company strictly liable for any damages caused by spillage. Other safeguards are also asked. Although the Secretary rejected these amendments last spring, he is now in the process of reconsidering the decision.

Arizona Public Service Company v. Environmental
Protection Agency, Court of Appeals, Tenth
Circuit (filed August 1972)

Pursuant to the National Clean Air Act, states are

required to submit plans for complying with clean air standards set by the Environmental Protection Agency. In July the E.P.A. rejected the state plans for Utah, Arizona and New Mexico with regard to emissions from electrical power plants in those states. The E.P.A. proposed alternative stricter plans for controlling these emissions. The power companies now seek to reverse the E.P.A.'s decision. Fund attorneys, on behalf of the Jicarilla Apache Tribe and individual Navajos have petitioned to intervene in these suits in order to support the rejection of the state plans and to urge the E.P.A. to establish stricter standards than they have proposed.

California Indian Land Claims

In 1964 the Indian Claims Commission approved a settlement of all California Indian land claims for 47 cents an acre. Now that distribution of the money is near, many California Indians who have felt the settlement was unfair want to reopen the matter and seek additional payments and the return of some land. Fund attorneys have consulted with attorneys from California Indian Legal Services and a private attorney in San Francisco about the possibility of reopening the claims case. A Fund attorney was also present at a statewide meeting to discuss the issue. California Indian Legal

Services has filed suit against the United States in the Court of Claims challenging the unfairness of the settlement. The Fund is of counsel in the case, which was filed in September.

Treaty Rights

The United States has historically failed to honor century old Indian treaties. The inviolability of these solemn agreements must be recognized by the courts if the government's record is to improve.

United States v. Winnebago Tribe of Nebraska,
United States District Court, Omaha, Nebraska
(filed March 1970)

Government action was instituted to condemn certain Winnebago reservation lands for a recreation lake complex along the Missouri River. The tribe defended on grounds that the clear Congressional intent required to abrogate an Indian treaty, which here guarantees the land "forever" to the Winnebagos, is not present. From an adverse ruling by the court, Fund attorneys appealed. The Court of Appeals held that the decision was not reviewable until the land valuation question had been decided. The Supreme Court declined to review the case. The case is currently in the trial court where questions of land title and valuation are to be determined.

United States v. Washington, United States
District Court, Tacoma, Washington
(filed September 1970)

This suit by the federal government against the State of Washington asserts that the enforcement of state laws and regulations interfere with the treaty fishing rights of Western Washington Indian Tribes as guaranteed under several treaties. The Fund, in conjunction with Seattle Legal Services, has intervened on behalf of five Western Washington tribes. Last winter the Fund was unsuccessful in its attempt to enjoin the state from arresting Indians and seizing fishing nets during the Indian fishing season. Discovery in the case has been proceeding and several expert witnesses are preparing testimony for the case. A trial has been requested in spring 1973.

Confederated Tribes of Umatilla Reservation
v. Froehlke, United States District Court,
Portland, Oregon (filed March 1972)

In this suit by the Umatilla Tribe and 22 individual Yakima Indians against the Army Corps of Engineers to protect Indian treaty fishing rights, the plaintiffs seek to enjoin permanently federal officials from constructing modifications of three dams along the lower Columbia River. The modifications would raise reservoir levels and threaten presently occupied fishing sites, thus seriously impairing the exercise of treaty

fishing rights. It would also threaten fish life by fluctuations in the reservoir and river levels. Last spring, Fund attorneys obtained a preliminary injunction against further construction of dam modifications. Negotiations are now under way in an attempt to settle the dispute.

Fishing Rights in Michigan

The Fund has been consulting with attorneys from Upper Peninsula Legal Services in Michigan on two treaty fishing rights cases. People v. LeBlanc is an attack by the State of Michigan on treaty fishing rights and Michigan United Conservation Club v. Anthony is an attempt by a sportsman organization to enjoin all Indian treaty fishing in the State. The cases have been tried and decisions are awaited.

Termination

United States v. Committee to Save the Remaining Klamath Lands, Circuit Court of Oregon for the County of Multnomah (filed October 1970)

Under the terms of the Klamath Termination Act of 1954, much of the Klamath Reservation was sold and cash shares distributed to tribal members. Those Klamaths declining cash payments had a portion of the lands put in trust with a private trustee. Pursuant to an election the trustee has taken steps to terminate the trust and distribute

cash shares. Klamath beneficiaries who oppose the liquidation for various reasons have formed the Committee to Save the Remaining Klamath Lands. The committee is a defendant in the trustee's petition for court approval of the liquidation. The Fund is co-counsel in the case for the committee in their efforts to preserve the remaining land or portions of it intact. Negotiations with the trustee on the method of disposing of the land are in progress and, should settlement efforts fail, the case will most likely proceed to trial.

Menominee Termination

Terminated by Congressional action in the 1950's, the Menominees have suffered from the loss of their special status as Indians. Welfare rolls have increased and the tribe has been forced to sell much of their lands because of financial straits. Fund attorneys have acted as legal consultants to the tribe in their efforts to repeal termination and restore federal responsibility for the Menominees with accompanying benefits and services.

Affiliated Ute Citizens v. United States, United States Supreme Court

Under the 1954 Ute Termination Act, "mixed blood" Utes have received shares evidencing their interest in the Ute mineral estate. A bank has held these shares for the Indians. Through fraudulent practices, many of the shares

have come into non-Indian hands with the acquiescence of the bank and the Bureau of Indian Affairs. The Indians seek monetary recovery for violations of the securities and federal trust responsibilities. The Fund filed a brief amicus curiae in the case, emphasizing the trust obligations owed to the Indians by the United States. In April the Supreme Court ruled that the United States had no residual responsibility with respect to the terminated Utes, but did hold that the Indians had stated a case against the bank for securities law violations.

Klamath Falls, Oregon: Economic and Civil
Discrimination

The Fund has organized, in conjunction with regional OEO and BIA offices and the Organization of the Forgotten Americans, an eight month planning grant for the Klamath Falls Indian community. The purpose of the study is two-fold. Economic and civil wrongs committed by the community of Klamath Falls against the terminated Klamath Falls Indians will be documented for the purposes of possible litigation to redress wrongs. Also, the need for a long-term community development corporation to provide the Klamath Falls terminated Indian community with financial, legal, educational and health services will be documented.

Termination Research Project

Special counsel for the Fund is preparing a major

research paper on the nature of the termination of federal services to Indian tribes. The study will compile, document and analyze the various termination schemes utilized by the federal government. The final report, which will run approximately 200 pages, will be the first major publication on the nature of termination.

State Indians

The Passamaquoddy Tribe of Indians v. Morton,
United States District Court, Portland, Maine
(filed June 1972)

The Passamaquoddy Tribe petitioned the United States to initiate a lawsuit on its behalf against the state of Maine for wrongs dating back to 1794. The government refused to file the suit. Since the statute of limitations would have prevented the United States from filing the lawsuit after July 18, special counsel for the Fund filed suit on behalf of the tribe against the Secretary of the Interior and the Attorney General seeking to have the court require them to file suit for the Indians against the state of Maine. Although the government argued it has no trust relationship with the Passamaquoddy Tribe, the court ordered the government to file suit against the state of Maine. The suit was filed. The government appealed the order requiring them to file suit but the appeal was dismissed after the government failed to file a brief.

Oneida Nation v. Oneida and Madison Counties,
United States Court of Appeals, Second Circuit

The Oneida Nation has asserted that transactions in 1795 by which most of their lands passed to the state of New York violate federal laws requiring federal approval of such transactions. The suit on behalf of the Oneidas was dismissed for lack of jurisdiction, the court holding that there was no federal question involved. On appeal, the Fund filed an amicus curiae brief supporting the claim for jurisdiction. The Court of Appeals ruled against the Oneidas. The Fund is assisting private counsel for the tribe in a petition for a writ of certiorari to be filed in the United States Supreme Court.

Eastern Indians Conference

The legal status of Indian tribes in the Eastern United States is unlike that of the tribes of the Western part of the country. Many of the tribes in the East are not recognized as tribes by the federal government while others have special relationships with the respective states. In response to inquiries on the subject, the Fund has agreed to undertake a general survey of Eastern Indian problems in the hope of formulating a set of well defined alternatives for Eastern tribes. A conference of Eastern Indians was organized by the Fund and held in Washington, D. C., in December. Over 100 representatives of Eastern

tribes attended. Questions of tribal identity and federal recognition were discussed. A Coalition of Eastern Native Americans was formed at the conclusion of the conference.

Education

The grim state of affairs in Indian education has been documented in several reports released within the last few years. The Fund is seeking to inform Indian people of their rights as parents and insure proper use of Indian education monies. Discrimination in public schools must be confronted and access to higher education must also be protected if education is to be the key to Indian self-determination.

Johnson-O'Malley Regulations

Recent studies have uncovered widespread misuse of Johnson-O'Malley funds, which are monies which go from the Bureau of Indian Affairs to local public school districts to relieve Indian educational needs. In many cases, the non-Indians rather than Indians in the school district have received the primary benefit from expenditures of the funds. To remedy the situation, the Bureau of Indian Affairs is revising the regulations relating to the release and use of the monies. The Fund has been asked to participate in this process and Fund attorneys have been in attendance at recent meetings held in Washington for this purpose, and are actively involved in drafting and analyzing

proposed regulations.

Tahdooahnippah v. Thimmig, United States District Court, Denver, Colorado (filed July 1971)

This suit seeks to compel the governing officials of Fort Lewis College and the State of Colorado to provide tuition free education for Indians at the state supported college located in southwestern Colorado. The action is based on a 1910 agreement between the United States and Colorado in which federal land containing a school was transferred on condition that Indians at all times be admitted tuition free. The Fund is of counsel in the case. In March, the United States finally brought suit to enforce the agreement. The cases were consolidated and heard on motion for summary judgment. In August, the court ruled that the State of Colorado had a legal obligation to provide tuition free education for Indians at the college. The state has appealed.

Fielder v. Board of Education, United States District Court, Lincoln, Nebraska (filed March 1972)

In response to reports of a serious pattern of discrimination in a school near the Winnebago Reservation, Fund attorneys represented four Indian students who had been expelled. The local board of education reinstated two of the four. Suit was filed immediately on behalf of the other two students. A temporary restraining order and a subsequent preliminary injunction were issued against the

school board. In July, the injunction was made permanent and the records of the students cleared of all disciplinary action.

Odegaard v. DeFunis, Supreme Court
of the State of Washington

This appeal is from a decision that a white student refused admission to law school was denied equal protection of the law because he was "statistically" better qualified than students participating in the school's minority admissions program. A Fund attorney submitted a brief amicus curiae on behalf of the American Indian Law Students Association and two Indian law students in the program under attack. The constitutionality of the program was argued, including a "permissive" standard of review of such "remedial" programs. A decision is awaited.

New Rider v. Board of Education, Court of
Appeals, Tenth Circuit (filed April 1972)

Last spring three Indian students were expelled from Pawnee, Oklahoma schools for wearing their hair in traditional fashion. When the board of education refused to reinstate the students, Fund attorneys obtained a restraining order. At trial on the merits in August, the court ruled against the students on the grounds that their constitutional claims were insubstantial. Fund attorneys have appealed the case and were successful in obtaining an injunction against the school board pending appeal.

Wilber v. Board of Education, United States
District Court, Madison, Wisconsin
(filed June 1972)

This is an action alleging widespread discrimination against Menominee Indian students in the Shawano Public Schools in Wisconsin. Relief is sought against excessive suspensions and expulsions, a discriminatory "tracking" system, the inequality in educational facilities, employment discrimination in the schools and curriculum reform. The United States is expected to join in the suit against the school district. Discovery in the case is now proceeding and trial is expected within the next few months.

Rocky Boys' Community Controlled School

The Fund was contacted by the Johnson-O'Malley Parent Advisory Council at the Rocky Boys Reservation in Montana to advise them concerning the possibility of establishing a community controlled high school. Reservation high school students now attend a high school in another school district where reservation residents have no right to vote. With the assistance of Fund attorneys, the negotiations will begin to include the reservation area in the high school district in order to secure the right to vote in school board elections.

Natonabah v. Board of Education, Denetclarence
v. Board of Education, United States District
Court, Albuquerque, New Mexico

These cases challenge the misuse of Title I and

Johnson-O'Malley funds in Gallup and Shiprock, New Mexico schools, which have large Indian student populations. The cases were originally filed by D.N.A., the Navajo legal services program. The Fund is working with D.N.A. and the Harvard Center on Law and Education on the case. Last summer a lengthy trial in the Natonabah case was held. The United States has filed briefs supporting the position of the Indians in the case. A decision from the trial court is expected soon.

Brigman v. Inchelium Board of Education,
Washington v. Brigman, Vanderbol v. Inchelium
Board of Education, Washington State Courts

The Inchelium, Washington School District is one of the few school districts in the country which is governed by an Indian controlled school board. In August, the Fund was contacted to represent the school board in several suits precipitated by financial problems in the district. Fund attorneys, along with representatives from the Coalition of Indian Controlled School Boards, negotiated with the Bureau of Indian Affairs for funds to alleviate the immediate financial problems. In the Brigman actions, where Washington State and individual taxpayers seek to recover amounts expended over the approved budget of the district, Fund attorneys have initiated negotiations which could lead to settlement. Vanderbol is an action by three teachers who claim they were improperly dismissed by the school board. Plaintiff's

motion for summary judgment against the school board was heard in October. Fund attorneys plan to continue their advice to the school board on the financial problems of the district.

Onondaga Reservation Education Problems .

The Onondagas of the state of New York contacted the Fund for assistance in developing a community controlled school, investigation of a Title I program, and the dismissal of an Indian employee by the local school district. The Fund plans to represent the employee in reinstatement procedures against the Civil Service Commission in New York. The Fund, along with the Harvard Center for Law and Education and the Coalition of Indian Controlled School Boards, will be involved in the community controlled school effort and the Title I investigation.

Winnebago Johnson-O'Malley Contract

The Nebraska Indian Intertribal Development Corporation, which administers all Johnson-O'Malley funds in the state of Nebraska, requested the Fund to draft contracts for the administration of Johnson-O'Malley funds between the corporation and the various school districts. Fund attorneys drafted three contracts for the corporation, which is now negotiating the execution of the contracts with the school districts.

Oklahoma Johnson-O'Malley Problems

On request, Fund attorneys attended a state-wide meeting in Oklahoma on Johnson-O'Malley funds. Information on expenditures was analyzed, resulting in a recommendation to the Bureau of Indian Affairs that a vigorous investigation be conducted by the Bureau into expenditures in Oklahoma. If necessary, litigation and negotiations will be undertaken to secure proper administration of the funds.

United States Office of Education Policy Statements

The Office of Education requested the Fund to comment on two draft policy statements concerning Indian education. The Fund prepared an opinion letter criticizing the two draft statements. The opinion letter set forth authority for the proposition that the Office of Education, in determining whether to support community controlled schools, should not consider whether the establishment of such a school would constitute either de jure or de facto racial isolation. The Fund's position was that such a consideration would effectively bar the establishment of most community controlled schools. The conclusion was that the federal government may properly "discriminate" in favor of American Indians, in the sense that some programs will benefit only American Indians.

Teaching at New Mexico Summer Program for Indian Students

At the request of the Indian Law Scholarship Program

at the University of New Mexico School of Law, a Fund attorney was an instructor at the summer program for Indian law students. He taught a course in legal writing two days a week for a four week period.

Jurisdiction and Sovereignty

The best hope for Indian survival and development rests with the maintenance of the tribe as an institution. The inherent sovereign powers of a tribe to hold land, to govern tribal members, and to command the respect of other units of government are essential to an Indian nation concept. Only when tribes are able to control internal matters free from outside interference will its promise of meeting peculiar Indian needs be fulfilled.

Mobil Oil v. Local Boundary Commission
Superior Court of the State of Alaska,
Anchorage, Alaska (filed March 1972)

This is a suit by several oil companies seeking judicial review of a determination by the Alaska Local Boundary Commission that an application by the Arctic Slope Native Association for the establishment of a borough, consisting of 56.5 million acres on the North Slope, should be accepted. The oil companies are opposed to submitting themselves to the taxing authority of the borough. The intention of Eskimo residents of the borough is to use the revenues to meet their many local needs.

The Fund, on behalf of the A.S.N.A., intervened in the suit. The Fund was successful in resisting the efforts of the oil companies to halt the election of borough officials and to stay certification of the election results. A trial in the case was held in November and a decision is awaited.

Maintenance of Tribal Jurisdiction

As a result of the federal government opening many Indian reservations for settlement under the homestead laws, questions have arisen over the extent of tribal jurisdiction which remains. The Fund has advised the Sisseton-Wahpeton Sioux Tribe of South Dakota on these questions and is planning to represent the tribe in an amicus curiae brief in a test case pending before the South Dakota Supreme Court. The Fund has also provided assistance on similar problems to attorneys on the Wind River Reservation in Wyoming.

Rincon Band v. County of San Diego, United States Court of Appeals, Ninth Circuit

The Rincon Band of Mission Indians of southern California by ordinance decided to allow certain forms of gambling on their reservation. The Federal District Court in San Diego ruled that because the County of San Diego had not exercised the local option to allow gambling as counties and incorporated cities in the

state may do, gambling is prohibited on the reservation. The Fund has filed an amicus curiae brief supporting the right of the tribe to allow gambling, arguing that a contrary result impairs tribal sovereignty and thwarts economic development. The case will be argued in March.

Bad Bear v. Fall River County Subcommission
for the Mentally Retarded, South Dakota
Circuit Court, (filed July 1971)

This is an action to compel a state institution to commit an Indian child to the facility. Although the tribal court has approved the commitment and the child now lives off the reservation, the state contends that it has no jurisdiction to commit the child. The case involves the right of Indians to share in state services on an equal basis with other citizens. A decision is expected soon.

United States v. Kills Plenty,
Court of Appeals, Eighth Circuit

The Fund filed an amicus curiae brief in this appeal from a criminal conviction in federal court, arguing that an Indian who had been acquitted in tribal court of driving while intoxicated could not be subjected to relitigation of the intoxication issue in a federal manslaughter trial. Because the federal government has so completely regulated the field of Indian criminal justice, the Fund argued that the federal court

should be bound by the findings of the tribal court in that the two courts are in conception, although not in origin, arms of the same sovereign. In a close decision, the Court of Appeals affirmed the conviction.

Indian Criminal Jurisdiction in the
Proposed Federal Criminal Code

At the written request of Senator McClellan of the Senate Judiciary Committee, the Fund has submitted comments on the proposed revisions of the Federal Criminal Code which affect Indians. While the revised code would eliminate disparate sentences based on race, allow federal courts to instruct the jury as to lesser included offenses, and adjust double jeopardy problems which currently exist, new problems would be created. Tribal courts may be stripped of their misdemeanor jurisdiction and permanently denied jurisdiction over non-Indians. The Fund is coordinating its comments with the Indian Civil Rights Task Force in Washington, D. C. and with legal services attorneys in the field. The Fund is also urging the committee to consult widely with the tribes affected.

Natewa v. Natewa, New Mexico Supreme Court

The New Mexico Supreme Court has held that New Mexico courts have jurisdiction to enforce a Wisconsin support order against a Zuni residing on the reserva-

tion. At issue is whether the Zuni Tribal Court has exclusive jurisdiction over such enforcement procedures on the reservation. On appeal to the United States Supreme Court, the Fund plans to assist with an amicus curiae brief.

Taxation and Business

Congress has seen fit to compensate for some of the competitive disadvantages which Indians labor under by exempting certain Indian lands and income from taxation. These exemptions are coming under increasing attack and must be protected to insure optimum Indian economic development. Similarly, individual Indian leasing and business ventures need encouragement in order to redirect profits from Indian goods from non-Indian to Indian hands. These two devices provide the means for the betterment of Indian economic conditions.

McClanahan v. Arizona Tax Commission, United States Supreme Court

The Fund filed an amicus curiae brief in this important tax case involving the authority of the State of Arizona to impose an income tax on income earned by a Navajo Indian who works and resides on the Navajo reservation. The Fund argued that the state is without jurisdiction to apply its tax laws on the reservation because it failed to assume jurisdiction under Public

Law 280. The Fund is also seeking a clarification of the holding in Williams v. Lee, which implied that state law applies on Indian reservations so long as it does not infringe upon tribal self-government. The Supreme Court is expected to rule on the case during the current term.

Tonasket v. State of Washington,
United States Supreme Court

The Fund filed an amicus curiae brief in this case involving the question of whether the transfer of jurisdiction to the state authorized by Public Law 280 conferred upon the State of Washington the power to impose a comprehensive scheme of taxation on reservation Indians. Fund attorneys argued that Public Law 280 does not authorize such taxing jurisdiction and that Tonasket as an Indian trader is regulated by federal law which precludes the application of state taxes. A decision by the court is expected this term.

Mescalero Apache Tribe v. Jones,
United States Supreme Court

This case involves the authority of the state of New Mexico to impose its gross receipts tax on a tribal enterprise located on federal lands off the reservation. The Fund filed an amicus curiae brief in support of the tribe's immunity from taxation, arguing that the tribe

is a federal instrumentality and therefore exempt from state taxation. In addition, the Fund argued that the laws relating to the admission of New Mexico as a state prevents the state from exercising such taxing power over an Indian tribe. The Supreme Court is expected to rule on the case during its current term.

Bissonette v. Shannon County Commissioners,
South Dakota Circuit Court

This case involves the immunity of a reservation Indian in South Dakota from state personal property taxation. In August, the court ruled that the state could not tax the Indians' cattle, but held that the state statute of limitations barred the \$2,500 tax refund sought. An appeal to the South Dakota Supreme Court is planned. Failure of the United States to intervene in the case may provide a basis for a related suit.

Individual Indian Rights

Freedom of religion, cultural integrity, and individual protection from racial discrimination and fraudulent practices are also among the goals and objectives the Fund seeks to implement in its work.

Skeet v. Tucson Gas & Electric Co.,
United States District Court, Albuquerque,
New Mexico (filed November 1971)

This case arises out of the efforts of Tucson Gas

& Electric Company to construct a power line through the Navajo Reservation. Several individual land owners were induced to grant the utility rights-of-way through fraudulent promises. They have brought suit seeking damages and rescission of those right-of-way agreements. The Fund is of counsel to D.N.A., the Navajo legal services program in the case. The Indians have successfully defended against two motions to dismiss the case and all pre-trial discovery has been completed. A pre-trial conference has been held and trial will take place within the next few months.

The Death of Raymond Yellow Thunder

The Fund became involved in representing the family of Raymond Yellow Thunder approximately two weeks after his beating and death in Gordon, Nebraska, which attracted national attention. Of the suspects arrested, two have been tried and convicted of manslaughter and false imprisonment charges, and two suspects are awaiting trial. The Fund has prepared a civil rights action and a wrongful death action under federal and state law in an attempt to secure damages for the relatives of Yellow Thunder. The actions may be filed at the conclusion of the criminal trials if the surviving family members believe it to be desirable.

Bureau of Indian Affairs Welfare Programs

The Fund is cooperating with attorneys for the Center on Social Welfare Policy and Law in the preparation of an attorneys manual on the general assistance welfare program of the Bureau of Indian Affairs. In view of the large numbers of Indian people receiving general assistance and the arbitrary administration of the program over the years, the materials are especially valuable as an educational tool. The manual is due to be published within the next few months. A recent decision of the Ninth Circuit Court of Appeals has extended eligibility for B.I.A. general assistance to Indians off the reservation. The Fund has provided copies of the decision and B.I.A. policy papers on the subject to attorneys with clients who might benefit by this change in the law.

Schryver v. South Dakota Employment Security
Department, United States District Court,
Sioux Falls, South Dakota

Fund attorneys have provided some assistance to private attorneys in South Dakota on an employment discrimination matter. At issue is the dismissal of a non-Indian employee of the Employment Security Department for objecting to the Department's failure to enforce equal opportunities for Indians. Commission field investigators have made findings substantiating the claims. Trial is expected to be scheduled soon.

Osage Tribal Elections

The Fund attorneys provided assistance to legal aid and private attorneys in Oklahoma in redrafting a complaint and legal memorandum aimed at reforming the regulations governing the Osage Tribal Council elections. The suit would compel the Secretary of the Interior, the Commissioner of Indian Affairs and the Osage Tribal Council to conduct Osage tribal elections without reference to federal regulations which prevent Osage tribal members from voting in tribal elections unless they own headright annuity interest in the Osage mineral estate. The case is expected to be filed soon.

Rapid City Flood Relief

After the flash flooding in June which destroyed much of the Indian community in Rapid City, South Dakota, the Fund sent one of its summer Indian law clerks to Rapid City to assist in the counseling of victims of the flood regarding their rights to participate in federal disaster relief programs.

Crowe v. Erikson, United States District Court, South Dakota (filed November 27, 1972)

A class action suit has been filed on behalf of prisoners in the South Dakota State Penitentiary asking that the court end censorship of inmate mail, punishment of inmates without due process of law, denials of medical

care, denial to Indian inmates of equal access to work release programs and rehabilitative services conducted by Indians, denial to inmates the right to worship according to the Indian religion, and failure to place an Indian on the Board of Charities and Corrections. A preliminary injunction was granted by the court on December 1 limiting mail censorship. The matter is now in discovery in preparation for trial.

APPENDIX C

NATIVE AMERICAN RIGHTS FUND

PROFESSIONAL STAFF

David H. Getches, Director. A.B., Occidental College, 1964; J.D., University of Southern California, 1967 (Staff member, University of Southern California Law Review). Luce, Forward, Hamilton & Scripps, San Diego (1967-1968); California Indian Legal Services (1968-1970). Member of the bars of California, The District of Columbia, and of the United States Supreme Court. Publications: "The Ex Convict's Right to Vote," 40 So. Cal. L. Rev. 148 (1966); "Special Treatment of Cemeteries," 40 So. Cal. L. Rev. 716 (1967); Book Review, Uncommon Controversy, 23 Maine L. Rev. 265 (1971); "Lawyers and Beginnings for Indian Legal Services," NLADA Briefcase, Vol. 30, No. 5, May 1, 1972.

John E. Echohawk, Deputy Director. B.A., University of New Mexico, 1967; J.D., University of New Mexico Law School, 1970. Reginald Heber Smith Fellow (1970-1972). Member of the bar of Colorado.

L. Graeme Bell, Staff Attorney. A.B. (magna cum laude), Dartmouth College, 1966; J.D. (magna cum laude), Harvard Law School, 1969. Instructor, Harvard College, (1969-1972); Assistant Professor of Law, The Columbus School of Law, The Catholic University of America (1969-1972). Member of the bar of the District of Columbia.

Joseph J. Brecher, Staff Attorney. A.B. (cum laude), Amherst College, 1962. J.D., New York University Law School, Brennan, London & Bittenweiser, New York (1966-1967); Dinkelspiel and Dinkelspiel, San Francisco (1967-1969); California Continuing Education of the Bar (1969-1971). Member of the bars of New York and California. Publications: Environmental Law Handbook (with Manuel E. Nestle), California Continuing Education of the Bar (1970); Book Review, T. J. Kent, Open Space and the San Francisco Bay Area; Organizing to Guide Metropolitan Growth, 1 Ecology Law Quarterly 427 (1971); Environmental Litigation: Strength and Weaknesses, 1 Environmental Affairs 565 (1971); Black Mesa and the Law, Clear Creek #13 (March 1972), at 62; Venue in Conservation Cases: A Potential Pitfall for Environmental Lawyers, 2 Ecology Law Quarterly 91 (1972).

Reid Peyton Chambers, Of Counsel. A.B. (cum laude), Phi Beta Kappa, Amherst College, 1962; Oxford University, Bailliol College, 1964; LL.B., Harvard Law School, 1967,

(Editorial Board, Harvard Law Review). U.S. Attorney's Office, Washington, D. C., (1967); Arnold & Porter, Washington, D. C. (1967-1970); Professor of Law, UCLA School of Law. (1970-present). Member of the bar of the District of Columbia. Publications: "Reform of Presidential Nominating Conventions," 56 Vir. L. Rev. 179 (1970); "Discharge of the Federal Trust Responsibility to Enforce Legal Claims of Indian Tribes: Case Studies of Bureaucratic Conflict of Interest," A Study of Administrative Conflicts of Interests in the Protection of Indian Natural Resources, Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary of the United States Senate, 91st Cong., 2d Sess. 1971.

Vine Deloria, Jr., Of Counsel. B.S., Iowa State University, 1958; B.D., Lutheran School of Theology, 1963; J.D., University of Colorado School of Law, 1970. College of Ethnic Studies, Western Washington State College, Bellingham, 1970-72; Director, Southwest Intergroup Council, 1971-72; Instructor, University of California at Los Angeles, 1972. Member of the bar of Colorado. Publications: Custer Died for your Sins, The Macmillan Company, 1969; We Talk, You Listen, The Macmillan Company, 1970; Of Utmost Good Faith, Straight Arrow, 1971; The Red Man in the New World Drama, The Macmillan Company, 1971; Other miscellaneous publications in New York Times, Civil Rights Digest, Playboy Magazine, Publishers Hall Syndicate, and Art in America.

Thomas W. Fredericks, Staff Attorney. B.S., Minot State College, 1965; J.D., University of Colorado School of Law, 1972. Teacher, Bowbells High School, Bowbells, North Dakota (1965-1966); Tribal Administrator, Standing Rock Sioux Tribe, Fort Yates, North Dakota (1966-1969). Member of the bars of Colorado and North Dakota.

Roy S. Haber, Staff Attorney. A.B. Syracuse University, 1962; Degree in Comparative Law, Faculte Internationale Pour L'Ensignement Du Droit, 1966; J.D., New York University School of Law, 1965. Staff Attorney with Judge Morris Ploscowe, (1967-1970); Lawyers' Committee for Civil Rights Under Law, Jackson, Mississippi, (1970-1972). Member of the bars of New York and the United States Supreme Court.

Daniel H. Israel, Staff Attorney. A.B., Amherst College, 1963; M.A., University of Pennsylvania, 1964; J.D., University of Michigan, 1967. Instructor, University of Washington Law School (1967-1968); Roberts and Holland, New York, New York (1968-1970); Colorado Rural Legal Services, Boulder, Colorado (1970-1971). Member of the bars of New York and Colorado. Publications: "Indian Taxation, Tribal Sovereignty and Economic Development," The Native American Rights Fund, Inc., (1972).

Yvonne T. Knight, Staff Attorney. A.B., University of Kansas, 1965; J.D., University of New Mexico Law School, 1971. Reginald Heber Smith Fellow (1971-1972). Member of the bar of Colorado.

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Douglas R. Nash, Staff Attorney. A.B., University of Idaho, 1969; J.D., University of New Mexico, 1971. United States Department of Interior, Indian Civil Rights Task Force (1971-1972). Member of the bar of New Mexico. Publications: "Tribal Control of Extradition," 10 New Mexico Natural Resources Journal 626 (1970).

Robert S. Pelcyger, Staff Attorney. A.B. (cum laude), Phi Beta Kappa, University of Rochester, 1963; LL.B., Yale Law School, 1966. Fulbright Fellow (1966-67); D.N.A. Legal Services (1967); California Indian Legal Services (1967-1971). Members of the bars of California and New York.

Thomas L. Smithson, Staff Attorney. A.B., University of Michigan, 1965; J.D., University of Michigan Law School, 1968. Reginald Heber Smith Fellow, (1968-1971); Neighborhood Legal Services, Detroit, Michigan (1968-1969), Pine Ridge Legal Services, Pine Ridge, South Dakota (1969-1972); Member of the bars of Michigan and South Dakota. Publications: "Indian Taxation, Tribal Sovereignty and Economic Development," The Native American Rights Fund, Inc. (1972).

Thomas N. Tureen, Of Counsel, A.B., Princeton University, 1966; J.D., George Washington University, 1969; Reginald Heber Smith Fellow, 1969-70. Citizens Advocate Center, Washington, D. C. (1967-69); Pine Tree Legal Assistance, Calais, Maine (1969-present). Member of the bars of Maine and the District of Columbia. Publications: Hunger, U.S.A., Citizens Board of Inquiry into Hunger and Malnutrition in the United States (Beacon Press, 1968) - Research staff; Our Brother's Keeper: The Indian in White America, Edgar S. Cahn, Ed., (Meridian, 1969) - Field Research Director; "State Power and the Passamaquoddy Tribe: A Gross National Hypocrisy", 23 Maine L. Rev. 1 (1971)- Co-author with Francis H. O'Toole; "Remembering Eastern Indians," Inequality in Education, No. 10, January, 1972.

Charles F. Wilkinson, Staff Attorney. A.B., Denison University, 1963; J.D., Stanford University Law School, 1966. Lewis & Roca, Phoenix, Arizona, (1966-1968); Bronson, Bronson & McKinnon, San Francisco, California, (1968-1971). Member of the bars of Arizona and California.

APPENDIX D.

NATIVE AMERICAN RIGHTS FUND MANUAL OF POLICIES AND PROCEDURES
OMITTED FROM THIS COPY - WILL BE FURNISHED UPON REQUEST