

Second Annual Report, 1973

Native American Rights Fund



STEERING COMMITTEE

LaNada Boyer, Shoshone-Bannock

Resident, Fort Hall Indian Reservation, Blackfoot, Idaho

Val Cordova, Taos Pueblo¹

Chairman, All Indian Pueblo Council, Albuquerque, New Mexico

Curtis L. Custalow, Sr., Mattaponi

Chief, Mattaponi Tribe, West Point, Virginia

Martha Grass, Ponca

Director, American Indian Referral Center, Marland, Oklahoma

John Clifford, Rosebud Sioux²

Educator, South Milwaukee, Wisconsin

Leo J. LaClair, Muckleshoot

Reginald Heber Smith Fellow, Seattle Legal Services, Seattle, Washington

LeRoy Logan, Osage³

Rancher, Hominy, Oklahoma

Charles H. Lohah, Osage⁴

Director, American Indian Educational Opportunity Program, Boulder, Colorado

Cipriano Manuel, Papago

Project Director, National Center for Native American Language Education, D-Q University, Davis, California

Janet McCloud, Tulalip

Member, Tulalip Indian Tribe, residing at Yelm, Washington

Francis McKinley, Navajo

Director, National Indian Training and Research Center, Tempe, Arizona

David Risling, Jr., Hoopa

Coordinator, Native American Studies, University of California, Davis, California

John Stevens, Passamaquoddy

State Commissioner of Indian Affairs, Augusta, Maine

Joseph Upicksoun, Inupiat Eskimo

President, Arctic Slope Native Association, Barrow, Alaska

EXECUTIVE COMMITTEE

Charles H. Lohah, *Chairman*⁵

David Risling, Jr., *Vice-Chairman*⁶

John Stevens⁷

LaNada Boyer

Leo J. LaClair⁸

CORPORATE OFFICERS⁹

John E. Echohawk, Pawnee

Executive Director

David H. Getches

Vice-Executive Director

Joan L. Carpenter

Secretary-Treasurer

¹Elected April, 1973

²Elected October, 1973

³Elected October, 1973

⁴Until October, 1973

⁵Until October, 1973

⁶Elected Chairman October, 1973

⁷Elected Vice-Chairman October, 1973

⁸Elected October, 1973

⁹Non-Voting Members

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DIRECTOR'S REPORT

DIRECTOR'S REPORT

1973 marked the second calendar year of operations for the Native American Rights Fund, which began as a project of California Indian Legal Services in 1970 and was established independently in 1971 in Boulder, Colorado. 1973 also marked the evolvement of NARF as an institution, both internally and externally, occupying an important position in the national Indian community.

The initial planning grant for the program was provided by the Ford Foundation and developed by program officer Leonard Ryan. The strategy of developing a national Indian legal program was to build from a base of Indian legal experience -- California Indian Legal Services and David Getches and Robert Pelcyger in particular. Indian direction and guidance was provided by the CILS Board and a national Indian advisory council -- Charles Lohah and David Risling in particular.

I was fortunate in being with the program from its inception and learning from experience. Over the years, the rationale of relying on Indian legal experience became consistent with the goal of selecting an Indian lawyer to head the program. It was a change that was anxiously awaited by many people, but none was more anxious than David Getches, who had always been committed to that goal.

I had no choice but to accept the confidence placed in me by the NARF Steering Committee and staff, particularly the Indian attorneys, by Leonard Ryan and others. The transition in April, 1973 went smoothly as the result of advance preparations, the remarkable abilities of David Getches and Joan Carpenter to adjust to a new situation and the support of the staff. The internal evolvement of the program into an institution was complete.

In the formative stages of the program, unanswered questions existed as to the magnitude of Indian legal needs and methods to satisfy them. Those questions have now been answered by the NARF experience -- Indian legal needs are

almost unlimited, as are the opportunities to assist. The greatest problem which confronts the program is having to say no to requests for assistance, which is unavoidable given the limited resources of the program. The Steering Committee has been invaluable in setting priorities and guidelines governing NARF's work and setting its direction. The support and appreciation of NARF clients, as well as the advocacy of the program by Steering Committee members, helps tremendously to alleviate this unavoidable crunch in the demand for legal services.

The demand is not just for services, however, but is for quality legal services which comes to be expected from a program which achieves results and is known for aggressive but responsible advocacy on behalf of Native Americans. The commitment of NARF resources in 1973 resulted in more water for the Pyramid Lake Paiutes, an end to discrimination and misuse of Title I and Johnson-O'Malley funds for Navajo students, expenditures of special education and health appropriations for Indians despite attempted impoundments of the funds by the President, over 1,000 additional acres of land for the tiny Cocopah Reservation, and assistance to the Menominees in their superb efforts which won back their status as a federally recognized tribe and emphatically substantiated the fallibility of righteous federal Indian policies.

Despite the idiosyncrasies of funding resources which do not always judge programs on their merits, the program has managed to maintain an adequate funding base and has even been able to add two new Indian attorneys to the staff. New major grants in 1973 came from the Lilly Endowment for Eastern Indian work, the Irwin-Sweeney-Miller Foundation for the Indian Corrections Project, and the Field Foundation for continued support of the Southwest Indian Environmental Project. The Indian Law Back-up Center was also refunded by the federal Office of Economic Opportunity and the Carnegie Corporation of New York provided supplemental funding for the National Indian Law Library. The Norman Foundation assisted NARF's direct mail fund raising program with a grant and the American Civil Liberties Trust provided support for the efforts to release impounded education funds. General support was

received from several other foundations, corporations and individual contributors. Our appreciation is extended to all of those people who assisted the program financially.

In the end, the program's success is attributable to contributors who recognize the urgent need of Indian people for special legal services and appreciate the program's ability to meet that need. To that end, I submit this 1973 annual report.

John E. Echohawk
Director

January, 1974

THE PROGRAM

THE PROGRAM

DEVELOPMENT
1970-1973

"... The [Ford] Foundation's largest single grant to assist American Indians."

The Native American Rights Fund is a "foundation-developed program". The foundation responsible for its development is the Ford Foundation, which during the late 1960's began to research the need for a national legal program for Native Americans. Ford staff members found that compared to the legal problems of minority populations existing in the midst of the dominant white culture, Indian legal problems (although terribly complex) are much more adapted to the work of lawyers and the courts. The former sought legal decisions to legislate human behavior -- a difficult if not impossible task. Indians, however, can rightfully seek what Thomas Jefferson promised the Cherokees would be so useful to them -- protection under Anglo law of the rights to their land, water and other natural resources.

The Ford Foundation and many others saw that these rights, so essential to the continued survival of Indian people, were not inconsistent with the continued growth of the dominant society. Still, it was clear that the small quantity of resources that the Indians had so tenuously held onto were continuing to provoke the cupidity of others, and that an able team of lawyers could do much to assist the government and the public in honoring their commitments and responsibilities, as well as protecting the continued existence of the first Americans.

In June, 1970, after many months of research and consultation, Ford made an 18-month planning grant to California Indian Legal Services (CILS), an Office of Economic Opportunity grantee. CILS was given the grant in order to develop a pilot project which was to be used as a model for a national Indian legal fund. The project model called for a small staff to provide high quality legal representation in a few cases or matters which were of major importance to Indian people. CILS was chosen by the Ford Foundation because it was one of the oldest OEO Indian legal projects and because its staff was composed of some of the most talented lawyers in the fields; lawyers who were already working on issues of major importance to Indian people. CILS was also asked to develop a procedure for selecting a Board of Directors for the national program, and to then nominate

and select the members. As Ford requested, an expert staff was assembled, housed at CILS's main office in Berkeley, California, and several major pieces of litigation were undertaken. The model project was also given a name -- The Native American Rights Fund (NARF).

After a year's work and development, NARF was incorporated as a non-profit corporation in the District of Columbia in July, 1971. That same month, the original staff of three attorneys, support personnel and all of their families moved to Boulder, Colorado. Boulder had been selected as the site for the national headquarters of NARF because, although it was near major Indian populations, it was not dominated by any one tribe. In addition, the University of Colorado's School of Law was located in Boulder to provide needed research facilities, and nearby Denver's Stapleton International Airport offered convenient transportation to almost any area in the country.

By fall, the first meeting of the Board of Directors, which was called the Steering Committee of the Native American Rights Fund, had been held in Boulder. The membership of the all-Indian, 13-man Steering Committee was nominated by a special advisory council selected by the CILS Board of Trustees. Selection was not based on tribal or geographic considerations, but rather on the individual's knowledge of and sensitivity to the important problems and issues facing Indian people. The role of the Steering Committee was to attempt to outline the most critical Indian problems and to determine for NARF lawyers which of the hundreds of requests for assistance should be given priority or preference. Once a request was accepted as a priority matter, it was then to be up to the staff to design the best legal strategies consistent with the needs of their Indian clients.

On October 21, 1971, a few weeks after the first meeting of the Steering Committee, the Ford Foundation announced what it described as "the Foundation's largest single grant to assist American Indians" -- a three-year, 1.2 million dollar grant to the Native American Rights Fund for the general support of its legal work and other related activities. The success of the model was ready to be tested.

THE PROGRAM

COMMUNITY RESPONSE

"A steady increase in trust"

If Native American tribes and individuals had had adequate and competent legal representation from the beginning of their dealings with the dominant white society, much of the abuse, despair and destruction they have experienced would have been avoided. For the most part they trusted and went unrepresented until it was too late. Then, because of the potential of large monetary claims, they found themselves in court represented by counsel who were seeking damages after the fact. The bitterness and distrust that followed have been passed from one Indian generation to the next. By the early 1900's, the response had become a visible hostility, combined with the realization that just about every aspect of their lives was and still is controlled by law. The result is a kind of fascination with legal things which is mixed with despair and hesitancy.

Since its inception, NARF has had more requests for assistance than it could accept. However, a very large portion of these requests related to matters which were low in the Steering Committee's priorities and, given NARF's limited resources, could not be undertaken. Individual matters, non-Indian law related matters and representation in criminal cases must generally be referred to other attorneys. In addition, fee generating cases or clients who have adequate resources to retain private counsel for their problems are encouraged to retain private counsel, although technical assistance is made available.

During 1973 these kinds of requests amounted to 44 percent of NARF's total intake. (See graphic analysis of 1973 Requests for Assistance at the conclusion of this section.) For obvious reasons, not being able to undertake such representation has often posed difficult public relations problems. Through the distribution of Announcements, NARF's newsletter, the program is attempting to explain what its work is all about, but no printed communication can surpass the effectiveness of the "moccasin grapevine" where men are quickly known for their actions and not their words. As a result of these two communication devices, throughout 1973 there has been a steady increase in trust in NARF's work and its staff.

Representation has now been provided to 82 tribes, bands and Alaska Native villages, and to more than 63 Indian groups and organizations. During 1973 NARF has also gone to court on behalf of 186 individual Indians, and non-litigation representation has been provided to over 250 others.

Perhaps the most interesting statistic relative to community response is the number of "second requests" from tribes and bands. That is, 57 percent of NARF's tribal clients have already come back to NARF during its short existence for additional legal assistance at least once; some tribes have made as many as 11 separate requests for legal representation. This high percentage in a relatively short period of time has to be measured not only in terms of the number of legal problems tribes have, but in the number they have in which NARF can assist them. It would therefore appear that a good measure of trust and confidence in NARF's work is developed once initial representation has been provided.

Although NARF is not economically dependent upon client satisfaction in the same sense that a private law firm is, both the Steering Committee and the staff are cognizant of the fact that none of the objectives of the program can be met without maximum possible client satisfaction. For this reason, another gauge of community response is the variety in types among NARF's clients. In this area the response suggests an almost total Indian cross-cultural acceptance. The spectrum of NARF clients includes perhaps the most traditional Indians in the country, the Hopi Kikmongwis (chiefs), as well as the national elected leaders of the National Tribal Chairmen's Association and the National Congress of American Indians. It ranges from the largest tribes, to the smallest bands, to the remnants of long-ignored and unrecognized Eastern groups. It encompasses members of the American Indian Movement, the Coalition of Eastern Native Americans, and the Arctic Slope Native Association. The tiny, three-member school board for the Reservation School District of the Kashia Band of Pomo Indians on the Stewarts Point Rancheria in California has been represented by NARF, as has the fifteen-member National Advisory Council on Indian Education and the American Indian Higher Education Consortium. The Pamunkey Tribe of Indians whose reservation in Virginia is less than 100 miles from NARF's Washington, D.C. office has sought help, and so have five of the remotest villages on Alaska's North Slope.

The Legal Community

Advocacy cannot begin without clients, but effective advocacy is dependent not only upon client trust but also upon acceptance in the legal community. In this area there is little doubt about the community response to NARF--there has been a nationwide acceptance of the program. Requests for legal advice and ideas, for legal interpretations, and for expert testimony have come from the White House, U.S. Senate and House Committees, the Justice Department, the Bureau of Indian Affairs, and six other federal agencies. Assistance has been sought by State Indian Commissions, by tribal courts and other tribal components, by the U.S. and individual state Civil Rights Commissions.

It is NARF's policy to obtain local counsel in all of its cases. Because NARF clients are located from Barrow, Alaska to Bangor, Maine to Yuma, Arizona, local or co-counsel assistance is vitally necessary and generally required by the court. The policy and requirements have their advantages because they permit NARF to stretch its own legal resources as far as possible. NARF also sees it as an opportunity to develop local legal resources for tribes. Often attorneys have their first experiences with Indian law while working with NARF, and they develop a long-term interest and continue to be effective advocates for Indian clients.

The fact that NARF has been requested to provide services to such a large number of tribes who already have private legal counsel appears to be due to NARF's growing reputation for high quality legal work. Many private firms and individual lawyers have seen extremely positive results in NARF-litigated cases and are increasingly seeking NARF's advice and strategy, if not assistance, for advocacy in which they are engaged.

OEO Indian Law Back-Up Center and the Indian Education Legal Support Project

Further recognition of the acceptance of NARF in the legal community is the fact that the Office of Economic Opportunity has made two special Indian legal grants with subcontract provisions calling for the services of the Native American Rights Fund. They are the OEO Indian Law Back-Up Center and the Indian Education Legal Support Project. The OEO Office of Legal Services had long

hoped to fund an Indian Law Back-Up Center to provide technical assistance and support to legal services programs with Indian clients. It was finally able to do this in July, 1971, when NARF was formally established in Boulder, Colorado. Since then, the University of Colorado School of Law has acted as the host institution for the grant, and NARF has become the OEO Indian Law Back-Up Center. In this capacity NARF staff members have frequent contact with all the Indian legal services programs on the reservations and in the major Indian urban and rural areas. When requested to do so, it acts as co-counsel on major cases whose requirements would drain the manpower and expense resources of local programs, and whose staffs may not have the requisite expertise. Legal materials, advice, and ideas are offered. Pleadings are drafted and on-site program visits are made as a part of Back-Up Center work. During 1973 the Back-Up Center filled 182 requests. A graphic analysis of the type and percent of the requests is shown on the last page of this section.

The OEO Office of Research and Development also contracted for NARF services in July, 1971. It did so through a special grant for an Indian Education Legal Support Project which was made to Harvard University and the Harvard Center for Law and Education. Two-thirds of the work under this grant has been performed by NARF. The Education Project has provided assistance to the Bureau of Indian Affairs, to parents and school boards in fifteen states, and to several national Indian education groups as well. Services have ranged from analyses of national regulations affecting Indian children, to contracting for Indian controlled schools, to ending impoundment of Indian education monies, to bringing additional litigation in order to halt discrimination and mis-expenditure of federal funds intended for Indian children.

The Community At Large

As a part of its effort to strengthen and develop a good body of Indian law, NARF has also developed a National Indian Law Library (NILL) which is housed in NARF's Boulder offices. This has become such an important strength in the program that a special report is found in the second to last section of this report. Since its inception in early 1972, the user response to NILL has more than doubled. Its services are sought by the Indian lawyers and the community at large at least six times per day. The increasing demand for the services of the National Indian Law Library must also be considered

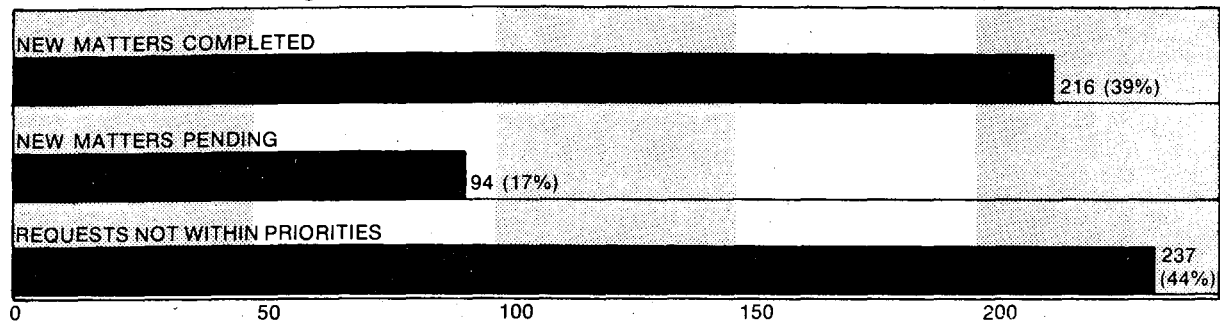
in measuring the total community response to the Native American Rights Fund.

Requests for general information not related to litigation or NILL resources totalled 319 in 1973. Graphic analysis for these requests is shown on the next page. More than half (51 percent) of the requests for general information come from the Indian community. These figures do not include over 3,300 persons who made individual contributions to NARF's work in 1973.

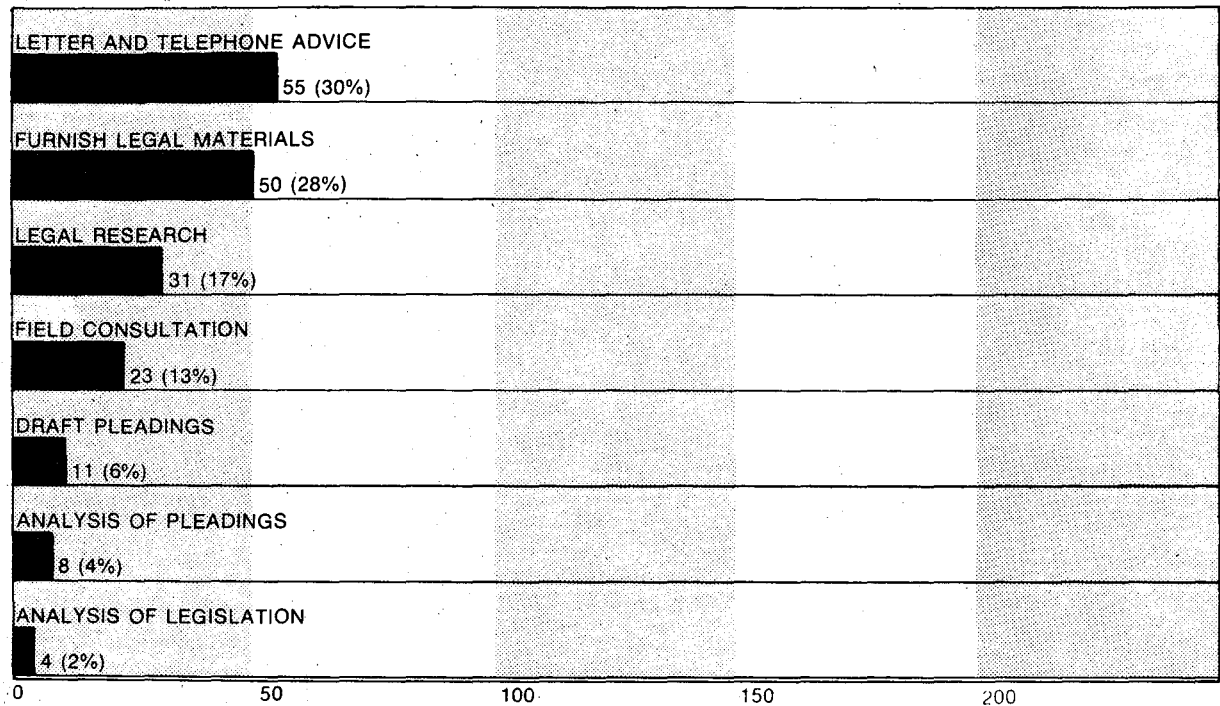
Native American Rights Fund

Requests for Assistance and Information, 1973

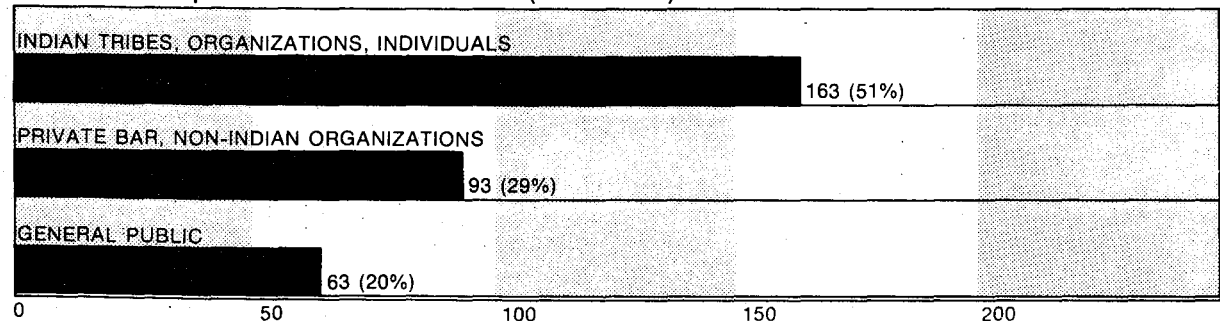
Native American Rights Fund Requests for Assistance (547 total)



Indian Law Backup Center Requests for Assistance (182 total)



General Requests for Information (319 total)



THE PROGRAM

AREAS OF INVOLVEMENT

"A New Kind of Geographic And Legal Diversity"

The field of Indian law is one of the most complex areas of the legal profession. A formidable array of treaties, statutes, solicitor's opinions, state, federal, local and tribal laws must all be dealt with in an Indian law practice.

NARF's nationwide practice is made doubly difficult by the fact that not only is each treaty and solicitor's opinion unique, but so are the laws of each state and community. This, combined with the tremendous differences in customs, traditions and tribal laws between the various Indian clients, tests the skills and abilities of the best Indian legal experts. The legal work at NARF is extremely exciting, but it is also some of the most demanding in the country.

During 1973, NARF's involvements almost doubled in geographic and legal diversity. NARF provided legal assistance to Indian people in 38 states in the nation, including Alaska and Hawaii. The map on the page following this section shows the exact geographical extent of NARF's activities. It also indicates the home communities of NARF Steering Committee members during 1973. More importantly, data on the map points up the fact that once the Native American Rights Fund becomes involved on a reservation or in an Indian community the program is very likely to be asked to assist with a number of additional matters. An average NARF attorney spends 8 full working days on the road each month meeting with clients or making court appearances. A tremendous number of images, impressions and ideas are brought back to Boulder to enrich and strengthen the program.

In February, 1973, the Steering Committee held a special, two-day meeting in an effort to further define special areas of emphasis. The following priorities were set during the course of the discussions.

Priorities of
Native American Rights Fund

- #1. Tribal Existence, including religion, Indian ways, treaty obligations, and tax jurisdiction problems.
- #2. Tribal Resources, including trust responsibility and protection from abusive economic development programs.
- #3. Human Rights, including education, health and prison reform.
- #4. Accountability of tribal, state, federal and local governments.
- #5. Indian Law Developments, including strengthening of important legal precedents, development of local legal resources and disbursal of Indian legal information.

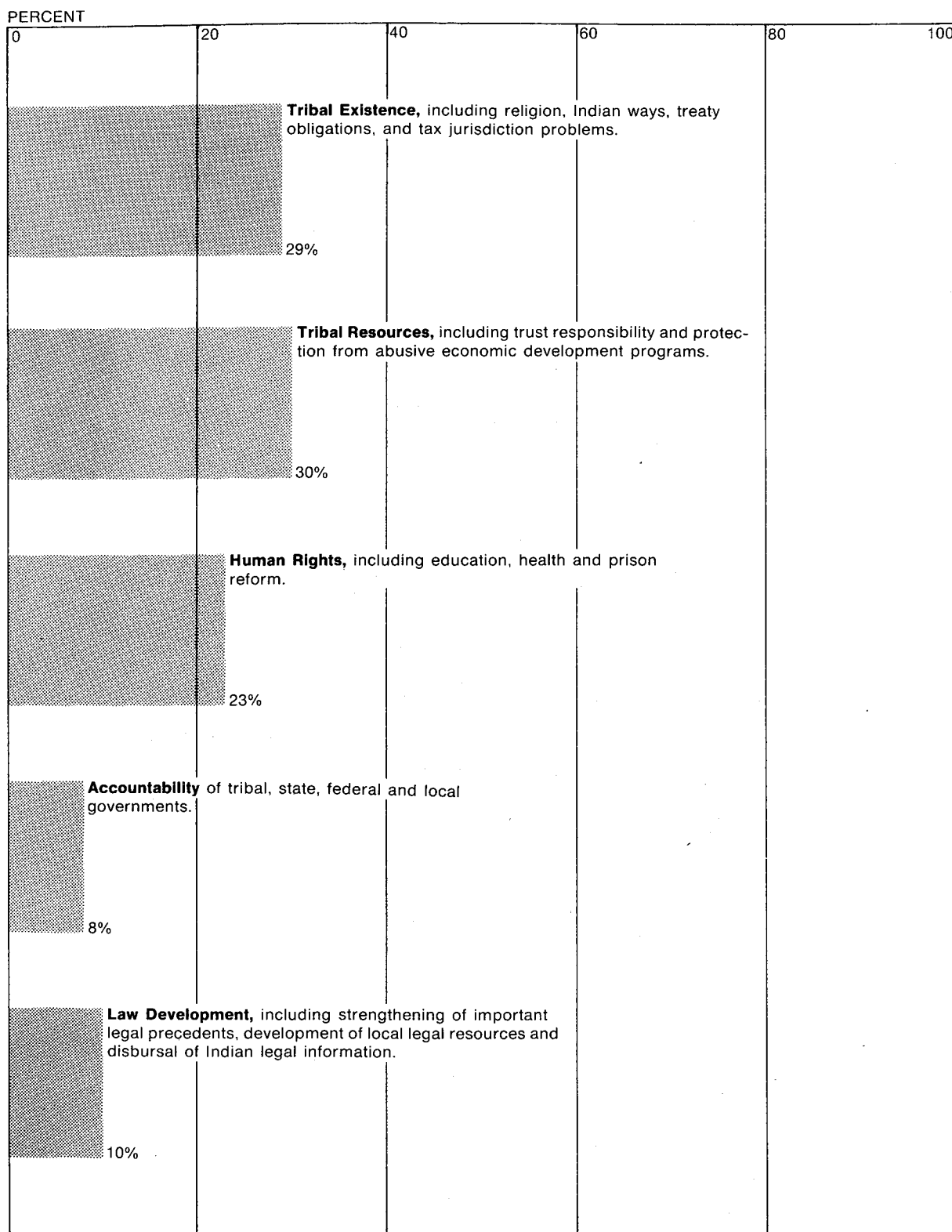
A careful review of NARF's existing caseload was made and the Steering Committee requested increased emphasis on the special problems of Eastern Indians, Indian prisoners, and the development of local legal resources. The graph on the following page shows how attorney man-hours were spent during 1973 when measured by NARF Steering Committee priorities. The graph shows that a nearly equal amount of time was spent on the first three priorities - tribal existence, tribal resources and human rights - and that about 10% of NARF's personnel resources were devoted to accountability and Indian law development,¹ respectively. At the Steering Committee's request, special additional funding was sought and obtained during 1973 for an Eastern Indian Legal Support Project, an Indian Corrections Project and for a special supplemental grant to the National Indian Law Library.

Because the field of Indian law is so complex, it is a very difficult task to limit a case or matter to the category of a single priority. However, for the purposes of this analysis all cases were reviewed and a primary priority assignment was made. Brief individual reports are provided in the next five sections of the report on more than 100 of the major cases or matters NARF was involved in during 1973.

¹The graph does not include personnel time for the National Indian Law Library.

Native American Rights Fund

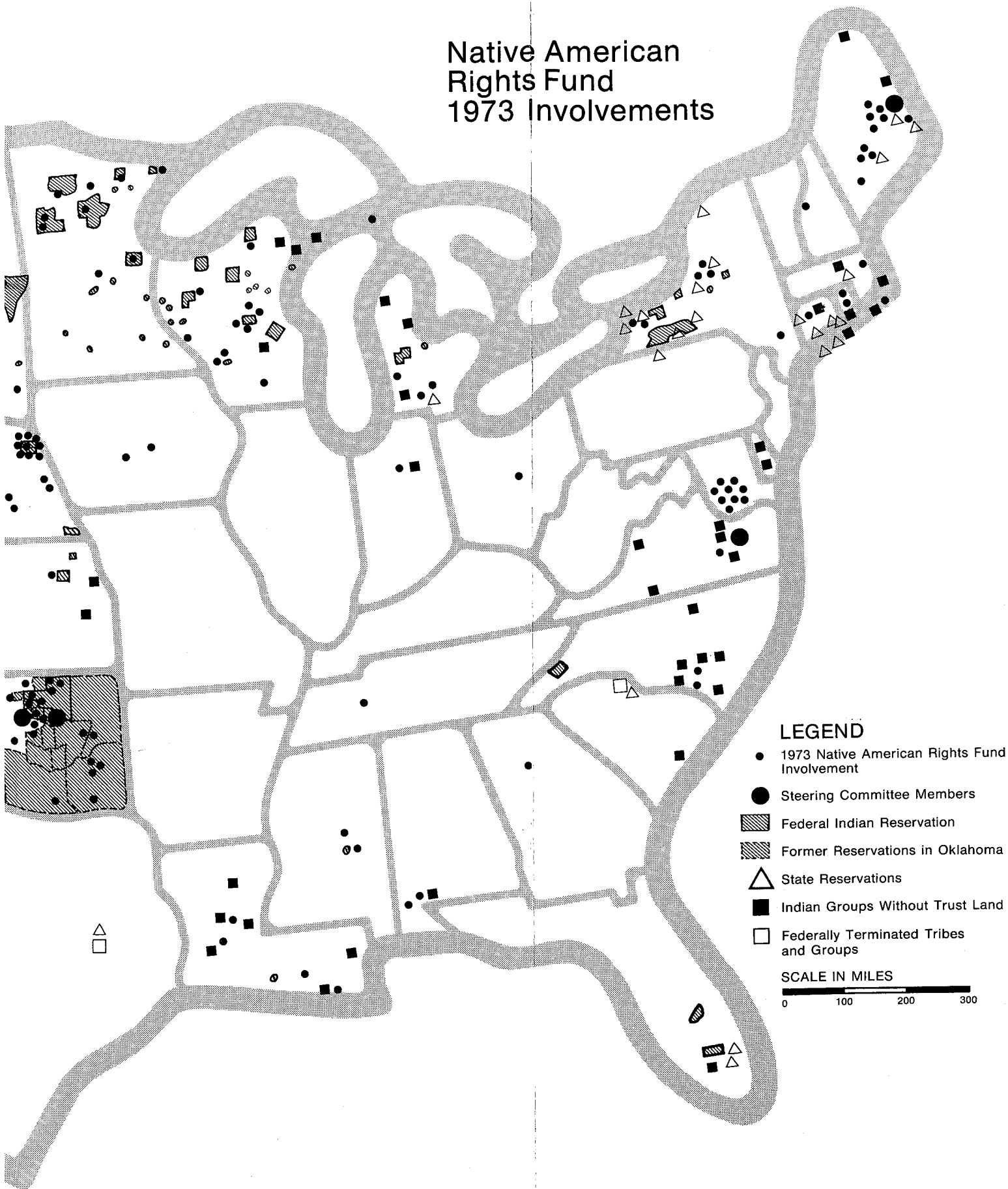
Allocation of Attorney Man-hours by Priority, 1973

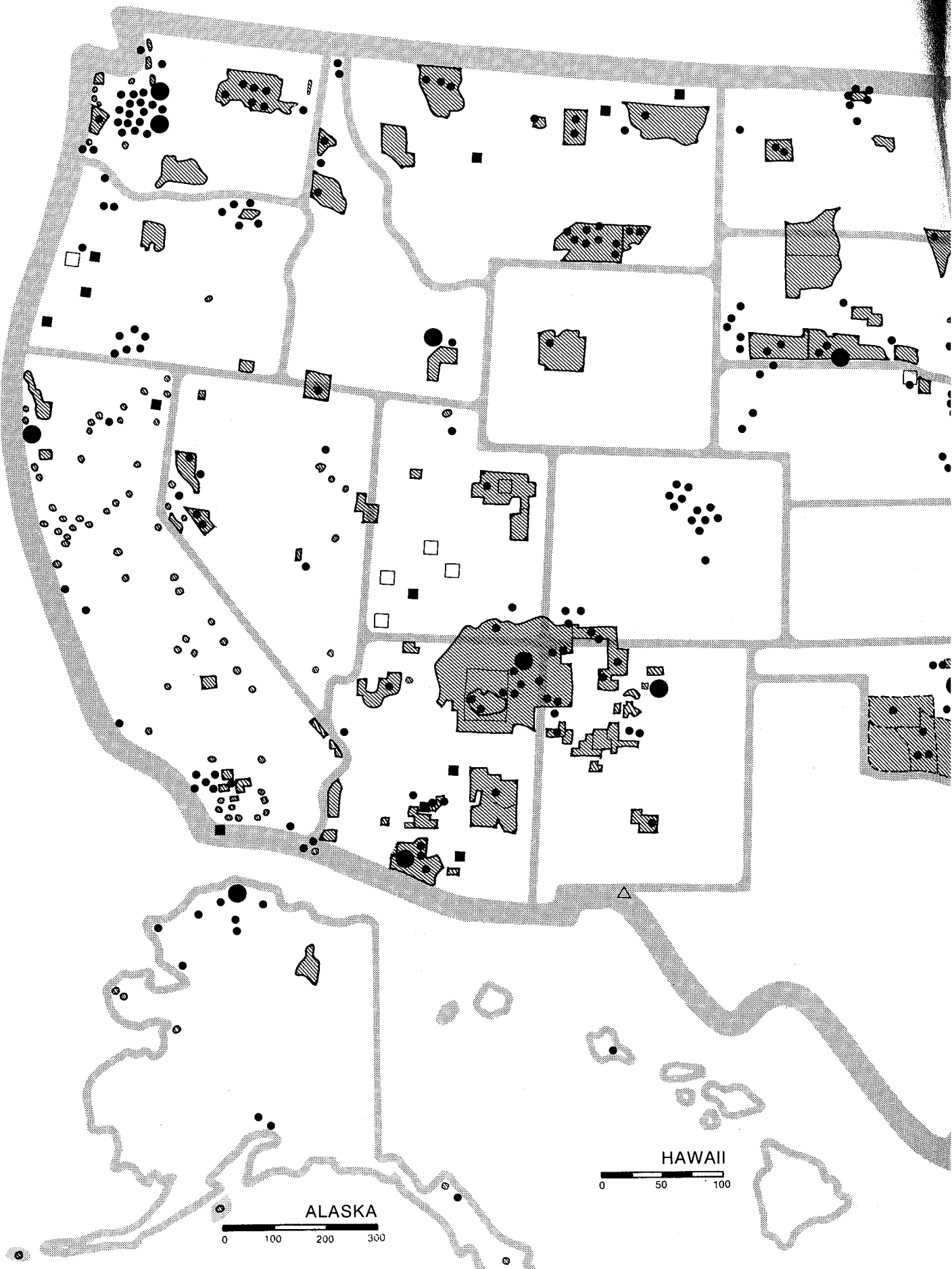


The use of NARF's skills in the 1973 world of Indian legal problems has ranged from ten weeks of intensive trial work before the Federal Power Commission, to the initial preparation of tribal hunting codes, to the conciseness needed for 45 minutes of oral argument in a case that fills three file drawers, to the drafting of critical congressional legislation, to the tenseness of the negotiation teepee at Wounded Knee.

The year has included innumerable tribal council, committee and school board meetings; long walks in dried-out streambeds, and between the ravaged wedges of strip mined acres, and up and down the steps of courts and the United States Capitol building. The year has brought long days and nights - many away from home. It has filled the clients, the Steering Committee and the staff with anxiety and joy, frustration and pride. It has been a remarkable year with an extraordinary number of Indian legal victories.

Native American Rights Fund 1973 Involvements





THE PROGRAM
MEASURABLE RESULTS

"We have borne everything patiently
for this long time."

Joseph Brant, Mohawk, 1974

The Native American Rights Fund has now gone to Court, to the Congress, and to the negotiation and contracting tables on behalf of more than 600 tribal and individual clients. The votes or results that have come in to date have been remarkable.

In original actions (cases in which NARF developed the legal strategies for clients) 98% of the remedies sought on behalf of clients have been obtained in those cases where decisions have been handed down. It should be noted that about half of the original actions filed by NARF on behalf of clients are still pending.

In actions where NARF was asked to join as co-counsel after motions had been filed by other firms or legal services programs, the percentage of success to date has been 76%.

The Fund has been frequently asked by clients to file briefs of amicus curiae in Indian and non-Indian cases where issues of importance to them are being litigated. Most of these briefs have requested a higher court to overturn the decision of a lower court. In these instances, success for NARF clients has only come in 40% of the cases.

In those instances where the Native American Rights Fund has been asked to provide legislative advocacy to a client, 90% of the legislative remedies sought have been obtained. At the negotiating and contracting tables, NARF's representation has also been effective. Fair settlements providing good benefits to NARF clients have been obtained in all those instances where NARF, at the clients' direction, chose to settle a dispute out of court. Since NARF's inception this has been done in five instances. Virtually all leasing and contracting efforts, tax applications and other organizational and corporate efforts have been successful.

In conclusion it would appear that NARF clients have the best chance for obtaining the successful legal remedies when NARF has the responsibility for developing the initial theories and procedures.

A court order is not always readily translated into the Indian value system. Too often in the past, courts have only produced ephemeral monetary awards which have done little or nothing to strengthen tribal existence and culture. The remedies sought by NARF on behalf of its clients have only rarely included monetary claims. For the most part they have long-term ramifications which are particularly difficult to measure or place monetary or resource value on. However, some of the most important results obtained for NARF clients in 1973 are shown by client, result, and method on the following pages. It is clear that in each of these instances one or more of the priorities and criteria set by the Steering Committee was met. These results have been absolutely critical to the survival of some tribes and have had an important effect on others as well. The precedents resulting from the priority areas of NARF's work are vital and essential to the preservation of Indian culture through the use of the law.

Significant Results
1973

<u>Client</u>	<u>Result</u>	<u>Method</u>
Alaska Native Villages on the North Slope and the Arctic Slope Native Association	Right of North Slope Natives to form a borough (county government) upheld. Permits natives to tax oil industry in the area and to develop currently non-existent education, utilities, and health services.	Litigation
	Clients awarded attorney fees and costs in case amounting to \$20,000.	
Cocopah Tribe	Size of reservation doubled.	Litigation and Administrative Advocacy
Coushatta Tribe of Louisiana	Federal recognition; restoration of trust status and federal services.	Administrative Advocacy

<u>Client</u>	<u>Result</u>	<u>Method</u>
Chemehuevi Tribe	Southwest power plants near Chemehuevi Reservation and other major Indian reservations must be licensed by FPC, providing affected Indians opportunity to object to proposed development.	Litigation
Eastern Native Americans	Increased awareness of and communication between Eastern Indian tribes and communities; Coalition of Eastern Native Americans formed as an organizational base to develop Eastern group strategies.	Community education and conference of all Indians east of the Mississippi
Menominee Tribe of Wisconsin	Restoration of federal trust status, including trust lands and federal services after ten years of a destructive termination Act.	Legislative Advocacy
Navajo and Zuni parents residing in Gallup, New Mexico area	Halt to racial discrimination and misexpenditure of millions of dollars of federal monies meant to benefit their children in Gallup-McKinley County schools.	Litigation and Negotiation
Passamaquoddy Tribe	Federal government, as trustee, required to file protective action against the State of Maine on their behalf (that action still pending).	Litigation

<u>Client</u>	<u>Result</u>	<u>Method</u>
Pyramid Lake Tribe of Paiute Indians	Further destruction of Pyramid Lake halted by obtaining sufficient water to maintain current level. Tribe awarded \$100,000 in attorneys and expert witness fees against their trustee (this portion of the case currently being appealed by the government). Government, as trustee, prompted to file water rights adjudication suit on behalf of the Paiutes, first against Nevada and California in U.S. Supreme Court and after Supreme Court declined to hear case, against Nevada and 13,000 Nevada water users in Federal District Court.	Litigation
Umatilla Tribe	U.S. Corps of Engi- neers prevented from destroying Indian in lieu fishing sites on Columbia River.	Litigation and Legislative and Administrative Advocacy
Walker River Paiute Tribe	State of Nevada prevented from taxing cigarettes sold on reservation.	Litigation

<u>Client</u>	<u>Result</u>	<u>Method</u>
Of benefit to all tribes	Release of \$18 million in Indian education monies impounded by the administration as well as a court order requiring full implementation of the Indian Education Act (Public Law 92-318).	Litigation
Of benefit to all tribes	Release of \$4,708,000 in Indian health monies impounded by the administration after congressional appro- priation under Public Law 92-369.	Litigation

TRIBAL EXISTENCE

We Preferred Our Own Way of Living

Crazy Horse, Sioux, 1877

TRIBAL EXISTENCE

OVERVIEW

"Including the preservation of Indian religion ways, treaty obligations, and sovereignty."

It is a well known statistic that Indians commit suicide twice as frequently as the rest of the population of the United States. But many do not realize that suicides among tribal members whose aboriginal traditions and structure remain intact are less than half of those occurring among Indian groups whose tribal existence has been altered. The more Indian experience is destroyed or lost, the more destructive the behavior. Suicide and alcoholism are not Indian traits, but manifestations of destructive behavior turned inward. The Native American's common cultural veneration for human personality, the earth and web of life is sustained within a strong tribal or pan-Indian setting -- when this experience is no longer available, his substance is open to attack.

The dominant white society and the Native American tribes have had two centuries of experience together. If the initial treaties and laws of the American government had been upheld and enforced, experiential ties of trust, instead of distrust, might have developed. But because the dominant society has not been able to control its own membership, and has had even more difficulty recognizing the need for difference, the policies affecting Indians have fluctuated more widely than any other American legal phenomena.

One of NARF's major 1973 legal efforts, the passage of the Menominee Restoration Act, clearly illustrates the fact that the original treaty commitments made to Indian tribes, (in this particular case the Menominee Tribe of Wisconsin Indians), have yet to be improved upon by any subsequent policy designed by the United States.

Though tribal existence is the Fund's first priority, it is not always a problem which is easily remedied through the courts or the Congress. The primary inspiration and energies must come from Indian people themselves. For too many tribes it is already too late, but for the Menominee and almost 50 other tribal clients in 1973 there were important legal efforts to be made on behalf of the preservation of Native American culture.

The Menominee Restoration Act is only one example of the kinds of activities and cases the Fund has handled in an effort to preserve tribal existence during 1973. On the following pages are brief descriptions of the most major matters undertaken.

TRIBAL EXISTENCE

REPORTS ON CASES AND ACTIVITIES

Alabama Creek Nation Lands and Recognition

The Creek Nation of Alabama is not recognized as an Indian Tribe by the federal government and does not have any lands held in federal trust. NARF is exploring ways by which state land in the Creek community can be transferred to the federal government in trust for the Tribe, which will also constitute federal recognition of the Tribe. Recognition, of course, will make the Creeks eligible for the services of the Bureau of Indian Affairs.

Bissonette v. Shannon County Commissioners, South Dakota Circuit Court (filed November 1971)

This case involves the immunity of an Indian from the Pine Ridge Reservation in South Dakota from a state personal property tax on his cattle on the reservation. The Court ruled in 1972 the state could not levy the tax because the cattle were derived from a federal Indian program. The Court held, however, that the state statutes of limitations barred the claim for a portion of the tax refund sought. Preparations for filing an appeal on the statutes of limitations question were abandoned when a monetary settlement was reached.

Boxer v. State of Montana, Montana State District Court

NARF has provided back up assistance to Ft. Peck Legal Services in Montana in this case involving the power of the state to tax income earned on the Ft. Peck reservation by a Chippewa Indian who resides on the reservation but is not a member of the Assiniboine and Sioux Tribes of the Ft. Peck reservation. The case seeks to extend to non-member Indians a recent Supreme Court decision which denied the State of Arizona the power to tax the income of a Navajo Indian living on the Navajo reservation.

Coushatta Tribe of Louisiana Recognition

In conjunction with the Association on American Indian Affairs, NARF assisted in securing an administrative determination by the federal government that the Coushatta Tribe is a federally recognized tribe. Such recognition, of course, makes the Tribe eligible for BIA services and for the government to hold land in trust for them. Efforts are now underway to secure a tribal land base.

Ft. Buford Indian Development Corporation Sub-Agency

Treaty provisions with the Turtle Mountain Band of Chippewa Indians in North Dakota allow tribal members who were unable to secure land on the reservation to take up homesteads on vacant public lands and still retain their tribal membership. As a result, approximately 900 Chippewas are located away from the reservation in northwestern North Dakota. They have organized themselves and are seeking a sub-agency office with the Bureau of Indian Affairs to be located in that area to improve their access to BIA services. Based on their eligibility for federal services, NARF is assisting in negotiations for a sub-agency office.

Great Lakes Inter-Tribal Council v. Voight, United States District Court, Eastern District of Wisconsin

NARF has provided back up assistance to the Wisconsin Judicare Program which is representing the Great Lakes Inter-Tribal Council against the State of Wisconsin to establish the nature and extent of treaty fishing rights for the various tribes. A voluntary dismissal of the case is currently being sought, with plans to present the issues in several new cases on behalf of individual tribes.

Houma Tribe Lands and Recognition

The Houma Tribe of Louisiana has contacted NARF for assistance with its land claims. Investigation is underway to determine the Tribe's relationship with the federal government and the disposition of its lands in preparation for the possible suit claiming that the lands were taken without the approval of the federal government as required by law.

Huron Pottawatomi Lands and Recognition

NARF has provided assistance to the Huron Pottawatomis in Michigan in their efforts to obtain an administrative declaration that they are a federally recognized tribe. The ruling will soon be made in Washington and, if recognized, the federal government will be asked to take lands in trust for the Tribe.

Kimball v. Callahan. United States Court of Appeals, Ninth Circuit (filed February 1973)

This is a suit to establish the continuing existence of treaty hunting and fishing rights for the Klamath Indians of Oregon. The Klamath Termination Act of 1953 ended federal supervision over the Tribe. The case seeks a determination that the treaty hunting and fishing rights of the Tribe survived termination, thus preserving for the Klamaths the right to hunt and fish free of state regulation. From an adverse decision of the Oregon Federal District Court, the case has been appealed to the Ninth Circuit in San Francisco.

Locklear v. Morton, United States Court of Appeals, District of Columbia (filed February 1973)

In this action, NARF is seeking to establish the eligibility of a group of North Carolina Lumbee Indians for BIA recognition and services under the Indian Reorganization Act of 1934. The Indians were formally recognized as eligible for the Interior Department in 1938, but the Department now claims their eligibility was extinguished by a 1956 act recognizing the cultural identity of the Lumbee Indians. The federal court in Washington, D.C., held that their eligibility had been lost. The case has been appealed.

Mahoney v. State of Idaho State Tax Commission, Idaho Supreme Court

The Idaho Supreme Court rendered a favorable decision denying the State the authority to tax the sales of an Indian in the business of selling cigarettes on the Coeur d'Alene Reservation. The State is seeking a rehearing in the case, urging the Court to alter its judgment in favor of the State. NARF filed an amicus curiae brief supporting the jurisdiction of the Tribe

and the limitation on the State's taxing power, and urging the Court not to modify the decision on rehearing. The brief was filed on behalf of the Nez Perce and Kootenai Tribes of Idaho, the Duck Valley Tribe of Idaho and Nevada, the Walker River Paiute Tribe of Nevada, the Makah, Lummi, Suquamish, Colville and Yakima Tribes of Washington, and the Affiliated Tribes of Northwest Indians.

McClanahan v. Arizona Tax Commission,
United States Supreme Court

A Navajo Indian who worked and lived on the Navajo Reservation challenged the authority of the State of Arizona to impose an income tax on her income earned within the reservation. The Arizona Supreme Court upheld the power of the state to impose its tax. When the United States Supreme Court agreed to review the case, NARF filed an amicus curiae brief. The Navajo Indian challenging taxation was represented by DNA, the Navajo Legal Services Program. The amicus curiae brief argued that unless Congress expressly extends jurisdiction to tax, a state is without power to do so. The United States Supreme Court reversed the Arizona Supreme Court decision and held that the state was without jurisdiction to impose an income tax in this situation, recognizing the notions of sovereignty which have prevailed for over a century.

Menominee Restoration Act

Terminated by federal legislation in 1954, the Menominee Tribe of Wisconsin has suffered from the loss of its status as federally recognized Indian tribe. Welfare rolls have increased, tribal lands have been sold to meet financial problems and the tribal business corporation has experienced difficulties. In association with Menominee tribal attorneys, NARF has acted as legal counsel to the Tribe in their efforts to secure federal legislation repealing termination and restoring federal responsibility for the Tribe. On December 22, 1973, President Nixon signed the Menominee Restoration Act ending termination, returning tribal lands to trust status and recognizing Menominee tribal government.

Mescalero Apache Tribe v. Jones, United
States Supreme Court

A tribe in New Mexico operating a business on federal lands off the reservation challenged the authority of the State of

New Mexico to collect from them a gross receipts tax and its use tax on personalty purchased out of state. NARF filed an amicus curiae brief in support of the tribe's immunity from taxation. Last term, the United States Supreme Court handed down its decision allowing New Mexico to tax gross receipts from the business but preventing the imposition of a use tax. The Court made a distinction between the principle to be applied in this case and that which would be applicable to gross receipts from a tribal enterprise on the reservation. The Court found that the use tax was barred because the personal property which was purchased out of state had been installed as a permanent improvement and was so intimately connected with the land itself that it was encompassed in the statutory tax exemption under the Indian Reorganization Act.

Miami Tribe of Indiana Taxation

Through a series of federal treaties, lands were reserved in the present State of Indiana for some of the Miami Indians who remained behind after the bulk of the Tribe was moved to Kansas. Although the land has continued to be held as Indian land, the State of Indiana over the years has attempted to tax the property and their efforts have been validated by a state court decision. NARF has been gathering historical materials on the case in preparation for an action to challenge state taxation on the grounds that it is not authorized by federal treaties or statutes.

Mobil Oil v. Local Boundary Commission, Alaska Supreme Court (filed March 1972)

Several oil companies brought suit to invalidate a decision by the Alaska Local Boundary Commission granting an application by the Arctic Slope Native Association to establish a borough, a local unit of government, consisting of 56.5 million acres on the North Slope of Alaska. The oil companies do not want to submit to the taxing authority of the Alaska Native-controlled borough, but the Natives see their many local needs being met by the tax revenues. ASNA, represented by NARF, intervened in the suit against the oil companies and was successful in Alaska Superior Court in resisting the oil companies' efforts to invalidate the creation of the borough. The oil companies have appealed the case to the Supreme Court of Alaska.

Moore v. Johnson, Maine Superior Court

In association with Pine Tree Legal Services in Maine, NARF is representing an Indian businessman on the Passamaquoddy reservation in challenging the propriety of the state's collecting sales taxes on the reservation. The case is temporarily stayed pending the outcome of a related NARF case seeking a declaration that a federal trust relationship exists between the Passamaquoddy Tribe and the United States. Such a determination would preclude state taxing jurisdiction on the reservation.

New Rider v. Board of Education, United States Supreme Court (filed April 1972)

When three Indian students were expelled from Pawnee, Oklahoma public schools for wearing their hair in traditional braided fashion, NARF represented them in their efforts to be reinstated on the grounds that the school policy against long hair deprived the boys of their constitutional rights to freedom of expression, freedom of religion and equal protection. After unfavorable decisions from the Oklahoma Federal District Court and the Tenth Circuit Court of Appeals in Denver, the case was taken to the United States Supreme Court on a Writ of Certiorari. The Supreme Court, by a 6-2 vote, declined to hear the case and, in the usual manner, did not issue an opinion. Justices Douglas and Marshall, however, who dissented from the majority, wrote an opinion urging review of the case on the grounds that substantial constitutional questions involving religious freedom and cultural identity were in issue.

Osage Headrights Taxation

The Osage mineral estate is held in trust by the federal government for Osage tribal members who have a headright interest, or share, in the estate and the royalty income is distributed among the headright interest owners. Although the federal government recognizes the tax immunity of the proceeds from the mineral estate when distributed to non-competent headright owners, Osage headright owners who have received their certificates of competency to manage their own affairs are held liable for federal income tax on their share of the proceeds. On behalf of a competent Osage headright owner, NARF is challenging this distinction through an Internal Revenue Service administrative appeal. The appeal is based on the general tax immunity of the mineral estate and the proceeds therefrom, regardless of the competency status of the Osage headright owner.

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

When the Passamaquoddy Tribe petitioned the United States to initiate a lawsuit on its behalf against the State of Maine for continuing trespasses dating back to 1794, the government refused. Since a statute of limitations would soon bar the United States from filing the lawsuit, NARF filed suit on behalf of the Tribe against the Secretary of Interior and the Attorney General and obtained a court order requiring the government to file the suit against the State of Maine for the Indians. The government is seeking to have the case against it dismissed and the suit against the State of Maine withdrawn on the grounds that no federal Indian trust relationship exists with the Passamaquoddy Tribe. The government's motion to dismiss has been denied, clearing the way for a ruling on the existence of a trust relationship which, if successful, would mean federal services for the Tribe as well as a hearing on their claims against the State of Maine.

Pokrywka v. Board of Education, Colorado
District Court (filed October 1973)

Two Oglala Sioux boys were expelled from public schools in Keenesburg, Colorado, for wearing their hair in traditional braided fashion in violation of a school policy against long hair. The expulsions were upheld by the school board following a hearing at which the boys' religious claims were supported by testimony from Indian religious leaders and anthropologists. NARF filed suit on behalf of the boys in state court seeking a review of the school board's decision on the grounds that it violated constitutional rights to freedom of expression, freedom of religion and equal protection of the law.

Puyallup Tribe v. Department of Game, United
States Supreme Court

An amicus curiae brief on behalf of the Muckleshoot, Squaxin Island, Nisqually and Sauk-Suiattle Tribes and a Puyallup tribal member was submitted to the Supreme Court in this case to clarify the nature and extent of treaty fishing rights in Washington state. The brief urged the Court, in determining the extent of state regulatory power, to consider the reserved nature of the treaty right, tribal and federal fishing regulations, restriction of non-treaty fishing prior to regulation of Indian fishing, and judicial review of state regulations

prior to enforcement. The Supreme Court ruled against the Washington Department of Game and their regulations prohibiting all Indian net fishing, holding that regulations must fairly apportion the number of fish that could be caught between Indian net fishing and non-Indian sports fishing, so as to accomodate both rights of Indians under the treaty and the rights of other people.

Ruiz v. Morton, United States Supreme Court

The issue before the Supreme Court in this case is the validity of BIA policy limiting its services to reservation Indians only, in light of a federal statute which authorizes the BIA to provide services to "Indians throughout the United States". Since approximately half of the nearly one million American Indians do not reside on federal reservations, NARF filed an amicus curiae brief supporting a broader interpretation of the law that might include off-reservation and non-federally recognized Indians as eligible for BIA services. The brief also argued, at a minimum, that alternative standards for eligibility be established with due process guarantees in the application process. NARF also assisted Papago Legal Services in Arizona, who brought the case on behalf of an Indian couple, with their main brief before the Supreme Court.

State of Idaho v. David, Idaho District Court (filed October 1972)

A member of the Kootenai Tribe of Idaho was arrested and prosecuted by the State of Idaho for hunting deer out of season on former Kootenai lands. NARF has participated as defense co-counsel, asserting as a defense aboriginal hunting rights of the Kootenai Tribe which exist even though no treaty exists between the Tribe and the United States. This defense was rejected by the court and the defendant was convicted. The case is being appealed.

State of Oregon v. Bojorcas, Oregon Court of Appeals

Several Klamath Indians were convicted in state court for violations of state hunting and fishing laws. On appeal of the convictions, NARF participated as co-counsel, renewing the defense that the Indians were exercising treaty hunting and fishing rights and that these rights were not abrogated by the 1953 Klamath Termination Act ending the federal trust responsibility. The appeals court ruled, however, that the treaty rights were extinguished and upheld the state convictions.

State of Washington v. Mills, Thurston
County Superior Court

NARF is defending an Indian accused of violations of Washington state fishing laws on the Puyallup River within the Puyallup Reservation. The defense is based on the treaty fishing rights of Puyallup tribal members and their ability to share those rights with non-member Indian spouses and relatives. The case is in abeyance pending the outcome of related cases.

Tomow v. Menominee Enterprises, Inc.,
United States Supreme Court

NARF is representing the National Congress of American Indians, the National Tribal Chairmen's Association and the University of New Mexico American Indian Law Center as amicus curiae, urging the Supreme Court to hear the case and reverse the Wisconsin Supreme Court decision below. Under the Menominee Termination Plan, each tribal member received shares of stock in the tribal assets and the "holders of the shares" were required to approve land sales. The Wisconsin Supreme Court decided that all shares are "held" by a seven-member voting trust, thus excluding tribal members from the land sale approval process. Should the Supreme Court hear the case and reverse the decision, the Menominees may regain much of their land.

Tonasket v. State of Washington, United
States Supreme Court

An Indian operating a store on the Colville Reservation in the State of Washington challenged the right of the state to impose taxation on cigarettes sold in his store. Although the question of whether Public Law 280 was properly extended over the reservation was an issue, NARF, in its amicus curiae brief in this case, argued that even if Public Law 280 applied, it did not authorize state taxing jurisdiction. Furthermore, it was argued that Tonasket, as an Indian trader regulated by federal law, could not be taxed by the state. The United States Supreme Court reversed the holding of the Washington State Supreme Court which allowed taxation, and remanded it to the state courts in light of its decision in McClanahan v. Arizona Tax Commission.

Tunica Tribe Lands and Recognition

Historical research is underway to determine possible land claims and past federal relationships for the Tunica Indians of Louisiana. The investigation could result in legal efforts to recover lands alienated without the approval of the federal government.

Umatilla Tribe v. Callaway, United States District Court, District of Oregon (filed March 1972)

On behalf of the Umatilla Tribe and individual Yakima Indians, NARF sought to enjoin the Army Corps of Engineers from constructing modifications of three dams along the lower Columbia River in violation of Indian treaty fishing rights. A preliminary injunction was issued against the construction, which would threaten fish life by creating fluctuations in the reservoir and river level. The case was settled with the suit being withdrawn in exchange for new Indian fishing sites and facilities to replace those which would be flooded out and an agreement to monitor and report on the modifications' effect on the fish runs.

Umatilla Tribes' Opposition to Catherine Creek Dam

The Army Corps of Engineers proposes to build a dam across Catherine Creek on the Umatilla Reservation. The Umatilla Tribes oppose the dam because of its potential effect on their treaty fishing rights and the lack of benefits accruing to the Tribe. NARF has assisted the Umatillas in their attempts to prevent construction of the dam. The Interior Department has been convinced to oppose the dam and state and federal legislators have been urged to withhold appropriations.

U.S. v. Akin, United States Court of Appeals, Tenth Circuit

An amicus curiae brief on behalf of the Southern Ute Tribe, the Ute Mountain Tribe, and the National Tribal Chairmen's Association was filed in the federal appeals court in Denver urging federal jurisdiction over the adjudication of Indian water rights. The case was originally filed in federal court by the United States to determine the water rights of the

United States and the two Ute Tribes in Southwestern Colorado. The lower federal court, however, held that the case should be heard in Colorado state courts, even though Indian trust property rights are involved which have traditionally been adjudicated in federal courts.

U.S. v. Blackfeet Tribe, United States
District Court, District of Montana

When Blackfeet tribal officials sought to prevent federal officers from seizing gambling devices on the reservation, the federal court held that gambling devices were illegal under federal law and the seizures were justified. In deciding the case, however, the federal court unnecessarily made statements denying the existence of inherent tribal sovereignty. NARF assisted the Blackfeet tribal attorney in petitioning the Court to modify its opinion to delete the erroneous and unnecessary statements which could be damaging to the tribal sovereignty concept.

U.S. v. Mason, United States Supreme Court

The United States was held liable by the Court of Claims for paying Oklahoma state inheritance taxes out of the estate of a restricted Osage allottee in violation of its trustee responsibilities. The United States took the case to the Supreme Court, arguing that it acted properly under a 1948 Supreme Court case allowing the tax, even though subsequent cases may have eroded the validity of the 1948 case. Because of the important questions of Indian tax immunity and the federal trust responsibility, NARF filed an amicus curiae brief arguing that the trust responsibility had been breached and that the 1948 case authorizing the tax should be overruled. The Supreme Court held, however, that the government was justified in relying on the 1948 case even though it had been substantially weakened, and that it would not overrule the 1948 case in this indirect attack on its validity.

U.S. v. Michigan, United States District
Court, Western District of Michigan

The United States on behalf of the Bay Mills Indian Community brought suit against the State of Michigan asserting the existence of Indian treaty fishing rights for members of the Bay Mills Indian Community and limiting the power of the state

to regulate treaty fishing. In association with Upper Peninsula Legal Services and Michigan Legal Services Association Program, NARF is representing the Bay Mills Indian Community as a plaintiff-intervenor in the case to assert additional claims to Indian treaty fishing rights than those asserted by the United States and to raise additional arguments as to their existence.

U.S. v. Oregon, United States District Court, District of Oregon

The Oregon federal court in a 1969 decision in this case recognized the existence of Indian treaty fishing rights and the limitations on the state's regulatory powers. It also maintained continuing jurisdiction over the case to review disputes which might arise over regulations. NARF represented the Umatilla Tribes, intervenors in the case, in a dispute concerning the procedures for setting the Indian fishing season and in negotiations with the state to establish the season.

U.S. v. Washington, No. 73-1793, United States Court of Appeals, Ninth Circuit

The United States filed suit on behalf of the Puyallup Tribe seeking a declaration that the Indians have an exclusive right to regulate all fishing in the Puyallup River within the Puyallup Indian Reservation. The Washington federal court rejected the claim, holding that the reservation no longer existed. In the Court of Appeals, NARF represents the Puyallup Tribe as amicus curiae, pointing out the importance of reservation status to the Tribe as a governmental unit and the lack of specific congressional diminishment of the Puyallup Reservation.

U.S. v. Washington, No. 9213, United States District Court, District of 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 several Indian tribes in western Washington guaranteed under several treaties. NARF, in conjunction with Seattle Legal Services, has intervened on behalf of the Muckleshoot, Squaxin Island, Sauk-Suiattle, Skokomish, and Stillaguamish Tribes to assert their treaty rights. After extensive pre-trial preparation

and discovery, the trial was held which lasted four weeks. Proposed findings of fact and conclusions of law protecting treaty fishing rights and limiting state regulatory authority were submitted, and the court took the case under submission.

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

The United States filed suit to condemn certain Winnebago reservation lands along the Missouri River for a recreation lake complex. Questions of land title and valuation are being determined by the Nebraska federal court. At the conclusion of these proceedings, an appeal is planned from the federal court's decision rejecting the Tribe's claim that the clear congressional intent required to abrogate the treaty guaranteeing the land "forever" to the Winnebagos was not present in this case, so the condemnation is illegal.

Walker River Paiute Tribe v. Sheehan,
United States District Court, District
of Nevada (filed July 1973)

The State of Nevada passed an act intended to impose state sales taxes on Indian reservation businesses selling cigarettes tax free. On behalf of the Walker River Paiute Tribe and an Indian businessman licensed by the Tribe, NARF obtained a temporary restraining order and a preliminary injunction against the state taxing authorities enjoining them from interfering with the shipment of or attempting to tax cigarettes intended for sale on the reservation. The court held that the state was without jurisdiction on the reservation and was constitutionally precluded from interfering with the interstate shipments to the Indians.

TRIBAL RESOURCES

I Love the Land and the Buffalo and Will Not Part With it.

Santana, Kiowa, 1867

TRIBAL RESOURCES

OVERVIEW

"Including trust responsibility and protection from abusive economic development programs."

Of all the priorities of the Native American Rights Fund, the protection of Indian resources is the most susceptible to legal remedies. However, tribal resources, to the extent that they can be protected by the law, require protection before they are lost or destroyed, rather than after the fact and in ephemeral money awards. The complexity and cost of such an approach has seriously hampered the use of the American legal system in a manner consistent with Indian cultural needs. The result has had a critical impact on the ability of Indians to survive.

In the Southwest the remaining mineral and water resources of more than 39 tribes have provoked some of the most blatant examples of modern day cupidity. In order to combat the cupidity NARF, in 1971, established the Southwest Indian Environmental Project. The litigation undertaken as a part of this Project has been difficult not only because of the usual range of conflicting and hidden Indian law issues, but also because of the myriad of new, complex and generally untested law relating to environmental protection. The adversaries of NARF's clients in this area include a governmental trustee (with insurmountable conflicts of interest), power, mining and business conglomerates. All of these have unlimited financial and legal resources at their disposal. NARF, representing three tribes and over one hundred individual Indian residents of the area, has the resources of only one attorney on this Project. Once in court he often faces ten lawyers of the opposing counsel table. Because of this, NARF has in many instances joined hands with environmental groups and raised Indian law issues as intervenors in their suits.

With the arrival of the energy crisis, the Southwest and other Indian reservations in the Western United States, (such as the Crow Reservation in Montana where there are large coal deposits) have become areas where the preservation and growth of Indian culture is matched against the unyielding development and progress of the dominant society. The problems in the Southwest and on the Crow Reservation

makes it more apparent each day that the Indians' universal and stoic reverence for Mother Earth is a trait and posture that must be adopted by the dominant culture if other societies are to survive. Some cases and activities in this priority area are discussed on the next pages.

TRIBAL RESOURCES
REPORTS ON CASES AND ACTIVITIES

Arizona Public Service Company v. Environ-
mental Protection Agency, United States
Court of Appeals, Ninth Circuit

Pursuant to the Clean Air Act, the states are required to submit plans to implement the clean air standards set by the E.P.A. When the E.P.A. rejected as insufficient Arizona's plan for controlling emissions from electric power plants and proposed stricter plans, the power companies filed suit to reverse E.P.A.'s decision. Because of the environmental impact on Indians living near the plants, NARF sought to intervene in the case on behalf of the Committee to Save Black Mesa and individual Navajos to support the E.P.A.'s decision. Although the intervention was denied, the power company's case was eventually dismissed.

Arkansas Riverbed Ownership

Five Oklahoma Tribes -- the Kaw, Tonkawa, Ponca, Pawnee, and Otoe Tribes -- formed the Arkansas Riverbed Association to press their ownership claims to the riverbed of the Arkansas River in north central Oklahoma. The Arkansas River borders the reservations of all five tribes. Adverse claimants to the riverbed are largely non-Indian landowners along the river. NARF has researched the claims of the tribes and because of the magnitude of the case, is negotiating with the trustee United States in efforts to have legal proceedings asserting Indian ownership instituted.

Blackfeet Tribe -- St. Mary's Lake Pollution

Non-Indian resort owners along the shores of St. Mary's Lake on the Blackfeet Reservation were ignoring the Tribe's request to cease their dumping of sewage into the tribally-owned lake. In association with the Tribe's attorney, NARF advised the resort owners that their actions violated federal and tribal statutes and regulations and constituted a nuisance. With the threat of the lawsuit, the resort owners voluntarily ceased the pollution of the lake.

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Bonelli Cattle Company v. State of Arizona,
United States Supreme Court

In a decision involving the ownership of accreted lands in Arizona which were created as the bed of the Colorado River shifted, the Arizona Supreme Court held that the accreted land belonged to the state as opposed to non-Indian landowners along the river. Since the Cocopah Tribe owns accreted lands in Arizona which were created as the bed of the Colorado River shifted, the decision threatened their title. When the non-Indian land owners appealed the Arizona decision to the United States Supreme Court, NARF filed an amicus curiae brief on behalf of the Cocopah Tribe addressing the difference between non-Indian owned lands and Indian lands which are held in federal trust. The Supreme Court, however, reversed the Arizona decision, holding that the accreted lands belonged to the landowners along the river, thus eliminating a possible state claim to the accreted Cocopah lands.

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

On behalf of the Chemehuevi Tribe, the Cocopah Tribe, and individual Navajos, NARF filed a petition in the FPC against several southwestern power companies seeking to compel the FPC to take licensing jurisdiction over a complex of six coal-fired power plants on or near Indian lands in the Southwest. The FPC asserted that it only had jurisdiction over hydro-electric plants and dismissed the petition. On appeal, the federal appeals court disagreed, holding that power plants using surplus water from government dams had to be licensed by the FPC. The licensing, which must consider the impact of the facility on the Indians, is pending since an appeal to the Supreme Court is expected.

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

When established in 1917, the Cocopah Reservation in Arizona bordered on the Colorado River and, as the course of the river shifted, nearly 1,000 acres accreted to the reservation land. The United States claimed the land on the basis of a 1955 Interior Department opinion resolving an

ambiguity in a description of the land against the Indians. As a result of a suit filed by NARF on behalf of the Tribe, a new Interior Department opinion was eventually issued recognizing the Indians' ownership of the land and, when the federal government refused to consent to a judgment, the federal court ruled in favor of the Indians' claim.

Committee To Save Black Mesa v. Environmental
Protection Agency, United States Court of Appeals,
Ninth Circuit (filed March 1973)

When the E.P.A. rejected Arizona's plan for implementing controls over emissions from electric power plants pursuant to the Clean Air Act, the E.P.A. eventually issued its own plan for controlling these emissions. Because of the environmental impact on Indians near the plants, NARF filed suit against the E.P.A. on behalf of the Committee to Save Black Mesa, individual Navajos, a Navajo Chapter, and the Jicarilla Apache Tribe. The suit asserted that the E.P.A. plan was also insufficient and that more stringent controls were required. The suit is pending further E.P.A. review of the plan.

Crow Leasing Violations

NARF is representing a group of Crow landowners to halt illegal leasing practices by lessees of Indian land on the Crow reservation in Montana. The practice, which consists of agreements to cancel and re-lease the land at a future point, has been held by a federal court to be in violation of federal law limiting the duration of lease periods. Notices must be given to some lessees declaring their leases null and void and demanding damages, but if this fails to stop the illegal practice, litigation may be initiated.

Crow Coal Lease Negotiations

As a result of a corporate lessee's offer to renegotiate existing coal leases with the Crow Nation, the Crow Mineral Committee has undertaken review of existing coal arrangements on the ceded portion of the Crow reservation. NARF is assisting the Committee in their review of the royalty rate in the existing lease and in their efforts to secure appropriate technical advisors and staff to evaluate other aspects of the lease.

Ft. McDowell Orme Dam Negotiations

As part of the Central Arizona Project which will transport Colorado River water to the Phoenix-Tucson area, federal officials plan to construct a storage dam and reservoir on the Ft. McDowell Indian Reservation. The condemnation has been authorized by federal law and would include a major portion of the reservation. NARF is assisting the Ft. McDowell people in their review of the impact of the project on the reservation as they formulate a tribal position on the matter.

Jicarilla Apache Tribe v. Environmental Protection Agency; Goodman v. Environmental Protection Agency, United States Court of Appeals, Tenth Circuit (filed March 1973)

When the E.P.A. rejected New Mexico's and Utah's plan for implementing controls over emissions from electric power plants pursuant to the Clean Air Act, the E.P.A. eventually issued its own plan for controlling these emissions. Because of the environmental impact on Indians near the plants, NARF filed suit against the E.P.A. on behalf of the Jicarilla Apache Tribe, individual Navajos, the Committee To Save Black Mesa, and a Navajo Chapter. The suits assert that the E.P.A. plan is also insufficient and that more stringent controls are required. The suit is suspended pending further E.P.A. review of the plan.

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

In a case brought on behalf of the Jicarilla Apache Tribe, The Committee to Save Black Mesa, and several individual Navajos, NARF challenged major federal actions approving the development of several-coal burning power plants on or near Southwestern reservation on the grounds that they violated the National Environmental Policy Act. After lengthy and complex litigation, the federal appeals court denied injunctive relief against the government. It held that many of the federal actions took place before the effective date of the Act and refused to apply the Act retroactively. With respect to the major actions after the date of the Act, the court held that they had been taken without compliance with the Act, but since environmental impact statements had recently been filed on these actions which were in substantial compliance with the Act, it ruled that no injunction should issue.

Lac Courte Oreilles Band of Lake Superior
Chippewa Indians v. Federal Power Commission,
United States Court of Appeals, District of
Columbia Circuit (filed October 1973)

A Wisconsin power company is seeking to renew its Federal Power Commission license to operate a project which uses Lac Court Oreilles tribal land for reservoir purposes. On behalf of the Lac Courte Oreilles and in association with tribal attorneys, NARF intervened in the FPC relicensing proceeding challenging the jurisdiction of the FPC to issue the license despite the Band's veto of the land use under its Indian Reorganization Act powers. The decision has been taken to a Federal Appeals Court for review.

Muckleshoot Tribe - FPC Project 2494

The Muckleshoot Tribe of Washington, represented by Seattle-King County Legal Services and NARF, has intervened in the Federal Power Commission relicensing proceedings for a Washington power company's operation of an FPC project on the White River. The power company is asserting that the FPC no longer has jurisdiction over the project. The Tribe is supporting the retention of jurisdiction, since the relicensing proceedings would allow them to present their claims that their water rights and fishing rights have been impaired by the power company's upstream facilities.

Narragansett Tribe Land Claims

Because of past transactions with the State of Rhode Island, the Naragansett Tribe has very little land remaining. Since the land transactions were not approved by the federal government as required by law, the tribe may have a claim for the lands. NARF is investigating the claim and preparing to advise the Tribe.

Oljato Chapter of the Navajo Tribe v. Fri,
United States District Court, District of
Columbia (filed May 1973)

Under the Clean Air Act, the Environmental Protection Agency is required to set new source standards on sulphur-oxide emissions from new coal-fired power plants. Since the new source standards proposed by the E.P.A. would require no such controls over the new power plants plan near the southwestern Indian reservations, NARF filed suit against the E.P.A. on behalf of

a Navajo Chapter and individual Navajos. The suit seeks to compel the E.P.A. to revise the new source standards up to an adequate level.

Oneida Nation v. Oneida and Madison Counties
United States Supreme Court

The Oneida Nation brought suit asserting that transactions dating back to 1795 by which most of their lands passed to the State of New York violated federal law requiring federal approval of such transactions. The lower federal courts refused to hear the case, holding that jurisdiction was lacking because the Indians were out of possession of the land. When the Oneidas petitioned the Supreme Court to review the case, NARF supported the petition with an amicus curiae brief on its own behalf. When the Supreme Court agreed to hear the case, NARF assisted the Oneida Nation attorneys with their brief and, in conjunction with the Association on American Indian Affairs and several tribes, filed an amicus curiae brief on its own behalf. The brief emphasizes the disastrous impact on potential Indian land claims if the lower court rulings are affirmed.

Oneida Trespass Claims

Following research and investigation of individual Oneida land claims, it was determined that certain past land transactions were not federally approved as required by law. The claims have been presented to the government for court action in its capacity as trustee for Indian land resources. If the government fails to take action, NARF is prepared to file suit for the individuals in the name of the United States under federal laws allowing such suits against trespassers on Indian land. The case could provide an alternative remedy to assert Indian land claims.

Public Service Company of New Mexico v. Environmental
Protection Agency; Utah International, Inc. v.
Environmental Protection Agency, United States
Court of Appeals, Tenth Circuit

Pursuant to the Clean Air Act, states are required to submit plans to implement the Clean Air Standards set by the E.P.A. When the E.P.A. rejected as insufficient the state plans of New Mexico and Utah for controlling emissions from electric power plants and proposed stricter standards, the power companies filed suit to reverse the E.P.A.'s decision.

Because of the environmental impact on Indians near the plants, NARF intervened in the cases on behalf of the Jicarilla Apache Tribe, individual Navajos, the Navajo Chapter of the Committee to Save Black Mesa to support the E.P.A.'s decision. The power companies' cases were dismissed on grounds that the E.P.A.'s proposed plans were not reviewable until they became final.

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

This suit on behalf of the Pyramid Lake Paiutes sought review of the Secretary of Interior's regulations governing the amount of Truckee River water which could be diverted for a reclamation project. Over the years, these diversions had reduced the level of Pyramid Lake, which is dependent on Truckee River water and is located downstream from the diversion. Following a sweeping decision that the Secretary's regulations violated his trust responsibilities to the Indians, NARF was successful in greatly reducing the amount of water the Secretary could allocate for the reclamation project, thereby increasing the flow into the Lake. NARF, in association with the tribal attorney, was also successful in obtaining an order for attorneys' fees and expenses from the government because of its breach of fiduciary duties, but the award has been appealed by the government.

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

This suit on behalf of two bands of Mission Indians seeks damages and the invalidation of contracts for the use of Indian water of the San Luis Rey River in Southern California on the ground that the contracts violate federal Indian contracting laws. The case is being handled in conjunction with California Indian Legal Services and is pending during the FPC licensing proceeding which effects the diversion facilities. The government has filed a similar suit on behalf of the Bands. The Court ruled against the Indians' motion for access to additional water during the pendency of the proceedings and also rejected the water company's efforts to distribute dividends to shareholders during the pendency of the proceedings.

San Luis Rey--Federal Power Commission
Project #176

The Rincon and LaJolla Bands of Mission Indians, represented by NARF and California Indian Legal Services, are opposing a water company's renewal of their license for facilities which divert the flow of the San Luis Rey River from their reservations in southern California. The Indians assert that the water contracts involved are defective and that the original FPC license has been violated by the water company. The Indians, with the support of the Secretary of Interior, are also seeking a non-power FPC license to take over the facilities now held by the water company. Extensive hearings before the Federal Power Commission have been held in southern California and Washington, D.C. on these unique questions.

Sierra Club v. Ruckelshaus, United States
Supreme Court

In this important environment law case, NARF submitted an amicus curiae brief on behalf of the Jicarilla Apache Tribe, the Committee to Save Black Mesa, a Navajo Chapter and individual Navajos. The issue in the case was whether the Clean Air Act prohibited significant deterioration of clean air regions, even though the degradations would not violate minimum clean air standards. Given the clean air of the southwest, the construction of additional power plants would cause a significant deterioration of air quality. The Supreme Court deadlocked on the issue, leaving in effect a federal appeals court decisions upholding the non-degradation standard. NARF is submitting comments on the proposed E.P.A. regulations to implement the anti-degradation policy.

Skeet v. Tucson Gas and Electric Company,
United States District Court, District of
New Mexico (filed November 1971)

The case arises out of the efforts of Tucson Gas and Electric to construct a powerline through the Navajo Reservation. Several Indian landowners were induced by fraudulent promises to grant the utility rights-of-way through their lands. They brought a suit seeking damages and rescission of those rights-of-way agreements. NARF, working with DNA, represented the Indian landowners. After successfully defending two motions to dismiss, one of which the power company attempted to appeal to the Tenth Circuit Court of Appeals, the case was favorably settled. The Indians obtained rescission of the rights-of-way and assurance that the powerlines would not go

across their land. Furthermore, they received damages for trespasses by surveyors who came on their land without permission.

Taylor v. Bangor Hydro-Electric Company,
United States District Court, District of
Maine, (filed July 1972)

In association with Pine Tree Legal Services, NARF is representing Penobscot Indian landowners who are challenging the validity of easements for flooding issued by the state of Maine to a power company. The case is suspended pending the Supreme Court decision in the Oneida case on the question of whether there is jurisdiction to challenge non-federally approved land transactions between Indians and the state when Indians are out of possession of the land. Even if that case is decided unfavorably, jurisdiction may exist to challenge the easements since an interest remains in the landowner.

U.S. v. Nevada and California, United
States Supreme Court

The government filed an original action in the Supreme Court against the states of Nevada and California to establish 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. In association with the Tribe's attorney, NARF filed an amicus curiae brief on behalf of the Tribe in support of the case. The Supreme Court, in its discretion, declined to invoke its jurisdiction, however, citing the availability of lower federal courts to decide the dispute.

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

This suit on behalf of the Walker River Paiute Tribe and individual allottees seeks to invalidate Southern Pacific's purported right-of-way across the Walker River reservation and to have damages assessed for trespass. The suit claims that the 1882 agreement between the Indians and the railroad for the right-of-way was never ratified by Congress as required by federal law. The United States, in its capacity as trustee, has filed a similar suit. A motion for summary judgment is pending.

Wampanoag Tribal Council of Gay Head Lands

The remaining 200 acres of Wampanoag lands in Massachusetts is threatened by the proposed Nantucket Sound Island Trust bill. At the request of the Wampanoags, NARF proposed legislative recommendations which were incorporated into the bill. The lands are specifically recognized in the bill as Indian lands and are afforded the protection of the federal Indian statutes.

HUMAN RIGHTS

Brother, the Great Spirit Has Made Us All

Red Jacket, Seneca, 1792

HUMAN RIGHTS

OVERVIEW

"Including rights to education and health, and prison reform."

The area of human rights is a problem which is not always easily remedied by the law. Compared to the legal problems of other minority populations existing in the midst of the dominant culture, Indian legal problems (although terribly complex) are much more adapted to the work of lawyers and the courts. The human rights issues facing Native Americans today are unlike those of other minorities because equal access to the dominant society is not always an appropriate solution. Indian cultural experiences differ sharply from those in the dominant society as do their perceptions of the law and their ability to relate to it.

Lawyers working in the human rights area must be particularly sensitive to Indian cultural needs and desires, as well as maintaining a constant recognition of the fact that lawyers will never be the best answer to these problems. Nevertheless, they can play an important role in making certain that the institutions of the dominant society in which Native Americans participate provide equal opportunities and treatment with provisions for their special cultural differences.

The Native American Rights Fund concentrated most of its human rights efforts during 1973 on matters related to Indian education and the problems of Indian prisoners in tribal, local, state and federal penal institutions. A discussion of these and other human rights activities follows.

HUMAN RIGHTS

REPORTS ON CASES AND ACTIVITIES

American Indian Higher Education Consortium

The American Indian Higher Education Consortium is an association of Indian-controlled colleges organized for the purpose of providing research, training and services that will strengthen and develop the member institutions. Membership consists of Navajo Community College, Navajo Reservation; D-Q University, Davis, California; Sinte Gleska Community College, Rosebud Sioux Reservation; Lakota Higher Education Center, Pine Ridge Reservation; Standing Rock Community College, Standing Rock Reservation; and Turtle Mountain Community College, Turtle Mountain Reservation. NARF has provided advice to the Consortium on matters relating to incorporation and funding.

Brigman v. Inchelium Board of Education, Washington Superior Court

The Inchelium School District in the State of Washington is one of the few public school districts governed by an Indian-controlled School Board. When the district encountered severe financial problems, the State filed suit to remove the school board members from office and to recover amounts expended over the approved budget. NARF and the Coalition of Indian Controlled School Boards assisted in keeping the school board in office and the school open. NARF is defending the case brought by the state and settlement negotiations are underway.

Calf Looking v. Richardson, United States District Court, District of Columbia (filed August 1973)

This is a suit on behalf of individual Indian inmates at McNeil Island Federal Penitentiary in Washington state and their Indian religious counselor against officials of the Federal Bureau of Prisons. The relief sought is an injunction against the federal officials from denying visitation rights to the Indian counselor without due process requirements of notice, reasons for denial, and an opportunity to be heard. After the suit was filed, federal officials changed their position and agreed to consider visitation privileges for the Indian inmates' counselor.

Crowe v. Erickson, United States District
Court, District of South Dakota (filed
December 1972)

NARF is representing Indian inmates in the South Dakota State Prison where Indians constitute one-third of the inmate population. The suit was filed against state prison officials, attacking their mail censorship practices, the lack of due process in disciplinary matters, the lack of adequate medical care, employment discrimination in the prison, and the lack of adequate Indian rehabilitation programs. As the result of the suit, disciplinary procedures were revised to provide for notice and hearings and temporary relief against the mail censorship practices was obtained. Discovery is proceeding on other issues in the case.

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

This is an action against the Central School District by Navajo students and parents for misuse of Title I and Johnson-O'Malley funds intended to benefit the large Indian student population. NARF is involved in association with DNA, the Navajo Legal Services Program which originally filed the case, and the Harvard Center on Law and Education. After a court decision favorable to Indians in a related case, settlement negotiations began. A tentative agreement has been reached establishing the misexpenditures of federal funds and also recognizing the right of Indian students to a bilingual education.

Holford v. Fry, Washington Superior Court

The Inchelium School District in the State of Washington is one of the few public school districts governed by an Indian-controlled school board. When the district encountered severe financial problems, the suit was filed against the board by non-Indian taxpayers seeking to remove the school board members from office and to recover amounts expended over the approved budget. The case is similar to one filed by the State of Washington and settlement negotiations are underway.

Hootch v. Alaska, Alaska Superior Court

The State of Alaska has failed to provide adequate secondary school facilities for Alaskan Native children. The state

operates facilities in predominantly non-Indian communities, but very few in Native communities. A discrimination suit to rectify the situation was filed by Alaska Legal Services and the Harvard Center on Law and Education. NARF has provided advice and assistance to the lawyers on the case, which is proceeding.

Indian Inmates of Nebraska State Penitentiary
v. Wolff, United States District Court, District
of Nebraska

Indian inmates in the Nebraska State Prison filed petitions with the federal court charging state prison officials with widespread discrimination. NARF has undertaken representation of the inmates in the case which is proceeding as a class action. The suit seeks to force the prison officials to allow religious and cultural programs for Indians, to invalidate restrictions against Indians wearing their hair in braided fashion, to end discrimination in parole and work release programs, and to remedy employment discrimination in the prison.

Kinale v. Dowe, United States District
Court, Southern District of California
(filed September 1973)

NARF filed suit in conjunction with California Indian Legal Services on behalf of the Indian inmates in the Imperial County Jail against jail officials. Injunctive relief was obtained prohibiting unreasonable mail censorship, disciplinary procedures without certain due process requirements, incarceration of pre-trial detainees with those already convicted, and allowing attorneys access to the jail to interview inmates and inspect the facilities. Discovery is proceeding on the issues of crowded and unsanitary conditions, the lack of adequate rehabilitation programs, and employment discrimination.

Klamath Health Project

The Klamath Tribe of Oregon was terminated from federal Indian services as the result of a 1953 Congressional act. A part of the services lost were Indian health services. To meet the critical Indian health problems existing today, the Organization of the Forgotten American is planning a community health center.

NARF assisted OFA in preparing background information and a proposal for the funding of a community health center; the project has begun.

National Advisory Council On Indian Education

After years of studies and hearings on Indian Education problems, Congress passed the Indian Education Act of 1972. The Act provides financial assistance to local educational agencies for the special educational needs of Indian children, giving preference to Indian-sponsored projects. The Act also creates a National Advisory Council on Indian Education to assist in policy formulation. NARF has assisted the Advisory Council on organizational matters and has provided advice on the interpretation of the Act.

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

This action filed on behalf of Navajo students and parents sought to enjoin local school officials from misusing federal Title I and Johnson-O'Malley funds intended for the benefit of the substantial Indian student population in the Gallup-McKinley County School District. The suit was originally filed by DNA, the Navajo Legal Services Program, and NARF and the Harvard Center on Law and Education have assisted as co-counsel. After an extensive trial, the court ruled that the school district had misspent Title I and Johnson-O'Malley funds, prohibiting further such illegal expenditures, and held that the funds could be used only for educationally deprived children and for Indian children. The court also held that the school district discriminated against the predominantly Indian schools in the district in favor of the non-Indian schools in the allocation of resources and in facilities, and ordered the school district to submit a plan to eliminate the discrimination.

Odegard v. DeFunis, United States Supreme Court

A white student who was refused admission to the University of Washington Law School claimed that he was "statistically" better qualified than some students admitted to the law school under a minority admissions program. NARF prepared an amicus curiae brief on behalf of the American Indian Law Students Association and two Indian law students in the pro-

gram under attack, defending the legality of a minority admissions program and pointing out the vital importance of such programs, especially to Indians. The Washington State Supreme Court upheld the constitutionality of the program, but the United States Supreme Court has granted a writ of certiorari and will review the case. NARF, together with several Indian law-oriented groups, will participate as amicus curiae.

Ojibwa Indian School

In association with the Coalition of Indian Controlled School Boards, NARF is representing Ojibwa Indian School, Inc. in their efforts to establish a community-controlled school on the Turtle Mountain reservation in North Dakota. The students are presently attending a church school, but church school officials have agreed to turn the school over to the Ojibwa School board if they can negotiate a contract with the Bureau of Indian Affairs to operate the school. The negotiations with the Bureau of Indian Affairs to receive federal funding are underway.

Randall v. Inchelium Board of Education, Washington Superior Court

NARF is defending the Indian-controlled Inchelium School Board in a suit by three teachers challenging the board's decision not to renew their teachers contracts. The teachers claim that the board acted improperly in not renewing their contracts for the 1973-74 school year. The case is similar to an earlier suit filed by the same three teachers, which is pending.

Rockpoint Community School

The Rockpoint Community School is one of several community controlled schools on the Navajo reservation. When the school board encountered difficulties in negotiating a new contract with the Bureau of Indian Affairs, NARF provided assistance with the negotiations. After extensive negotiations, and with the support of the Navajo Tribe, the Rockpoint contract was renewed.

Tahdooahnippah v. Thimmig, United States Court of Appeals, Tenth Circuit

This suit sought to compel the governing officials of Ft. Lewis College in the State of Colorado to provide tuition-free

education for Indians at the colleges, pursuant to a 1910 agreement between the United States and Colorado. The action was filed by private attorneys and NARF is of counsel in the case. The United States later filed a similar suit to enforce the agreement. The federal district court ruled in favor of the Indians and this decision was affirmed by the federal Court of Appeals.

Teterud v. Gillman, United States District Court, Southern District of Iowa

Iowa state prison Indian inmates filed a petition in the federal court to invalidate the prison's regulations against Indians wearing their hair in long traditional fashion. NARF undertook to represent the inmates in association with their local attorney. Trial was held and extensive testimony was submitted by Indian religious leaders and anthropologists. The constitutional questions relating to freedom of expression, freedom of religion and equal protection were also argued.

Vanderbol v. Board of Education, Washington Superior Court

NARF is defending the Indian-controlled Inchelium School Board in a suit by three school teachers claiming they were improperly dismissed. If the teachers are successful, their claim for money damages for the loss of 1972-73 employment would place the district in a difficult financial situation. The board did not renew their contract for the 1973-74 school year, and another damage suit has also been filed.

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

NARF brought an action on behalf of Menominee Indian students and parents charging widespread discrimination against 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 case is suspended pending an investigation of the charges by federal officials from the Department of Health, Education & Welfare.

ACCOUNTABILITY

If We Make Peace, You Will Not Hold It

Gall, Sioux, 1868

ACCOUNTABILITY

OVERVIEW

"Of tribal, state, federal and local governments -- and of individual men."

All laws, whether common or statutory, are only as effective as the men who administer and enforce them. The most idealistic judicial ruling or piece of legislation can be emasculated in today's complex society by a single irresponsible bureaucrat. The lives of American Indians, more than any other race or group of citizens, are ruled by law. It is for this reason that their existence is disproportionately dependant on the power or influence of individual men. If these men are effective and honest individuals, they can have an enormously beneficial effect of Indian lives. If they are "obdurate and intransigent" they can wreak an equal or greater amount of havoc.

The search for effective and honest men, and the obdurate and intransigent ones, is a time-consuming and exhausting process because more often than not such men are faceless. Only in rare instances can they be credited with or held directly accountable for their actions. Without exception in each case or matter which has been handled by NARF during 1973, the pursuit of accountability has been involved. The trail has led to past and present presidents, to legislators, and to more than a dozen Secretaries of the Department of Interior, to countless civil service and Bureau of Indian Affairs officials, to prison wardens, to corporate presidents, to tribal lawyers, solicitors general, to innumerable judges and the Supreme Court as well, to school board officials and superintendents of education, to state highway patrol officers and fish and game authorities, to minor state and federal revenue officials, to anthropologists and hydrologists and finally, to million of individual American citizens. There have been effective, as well as ineffective representatives of all the above.

The character differences of these men and the multitude of methods with which they wield power and influence have led the Native American Rights Fund and its clients into some complex, interesting and treacherous arenas. Some of the most significant arenas are discussed in the following pages.

ACCOUNTABILITY

REPORTS ON CASES AND ACTIVITIES

Alaska Native Association of Oregon v. Morton,
United States District Court, District of
Columbia (filed November 1973)

NARF filed suit on behalf of several groups of Alaska Natives who reside outside the State of Alaska challenging the election conducted by the Secretary of the Interior on the question of the creation of a Thirteenth Regional Corporation for Alaska Natives residing outside the State of Alaska. The Alaska Native Claims Act of 1971 required a vote on the question by the non-resident Natives during the enrollment process, but many irregularities occurred during the election, which the Secretary of the Interior certified as a mandate against the creation of a Thirteenth Corporation to manage the assets of the non-resident Natives. Although the court denied a preliminary injunction against the certification, it ordered the Secretary to report on the results of the election to determine if irregularities existed. The Secretary's report is in preparation.

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

This is an action by Indian parents to compel a state institution to permit their child access to a training facility. Although the tribal court approved the commitment and the child was located off the reservation, the state contended it had no jurisdiction to commit the child. The court ruled that the institution must accept the child, holding that Indians are entitled to share in state services on equal basis with other citizens.

Ft. Belknap Builders Financial Problem

The Ft. Belknap Tribes of Montana created a pre-fab housing manufacturing business with government and tribal financing, but the business experienced severe financial problems and discontinued production. NARF has been asked to investigate the circumstances surrounding the business failure, and particularly the role of the BIA in advising the tribe, to determine what liabilities or remedies the tribe may have.

Ft. Sill Apache Tribe v. U.S., United
States Court of Claims

The Indian Claims Commission Act of 1946 allows tribes to bring claims before the Commission based upon "fair and honorable dealings that are not recognized by an existing rule of law or equity". The Ft. Sill Apache Tribe asserted a claim under this section for the 27 years of internment of Geronimo and his followers, but it was dismissed by the Commission and affirmed by the Court of Claims. NARF filed an amicus curiae brief supporting the Tribe's motion for reconsideration, arguing that the claim was a tribal claim for jurisdictional purposes and that it was cognizable under the fair and honorable dealings section. The motion for reconsideration was denied by the Court of Claims.

Hopi Tribal Lease of Traditional Clan Lands

An administrative appeal to the Interior Department was brought on behalf of several Hopi traditional leaders questioning the jurisdiction of the Tribal Council under the tribal constitution to lease out their traditional clan lands without their consent. The appeal was denied by the Secretary of the Interior and the validity of the lease and the jurisdiction of the tribal council was upheld. Further action is possible pending the outcome of a related suit raising similar issues.

Iron Horse v. City of Scottsbluff, United
States District Court, District of Nebraska
(filed January 1973)

A group of Indians attending an Indian-Chicano unity meeting in Scottsbluff, Nebraska, were harrassed and arrested by local law enforcement officers. Representing the group, NARF obtained a temporary restraining order from the Nebraska Federal Court enjoining city officials and law enforcement personnel from denying the Indians their constitutional rights and prohibiting discriminatory law enforcement. At a hearing on the motion for a preliminary injunction, an agreement was reached prohibiting violations of constitutional rights, allowing complaints to be filed against law enforcement officials, and calling for the evaluation of all Indian criminal cases. The agreement also established a commission composed of city officials, Indians, and Chicanos to negotiate solutions to their problems in the community.

Lomayaktewa v. Morton, United States
Court of Appeals, Ninth Circuit (filed
May 1971)

The Hopi traditional and religious leaders filed suit seeking to set aside the Secretary of the Interior's approval of a coal strip-mining lease by the Hopi Tribal Council. The suit is based on violations of the tribal constitution, including the lack of leasing authority and the lack of a duly constituted quorum. After the case was transferred from a Washington, D.C., federal court, the case was dismissed by the Arizona federal court for failure to join indispensable parties. The decision has been appealed to the federal Court of Appeals in San Francisco.

Minnesota Chippewa Tribe v. Weinberger,
United States District Court, District
of Columbia (Filed January 1973)

To implement the Indian Education Act of 1972, Congress enacted a special appropriation of \$18 million. When the administration impounded the appropriation and refused to release it for expenditure citing national budget control reasons, NARF filed suit against federal officials on behalf of the Minnesota Chippewa Tribe, the Oglala Sioux Tribe, the Tuscarora Indian Nation, the Metlakatla Indian Community, the Seneca Nation of Indians, the Nez Perce Tribe, the North Slope Borough School District, the Reservation School District of the Kashia Band of Pomo Indians, the California Indian Education Association, the National Indian Training and Research Center, and the Coalition of Eastern Native Americans. The suit was filed in association with the respective tribal attorneys and the Harvard Center on Law & Education. As a result of the suit, and a similar suit filed by the Coalition of Indian Controlled School Boards, the matter was settled with the appointment of the National Advisory Council on Indian Education and the release of the \$18 million for expenditure.

National Tribal Chairmen's Association v.
Weinberger, United States District Court,
District of Columbia (filed June 1973)

Congress appropriated over \$6 million as supplemental funding for the Indian Health Service in fiscal year 1973. When the administration impounded nearly \$5 million of the appropriation and refused to release it, NARF filed suit on behalf of the

National Tribal Chairmen's Association and the Arctic Slope Native Association to release the appropriated funds and have them expended. Just prior to the first hearing in the case, the federal government released the funds and they were eventually obtained and expended for Indian health services.

Osage Tribal Government Problem

The Osage Tribal Council of Oklahoma is elected by Osages and non-Osages who own shares in the tribal mineral estate. Not all Osages own mineral estate shares, however, so they are not included in the electorate. Although the Tribal Council's functions are limited to the administration of the mineral estate, it is allowed by the BIA to administer some general reservation programs for all Osages, even though it does not represent all Osages. In conjunction with the Association on American Indian Affairs, NARF is negotiating on behalf of a group of Osages with the Tribal Council to prepare legislation which will insure all Osages the right to vote for a Tribal Council, separate from the Council which administers to mineral estate.

Wounded Knee Negotiations And Assistance

In association with other attorneys for the Indians, NARF attorneys participated in the negotiations with the government on two separate occasions in an effort to resolve the confrontation at Wounded Knee, South Dakota. Dealing only with law enforcement issues and not political issues, NARF was instrumental in arranging an offer of safe passage out for the Indians and, later, the withdrawal of federal marshalls surrounding Wounded Knee which lasted a short time. The confrontation was ultimately resolved, of course, after the government made some concessions on political issues.

INDIAN LAW DEVELOPMENT

You Must Speak Straight So That Your Words May Go As Sunlight To Our Hearts

Cochise, Apache, 1866

INDIAN LAW DEVELOPMENT

OVERVIEW

"Including strengthening of important legal precedents, development of local legal resources and disbursal of Indian legal information."

In addition to filing suits designed to strengthen legal precedents of benefit to Indian people, NARF has made the stretching and strengthening of existing Indian legal resources one of its primary efforts. The National Indian Law Library and the Indian Law Backup Center both have gone a long way to expand and increase the quality of legal services to Indian clients all across the country.

The NILL collection greatly reduces the amount of time-consuming legal research required of NARF, legal services attorneys, and any attorney practicing Indian law. It enables lawyers representing Indians to present the issues to the courts in an orderly and carefully calculated manner so that new law has the best possible opportunity to develop favorably. A more complete report on NILL is found in the next section of this report.

Under the OEO Indian Law Backup Center, NARF has used the full-time resources of one staff attorney to provide both emergency and long-term legal research, advice, and materials to legal services attorneys. Sometimes this is done by simply clarifying the legal issues in a particularly difficult tribal resource problem by telephone or letter. In other instances it is done by assuming the primary responsibility for complex litigation that legal services attorneys cannot undertake.

Beyond this, by carefully screening each request for assistance (estimated to take up to ten percent of NARF's resources) NARF hopes to avoid two evils. One, to prevent the unjustified continuation of long held hopes of clients for the resolution of their problems legally. And two, by determining the exact nature of the client's problems (even if it is a case NARF cannot accept or a non-legal problem), NARF attorneys are better able to make effective referrals resulting in a savings of human and financial resources for everyone -- the clients, lawyers and other social or governmental agencies.

The Native American Rights Fund National Indian Law Library newsletter, Announcements, was sent to more than 4,000 subscribers during 1973. Beginning in October, 1973, the Indian Law Backup Center began the publication of Indian Law Developments, to provide technical and legal analysis of pending litigation in the field of Indian law, primarily for the 70 or 80 Indian legal services attorneys. A full list of all of NARF's publications with distribution information can be found in the Secretary-Treasurer's Report. A summary of activities in the Indian Law Development field follows.

INDIAN LAW DEVELOPMENT
REPORT ON CASES AND ACTIVITIES

Legislation and Regulations

The Senate Judiciary Committee has proposed revisions in the Federal Criminal Code, some of which will affect Indians. The revisions raise questions relating to the expansion of federal jurisdiction over Indians and limitations on the jurisdiction of tribal courts. On request, NARF has submitted analyses of the revisions affecting Indians and has urged the Committee to consult widely with the tribes affected.

Legislation is pending which would create an Indian Trust Counsel Authority, a legal unit to carry out the government's responsibility as trustee to protect Indian natural resources. NARF submitted testimony before the House Indian Subcommittee, stressing the urgent need for the bill and the need for an adequate level of funding for the Trust Counsel. Because of the similarity between NARF and the proposed Trust Counsel Authority, data was submitted on the allocation of NARF resources to Trust Counsel Authority-type cases as an indicator of what an adequate level of funding might be.

When the National Water Commission completed its recommendations on a national water policy, many of its proposals to Congress affected Indian water rights. Testimony was submitted before the Water Commission by NARF attorneys pointing out critical errors in the recommendations and urging that they be changed to protect Indian water rights.

The Bureau of Indian Affairs has been in the process of revising the regulations pertaining to the use of Johnson-O'Malley funds which are intended for the special educational needs of Indian children. NARF, in conjunction with the Harvard Center for Law and Education, has participated in drafting proposed new regulations, suggesting changes and commenting on alternative proposals put forward by the BIA. NARF has also assisted in the formulation of a coalition of Indian interest groups to press reforms in the Johnson-O'Malley program.

NARF has also provided information for key congressional leaders on the importance to Indians of

legal services back-up centers and effective legal services programs as the Congress considers a bill to establish a legal services corporation. When Indian concerns prompted Senate hearings on the realignment of the Bureau of Indian Affairs, testimony was submitted as to the impact of the reorganization on the administration of the trust responsibility to protect Indian natural resources. Assistance was provided to the Coalition of Eastern Native Americans in their efforts to qualify their constituents for federal grants from the new H.E.W. Office of Native American Programs.

Tribal Codes

After the Colville Tribe of Washington succeeded in halting federal plans to administer the Tribe's water resources, the Tribe set about to draft its own tribal water code to provide for tribal regulation. NARF was called in to assist tribal officials and consultants in drafting the code, which is the first of its kind and an important exercise of tribal sovereignty.

The Northern Cheyenne Tribe of Montana, in preparation for the development of its coal resources, sought advice on tribal control of the development. As a result, NARF prepared a resource code for tribal consideration which would regulate and control the mining activities of the coal companies and insure environmental protection. A proposed tax code was also presented in order to produce additional revenues for the Tribe. NARF has also assisted the Northern Cheyennes in their efforts to secure a contract with the BIA to take over law and order functions on the reservation.

As a result of a recent federal court decision confirming Chippewa treaty rights to hunt, fish, trap and gather wild rice free of state regulation, the Leech Lake Band of Chippewa Indians has enacted a conservation code to regulate those activities on the reservation through a conservation court. To improve the court's effectiveness, NARF is assisting the court in preparing a procedural code for use by the court in administering the Tribe's conservation laws.

The Crow Land and Livestock Association is made up of Crow Indian ranchers on the reservation in Montana. Assistance has been provided to the Association in formu-

lating a plan for tribal consideration which would stem the leasing of Crow tribal lands to non-Indians by establishing a priority for Indian lessees on a competitive basis. The priorities are intended to assist Crow tribal members to develop successful ranching operations and maximize the tribal leasing revenues.

General

In efforts to expand the availability of legal assistance to Indians, NARF has conferred with and encouraged several organizations to undertake representation of Indian clients in particular cases. Discussions with the National Lawyers' Guild, the American Civil Liberties Union, and the Lawyers' Committee for Civil Rights Under Law have resulted in the acceptance of some referrals. To meet the special needs of Hawaiian Natives, NARF is exploring methods to provide legal assistance on land matters and issues of cultural survival. In order to insure adequate representation to Indians accused of criminal violations during the Wounded Knee confrontation, NARF is assisting in the incorporation of a special criminal defense project for Indians.

Extensive research is underway on the legal status of Eastern Indians. NARF is participating with Pine Tree Legal Services of Maine in the effort, which will focus on alternative methods of improving tribal conditions by establishing or strengthening federal or state relationships.

NARF attorneys participated in an Indian law course at the University of Colorado Law School, and were responsible for a similar undergraduate course at the Denver Center of the University of Colorado. A NARF attorney also participated as an instructor during the summer program for Indian law students participating in the special scholarship program at the University of New Mexico Law School. On several occasions, NARF attorneys have appeared as speakers or panelists on Indian law subjects at universities and at Indian organizational meetings.

THE NATIONAL INDIAN LAW LIBRARY

THE NATIONAL INDIAN LAW LIBRARY

PROJECT PROFILE

During the first months of NARF's work, staff attorneys and advisors spoke often of the need for a central clearinghouse on Indian law. There were dozens of new cases being brought by those Indian legal services programs that had been funded by the Office of Economic Opportunity on reservations from California to Maine. The attorneys working for these programs were primarily young, inexperienced and overworked. They had little or no time for research or communication with each other. As a result of OEO, after more than 200 years of sporadic Indian involvement with the white man's courts, in less than five years there was a three-fold increase in the number of Indian law cases being litigated. Unfortunately, many were brought hastily, too many did not produce the desired result and still others proved beneficial for one tribe but disastrous for another.

The standard commercial reporting system which has been applied to Indian law was, and still is, archaic. It has less than 40 subject headings in a field of law that is well-known as a morass of statutes, treaties and solicitor's opinions. The result had been that even published or reported decisions were relatively inaccessible to lawyers practicing Indian law and could not be readily applied to the appropriate cases. Further, most of those practicing in legal services programs did not have access to large libraries and could not afford to subscribe to the five or six expensive digests that needed to be scanned for relevant Indian materials.

After reviewing these problems, staff members began to correspond and meet with Native American law students, professors, legal services lawyers, and members of the private bar who represented Indian tribes and to discuss with them their problems. They all agreed on the need for an Indian law clearinghouse. As a result, early in 1971, David Getches, NARF's Founding Director, met with Eli Evans of the Carnegie Corporation of New York to speak with him about the work of the Native American Rights Fund and the need for assistance in a coordination effort, and in May, 1972, Carnegie Corporation announced a \$119,000 grant to NARF for the development of the National Indian Law Library. The grant provided monies for three years of the initial operation of the Library. During the past year, the Library has become an essential tool in the NARF work to strengthen and develop an effective body of Indian law.

It was readily apparent that the missing link between a new retrieval system and new or old decisions or precedents in Indian law was a workable index providing access to all of the subject areas in the field. Staff attorneys spent over a year developing what has now become NARF's General Index to Indian Law. Because there are so many laws affecting the lives of Indians, and so many judicial and administrative bodies interpreting them, the index had to have a large number of topics, and enough sub-topics to enable any lawyer using it to have quick access to those cases which were most closely related to the problem areas confronting him.

The General Index to Indian Law has more than 380 classifications. Before the Index was copyrighted, it was used daily for many months by all NARF attorneys, reviewed by Indian legal scholars at several universities and distributed for comments and recommendations to governmental, private and legal services attorneys. During the 18 months of the Library's official operations, the Index has had steadily increasing use, and has indeed proved itself to be the missing link. It is the key to the National Indian Law Library collection.

The Holdings

NILL's collection of legal documents continues to grow. It includes treaties between the United States and Indian tribes, governmental regulations pertaining to Indian affairs, and publications devoted to natural resources and environmental protection. The bulk of the 3000 files are pleading files from Indian law cases which have been decided or are pending before courts throughout the United States. Perhaps the most complete portion of NILL's collection is the compilation of law review articles, some of which date back to the 1860's. These articles are valuable for their analysis of developments in Indian law.

In addition to the aforementioned, NILL's holdings include transcripts of congressional committee hearings, studies of social and economic matters affecting tribes, legislative reports, Indian-published newspapers and periodicals, and files of press clippings of importance to Indian affairs.

National Indian Law Library Catalogue

Since NILL's inception, one of its objectives has been to publish a catalogue listing all of the holdings in the Library. It was felt that if such a catalogue were in an attorney's hands, whether in Window Rock, Arizona, or in Calais, Maine, that he would be better able to request the materials and cases most suited to his immediate problem. The staff would be saved research time and copying costs and requests could be filled more rapidly.

The first National Indian Law Library Catalogue was printed in August 1973. The Catalogue, besides containing an introduction and table of contents, is divided into three sections. In section one, each holding is organized by subject headings. The second section lists each holding by number and gives the documents on file in the Library. In addition, such information as the state in which the action arose, the court, the tribe, date of the first document, and a short description of the holding is provided in both sections. Finally, a third section contains an alphabetical listing of the holdings.

The Catalogue is being distributed on an experimental basis in the hope that it will make NILL a more useful research tool for its users. The in-house card-file catalogue, of course, will continue to be the main and most up-to-date key to the collection. Those requests from NILL users who have a Catalogue (tentatively scheduled for publication on an annual sequential basis) are quickly checked against the card-file catalogue to see if any additional holdings in the area in which they are making requests have been added to the NILL collection since the Catalogue was published. Copies of any new holdings are then automatically sent with their Catalogue order. The Catalogue has been distributed free of charge to every Indian legal services program and tribe. Copies for libraries, non-Indian organizations and individuals have been made available at \$10.00 per catalogue.

Indian Claims Commission Decisions

Until this year the Decisions of the Indian Claims Commission were largely inaccessible to lawyers and tribes. A few incomplete collections had been gathered, but they had never been catalogued, nor had they been printed for distribution. In fact, the Commission's own original copies were in very poor condition.

In 1972, it was agreed that, in exchange for a complete set, NARF would assume the responsibility for the at-cost printing and distribution of the Decisions - some 30 volumes amounting to more than 22,000 pages of material. This arrangement permitted NILL's staff to have an opportunity to review the materials, catalogue them and prepare a special index. In a state of some naiveté about the complexity of this task, the staff projected that this would be accomplished in about six months. The indexing and cataloguing has, in fact, taken more than 18 months, and has required a tremendous amount of NILL staff time and resources.

At the time the ICC project started there were more than fifteen libraries who wanted full or partial sets of the Decisions. As soon as it was known that NARF had undertaken the printing and distribution, several hundred requests were received for special sections. Tribes, in particular, were very anxious to have copies of those materials relating to their claims before the ICC.

In October 1973 the Native American Rights Fund's Index to the Decision of the Indian Claims Commission (Library of Congress Card Catalogue No. 73-89021) was published. The Index includes a unique subject index, which was specially developed for the Commission's Decisions in conjunction with the General Index to Indian Law. It makes an enormous amount of valuable information and legal precedents found only in the Decisions readily accessible to lawyers and tribes for the first time.

Seventeen volumes of the existing 30 volumes have been printed and distributed this year. The remaining volumes will be printed in 1974.

NATIONAL INDIAN LAW LIBRARY

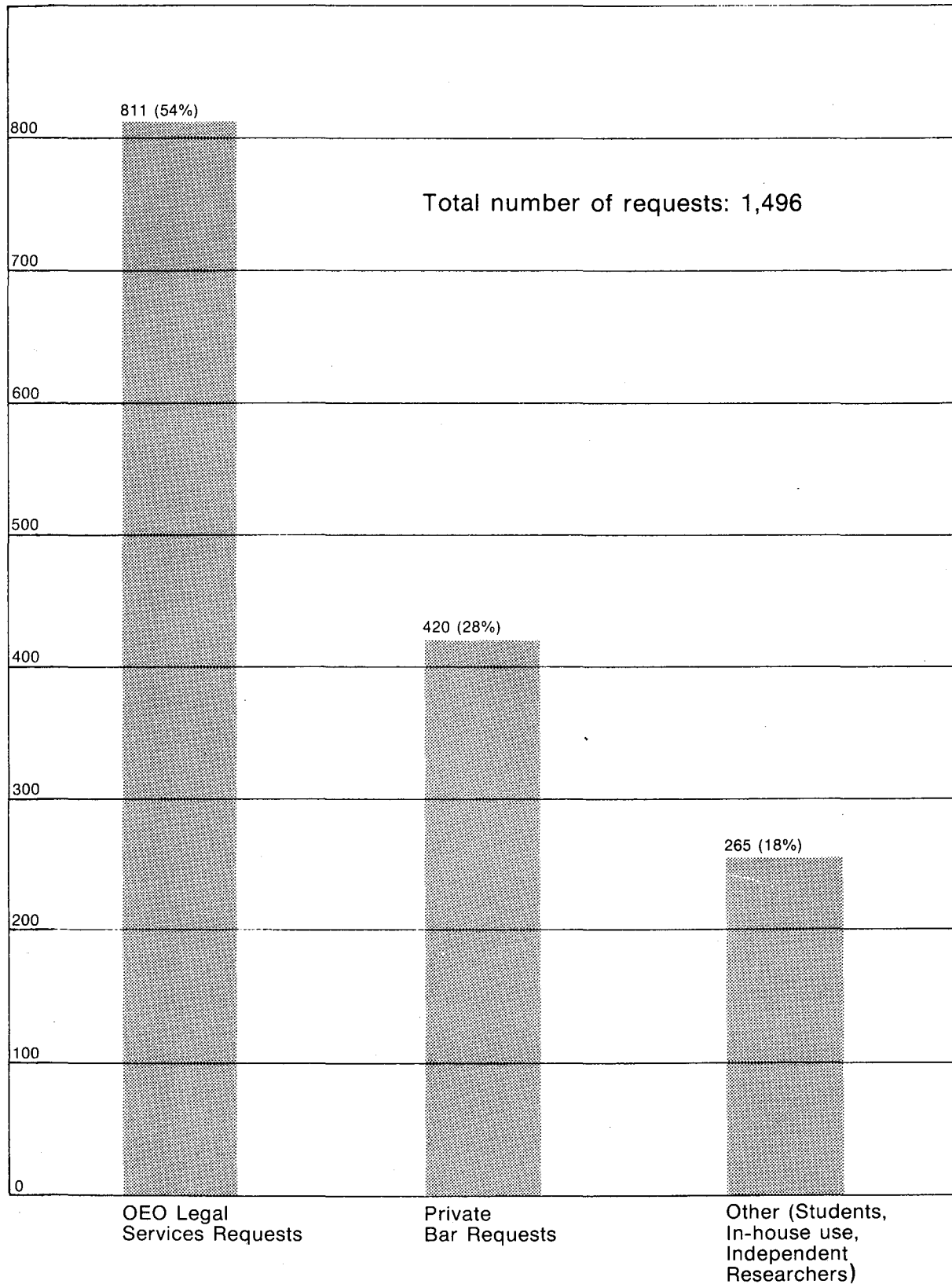
USER RESPONSE

The Library is currently receiving more than 300 requests per month for materials or research assistance. A graphic analysis of user requests is shown on the following page. During 1973 NILL had 1496 requests for assistance and materials. As the graph indicates the most frequent users of the collection are Office of Economic Opportunity Legal Services Programs. NILL had 811 requests from staff attorneys working for Indian clients in projects all across the country. Since NILL's inception, there has been a steady increase in use by the private bar. A total of 420 such requests were made this year. In addition, an increasingly large number of law students, anthropologists, historians and other researchers have made use of the NILL collection. Individuals from foreign countries including Australia, England, Finland, Germany, and Canada have visited NILL while working on special research projects. Requests from these individuals reached 265 in 1973.

The investment made by the Carnegie Corporation in the National Indian Law Library comes at a critical time in the legal history of Native American people. If NILL permits only one tribe to preserve its existence by a thorough and accurate use of the law, then the investment by Carnegie Corporation, the Steering Committee and individual NARF staff members will have been a remarkably small, but priceless, one.

Native American Rights Fund National Indian Law Library

Requests for Assistance and Materials, 1973



Total number of inquiries during 1973: 2,544

SECRET AND CONFIDENTIAL REPORT

SECRETARY-TREASURER'S REPORT

OVERVIEW

IRS Classification

On February 5, 1973, the Internal Revenue Service classified the Native American Rights Fund as an organization that is not a private foundation as defined in section 509 (a) of the Internal Revenue Code. The letter of determination classified NARF as an organization described in section 170 (b) (A) (vi) and 509 (a) (1). The classification was made retroactive to the original date of incorporation, July 19, 1971. This classification relieves private foundations of expenditure responsibility for all grants made to the Native American Rights Fund.

Fiscal Management

The Native American Rights Fund's accounting and financial management are in accordance with generally accepted principles of fund balance accounting and are the responsibility of the Secretary-Treasurer of the Corporation. The system is a full accrual, double entry system involving a receipts and disbursements journal, payroll journal, and general ledger. All expenses are segregated by grantee. A general fixed asset fund has been established, a memo budgetary control exists for all budget categories to guard against over expenditures.

The Native American Rights Fund's operational budget for Fiscal Year 1973 increased by 19% over expenditures made in Fiscal Year 1972. In FY 1973 total operational expenses amounted to \$791,015; in FY 1972, they were \$540,146. The increases were due to program expansion, including the addition of two professional staff members and the necessary support components, as well as to price increases in services and goods NARF must purchase.

Private foundations provided 72% of the budget support for 1973; governmental and public institutions 23%; and the general public 5%. A list of all 1973 supporting foundations, public grant sources, corporate gifts, and major individual contributors is included on pages 72-74 of this report section.

A small portfolio of stocks provided by individual contributors has been maintained during 1973. In addition, a 200,000-piece direct mail solicitation test was made between February and September, 1973, in an effort to build a broader base of funding support for the program.

NARF FY 1973 resources were spent according to the following budget lines.

<u>FY 1973 Expenditures</u>	<u>Amount</u>	<u>Per Cent of Total</u>
Personnel Costs	\$407,295	52%
Consultants and contract services	21,526	3
Travel	69,769	9
Space Costs and rentals	43,308	5
Consumable supplies	71,486	9
Equipment and furnishings	6,878	1
Litigation Costs	16,295	2
Other Costs	154,150	19
Transfer to other programs	308	0
TOTALS	\$791,015	100%

The auditor's opinion and NARF's statement of assets, liabilities and fund balance as of September 30, 1973 for FY 1973, as well as accompanying notes, are included in this Report section beginning on page 75.

Publication Program

Two major Native American Rights Fund publications were completed in 1973. They were the National Indian Law Library Catalogue and the Index to the Decisions of the Indian Claims Commission, Volumes 1-29. The Catalogue was published in August 1973 and includes the Native Ameri-

can Rights Fund's "General Index to Indian Law" under which the first 700 holdings of the NILL collection have been listed. The Index, published in October, 1973, also includes a unique subject index developed by NARF to the particular work of the Indian Claims Commission. All of the decisions of the Indian Claims Commission up to 1973 have been indexed in this volume. The Native American Rights Fund also published the first 16 volumes of the Decisions of the Indian Claims Commission during 1974. Both the Catalogue and the Index have been in preparation since early 1972. Their completion was an important accomplishment of the Native American Rights Fund's publication program. Both volumes were printed by Native American Rights Fund's National Indian Law Library Press. A complete listing of all NARF monographs and periodicals begins on page 80. The listing includes price information. A list of staff publications is shown on page 82.

Corporate and Program Management

John E. Echohawk, a Pawnee, became Executive Director of the Corporation and Director of the program on April 1, 1973. He had previously held the positions of Vice-Executive Director of the Corporation and Deputy Director of the program. David H. Getches, who had held the directorship positions until April 1, 1973 was appointed Vice-Executive Director of the Corporation on that date. The position of Deputy Director of the program was not filled after April 1, 1973.

In addition to Mr. Echohawk, fifteen other professional staff members worked out of NARF's main office in Boulder, Colorado during 1973. These included thirteen attorneys, five of whom are Native Americans, one Native American Research Associate, and the Assistant to the Director. An additional attorney was located in NARF's Washington, D.C. office and the full-time services of a lawyer in Calais, Maine were used on an Of Counsel basis. No professional staff members left the program during 1973; two were added.

Of the 27 full-time NARF support staff position, 22 or 81% were filled by Native Americans during 1973. Nine support staff members left during 1973, a 33% turn-over rate. Four left NARF to complete their college educations, three to accept other positions, and two for personal reasons. Two new support staff positions were created in

1973 to strengthen the support component because of professional staff growth. The staffing ratio has remained at a 1/1 level professional/support personnel. A listing of all 1973 NARF employees can be found on pages 84 - 88. The vitae of staff attorneys are also included. The Organizational Chart for the Corporation and program is shown on page 89.

The Corporation was incorporated as a non-profit corporation in the District of Columbia on July 19, 1971. The Native American Rights Fund, Inc. operates under a Certificate of Authority for a Foreign Non-profit Corporation in the State of Colorado.

Joan L. Carpenter
Secretary-treasurer

January, 1974

NATIVE AMERICAN RIGHTS FUND

CONTRIBUTORS 1973

<u>Foundations</u>	<u>Grant Purpose</u>
American Indian Civil Liberties Trust	To End Impoundment of Indian Education Monies
Avon Products Foundation	General Support
Carnegie Corporation of New York	National Indian Law Library
Field Foundation	Southwest Indian Environmental Project
Ford Foundation	General Support
General Mills Foundation	General Support
Irwin-Sweeney-Miller Foundation	Indian Corrections Project
Lilly Endowment, Inc.	Eastern Indian Legal Support Project
Norman Foundation	Direct Mail Solicitation Program
Seacoast Foundation	General Support
Stanton Foundation	General Support
Tamler Foundation	General Support
Vinmount Foundation	General Support
<u>Corporations</u>	<u>Purpose</u>
American Telephone and Telegraph	General Support
CNA Financial	General Support
Erie Insurance Exchange War Orphan Fund	General Support
Random House, Inc.	General Support
Textron	General Support

Religions, Governmental and
Public Institutions

Purpose

Harvard University (Subcontract of OEO Grants)	Indian Education Legal Support Project
United Society of Friends Women	General Support
University of Colorado (Subcontract of OEO Grants)	Indian Law Back Up Center

Individual Contributors over \$100

Purpose

Fanny H. Arnold	General Support
Mrs. Frank L. Babbitt	General Support
Frank C. Baldwin	General Support
Gloria Bamberger	General Support
Katrina McCormick Barnes	General Support
Roger Boone	General Support
Mel Borisic	General Support
Eugene Rowe Bradford	General Support
Gordon W. Brown	General Support
James G. Butterhead	General Support
Jane Ann Choate	General Support
Mrs. Harding Clegg	General Support
Elizabeth B. Conant	General Support
Robert H. Cory, Jr.	Endowment
Russell Cowles	General Support
Stuart P. Coxhead, Jr.	General Support
Ed & Phyllis Davis	General Support
Miss A. DeLamar	General Support
Babette Deutsch	General Support
M. M. Devore	General Support
Carol Fehfisch	General Support
Mary Fraser de Packh	General Support
S. Stuart Hanisch	General Support
Fredrika T. Hastings	General Support
Sarah H. Haubert	General Support
Paul Henning	General Support
Sarah A. Hinckley	General Support
Raymond L. Jewett	General Support
Louise Johnson	General Support
Samuel Kinser	General Support
John E. Lamb	General Support
Mrs. Wann Langston	General Support
Beverly Leopold	General Support
Ernest N. May	General Support

Individual Contributors over \$100
(Continued)

Purpose

Mrs. Charles R. McLean	General Support
Kady L. Offen	General Support
Vera C. Pratt	General Support
Mrs. William M. Preston	General Support
Dr. & Mrs. Stephen Shafer	General Support
Mr. & Mrs. Paul J. Sperry	General Support
Robert & Nancy Stover	General Support
Ruth Thompson	Eastern Indians
Henry Wallace	General Support
Louise Wilson Warren	General Support
T. L. Williams	General Support
Julie D. Winslow	General Support

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METRO 443-9993

2305 CANYON BOULEVARD
BOULDER, COLORADO 80302
(303) 444-2971

Brock, Cordle and Associates
CERTIFIED PUBLIC ACCOUNTANTS

THOMAS P. BROCK,	C.P.A.
MERLYN J. LAMBERT,	C.P.A.
GERALD E. BUCHHOLZ,	C.P.A.
VANDERLYNN STOW,	C.P.A.
ALAN L. GROTHE,	C.P.A.

THOMAS E. HENBEST,	C.P.A.
THOMAS A. BRUCH,	C.P.A.
DONALD N. ARMSTRONG,	C.P.A.

Steering Committee
Native American Rights
Fund, Inc.
Boulder, Colorado

We have examined the statements of assets, liabilities and fund balances of Native American Rights Fund, Inc., a non-profit corporation, as of September 30, 1973, and the related statements of revenues, expenditures and fund balances for the year then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, subject to any adjustments to the financial statements which may result from determination of the amount which ultimately will be realized from the Fund's investment in common stock described in Note 3, the aforementioned financial statements present fairly the financial position of Native American Rights Fund, Inc. at September 30, 1973, and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Brock, Cordle and Associates
Certified Public Accountants

Longmont, Colorado
November 28, 1973

NATIVE AMERICAN RIGHTS FUND, INC.

GENERAL FUND

STATEMENT OF ASSETS, LIABILITIES AND FUND BALANCE

September 30, 1973

(Notes 1 and 2)

ASSETS

CURRENT ASSETS

Cash on hand and in banks		\$ 31,454
Marketable securities (Current market value approximately \$7,000) (Note 1)		6,634
Accounts and grants receivable		
University of Colorado	\$ 28,847	
Harvard University	14,530	
Other accounts receivable	<u>8,181</u>	51,558
Prepaid expenses		2,406
Payroll and travel advances		<u>1,211</u>
Total current assets		93,263

INVESTMENT IN COMMON STOCK (Note 3)	40,000
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OTHER ASSETS

	<u>307</u>
	<u>\$133,570</u>

LIABILITIES AND FUND BALANCE

CURRENT LIABILITIES

Accounts payable - trade		\$ 19,766
Accrued expenses		
Accrued salaries and fringe benefits	\$ 18,131	
Accrued payroll taxes	<u>4,333</u>	<u>22,464</u>
Total current liabilities		42,230

FUND BALANCE (Note 4)

Balance, October 1, 1972	192,559	
Excess of expenditures over revenues	<u>(101,219)</u>	
Balance, September 30, 1973 (Exhibit B)		<u>91,340</u>
		<u>\$133,570</u>

The Notes on Page 77 are an integral part of this financial statement.

NATIVE AMERICAN RIGHTS FUND, INC.

GENERAL FIXED ASSET FUND

STATEMENT OF ASSETS, LIABILITIES AND FUND BALANCE

September 30, 1973

(Note 1)

ASSETS

PROPERTY AND EQUIPMENT

Office equipment and furnishings	\$ 45,844	
Land and buildings (mortgaged)	140,135	
Improvements to land and buildings (mortgaged)	<u>1,720</u>	
		<u>\$187,699</u>

LIABILITIES AND FUND BALANCE

CURRENT LIABILITIES - Current portion of long-term liability (see below)		\$ 2,487
LONG-TERM LIABILITY		
Mortgage payable - United Bank of Boulder - 8 3/4%	\$125,411	
Less portion due within one year (see above)	<u>2,487</u>	122,924
FUND BALANCE		
Balance, October 1, 1972	27,749	
Net increase in fund balance	<u>34,539</u>	
Balance, September 30, 1973		<u>62,288</u>
		<u>\$187,699</u>

STATEMENT OF CHANGES IN FUND BALANCE

Year ended September 30, 1973

(Note 1)

INCREASES IN FUND BALANCE

Acquisition of land and buildings	\$140,135	
Less funds provided by mortgage	<u>126,000</u>	\$ 14,135
Acquisitions of office equipment and furnishings		18,257
Improvements to land and buildings		1,720
Payments on mortgage payable		<u>589</u>
Total increases		<u>34,701</u>

DECREASES IN FUND BALANCE -

Dispositions of office equipment		<u>162</u>
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NET INCREASE IN FUND BALANCE

\$ 34,539

The notes on Page 78 are an integral part of this financial statement.

NATIVE AMERICAN RIGHTS FUND, INC.

NOTES TO FINANCIAL STATEMENTS

September 30, 1973

Note 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Accounting Method. The accounting records of Native American Rights Fund, Inc. are maintained using the accrual method of accounting. However, for grants which cover periods extending after the end of the fiscal year, revenues are recognized only to the extent of the funds that are actually received during the fiscal year except for grants which authorize expenditures prior to the receipt of funding and provide for billing of costs incurred to the grantor after expenditures have been made. In this latter case, additional revenues are recognized for amounts billed to the grantors.

Marketable Securities. Contributions of marketable securities and similar assets are recorded by the Fund at estimated market values as of the dates of contribution.

Property and Equipment. Funds expended for acquisitions of non-expendable property and equipment and payments on related mortgages have been treated as expenditures of the general fund. Assets acquired have been recorded in the general fixed asset fund at their acquisition cost. Depreciation has not been computed on general fixed assets.

Note 2 - NATURE OF ORGANIZATION

Native American Rights Fund, Inc. was incorporated under the non-profit corporation law of the District of Columbia on July 19, 1971. Operations began immediately. The Fund has received notice of exemption from federal income taxes as a charitable and educational organization as described in section 501(c)(3) of the Internal Revenue Code.

Note 3 - INVESTMENT IN COMMON STOCK

In December, 1972, 20,000 shares of the common stock of Elixir Industries, a corporation listed on the New York Stock Exchange, were donated to the Fund. These shares represent about one-half of one percent of the outstanding stock of that company. These shares had not and have not since been registered under the Securities Act of 1933. Accordingly, they are subject to certain restrictions. While these shares can be sold, the restrictions require, among other things, that a legal opinion and certain other documents be obtained, that sales be made only during specified time periods and that the number of shares that can be sold in any period be limited by average trading volume. Compliance with these requirements may produce a situation where a number of weeks or even months is required to complete the sale of a significant number of shares.

NATIVE AMERICAN RIGHTS FUND, INC.

NOTES TO FINANCIAL STATEMENTS
September 30, 1973

Note 3 - INVESTMENT IN COMMON STOCK (Continued)

At the time the shares were donated, the price of unrestricted stock trading on the New York Stock Exchange was approximately \$25.00 a share. Within four months, unrestricted stock traded as low as \$6.00 a share. Because of the restrictions on the sale of the stock, and because of the size of the block of shares involved and because of the substantial decline in the price of the stock from \$25.00 a share, the Fund has determined that the stock should be initially recorded as of December, 1972 at \$10.00 a share or a total of \$200,000.

As of September 30, 1973, unrestricted stock was trading on the New York Stock Exchange at approximately \$5.00 a share. Subsequent to September 30, 1973, the stock declined further and has traded for as little as \$2.00 a share. Because of the continued deterioration in the price of unrestricted stock and for the other reasons enumerated above, the Fund has determined that this stock should be adjusted as of September 30, 1973 to \$2.00 a share or \$40,000 total. The resulting decrease from the date of contribution to September 30, 1973 has been reflected as a reduction in revenues from contributions.

Note 4 - RESTRICTIONS ON FUND BALANCE AND GRANT INFORMATION

Funds totalling \$43,203 included in the fund balance at September 30, 1973 are unrestricted and may be used at the discretion of the Steering Committee. However, \$40,000 of this total is invested in the stock of Elixir Industries which is described in Note 3 above. The remaining \$48,137 of the fund balance at September 30, 1973 is restricted to uses specified in various grants.

Revenues from Harvard University arise from a subcontract with the University under O.E.O. Grants CG-1603 and CG-10301.

Revenues from the University of Colorado arise from a subcontract with the University under O.E.O. Grants CG-8630 and CG-80026.

NATIVE AMERICAN RIGHTS FUND

PUBLICATIONS

Announcements, Native American Rights Fund, National Indian Law Library newsletter, contains updates of the NILL Catalogue, quarterly. Subscriptions \$10.00 per year for libraries and non-Indian organizations; no charge to Indian tribes, organizations and individuals; attorneys and other individuals by contribution.

The Borough Concept in Alaska; The Inupiat People, David H. Getches, Attorney, Native American Rights Fund, Inc. (1972), NILL Acquisition No. 001128. No charge for single copies.

Handbook on Bureau of Indian Affairs General Assistance for Attorneys and Advocates, Sarah W. Barlow and Martha Ward (1973), NILL Acquisition No. 002143. \$5.00; no charge to tribes or legal services.

Indian Claims Commission Decisions, 27 volume set, prepared by Native American Rights Fund, Inc. \$500.00; single and subsequent volumes \$18.50 each.

Index to the Indian Claims Commission Decisions, prepared by Native American Rights Fund, Inc. (1973). Covers the first 29 volumes of the Indian Claims Commission Decisions providing access to the Decisions by subject, tribe and docket number. Library of Congress Card No. 73-89021. \$25.00; two-year subscription service for pocket updates is available for an additional \$15.00.

Indian Law Developments, prepared by the Native American Rights Fund Indian Law Back-Up Center. Published monthly; subscriptions \$5.00 per year; no charge to Indian tribes or legal services organizations.

Indian Legal Problems, prepared by Native American Rights Fund, Inc. (1971), NILL Acquisition No. 001235. \$5.00 per copy; no charge to legal services.

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NATIVE AMERICAN RIGHTS FUND

STAFF PUBLICATIONS

Joseph J. Brecher, Staff Attorney

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John E. Echohawk, Directing Attorney

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David H. Getches, Staff Attorney

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Daniel H. Israel, Staff Attorney

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Douglas R. Nash, Staff Attorney

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Thomas L. Smithson, Staff Attorney

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Thomas N. Tureen, Of Counsel

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STAFF - 1973

John E. Echohawk is the Director of NARF. Mr. Echohawk is a Pawnee and was the first graduate of the University of New Mexico's special program to train Indian lawyers and received national prominence in that capacity. He was a founder of the American Indian Law Students Association while in law school and has been with the Fund since its inception. He was Deputy Director of NARF from March, 1972, until he assumed the Directorship in April, 1973.

David H. Getches is NARF's Founding Director and carried the primary responsibility for initial development. In April, 1973, he moved into a full time litigation role as a staff attorney. Prior to assuming the directorship of NARF in June, 1970, he spent three years as a co-director of one of California Indian Legal Services' field offices.

L. Graeme Bell is the staff attorney in NARF's Washington, D. C. office. A graduate of Harvard Law School, he taught law at Columbus School of Law at the Catholic University of America prior to joining NARF in May, 1972. He helped to develop an Indian law program at Catholic University, and during law school was an intern with DNA on the Navajo reservation.

Joseph J. Brecher, staff attorney, has extensive experience in the fields of environmental policy and law. He is the author of the first handbook on environmental law for lawyers. Mr. Brecher is a graduate of New York University Law School and joined NARF in June, 1971.

Reid Peyton Chambers was Of Counsel to NARF until September, 1973, when he accepted a position as Associate Solicitor for Indian Affairs with the United States Department of Interior. He studied at Oxford University, Bailliol College, prior to his graduation from Harvard Law School. He has authored a monograph on the subject of governmental conflict of interest vis-a-vis Indians for the Administrative Conference of the United States.

Walter R. Echo-Hawk, Jr., is a Pawnee Indian and a graduate of the University of the New Mexico School of Law. Mr. Echo-Hawk joined the NARF staff as a Research Associate in June, 1973. He has previously worked extensively in the Northern Oklahoma area with the Pawnee Indians and has

served as a consultant with the United States Civil Rights Commission through a contract with the National Indian Youth Council

Thomas W. Fredericks is a Mandan Indian from the Fort Berthold Reservation in North Dakota and a staff attorney. A 1972 graduate of the University of Colorado School of Law, Mr. Fredericks was treasurer of the American Indian Law Students Association. He was tribal administrator for the Standing Rock Sioux Tribe at Fort Yates, North Dakota, from 1966 to 1969. He joined NARF in June, 1972.

Roy S. Haber is a graduate of the New York University School of Law and a staff attorney. He was with the Lawyer's Committee for Civil Rights Under Law in Jackson, Mississippi, prior to joining NARF in October, 1972.

Daniel H. Israel is a graduate of the University of Michigan Law School. He has had experience in private practice in New York City and taught at the University of Washington. Prior to joining NARF in July, 1972, Mr. Israel was a staff attorney of the Colorado Rural Legal Services program.

Yvonne T. Knight, a Ponca, is the first Indian woman law school graduate from the University of New Mexico's Indian law program and one of the few Indian woman lawyers in the country. She has been a Reginald Heber Smith Fellow since joining NARF in August, 1971.

Scott E. Little is a graduate of the University of Colorado School of Law and a member of both the Arizona and Colorado State Bars. Until joining NARF as a staff attorney in September, 1972, Mr. Little was a partner with the firm of Lewis & Roca in Phoenix, Arizona.

Douglas R. Nash is a Nez Perce Indian and a graduate of the University of New Mexico School of Law. He is past Executive Director of the American Indian Law Students Association. Prior to joining NARF as a staff attorney, he worked with the Indian Civil Rights Task Force for the United States Department of Interior.

Robert S. Pelcyger is a graduate of Yale Law School and a Fullbright Fellow. He gained prior experience with DNA, the Navajo legal services program, and as a Director of the Escondido Office of California Indian Legal Services where he practiced Indian law for three years. He joined NARF in August, 1971.

Thomas L. Smithson joined the NARF staff as head of the Indian Law Back Up Center in March, 1972. He was the only attorney on the Pine Ridge Reservation in South Dakota for three years prior to joining NARF. Mr. Smithson is a graduate of the University of Michigan School of Law.

Thomas N. Tureen, Of Counsel to NARF, has been involved with the problems of Eastern Indians for several years as Director of the Indian Legal Services Unit for Pine Tree Legal Assistance in Maine. He is now working full time for the Fund in Calais as a part of the NARF Eastern Indian Legal Support Project. Mr. Tureen is a graduate of George Washington University School of Law.

A. John Wabaunsee, a Prairie Pottawatomie and a graduate of the DePaul University College of Law, joined NARF as a Research Associate in June, 1973. After passing the Colorado Bar in September, 1973, he became a staff attorney. Mr. Wabaunsee was selected as a Reginald Heber Smith Community Lawyer Fellow for 1973-74.

Charles F. Wilkinson is in charge of NARF's Indian Education Legal Support Project. Prior to joining NARF in October, 1971, he practiced privately with major law firms in Phoenix and San Francisco for five years. He is a graduate of Stanford University School of Law.

Assistant to the Director
Joan L. Carpenter

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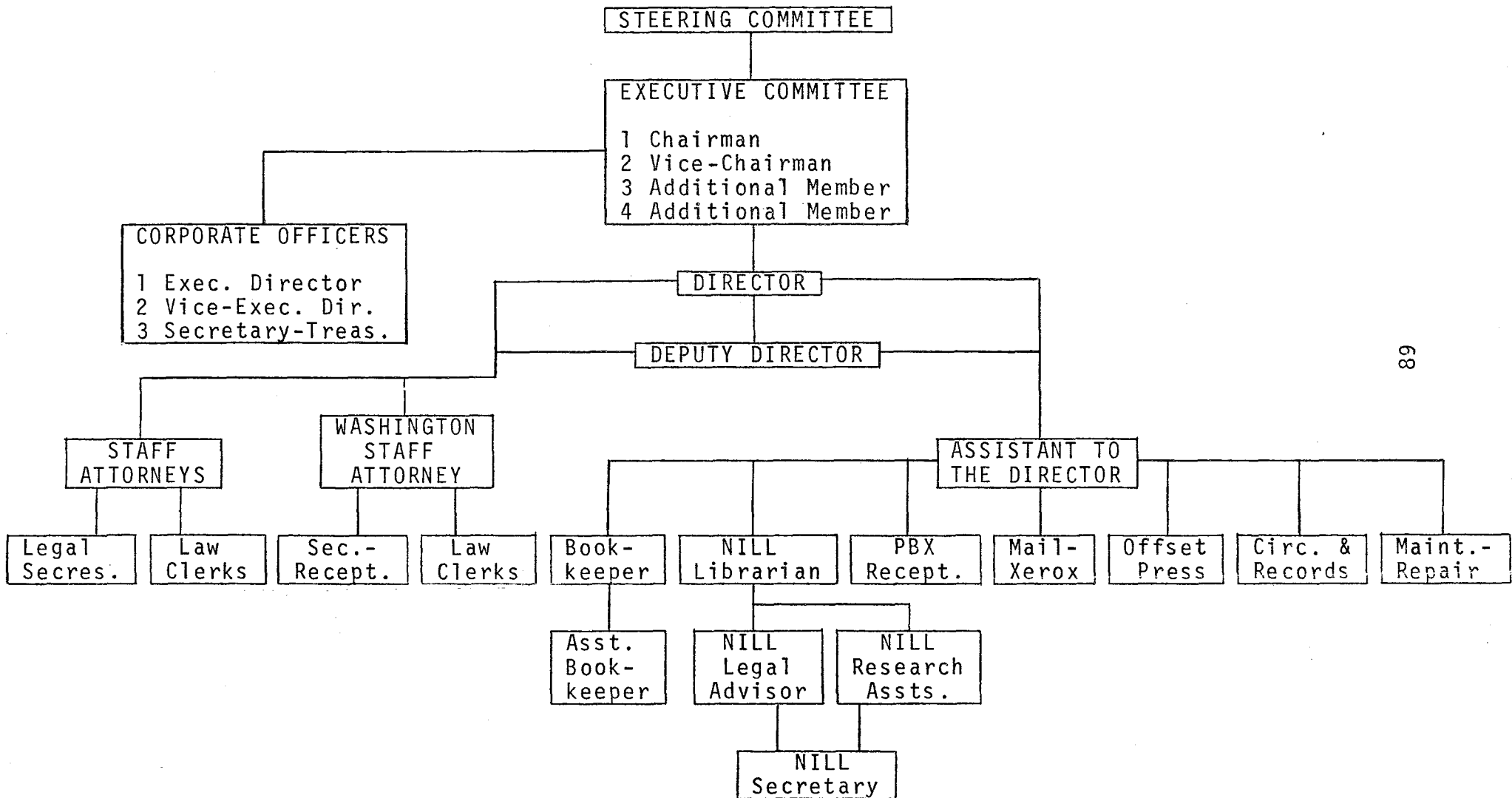
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