

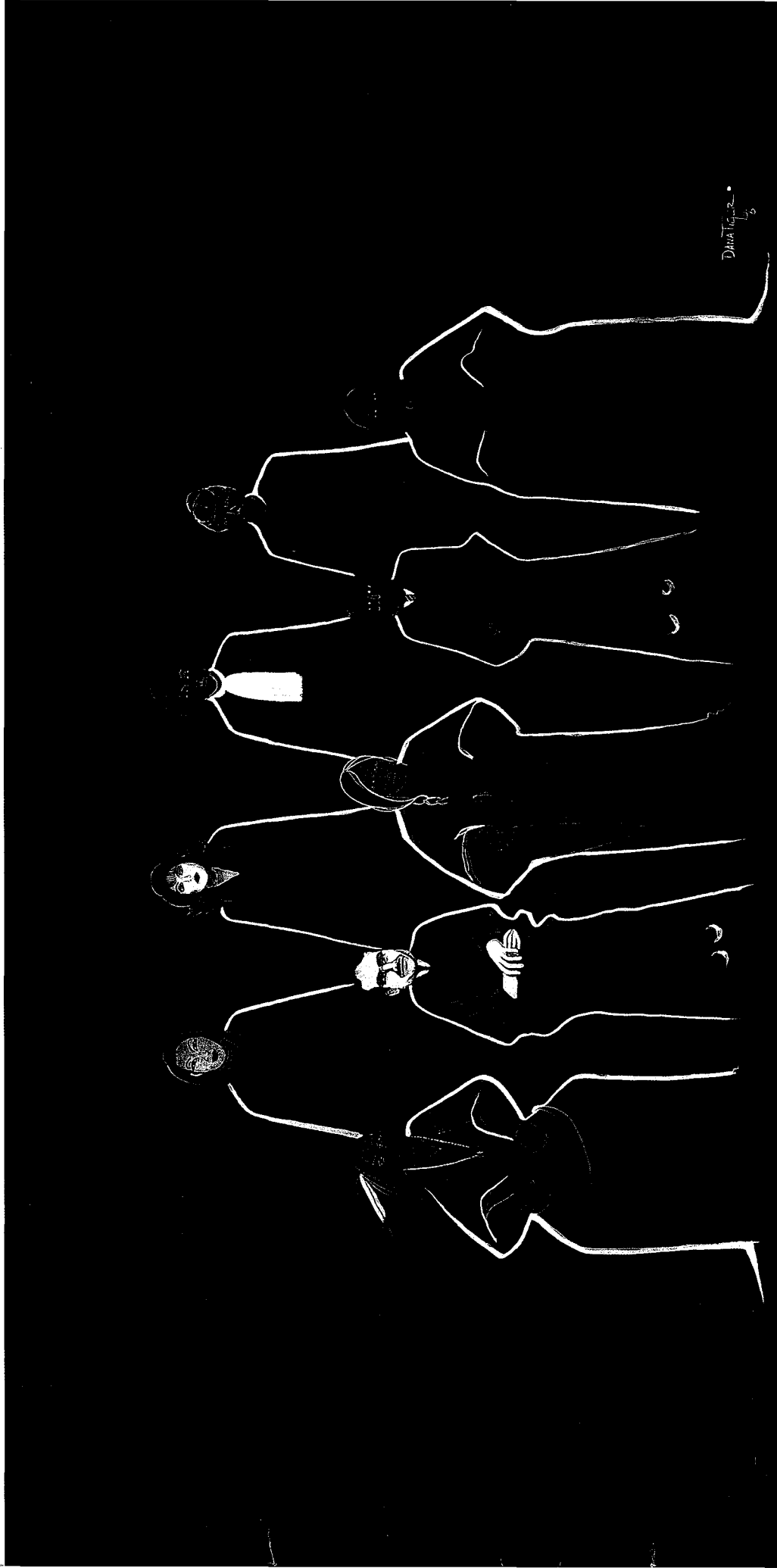
NATIVE AMERICAN RIGHTS FUND

2000 Annual Report

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Truly Supreme Court

NATIVE AMERICAN RIGHTS FUND *2000 Annual Report*

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COVER ART: "Truly Supreme Court" This particular art work was chosen as the new Republican Administration is taking office in Washington, D.C. Too many times the way of life and cultural survival of the Indigenous peoples of this country has been dependent on the rulings of the United States Supreme Court. Unfortunately, for the past 20 years, the Supreme Court Justices have undertaken to rule on issues critical to the sovereignty and cultural survival of Native Americans with little or no knowledge about how Native Americans actually live and govern themselves and their territories. The voice of Indian country has fallen on deaf ears and this lack of understanding is unfortunately reflected in the Court's decisions. The sovereign attributes of Indian nations have been eroded under their rulings. Tribes believe that they can no longer look to the highest court in the land for an informed and impartial review and interpretation of the law concerning the constant attacks on their rights and way of life. The new Administration may have the opportunity to appoint several new Justices. Native Americans can only encourage the new Administration to appoint Supreme Court Justices who will bring with them the knowledge, experience, and conviction to do what is fair and just under the law and the Constitution, and who will understand and protect the rights of the first inhabitants of this continent.

ARTIST: Dana Tiger is a member of the Muscogee (Creek) Nation and is of Creek/Seminole and Cherokee descent. She was born in 1961, five years before the death of her father, nationally acclaimed artist, Jerome Tiger. Dana turned to her father's art as a way to know him. Through the paintings left by her father and under the tutelage of her uncle, Johnny Tiger, Jr., Dana learned the extraordinary richness of her Native American culture. During high school and college Dana won numerous awards for her paintings, but it wasn't until 1985, at the age of twenty-four, that Dana began her full time career as a painter. From the beginning, her one-woman shows have been sell-outs and she has established herself as one of America's leading contemporary artists. Dana is best known for her paintings portraying the strength and determination of Native American women.

PHOTOGRAPHS: Photographs of NARF's Board of Directors and staff by Thorney Lieberman.

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Tax Status: The Native American Rights Fund (NARF) is a nonprofit, charitable organization incorporated in 1971 under the laws of the District of Columbia. NARF is exempt from federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue code. Contributions to NARF are tax deductible. The Internal Revenue Service has ruled that NARF is not a "private foundation" as defined in Section 509(a) of the Internal Revenue Code. NARF was founded in 1970 and incorporated in 1971 in Washington, D.C.

INTRODUCTION

The Native American Rights Fund (NARF) was founded in 1970 to address the need for legal assistance on the major issues facing Indian country. The critical Indian issues of survival of the tribes and Native American people are not new, but are the same issues of survival that have merely evolved over the centuries. As NARF heads into its thirty-first year of existence, it can be acknowledged that many of the gains achieved in Indian country over those years are directly attributable to the efforts and commitment of the present and past clients and members of NARF's Board and staff. However, no matter how many gains have been achieved, NARF is still addressing the same basic issues that caused NARF to be founded originally. Since the inception of this Nation, there has been a systematic attack on tribal rights that continues to this day. For every victory, a new challenge to tribal sovereignty arises from state and local governments, Congress, or the courts. The continuing lack of understanding, and in some cases lack of respect, for the sovereign attributes of Indian nations has made it necessary for NARF to continue fighting.

As the struggle continues, NARF strives to safeguard the legal and sovereign rights of tribes and Indian people within the limit of available resources. NARF's success is directly attributable to the many financial supporters that NARF has had throughout the years. Contributors like the Ford Foundation have been with NARF since the beginning. The Rockefeller Foundation, the General Service Foundation, the John D. and Catherine T. MacArthur Foundation, the Carnegie Corporation of New York, and the Skadden Fellowship Foundation have consistently contributed towards NARF's efforts. Federal funding from the Administration for Native Americans for NARF's governance, economic and social development efforts in Indian country has been almost continuous. Many tribes such as the Mashantucket Pequot, the Cow Creek Band of Umpquas, the Winnebago Tribe of Nebraska, the Shakopee Mdewakanton Tribe, the Mashpee Wampanoag Tribe, the Confederated Tribes of Grande Ronde and many other tribes have been consistent contributors to NARF. NARF is also indebted to the thousands of individuals who have had

faith in NARF and have given their financial and moral support to NARF's efforts on behalf of tribes and Indian people.

As established by NARF's first Board of Directors, the priorities that guide NARF in its mission to preserve and enforce the status of tribes as sovereign, self-governing bodies still continue to lead NARF today:

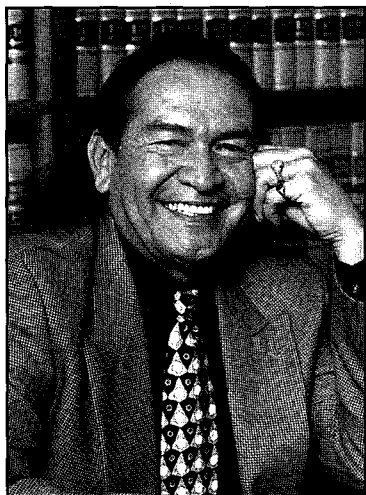
- Preservation of tribal existence
- Protection of tribal natural resources
- Promotion of Native American human rights
- Accountability of governments to Native Americans
- Development of Indian law and educating the public about Indian rights, laws, and issues

CHAIRMAN'S MESSAGE

An elder friend of mine once said, "One of these days you're going to look around and the people you go to for advice, they're not going to be there." That was in 1987 and I still remember those words as if they were shared just the other day.

It is true we are losing our elders at a very fast pace. Can you imagine the resources they take with them? They are the last of our fluent language speakers and what about the strong bond they have with their spiritual ways of worship and most of all, the last vestiges of oral history.

Over thirty years ago when the Native American Rights Fund (NARF) was just a dream, the elders came forward and shared their wisdom and provided encouragement. They said that the policies of the federal government worked for some, but not for all, and that the educational, social and economic influences of the majority population was not taking hold because of the conflict between dominant characteristics and tribal cultural values. They further expressed the desire of Indian people to remain culturally strong and to continue to identify themselves as a unique race of people.



For the past thirty years, the Native American Rights Fund has been "Standing Firm for Justice." We have witnessed changes in American Indian pride and self-esteem. And we have seen many changes in the area of Indian law and policy. But we are reminded by the wisdom of our elders that this great nation has high hopes for the future and we may not be included. The task of thinking about the future has been confined to people other than ourselves who continue to make decisions that will greatly impact our future as well.

When NARF celebrated its 30th Anniversary the elder friend of mine came to the pow-wow to be with us and to celebrate with us. We call each other "Hites" which means friend in Comanche. Hites is a powerful word amongst the Comanche people as it represents love, respect, warmth and wealth. I called upon my "Hites" to render our closing prayer. Without hesitation he came forward and in his Cheyenne language gave a beautiful, most powerful and inspiring prayer.

The challenge ahead is for the Native American Rights Fund to continue to fight for the rights of Native peoples. It is the right thing to do and we will make every effort to be included in the decision-making of this great nation because it is the birthright of all citizens. We will carry the wisdom of our elders as we continue to advocate for the culture of our ancestors so those yet unborn can benefit as we have. As Executive Director John Echohawk said during our anniversary dinner when he received his 30-year pin, "I'm ready for another thirty years." So am I.

May God Bless You All

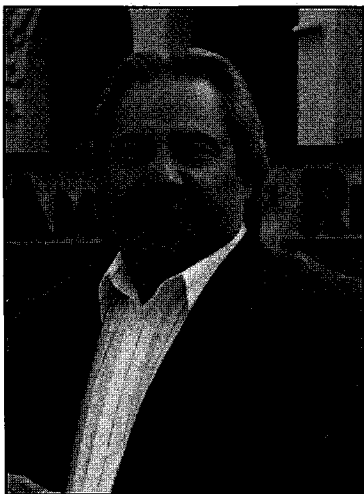
Wallace Coffey

EXECUTIVE DIRECTOR'S REPORT

In 2000, the Native American Rights Fund celebrated the 30th anniversary of its founding. During this 30 year period, Native nations forced an end to the old federal policy of terminating tribal governments and created a new federal policy of tribal self-determination and self-governance that recognizes tribal governments as permanent institutions in the American system of government along with the federal and state governments. NARF is proud to have played a key role during this time by providing legal advice and representation to Indian tribes, organizations and individuals in cases of major national significance that have helped to forge this new policy.

NARF continued its program of legal assistance on priority Native issues during 2000 and those efforts once again resulted in several important developments for Native Americans.

The Governor of Alaska signed an Administrative Order recognizing the 226 Alaska Native tribes for the first time and is negotiating a tribal-state accord with tribal representatives that would implement the Administrative Order. NARF has taken a leading role in providing technical assistance to tribal leaders through the Alaska Inter-Tribal Council as they participate in these government-to-government meetings with the State.



In December 2000 the Bureau of Indian Affairs issued a determination acknowledging the Shoonaq' Tribe of Kodiak, Alaska to be a federally recognized tribe. NARF has been representing the Shoonaq' Tribe ever since it was erroneously removed by the Interior Department bureaucrats from the list of Alaska Native Villages acknowledged to be federally recognized tribes by the Assistant Secretary in 1993.

After 15 years of preparation and representation by NARF, the Little Shell Tribe of Chippewa Indians of Montana had their petition for federal recognition of their tribal status acted upon favorably by the Bureau of Indian Affairs with the publication of a proposed finding acknowledging their existence as an Indian tribe. The proposed finding should be finalized in 2001 and the 3,900 member tribe would finally be recognized.

In *Alabama-Coushatta Tribe of Texas v. United States*, the Court of Federal Claims ruled that the United States should compensate the Tribe for loss of use of 2.85 million acres of ancestral land in east Texas that was illegally taken without federal approval after Texas became a state in 1845. NARF is involved in settlement discussions with the United States on behalf of the Tribe on the monetary damages owed for failure to protect the Tribe's possession of its aboriginal lands which are expected to be about \$300 million.

A \$1.83 million settlement has been reached on a claim by the Northern Lakes Pottawatomi Nation of Canada filed in 1993 by NARF against the United States for payment of certain annuities based on a series of treaties with the historic Pottawatomi Nation from 1795 to 1833. The Northern Lakes Pottawatomi had never been paid because their ancestors had fled from their ancestral lands in the upper Midwest to Canada in 1833 to avoid being relocated to lands west of the Mississippi River.

NARF assisted in the development and passage of the Timbisha Shoshone Homeland Act, which transfers into tribal trust status approximately 7,500 acres of land in and around Death Valley National Park to establish a permanent homeland for the Timbisha Shoshone Tribe. The land being transferred is part of the Tribe's original ancestral homelands and will be used by the Tribe for community and residential development, historic restoration and visitor-related economic development.

In implementation of the first Indian water rights settlement that had the support of the Clinton Administration, a state and a tribe, Congress appropriated the first \$24 million authorized by the act settling the water rights claims of the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana. The \$50 million settlement approved in 1999 quantifies on-reservation water rights, establishes a water administration system and provides federal funding for the development of water projects to serve the present and future needs of the Tribe.

The Kenaitze Tribe of Alaska, whose primary hunting and fishing grounds have been on the Kenai Peninsula in Alaska, had their subsistence hunting and fishing rights under federal law recognized in that area when the Federal Subsistence Board ruled that the Kenai Peninsula is a rural area where subsistence hunting and fishing can occur. NARF is representing the Tribe and faces further challenges to the Board's decision.

The newly-developed National Tribal Justice Resource Center (NTJRC), which was established by the National American Indian Court Judges Association, opened its doors in space provided at NARF's National Indian Law Library (NILL). NTJRC, assisted by NILL, will provide legal resources to tribal court personnel and assist with legal inquiries from Native American justice systems around the country.

NARF was instrumental in securing the passage of the Indian Tribal Justice Act in Congress late in the year. The Act will provide a more stable funding base from Congress for Indian legal services programs and for tribal court systems.

In these cases and hundreds of others over the last 30 years, the Native American Rights Fund has proven that the legal system can work for Native American people if they are given access to justice. That access is provided by the grants and contributions from our supporters who make our work possible. We thank you for your financial support and hope that it continues as we advocate for Native Americans on issues critical to their future in this country.

John E. Echohawk, Executive Director

BOARD OF DIRECTOR'S

The Native American Rights Fund has a governing board composed of Native American leaders from across the country -- wise and distinguished people who are respected by Native Americans nationwide. Individual Board members are chosen based on their involvement and knowledge of Indian issues and affairs, as well as their tribal affiliation, to ensure a comprehensive geographical representation. The NARF Board of Directors, whose members serve a maximum of six years, provide NARF with leadership and credibility and the vision of its members is essential to NARF's effectiveness in representing its Native American clients.

BOARD OF DIRECTORS PHOTOGRAPHS

First Row (left to right): **Sue Shaffer** (Cow Creek Band of Umpqua - Oregon); **Rebecca Tsosie** (Pasqua Yaqui - Arizona); and, **E. Ho'oiipo Pa Martin** (Native Hawaiian - Hawaii).

Second Row: **Nora Helton** (Fort Mojave - California) and **Roy Bernal** (Taos Pueblo - New Mexico).

Third Row: **Mary T. Wynne** (Rosebud Sioux - South Dakota) and **Kenneth P. Johns** (Athabascan - Alaska).

Top Row: **Wallace E. Coffey**, Chairman (Comanche - Oklahoma); **Gilbert Blue**, (Catawba, South Carolina)*; **David Archambault**, Vice-Chairman (Standing Rock Sioux - North Dakota); **Mike P. Williams** (Yup'ik - Alaska); and **Billy Cypress** (Miccosukee - Florida).

Not Pictured: **Jaime Barrientoz** (Grande Traverse Band of Ottawa & Chippewa Indians - Michigan) and **Ernie Stevens, Jr.** (Wisconsin Oneida - Wisconsin)

*Gilbert Blue completed his six-year term on the Board.



NATIONAL SUPPORT COMMITTEE

The National Support Committee (NSC) assists NARF with its fund raising and public relations efforts nationwide. Some of the individuals on the Committee are prominent in the field of business, entertainment and the arts.

Others are known advocates for the rights of the underserved. All of the 40 volunteers on the Committee are committed to upholding the rights of Native Americans.

Owanah Anderson, *Choctaw*

Edward Asner

Katrina McCormick Barnes

David Brubeck

U.S. Senator Ben Nighthorse Campbell, *Northern Cheyenne*

Ada Deer, *Menominee*

Harvey A. Dennenberg

Michael J. Driver

Richard Dysart

Lucille A. Echohawk, *Pawnee*

Louise Erdrich, *Turtle Mountain Chippewa*

James Garner

Sy Gomborg

Carol Hayward, *Fond Du Lac Chippewa*

Richard Hayward, *Mashantucket Pequot*

Alvin M. Josephy, Jr.

Charles R. Klewin

Nancy A. Klewin

Wilma Mankiller, *Cherokee*

Chris E. McNeil Jr., *Tlingit-Nisga'a*

Billy Mills, *Oglala Sioux*

N. Scott Momaday, *Kiowa*

Amado Peña Jr., *Yaqui/Chicano*

David Risling Jr., *Hoopa*

Pernell Roberts

Walter S. Rosenberry, III

Leslie Marmon Silko, *Laguna Pueblo*

Connie Stevens

Anthony L. Strong, *Tlingit-Klukwan*

Maria Tallchief, *Osage*

Andrew Teller, *Isleta Pueblo*

Verna Teller, *Isleta Pueblo*

Studs Terkel

Tenaya Torres, *Chiricahua Apache*

Thomas Tureen

Richard Trudell, *Santee Sioux*

Aine Ungar

Rt. Rev. William C. Wantland, *Seminole*

Dennis Weaver

W. Richard West Jr., *Cheyenne Arapaho*

THE PRESERVATION OF TRIBAL EXISTENCE

Under the priority of the *preservation of tribal existence*, NARF's activity emphasizes enabling Tribes to continue to live according to their Native traditions; to enforce their treaty rights; to insure their independence on reservations; and to protect their sovereignty. Specifically, NARF's legal representation centers on federal recognition and restoration of tribal status, sovereignty and jurisdiction issues, and economic development. Thus, the focus of NARF's work involves issues relating to the preservation and enforcement of the status of tribes as sovereign, self-governing bodies. Tribal governments possess the power to regulate the internal affairs of their members as well as other activities within their reservations. Conflicts often arise with states, the federal government, and others over tribal sovereignty. During 2000, NARF handled several major cases that affected the sovereign powers of tribes.

TRIBAL SOVEREIGNTY

Several of these cases represent part of an on-going and extremely important effort to protect the viability and integrity of tribal courts nationally. Tribal judicial systems are under ceaseless attack from those who do not wish to be held accountable for their conduct while on Indian reservations. Tribes look to the federal courts to uphold the right of tribes to provide a forum for the resolution of civil disputes which arise within their territories, even when those disputes involve non-Indians.

Nevada v. Hicks presents important issues related to tribal court jurisdiction over state officials. The case involves two officers of the Nevada Division of Wildlife who, on two separate occasions, searched the residence and confiscated mounted bighorn sheep heads belonging to a member of the Fallon Paiute-Shoshone Tribe. The tribal member resides on his allotted trust land within the Fallon Paiute-Shoshone Indian Reservation in Nevada. It was determined that the tribal member had committed no crime so the mounted sheepheads were returned, but in damaged condition. As a result, the tribal member sued the officers in Fallon Paiute-Shoshone Tribal Court for the violation of his civil rights. The officers contested the jurisdiction of the Tribal Court over them and

lost. The ruling was affirmed by the Tribal Court of Appeals, the Federal District Court for Nevada and the Ninth Circuit Court of Appeals, all of them holding that the tribal court has jurisdiction over this civil case filed by the tribal member against the two Nevada state game officers for civil rights violations that occurred on the reservation. The United States Supreme Court decided to review the case in October 2000 and NARF will appear on behalf of the Fallon Paiute-Shoshone Tribe who it has represented throughout these proceedings.

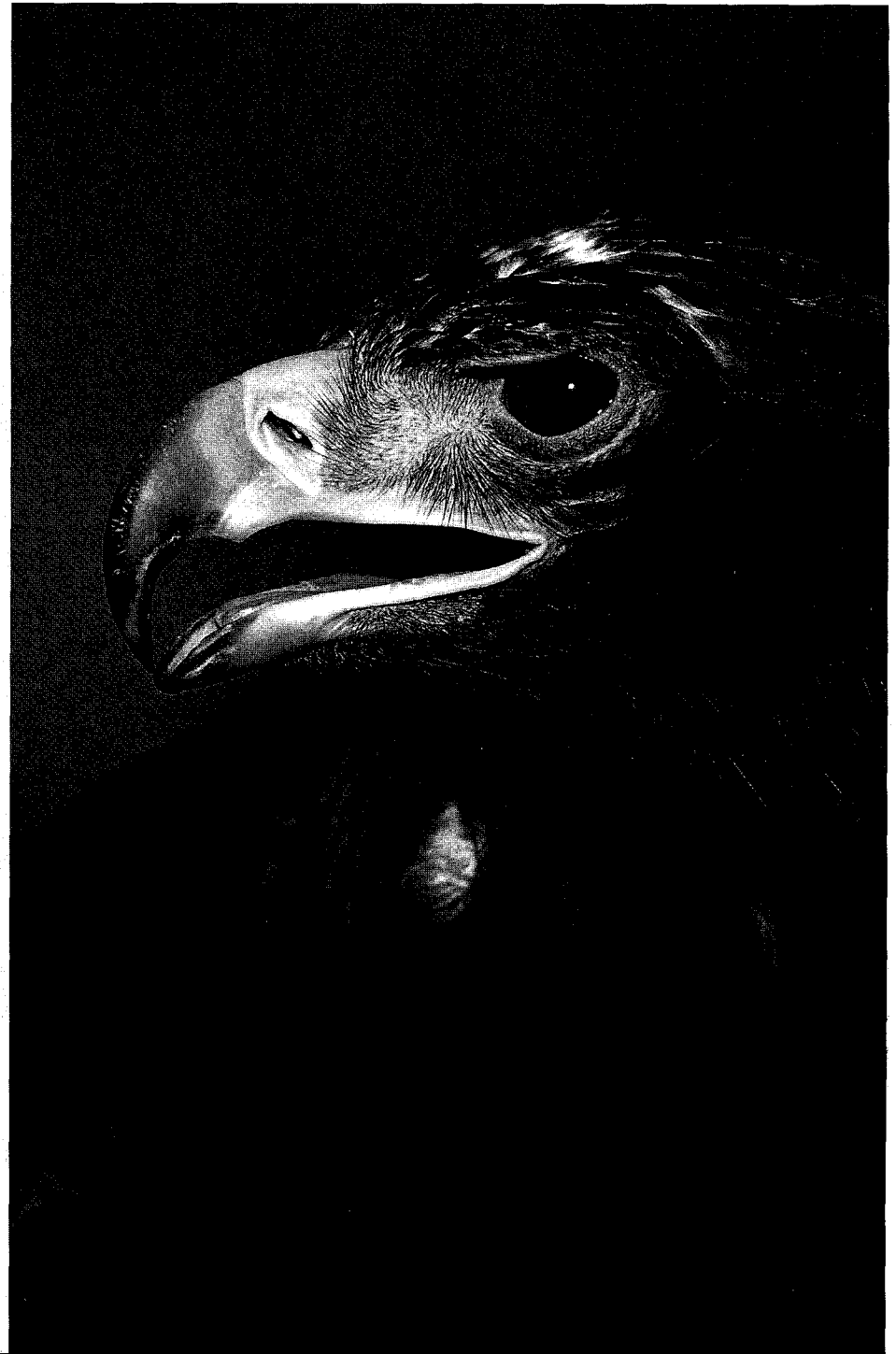
NARF is representing the National Congress of American Indians (NCAI) and working with the National American Indian Court Judges Association (NAICJA) in developing a model tribal law that provides adequate and timely notice to tribes of cases in tribal court that question tribal sovereignty and jurisdiction. After comment by tribes, tribal attorneys, and other Indian organizations, NCAI approved a final Model Tribal Notice Law for dissemination to tribes to consider adopting or enacting. NCAI also approved the development of a Model State Notice Law that would give tribes timely and adequate notice of cases in state courts that question tribal sovereignty and jurisdiction.

The Native Village of Akiachak has been operating a class two gaming facility on an Alaska Native allotment within the community for several years. The proceeds from the bingo operation go to fund community services. There is no incorporated municipality within the Village and no tax base to raise money. The bingo operation is the Tribe's only current means of raising revenue for important community services. To avoid conflict with the State of Alaska over regulation of the bingo activities, the Tribe petitioned the National Indian Gaming Commission for approval under the Indian Gaming Regulatory Act. The petition was denied on the basis that the Tribe had failed to establish that it possessed jurisdiction over the land in question. The Tribe brought suit in federal district court challenging the Commission's failure to recognize the Tribe's jurisdiction over the land on the basis that such land qualifies as Indian country under 18 U.S.C. § 1151(c). The State of Alaska intervened and is

arguing that there is no Indian country in Alaska. The Alaska Legislative Council has also moved to intervene to challenge the tribal status of Akiachak as well as all tribes listed on the BIA's list of federally recognized tribes. The Alaska Inter-Tribal Council has also moved to intervene in support of Akiachak to protect the broader interests of Alaska's tribes in this litigation and to establish the existence of Indian country which is important for purposes of delineating jurisdiction between state and tribal governments in a whole range of areas other than gaming. NARF is representing the Alaska Inter-Tribal Council in this case.

Following the Supreme Court's adverse Indian country jurisdiction decision in the *Venette* case in 1998, the State of Alaska formed a rural village governance commission that made some favorable recommendations on recognition of tribal governmental authority. In September 2000, the Governor of Alaska signed an Administrative Order recognizing the 226 Alaska Native tribes for the first time and is negotiating a tribal-state accord with tribal representatives that would implement the Administrative Order. NARF is taking a leading role in providing technical assistance to tribal leaders through the Alaska Inter-Tribal Council as they participate in these government-to-government meetings with the State.

In *Oklahoma Tax Commission v. Goodeagle*, NARF has undertaken representation of several individual Indians in Oklahoma who are challenging the taxation of their income by the State of Oklahoma. In these cases, the tribal members work on their own tribe's trust land, but live on trust allotments within the jurisdiction of another tribe. While Oklahoma does recognize it lacks jurisdiction to tax the income of tribal members who live and work within their own tribe's trust land, it does assert jurisdiction to tax where the member either lives or works on trust land within the jurisdiction of another tribe. NARF has filed position statements on behalf of seven claimants before the Oklahoma Tax Commission.



FEDERAL RECOGNITION OF TRIBAL STATUS

NARF currently represents seven Indian communities who have survived intact as identifiable Indian tribes but who are not federally recognized. These Indian tribes, for differing reasons, do not have a government-to-government relationship between themselves and the federal government. Traditionally, federal recognition was accorded to a tribe through treaty, land set aside for a tribe, or by legislative means. The majority of these NARF clients are seeking an administrative determination by the Bureau of Indian Affairs (BIA) that they, in fact, have continued to exist as Indian tribes from the time of significant white contact to the present day and have continued to govern themselves and their members. NARF, therefore, prepares the necessary historical, legal, and anthropological documentation to support a petition for acknowledgment. For more than 100 years, these Indian communities have been foreclosed from the benefits of a formal federal relationship with the federal government. Through administrative acknowledgment, NARF is now trying to bridge that gap.

In December 2000 the Bureau of Indian Affairs issued a determination acknowledging the Shoonaq' Tribe of Kodiak, Alaska to be a federally recognized tribe. NARF has been representing the Shoonaq' Tribe ever since it was erroneously removed by the Interior Department bureaucrats from the list of Alaska Native Villages acknowledged to be federally recognized tribes by the Assistant Secretary in 1993. With about 1,000 members, Shoonaq' was the largest of the few remaining unrecognized tribes in Alaska. The Tribe will now be entitled to the same federal benefits and services and have the same governmental status as other federally acknowledged Indian tribes with a government-to-government relationship with the United States.

On behalf of the United Houma Nation of Louisiana, NARF responded to proposed findings against federal acknowledgment issued by the BIA under their acknowledgment regulations. The Tribe has their petition for federal recognition pending before the BIA's Branch of Acknowledgment and Research and is now waiting for a final decision on its petition. In the meantime, NARF

assisted the Tribe in revising its constitution to strengthen its tribal government and to improve its chances for federal recognition. The draft constitutional revisions are now being reviewed by the tribal communities for completion and for an election to adopt the new constitution.

NARF completed and submitted a petition for federal recognition on behalf of the Little Shell Tribe of Chippewa Indians of Montana and the BIA placed the Tribe's petition on active review status in 1997. The Tribe was placed on a one year active review status, however, the BIA continued granting itself six-month extensions. Although the due date for the findings of tribal status was in February 1998, the extensions continued through April 2000. Finally, after all the delays, the Assistant Secretary informed the Tribe in May 2000 that the Bureau would publish in the Federal Register "a proposed finding that acknowledges that the Little Shell Tribe of Chippewa Indians of Montana exists as an Indian tribe within the meaning of federal law." Publication did not take place until July 2000.

In *Miami Nation of Indians v. Babbitt*, NARF is challenging the BIA's decision not to recognize the Miami Nation as an Indian tribe. The U.S. District Court for Indiana initially rejected the Miami's claim that they were recognized in an 1854 treaty and were never terminated by Congress, but the Court considered other Miami claims. In August 2000, the Court granted the federal government summary judgment on all claims raised by the Tribe. In September 2000, NARF, on behalf of the Tribe, appealed the District Court's opinion.

NARF has filed a petition for federal recognition for the Mashpee Wampanoag Tribe of Massachusetts that is now under active consideration by the BIA. NARF has also completed and submitted a petition on behalf of the Shinnecock Indian Nation of New York and is responding to a BIA technical assistance letter explaining omissions or deficiencies in the petition. Work on a petition for the Pamunkey Tribe in Virginia continues.

THE PROTECTION OF TRIBAL NATURAL RESOURCES

The land base and natural resources of Indian nations continue to be critical factors in the preservation of tribal existence. Through control over tribal lands and resources, Indian tribes can regain a degree of economic self-sufficiency necessary for Indian self-determination. There are approximately 55 million acres of Indian-controlled land in the continental United States which constitutes only 2.3 percent of their former territory. About 45 million acres are tribally owned and 10 million acres are individually owned. Additionally, there are about 44 million acres in Alaska which are owned by Natives after the 1971 Alaska Native Claims Settlement Act.

The federal government, has in many instances, failed to fulfill its trust duty to protect Indian tribes and their property rights. The Native American Rights Fund concentrates much of its legal representation on cases that will ensure a sufficient natural resource base for tribes.

PROTECTION OF INDIAN LANDS

The June 2000 Court of Federal Claims decision in *Alabama-Coushatta Tribe of Texas v. United States*, which considered modifications to its prior 1996 opinion, held that the United States should compensate the Tribe for the loss of use of 2.85 million acres of ancestral land illegally taken without federal approval after 1845, when Texas became a state, until 1954 when the Tribe was terminated by Congress. Settlement discussions on the monetary damages owed by the United States for failure to protect the Tribe's possession of its aboriginal lands are now nearly completed. NARF expects that the Court will soon recommend to Congress in this Congressional reference case that the Tribe be compensated about \$300 million for this loss. Congress is expected to extinguish the Tribe's aboriginal title to the land in exchange for the compensation.

The Stockbridge-Munsee Tribe of Wisconsin, represented by NARF, has a land claim to 26,000 acres of ancestral lands in New York pending in a New York federal district court against the State of New York and various local governments based on the lack of federal approval required for Indian land

transactions. Recent United States Supreme Court rulings have held, however, that the Eleventh Amendment bars tribal suits against states. In response, NARF has asked the United States to intervene as trustee to protect against the state's expected motion to dismiss based on sovereign immunity. Over two years ago, the Department of Interior requested the Department of Justice to intervene on behalf of the United States, but the matter is still under review. NARF is also pursuing a land claim for the Tribe as successor in interest to the former Brotherton Reservation in New Jersey.

NARF represents the Keewattinosagaing or Northern Lakes Pottawatomini Nation of Canada, a band of Pottawatomies descended from the historic Pottawatomini Nation, which from 1795 to 1833 signed a series of treaties with the United States. These treaties provided, among other things, the payment of certain annuities. The ancestors of the present-day Canadian Pottawatomini fled to Canada following the signing of the final treaty, the Treaty of Chicago in 1833, because they did not want to be moved west of the Mississippi. They were never paid their annuities. In 1993, NARF brought suit on behalf of the Tribe in the Court of Federal Claims, by way of Congressional reference, to seek redress of these failed payments. After five years of fact-finding, discovery and briefing of this case, the Tribe and the United States agreed in principle to the settlement of this case. Settlement terms were approved by the Court in December 2000 and settlement legislation will be presented to Congress in 2001 for compensation of \$1.83 million.

NARF continued representing the San Juan Southern Paiute Tribe in the consolidated cases of *Masayesva v. Zah v. James* and *Navajo Tribe v. U.S. v. San Juan Southern Paiute Tribe*, cases involving the Navajo and Hopi Tribes in a dispute over an area of land in northern Arizona claimed by all three tribes. An Arizona federal district court found that the San Juan Southern Paiutes had established exclusive use to 75 acres and had an interest, along with the Navajo Tribe, to another 48,000 acres of land. The court refused to partition San Juan Southern Paiute land. The Tribe appealed those findings to the Ninth Circuit

of Appeals. The appeal has been held up while settlement negotiations have proceeded. After negotiations, the San Juan Southern Paiute Tribal Council and the Navajo Tribal Council approved a settlement in 1999. On March 18, 2000, in an historic ceremony, the San Juan Southern Paiute and the Navajo Nation formally signed the settlement treaty. The settlement provides for a small reservation in Utah and one in Arizona (approximately 5,400 acres) to be carved out of the Navajo Reservation for the Paiute Tribe. The settlement now must be approved by Congress.

The Timbisha Shoshone Homeland Act, which transfers into trust approximately 7,500 acres of land in and around Death Valley National Park to establish a permanent homeland for the Timbisha Shoshone Tribe, was signed into law in November 2000. The land being transferred is part of the Tribe's original ancestral homelands and will be used by the Tribe for community and residential development, historic restoration, and visitor-related economic development. The Timbisha Shoshone Homeland Act comes nearly seventy years after a presidential Executive Order that established a national monument at Death Valley which placed the Tribe's aboriginal lands under the administrative jurisdiction of the National Park Service. As a result, tribal members were treated as trespassers having no rights to any lands. In 1936, the Park Service finally agreed to allow the Timbisha Shoshone to remain on a small 40-acre tract of land at Furnace Creek. However, since then, the Tribe's membership has grown to about 300 tribal members. With no significant land base, the Tribe has been unable to adequately address the housing, educational, healthcare, economic development, cultural and governmental needs of its tribal members. NARF facilitated the Tribe's and the National Park Service's administrative and legislative plan to restore a traditional homeland to the Tribe.

NARF continued its work with the Klamath Tribe of Oregon on the development of their Economic Self-Sufficiency Plan (ESSP) which was mandated by Congress in 1986 in the Klamath Tribal Restoration Act which reversed the Tribe's 1954 termination by Congress. The ESSP's chief recommendation is the

return of federally-held former tribal lands, along with the assessment of the costs of termination of the government-to-government relationship and the loss of the tribal reservation lands to federal management. The ESSP work continues to be coordinated with the Tribe's water settlement negotiations in order to maximize any opportunities that these two issues have for complimenting one another. The ESSP was finalized and delivered to the Secretary of the Interior in November 2000. NARF will be urging the Secretary of the Interior to support the ESSP.

NARF is assisting the Lower Brule Sioux Tribe of South Dakota in defending a challenge by the State of South Dakota to the decision of the Secretary of the Interior to take 91 acres of former reservation land purchased by the Tribe into federal trust status for the Tribe under a provision of the 1936 Indian Reorganization Act (IRA). The Secretary's initial decision to take the land into trust was challenged by South Dakota and eventually remanded to the Secretary by the United States Supreme Court for reconsideration under new regulations. The Secretary has reconsidered, decided again to take the land into trust and South Dakota is renewing its argument that the IRA provision is an overbroad unconstitutional delegation of authority from Congress to the Executive branch of government. Since passage of the IRA, hundreds of thousands of acres of land have been taken in trust for Indian tribes by the Secretary. Trust status shields tribal land and activities on the land from state taxation which could undermine tribal abilities to make the land profitable.

NARF represents the Native Village of Tuluksak in Alaska in their quest to have the land owned by the Village corporation transferred over in fee simple to the Village tribal council. The Department of Interior would then be petitioned to place the land into trust on behalf of the Village. The Department of the Interior is in the process of revising regulations governing the process of taking land into federal trust for Native Americans. NARF worked with the NCAI Tribal Leaders' Task Force on Land Recovery, on behalf of Tuluksak, to develop comments to the proposed regulations and has been waiting for the Secretary of

the Interior to issue final regulations. The Department of the Interior has already stated that the final regulations will continue to preclude Alaska tribes from being able to petition the Secretary to place tribal lands in trust. NARF is preparing a lawsuit on behalf of Tuluksak which will be filed against the Secretary once the regulations are finalized.

NARF has played a key role in the implementation of federal environmental law and policy that recognizes tribal governments as the primary regulators and enforcers of the federal environmental laws on Indian lands. NARF will continue to work with tribes, the National Tribal Environmental Council and other Indian organizations to maintain the progress that has been made with the Environmental Protection Agency and other federal agencies. With a representative on the Green Group, a coalition of national environmental leaders, NARF continues to coordinate with and educate the environmental community on the role of tribal governments in environmental law and policy.

After assisting the Oglala Sioux Tribe of South Dakota with a Tribal Environmental Review Code, NARF assisted the Tribe in drafting a Safe Drinking Water Code, a Water Quality Management Code, and a Water Services Security Connection Ordinance. These Codes will allow the Tribe to gain control over the environmental integrity of an important aspect to water within the Tribe's jurisdiction and bring the Tribe into compliance with the requirements of federal environmental laws.

Parallel to the efforts of completing these tribal codes is the effort to assure that their implementation will be compatible with the requirements of federal law. In particular is the concern the Tribes will be able to implement their laws in compliance with federal environmental laws and EPA's regulations. Of particular concern is the ability of Tribes, working with EPA, to secure implementation of federal environmental laws without the unnecessary intrusion from states. This will require a change in the laws that allow EPA to compact with tribes to accomplish implementation of certain federal



environmental laws—including the Clean Water Act. NARF has been working with the Oglala Sioux Tribe and representatives of other tribes from EPA's Region 8 (including North and South Dakota, Montana, Wyoming, Colorado, and Nebraska), along with the attorneys representing these Tribes, to secure the necessary authority for EPA and the Tribes to enter into the necessary agreements.

WATER RIGHTS

Establishing tribal rights to the use of water in the arid west continues to be a major NARF involvement. Under the precedent established by the United States Supreme Court in 1908 in the case of *Winters v. United States* and confirmed in 1963 in *Arizona v. California*, Indian tribes are entitled under federal law to sufficient water for present and future needs, with a priority date at least as early as the establishment of their reservations. These tribal reserved water rights are superior to all state-recognized water rights created after the tribal priority date, which in most cases will give tribes valuable senior water rights in the water-short West. Unfortunately, most tribes have not utilized their reserved water rights and most of these rights are adjudicated or unquantified. As a result, tribal water claims constitute the major remaining water allocation issue in the West. The focus in each case is to define or quantify the exact amount of water to which each tribe is entitled. NARF pursues these claims on behalf of tribes through litigation or out-of-court settlement negotiations.

In the first Indian water rights settlement that had the support of the Clinton Administration, a state and a tribe, Congress passed in 1999 an historic water settlement bill for the Chippewa Cree Tribe of the Rocky Boy's Reservation in Montana. It quantifies on-reservation water rights, establishes a water administration system designed to have minimal adverse impacts on downstream non-tribal water users, and calls for federal funding for the development of water projects to serve the present and future needs of the Tribe. The Act ratifies the Chippewa Cree/Montana Compact and authorizes \$50 million to be appropriated to implement the settlement. NARF then assisted the Tribe in their efforts

to obtain federal legislation that will authorize funds to construct a water pipeline to the Reservation. The first year's appropriations, authorized by the settlement Act in the amount of \$24 million, were approved by Congress in October 2000.

NARF continued its extensive involvement in water settlement negotiations on behalf of the Klamath Tribes to adjudicate the Tribes' reserved water rights to support its 1864 treaty hunting and fishing rights on former reservation lands in Oregon. The Tribe is asserting its reserved water rights claims on over 400 river miles and several lakes and marshes to support the Tribe's 1864 treaty hunting and fishing rights that exist on former tribal lands now considered federal lands. NARF continued representing the Tribe in both the adjudication proceedings and the parallel settlement negotiation proceedings.

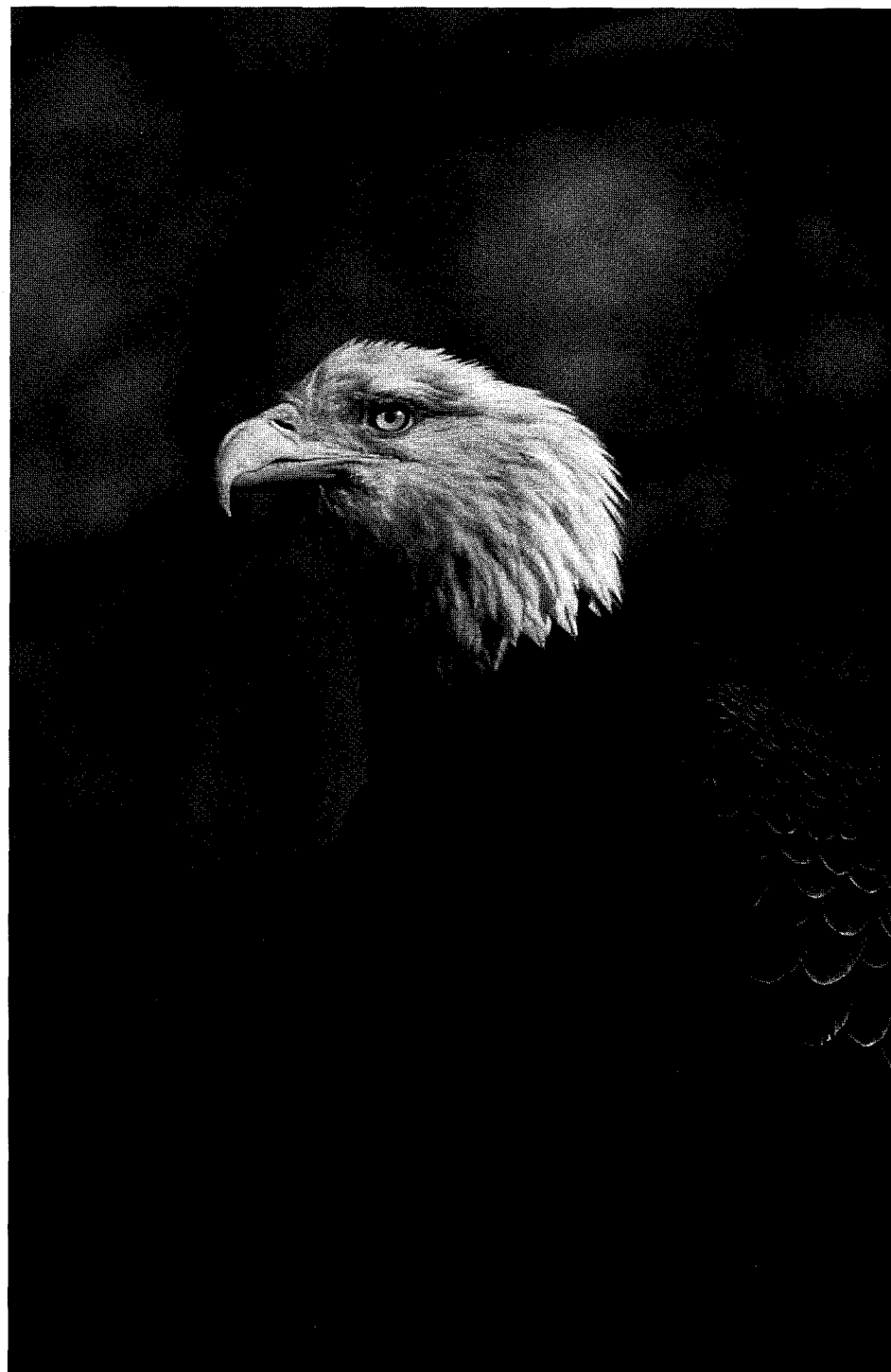
NARF filed an *amicus curiae* brief in November 2000 on behalf of the Klamath Tribe and many other tribes and intertribal organizations in the United States Supreme Court in an effort to overturn the Ninth Circuit's decision in *Klamath Water Users Protective Association v. United States Department of the Interior*. The decision held that several documents provided by the Klamath Tribe to the Department of the Interior concerning the Tribe's water rights case were subject to disclosure under the Freedom of Information Act. If the Court upholds the Ninth Circuit's decision, the federal government's ability to act as an effective trustee for tribal trust resources will be seriously undermined because the confidential trust relationship between the tribes and the United States will be destroyed. Many tribes rely on the United States to act in its fiduciary capacity with respect to litigation to protect tribal natural resources like land and water that are held in trust for them by the United States.

NARF represents the Nez Perce Tribe of Idaho on its water rights claims in the Snake River Basin. The Tribe's major claim is for sufficient in-stream flows to maintain its treaty rights to fish for salmon and steelhead that migrate down the Snake River to the Columbia River and out to the ocean before returning to

spawn. NARF is involved in on-going settlement negotiations that focus on the removal of four lower Snake River dams to obtain sufficient in-stream flows. In 1999 the state district court rejected the Nez Perce Tribe's in-stream flow claims to water in the Lower Snake, Clearwater, Salmon and Weiser rivers. After issuance of the decision, the Tribe learned that the judge and his brother and sister have claims to both surface irrigation and groundwater irrigation flows in the SRBA, which present direct and actual conflicts of interest with the Tribe's claims. The Tribe filed motions to disqualify the judge and appealed the decision. The judge has been replaced and the Tribe's appeal is pending.

NARF continued to assist the Tule River Tribe of California in securing its water rights to the South Fork of the Tule River. The Tribe focused on drafting a settlement agreement to present to both the United States and downstream users along the South Fork of the Tule River that will provide the Tribe with sufficient water to create a permanent homeland for its people with minimal impact on the other users. The Tribe has identified the core elements of a settlement proposal and has developed a method for allocating water between the parties based on allocating the natural flow of the river – a concept to which all parties have thus far agreed. Such a method of agreement relies on accurate measurement of the river flows and thus, to measure such flows the Tribe has installed a gage station at the midway point of the Reservation. The Tribe hopes to install a second gage station at the Reservation boundary in the coming year. Combined, these two gage stations should provide an accurate picture of the natural flows of the South Fork of the Tule River, upon which agreement will be based.

In order to help facilitate more Indian water rights settlements and Indian water development projects, NARF continued to participate in the joint tribal/federal water funding task force established by Secretary Babbitt at the urging of tribes. NARF also continued its membership in the Ad Hoc Group on Indian Reserved Water Rights along with the Western Governors' Association, the Western States Water Council and the Western Regional Council to help rebuild consensus in Congress for funding Indian water rights settlements.



HUNTING AND FISHING

The right to hunt and fish in traditional areas, both on and off reservations, and for both subsistence and commercial purposes, remains a vital issue in Indian country. NARF has long been instrumental in assisting tribes to assert hunting and fishing rights, which are guaranteed by treaty or other federal law.

In 1995, the Ninth Circuit Court of Appeals ruled that Alaska Natives were denied their right to subsistence fishing under the 1980 Alaska National Interest Lands Conservation Act (ANILCA) by the State of Alaska and the federal government. The decision requires the federal government to enforce the federal law giving a subsistence hunting and fishing priority for rural Alaska residents, who are mostly Natives, on all navigable waters in Alaska in which the federal government has reserved water rights. The federal government assumed management of subsistence fisheries in 1999 when the Alaska State Legislature failed to take action on a state constitutional amendment to conform to Title VIII of the ANILCA, the federal subsistence law. In January 2000, a final judgement was then entered in *Katie John v. United States and Alaska*, NARF's case that enforced the federal subsistence law and led to the federal takeover of the subsistence fisheries. Although the State lost an interlocutory appeal in this case in 1996, it appealed the final judgement on the same issue hoping for Ninth Circuit *en banc* review or Supreme Court review to interpret the federal subsistence law narrowly to exclude federal reserved rights in navigable waters. In July 2000 the Ninth Circuit granted Alaska's petition to hear the case *en banc* and the case was argued in December 2000.

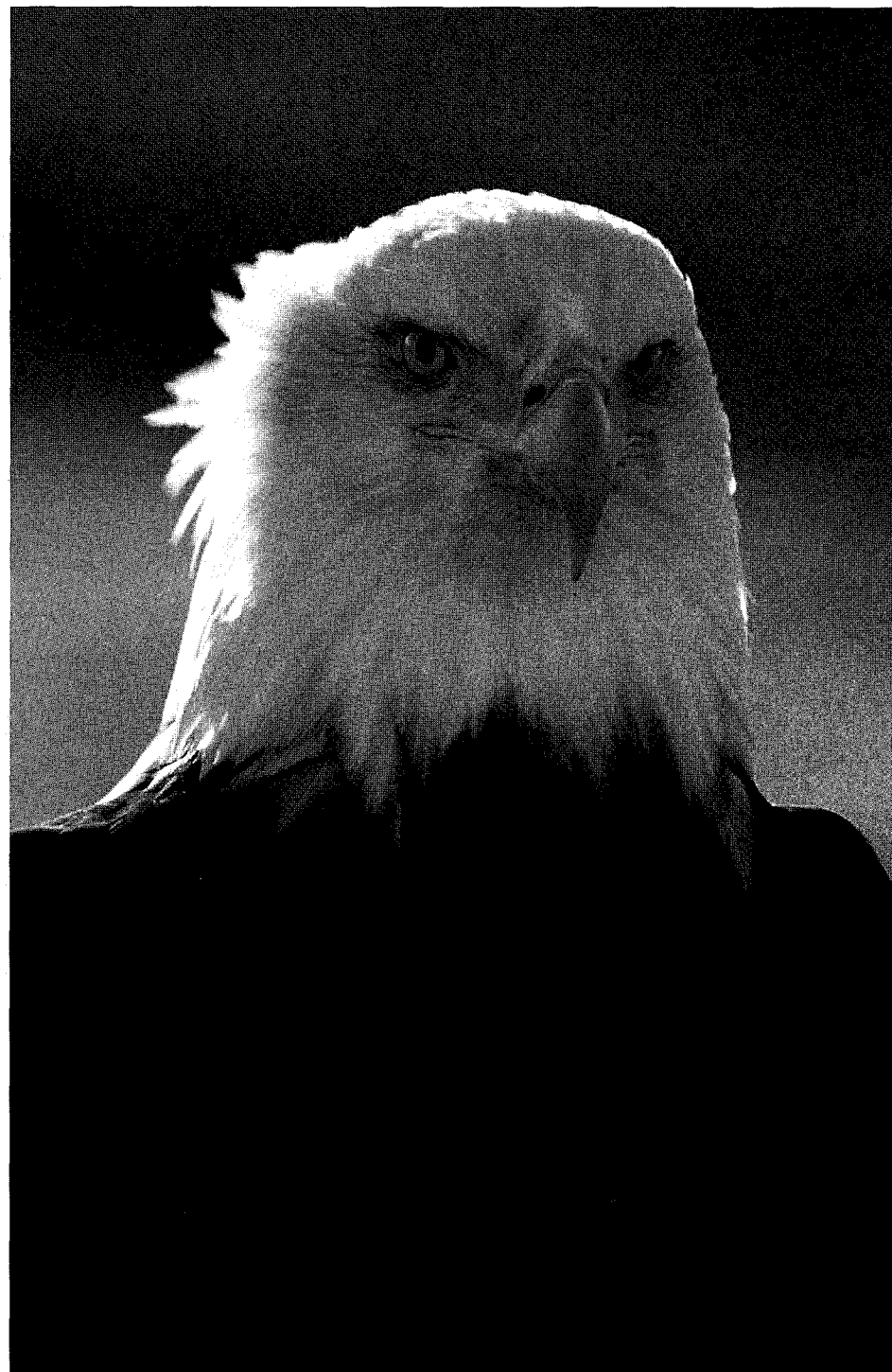
The Kenaitze Indian Tribe is a federally recognized tribal government whose members are direct descendants of Tanaina (Dena'ina) Athabaskan Indians. The Tribe has occupied the Kenai Peninsula region for centuries and subsisted by harvesting and gathering the resources offered by the land and the sea with salmon as the primary subsistence resource. Under the federal subsistence priority law, residents of rural areas are given a subsistence priority over sport and commercial hunters and fishermen. In 1991, the Federal Subsistence Board

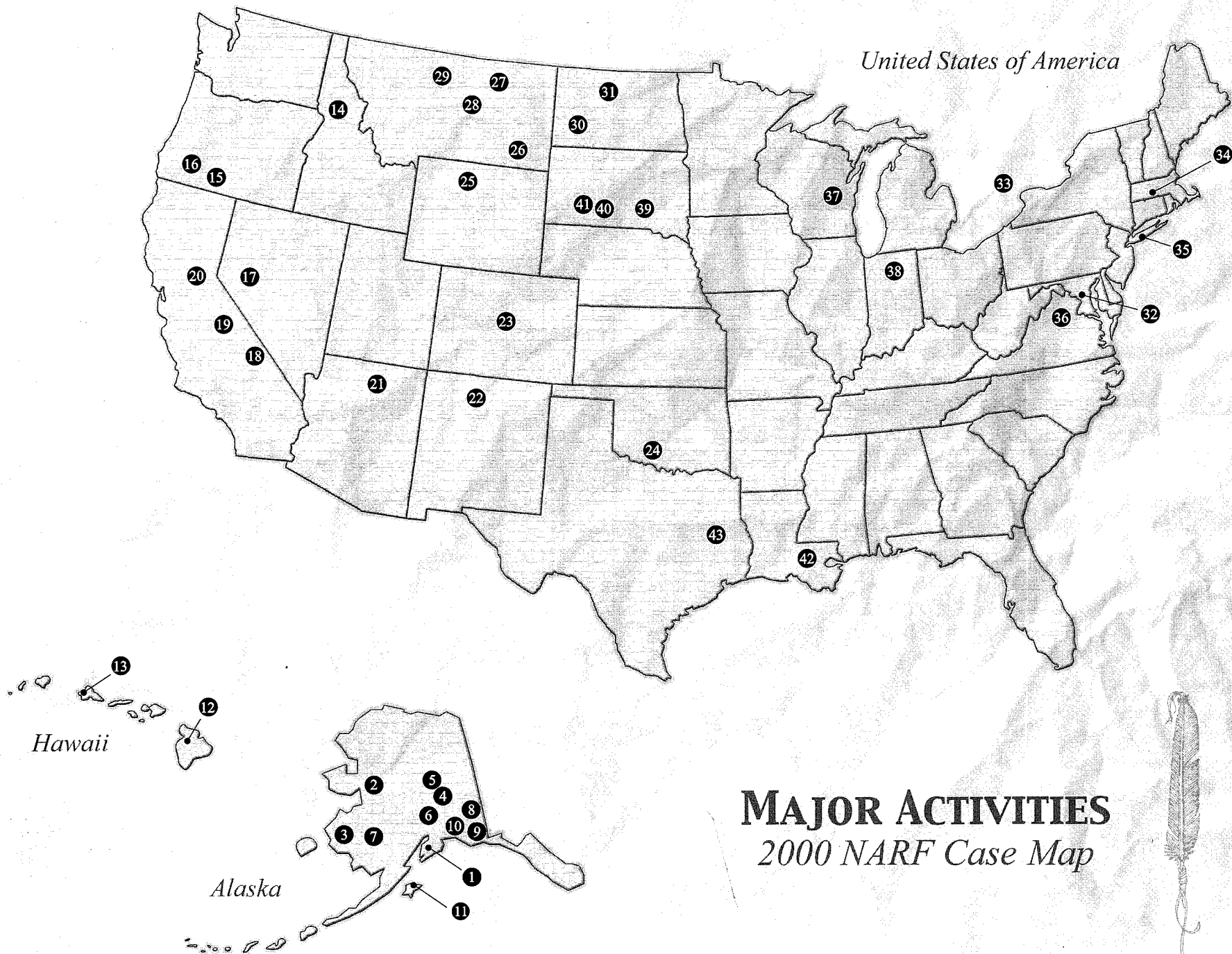
declared large portions of the Kenai Peninsula to be non-rural, including the entire Kenai area, which comprises the primary hunting and fishing grounds for members of the Kenaitze Indian Tribe. In 1999 the Federal Subsistence Board voted to reconsider its earlier decision after NARF intervened on behalf of the Kenaitze Tribe and asked the Board to declare the entire Kenai Peninsula rural for purposes of the subsistence priority in ANILCA. In May 2000 the Board ruled in favor of the Kenaitze Tribe and declared the entire Kenai Peninsula to be rural, which means the Kenaitze's subsistence hunting and fishing rights would be protected. However, in July 2000 the Safari Club International filed a petition requesting the Federal Subsistence Board to re-consider its May 2000 decision. In September 2000 the Board agreed to reconsider such decision. NARF is assisting the Tribe in preparing its brief and testimony in opposition to the petition of the Safari Club and seeking affirmation of the May 2000 decision.

In *Native Village of Eyak v. Daley*, NARF asserts aboriginal title on behalf of Alaska Native tribes to the Outer Continental Shelf (OCS) in Prince William Sound and the Gulf of Alaska. The issue presented is whether the Alaska Native Claims Settlement Act of 1971 extinguished aboriginal title outside the three mile limit. The lawsuit challenges the Department of Commerce's Individual Fishing Quota (IFQ) regulations for halibut and sable fish on the ground that they authorize non-tribal members possessing IFQ's to fish within exclusive tribal fishing grounds without tribal consent, while at the same time prohibiting tribal members without IFQ's from fishing within their own aboriginal territory. In 1998, on appeal, the Ninth Circuit Court of Appeals ruled that claims for aboriginal title, including exclusive hunting and fishing rights, on the Outer Continental Shelf were barred by the federal paramountcy doctrine. The court, however, expressly reserved the question whether Native Tribes might hold non-exclusive hunting and fishing rights. In 1999, the Supreme Court denied the Villages' petition, thereby refusing to review the Ninth Circuit's decision rejecting the Villages' claims to exclusive hunting and fishing

rights on the OCS. The question whether the Villages have nonexclusive aboriginal fishing rights is now back before the Federal District Court. The parties exchanged reports of their respective expert witnesses in October 2000 and are in the process of completing discovery and briefing on the remaining issues.

The Native Village of Kluti Kaah requested that NARF look into potential litigation against the federal government and the State of Alaska to federalize the fishery in and surrounding the Chitina area. The fishery has been regulated under state law as a personal use fishery until recently when the Alaska Board of Fisheries reclassified the fishery as a subsistence fishery open to all Alaskans. The designation will have a great impact on the local users as more and more urban residents come to the Copper River to fish as "subsistence users." NARF has been assisting the Tribe petition the State Board of Fisheries to get it to reconsider the decision to make the personal use fishery in Chitina a subsistence fishery. The Board's action will have the effect of opening the fishery to urban residents creating greater competition for a limited number of available fish. NARF has also assisted the Tribe in preparing testimony before the Federal Board of Fisheries requesting that Board to do a customary and traditional use determination for the Chitina fishery that occurs in federal waters.





MAJOR ACTIVITIES 2000 NARF Case Map

NATIVE AMERICAN RIGHTS FUND

2000 Annual Report

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THE PROMOTION OF HUMAN RIGHTS

In 2000, NARF provided assistance in several matters involving religious freedom, cultural rights, education, child welfare and international law. NARF, on behalf of its clients, seeks to enforce and strengthen laws which are designed to protect the human rights of Native Americans in this area.

RELIGIOUS FREEDOM

Because religion is the foundation that holds Native communities and cultures together, religious freedom is a NARF priority issue. As a result, NARF has utilized its resources to protect First Amendment rights of Native American religious leaders, prisoners, and members of the Native American Church, and to assert tribal rights to repatriate burial remains. Since Native American religious freedom affects basic cultural survival of Indian tribes, NARF believes that American law and social policy must provide adequate legal protection.

In late 1994, President Clinton signed into law Public Law 103-344 which exempts the religious use of peyote by Indians in bona fide traditional ceremonies from controlled substance laws of the federal and state governments. NARF represented the Native American Church of North America (NACNA) and played a key role in the passage of the legislation. It also prohibits discrimination against Indians for such religious use of peyote, including the denial of otherwise applicable benefits under public assistance programs. The bill closes the door to governmental prohibition of sacramental use of peyote by Indians and effectively reverses a 1990 United States Supreme Court decision in *Smith v. Oregon* that denied First Amendment protection to the Native American Church.

NARF represents the NACNA in negotiations with the Department of Defense (DOD), which has initiated a process to promulgate regulations governing the religious use of peyote in the military. The Pentagon issued interim rules in 1997 that recognize and control the sacramental use of peyote by Native Americans in the military who are members of federally recognized tribes. It is estimated that there are approximately 9,600 Native Americans in the U.S. mil-

itary but only a few hundred are members of the Native American Church. For Native American Church members, peyote is viewed as a natural gift from the Creator and the Church believes in strong family values, personal responsibility and abstinence from drugs and alcohol at all times. In 1998, the Department of Defense issued amendments to the interim rules and NARF submitted comments on behalf of the Native American Church of North America for the promulgation of a final rule which would prohibit the ingestion of the sacrament within 24 hours of duty, ban the possession of the sacrament except the amulet known as the "Peyote heif", on bases, military vehicles, aircraft and vessels, and require affected service members to notify their commanders after returning to base if they have used the sacrament. The final rule has not yet been released.

NARF was a leading proponent of the Native American Graves Protection and Repatriation Act (NAGPRA) which was signed into law in 1990. The Act requires federal agencies and private museums that receive federal funding to inventory their collections of Native American human remains and funerary objects, notify the tribe of origin, and return the ancestral remains and funerary objects upon request to the tribe. It makes clear that Indian tribes have ownership of human remains and cultural items which are excavated or discovered on federal or tribal land and that they alone have the right to determine disposition of Indian human remains and cultural remains discovered in these areas. The Act prohibits the trafficking of Native American human remains and cultural items where the items are obtained in violation of the Act and requires federal agencies and private museums that receive federal funds to create a summary of sacred objects in their possession. If a tribe can prove a right of possession to these objects then they must be returned upon request of the tribe.

In continued guidance to tribes asserting NAGPRA claims, NARF is participating with the Colorado Commission on Indian Affairs (CCIA) and the Colorado Historical Society (CHS) in assisting the Ute Mountain Ute Tribe of Colorado, the Northern Ute Tribe of Utah, the Cheyenne and Arapaho Tribes

of Oklahoma, the Comanche Tribe of Oklahoma, the Fort Sill Apache Tribe of Oklahoma, the Kiowa Tribe of Oklahoma, the Northern Cheyenne Tribe of Montana, the Pawnee Nation of Oklahoma, the Oglala Sioux of South Dakota, the Rosebud Sioux of South Dakota, and the Mandan, Hidasta and Arikara Tribes of North Dakota with the return in 2001 of 350 Native American ancestral remains that were stored for up to a century in boxes at the Colorado History Museum. NARF participated in a symposium involving the Tribes, the CCIA and the CHS in negotiating for the eventual return of the remains to the Tribes even though many could not be identified to any one specific tribe. NARF is also assisting the CCIA in developing changes to Colorado law protecting unmarked human burials.

The Medicine Wheel National Historic Landmark, located within the Bighorn National Forest in north-central Wyoming, is a valuable cultural and religious resource for several Native American tribes who have inhabited the area for at least 7,500 years. Many tribes consider the site sacred, as has been documented in various ethnohistoric studies. In 1988 it became apparent that the site was in need of a better management plan to ensure visitor safety and the integrity of the Medicine Wheel. Therefore, in 1996 the United States Forest Service and several consulting parties signed a Historic Preservation Plan (HPP) which established a management plan for this site. The purpose of the HPP was "to establish a process for integrating the preservation and traditional use of historic properties with the multiple use mission of the Forest Service, in a manner that gives priority to the protection of the historic properties involved by continuing traditional cultural use consistent with the National Historic Preservation Act." The HPP additionally provided for on-site interpreters, visitor management, limited motorized access, and the protection of traditional cultural use of the site. In *Wyoming Sawmills v. United States and Medicine Wheel Coalition*, a private timber company in Wyoming has challenged the legality of the United States Forest Service's Management Plan for the Sacred Medicine Wheel. NARF filed an *amicus curiae* brief on behalf of the National Congress

of American Indians urging the United States District Court for the District of Wyoming to uphold the Plan on statutory and constitutional grounds and is now awaiting a decision.

CULTURAL RIGHTS

The Tuolumne Me-Wuk Band of Indians in California has been concerned with the increased misuse and misappropriation by non-tribal members of its traditional songs, symbols, ceremonies, and arts and crafts. The Tribe has requested that NARF provide the Tribe with a legal opinion regarding the Tribe's rights to regulate its own cultural and intellectual property. This issue has been of concern for many tribes throughout the country and it is believed that a legal opinion regarding this issue will be of great benefit and value to all tribes. Congress passed and the President signed a law directing the United States Patent and Trademark Office (PTO) to study whether federal trademark law should protect tribal insignia. NARF filed two sets of comments on behalf of the Tribe with the PTO and testified at PTO hearings about whether and how this should be accomplished. NARF attorneys concluded researching this matter issued a legal opinion to the Tribe.

NARF is also helping the Rosebud Sioux Tribe of South Dakota develop a Cultural Resources Management Code by which the Tribe can regulate its cultural and intellectual property on its reservation. The Tribe is particularly interested in regulating the harvest and use of sage, its Sun Dances, and various arts and crafts.

In 1999 the Alaska State Superior Court granted a preliminary injunction that enjoined the State of Alaska from the operation and enforcement of Alaska's Official English Initiative, which was passed by state voters in 1998. NARF filed *Alakayak v. State* in 1999 on behalf of twenty-seven Alaska Native plaintiffs who speak Alaska Native languages. The *Alakayak* lawsuit claims that Alaska's English-only law is unconstitutional because it violates constitutional rights to free speech, equal protection, and due process.

Alaskans for a Common Language moved to intervene, requested an expedited appeal before the State Supreme Court and were granted intervention in August 2000.

NARF filed an *amicus curiae* brief in the U.S. District Court for Colorado in *Cow Creek Band of Umpqua Tribe of Indians v. IMOCA Licensing America, Inc. and Sterling Consulting Corporation*. The Tribe filed suit against IMOCA, a Canadian corporation who purchased the long dormant “Indian Motorcycle” trademarks. The Tribe complained that IMOCA has been using the trademarks to sell products, which creates the suggestion that the goods are produced by Indians — a suggestion that is completely false. NARF urged the Court to deny IMOCA’s motion to dismiss and to hear the case, as it is important that the Indian Arts and Crafts Act and its regulations are addressed. The Act is designed to protect Indian markets by specifically prohibiting non-Indians from selling goods as genuine Indian-made goods when indeed they are not. The Tribe’s case was dismissed on other grounds and the Tribe appealed.

In *Harjo v. Pro-Football, Inc.*, individual Indians petitioned the United States Patent and Trademark Trial and Appeal Board seeking to cancel the pro-football Washington “Redskins” trademark on the grounds that the term is, and always has been, a deeply offensive, humiliating and degrading racial slur. NARF, in representing the National Congress of American Indians, the National Indian Education Association and the National Indian Youth Council, filed an *amicus curiae* brief in support of the cancellation of the trademark. The *amicus curiae* brief was rejected by the Trial and Appeal Board. In 1999 the United States Patent and Trademark Trial and Appeal Board decided in favor of the Native Americans. The Washington team has filed an appeal.

EDUCATION

In the past and even today, most federal and state education programs circumvent tribal governments and maintain federal and state government control over the intent, goals, approaches, funding, staffing and curriculum for Indian

education. For 30 years, the Native American Rights Fund has focused its educational efforts on increasing Indian self-determination and transferring control back to the tribes.

NARF has implemented an Indian Education Legal Support Project with its central theme of “tribalizing education.” The goal is to give tribes more control over their most precious resource, their children, and help them to improve Indian education and tribal societies. Rather than focusing on traditional civil rights work such as racial discrimination claims, NARF’s efforts are devoted to confirming the unique sovereign rights of Indian tribes based on principles of Indian law. To date these rights and principles have not been addressed adequately in the context of education.

Under the Project, NARF strives to strengthen tribal rights in education. This means helping tribes gain control of the formal education of their members, regardless of the government that provides the education -- federal, state, or tribal. As NARF continues to develop and successfully promote cutting-edge legal theories about tribal control of education, work continues in developing tribal education laws, such as education codes, policies, and plans; developing tribal-state agreements and compacts as necessary to implement tribal laws; reforming federal and state education laws and policies; and litigation to enforce tribal rights in education.

NARF continued to represent the Rosebud Sioux Tribe on implementing and refining its Education Code that was adopted in 1991. In June 2000 NARF helped the Tribe coordinate the preparation of a national paper entitled “*Tribal-State Partnerships: Cooperating to Improve Indian Education*.” In August 2000 NARF submitted proposed amendments to the Tribe’s Education Code regarding schools and education programs chartered by the Tribe. The proposed amendments would strengthen the role of the Tribal Education Department in monitoring these charters. It would also provide for an improved process by which the charters are granted and revoked. Virtually all of the Tribe’s over

3,000 elementary and secondary students are served by one or more of these chartered schools and programs. NARF's extensive research of federal, tribal, and state laws in this area helped shape the proposed amendments which are now being reviewed by the Tribal Education Committee before being submitted to the Tribal Council for consideration.

Also, with support of the National Indian Education Association and the National Congress of American Indians, the Tribe submitted its request to the Department of Education to amend the Family Educational Rights and Privacy Act (FERPA) to treat tribes as sovereign nations in terms of obtaining public school student records of tribal members. As tribal education departments set up student tracking systems, a number of public schools have used FERPA as a ground for not providing tribes with student records, although the law is clear that the federal, state, and local governments can obtain such records from the schools without advance parental or student consent. NARF will be assisting tribes and Indian organizations in working with the new administration to garner their support in amending FERPA to help tribes in this area which is critical to improving Indian education.

NARF also represents the Assiniboine-Sioux Tribes of the Fort Peck Reservation in Montana in implementing its tribal education code. Since the enactment of the Fort Peck Tribes' Education Code, the Tribal Education Department (TED) has worked toward implementation of the Code's provisions through cooperative agreements with the five public school districts within the boundaries of the Reservation. In accordance with the Code, the TED has also attempted to conclude agreements with the school districts to require teacher training in Indian studies. A number of productive meetings with school superintendents have been held to discuss teacher training requirements, and several districts are either already requiring Indian studies training or are very receptive to the idea. However, some concern has been expressed about the lack of teacher training opportunities offered by the Tribes. In response to these concerns, the TED sponsored training in Indian studies on two separate occa-

sions during 2000. Providing this training is convincing reluctant school districts to voluntarily adopt an Indian studies teacher training requirement and has strengthened the working relationship between the Tribes and the public schools on the Fort Peck Reservation.

The Northern Cheyenne Tribe of Montana has also begun the process of developing a tribal education code with NARF's assistance. The Tribe has recognized the need for the educational systems serving tribal children to provide a relevant and quality education for them. The Tribe has an Education Commission and Education Department that needs assistance with the long range planning and regulation of education. Issues identified have included drop-out and truancy rates, relevant curriculum, databases and intergovernmental coordination. Since that time, the Tribe has temporarily placed these efforts on a back burner and will readdress them in the very near future.

NARF is also assisting the Three Affiliated Tribes of the Fort Berthold Reservation in North Dakota to establish a tribal education code. While the Fort Berthold Tribes have an Education Committee and an Education Department, NARF is assisting them in expanding the Department's responsibilities and in developing a comprehensive education code. The Tribes continued to work with the local community and school districts to increase understanding of the proposed tribal education code. The code has been reviewed by representatives of the school districts and communities and comments have been gathered. An amended draft has been circulated. In addition, the Tribes have been working with the State Department of Public Instruction to develop a Memorandum of Agreement (MOA) concerning the management of the schools on the reservation. The draft MOA will be part of the discussions with the communities and the State.

NARF represents the Jicarilla Apache Tribe of New Mexico in the development of an education code for Reservation education. The Tribe hopes the code will enable greater tribal input into the programs of the public school on the

Reservation that serves a vast majority of Jicarilla Apache children. Statistics show that the Tribe's effort is badly needed. The Jicarilla Apache children consistently rank last or near last in all education categories reported on annually by the State of New Mexico. NARF assisted the Jicarilla Apache Department of Education ("JADE") in negotiating a memorandum of understanding between the Tribe and the Dulce, New Mexico public school district setting out a process for JADE's data gathering from the district. This data is needed to formulate a State of the Reservation Education Report which sets forth facts concerning the present status of Indian education on the Reservation. NARF also assisted JADE in meetings with the Director of the New Mexico Office of Indian Education to discuss options for Tribal access to the state's Accountability Data System and for joint tribal/district hearings on school education data in the future. NARF also assisted in the preparation of a memorandum to the New Mexico Legislature urging the Legislature to adopt a legislative policy encouraging cooperative arrangements between Tribes and public school districts which encourage significant tribal input into the public school program.

NARF continues to represent the National Congress of American Indians and the National Indian Education Association in implementation of the Indian Education Executive Order signed by President Clinton in 1998. Twenty-eight grants under the new Indian teacher training program have been awarded. Nine Regional Partnership Forums have been held to develop a new Indian education policy and nine Pilot School Sites have been selected to implement the new programs first. A research agenda is being developed and was introduced at a national conference in 2000. A Comprehensive Federal Indian Policy has been drafted and is being reviewed. All of these activities are occurring in consultation with tribal leaders and Indian educators.

INDIAN CHILD WELFARE

In 1978, the United States Congress enacted the Indian Child Welfare Act (ICWA). The Act states as its purpose: "The Congress hereby declares that it is the policy of this Nation to protect the best interest of Indian children and to

promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family programs."

The Act established substantive, procedural and jurisdictional protections for tribes and Indian families in cases of adoption, pre-adoptive placement, foster care placement, and termination of parental rights proceedings involving Indian children. Because these protections are challenged or may conflict with state law, policy or practice, there have been several hundred state and federal court decisions interpreting the Act. Congress has also attempted to amend the Act to resolve concerns related to the enforcement of the Act. During 2000, Senate bill S.1213 was introduced, which provides notice to tribes in voluntary child custody proceedings, time limits imposed on tribes to intervene in Indian child custody proceedings, and criminal charges against those who illegally circumvent the ICWA. As tribes have had some concerns regarding some of the existing language and concerns on the proposed amendments to S.1213, NARF continued to monitor this Congressional legislation and participated in several national conferences and meetings related to Indian child welfare to address the tribal concerns. NARF also finished its revision of a draft chapter in a proposed book - entitled *Native American Children in our Legal System* - commissioned by the American Bar Association. The book outlines the legal rights of Native American children in our legal system in a variety of areas.

INTERNATIONAL LAW

NARF represents the National Congress of American Indians (NCAI) on issues relating to the negotiation and adoption of the United Nations (U.N.) and Organization of American States (OAS) draft declarations on the rights of Indigenous people. NARF and NCAI participated in two drafting sessions on the OAS Proposed Declaration on the Rights of Indigenous Peoples in 1999. The OAS General Assembly called for another session to be held in 2000-2001,

but the date has not been set. Meanwhile, NARF and NCAI have applied for civil society consultative status at the OAS.

NARF attended a U.N. session of the Working Group On Indigenous Populations in July 2000 and a drafting session in November 2000. The main task is to get the United States to accept the concept of group rights and self-determination for indigenous peoples. The United States State Department refuses to recognize these rights and insists on referring to indigenous populations as groupings of individual people with individual rights only. NARF and NCAI have applied for U.N. accreditation or NGO (Non-Governmental Organization) status with consultative status.

NARF is also representing NCAI in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in South Africa in September 2001. Once again, as with the President Clinton's Race Initiative, Indian people are the forgotten minority. The head of the United States delegation admitted a lack of personal awareness of indigenous issues but has agreed to include an Indian on the federal delegation. NARF and NCAI, in attending preparatory meetings in Geneva, Philadelphia, Oakland and Puerto Rico, have played an important role in advancing the indigenous agenda. NARF submitted, on behalf of NCAI, a proposed plan of action and statement of principle for the conference to the High Commissioner for Human Rights. The document emphasizes the draft declaration on the rights of indigenous peoples in the United Nations and the Organization of American States. The states and NGO's met on this matter in Chile in December 2000, and will meet in Geneva in January 2001 and in Ecuador in February 2001.



THE ACCOUNTABILITY OF GOVERNMENTS

NARF works to hold all levels of government accountable for the proper enforcement of the many laws and regulations which govern the lives of Indian people. NARF continues to be involved in several cases which focus primarily on the accountability of the federal and state governments to Indians.

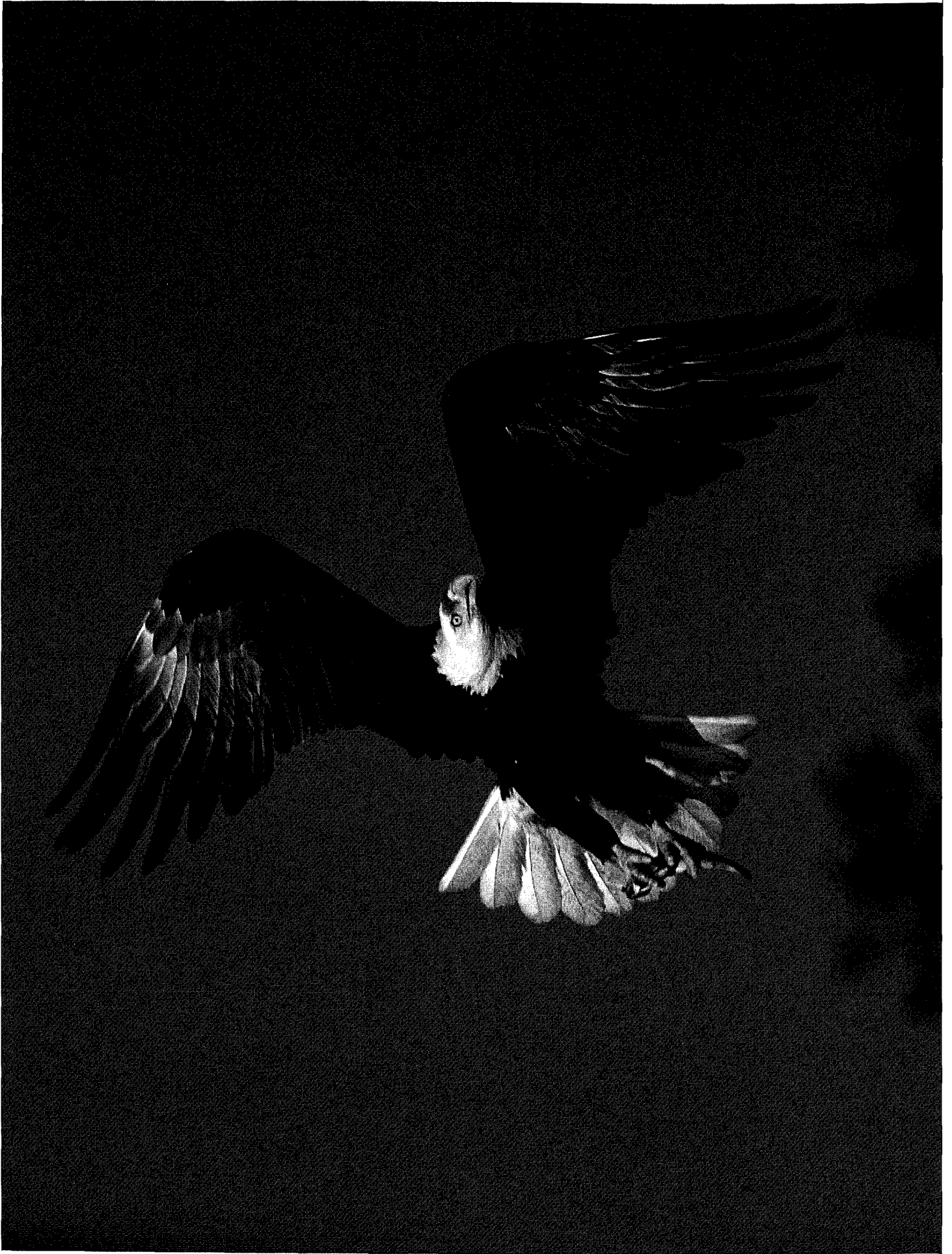
NARF represents approximately 500,000 present and past individual Indian trust beneficiaries in a class action suit against the United States for mismanagement of the individual Indian money (IIM) trust accounts. Filed in 1996, *Cobell v. Babbitt* is intended to force the United States as trustee to: (1) perform a complete, accurate and reliable accounting of all trust assets held to the benefit of individual Indian trust beneficiaries; (2) properly restate the trust fund accounts in conformity with that accounting; and (3) create an accounting and trust management system that is reliable and will safely and soundly manage the trust funds of individual Indians in the future. After a lengthy trial in the summer of 1999, the government was found to be in breach of trust in its operation of the Indian trust fund management system. The government is now appealing the December 1999 federal district court decision ordering the federal defendants to bring themselves into compliance with their trust obligations.

Together with co-counsel, NARF has defended the federal district court decision on appeal to the U.S. Court of Appeals for the District of Columbia where the case was argued in September 2000. On appeal, the federal government has argued that it owed no trust responsibilities to individual Indian trust beneficiaries until 1994 when the Congress enacted the Trust Fund Reform Act and that it is in the process of implementing that Act now so the federal district court has no jurisdiction to review the implementation until it is completed. NARF argued that federal trust responsibilities attached when Indian lands and monies were placed in federal trust status over 100 years ago and that Congress enacted the 1994 Trust Fund Reform Act precisely because the Interior Department had ignored repeated Congressional directives to correct the longstanding Indian trust fund management deficiencies and to provide an accounting. NARF argued further that breach of trust has occurred as determined at trial

and that the federal district court has jurisdiction to oversee the repair of the Indian trust fund management system and to order an accounting.

In a Court of Federal Claims action, NARF represents the Turtle Mountain Band of Chippewa in North Dakota, the Chippewa-Cree of the Rocky Boys Reservation in Montana and the Little Shell Tribe of Chippewa in Montana against the Bureau of Indian Affairs for mismanagement of the Pembina Judgment Fund. The Tribes allege misaccounting, misinvestment, and mismanagement by the federal government of their \$50 million tribal trust fund. The Fund was established in 1980 to distribute Indian Claims Commission awards to these tribes for lands and other rights taken by the United States. After a partial distribution to the tribes in 1988, the undistributed portion was held in trust by the Bureau of Indian Affairs. NARF and the Tribes have been exploring the possibility of a negotiated settlement of the Tribes' claims since 1997. In August 2000, the tribes submitted the first of three parts of their settlement proposal. NARF has also been monitoring proposed legislation to settle tribal trust fund claims to be sure that such proposals support the settlement efforts of Pembina.

The Native American Rights Fund, on behalf of ten Native villages and seven Native individuals, filed a civil lawsuit in 1999 in the Superior Court for the State of Alaska, seeking declaratory and injunctive relief against the State of Alaska for failure to provide minimally adequate police protection to 165 off-road Native villages and for discriminating against them in the provision of State law enforcement services. In *Alaska Inter-Tribal Council v. Alaska*, the complaint alleges that the actions of the State in unlawfully prohibiting Native villages from keeping the peace in their traditional ways, which rendered them defenseless to lawbreakers by failing to provide them even minimally-adequate police protection under the State law enforcement system, violated the Villages' rights to Due Process of law and basic law enforcement protection guaranteed by the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution. The complaint also alleges that the State's discrim-



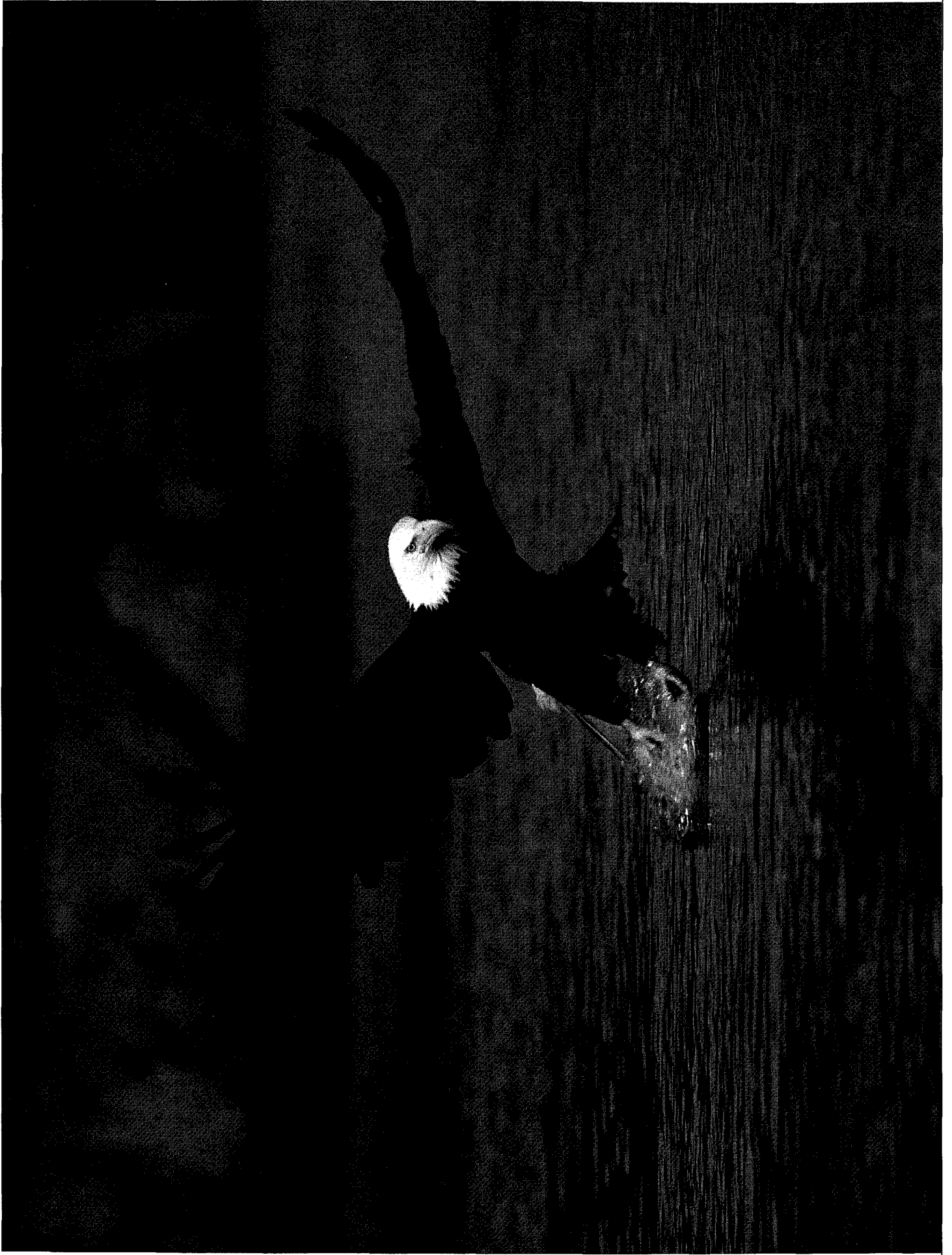
inatory treatment of Native villages in the provision of police protection is based on race and therefore violates the Villages' rights to Equal Protection of the law under the Fourteenth Amendment to the United States Constitution and Article I of the Alaska Constitution. The complaint also alleges that the State's use of State and federal funds and services in State law enforcement programs which discriminate against Alaska Natives in the provision of police protection violates their rights under Alaska statutes and Title VI of the Federal Civil Rights Act of 1964.

NARF is involved in Native Hawaiian legal issues primarily in support of the Native Hawaiian Legal Corporation, which NARF helped to organize in the early 1970s to address these issues. The Native Hawaiian cases are somewhat different than other NARF cases but there are historical similarities. The United States overthrew the sovereign Native Hawaiian government in 1893, pandering to business and military interests who sought control of the islands for strategic purposes. But prior to European contact in 1778, the Islands had a very complex and elaborate Native Hawaiian civilization. Over the years, Native Hawaiians have been making substantial progress in re-asserting Native Hawaiian rights.

Rice v. Cayetano involved a challenge by a non-Native to the voting restriction in the state constitution allowing only Native Hawaiians to vote for trustees of the Office of Hawaiian Affairs (OHA). The OHA administers income received from certain trust lands for the benefit of Native Hawaiians. Rice argued that the restriction violates the Fourteenth and Fifteenth Amendments to the U.S. Constitution. The Ninth Circuit Court of Appeals upheld the voting restriction, but the United States Supreme Court reviewed that decision. One of Rice's arguments is that since there are no tribes in Hawai'i, the voting restriction is purely race-based and subject to strict scrutiny. The Supreme Court case of *Morton v. Mancari* held that legislation as to Indian tribes is based on the political relationship between tribes and the United States and need only be rationally related to Congress' unique obligation toward Indian

tribes. The question was whether the same standard applies to legislation passed for the benefit of Native Hawaiians. NARF filed an *amicus curiae* brief in support of Native Hawaiians on behalf of the National Congress of American Indians in the Supreme Court. However, in February 2000 the Supreme Court ruled against the Native Hawaiians declaring that the state restriction on voting for OHA trustees to Hawaiians was based on race and, therefore, violated the 15th Amendment which prohibits denying anyone the right to vote based on race.

In *Pele Defense Fund v. Campbell*, NARF and co-counsel Native Hawaiian Legal Corporation await a favorable ruling promised by a Hawai'i state court in 1996 that would allow for traditional Native Hawaiian access rights to rain-forest lands traditionally exercised by Native Hawaiians on those lands before they were exchanged in 1983 by the State of Hawai'i for other lands in order to accommodate a geothermal developer. The decision is expected to be appealed to the Hawai'i Supreme Court. The case was previously before the Hawai'i Supreme Court in 1992 when it upheld the land exchange but remanded the case for trial on the traditional access rights issue. That ruling was precedent for a landmark 1995 ruling by the Court in *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission* which alerted government agencies of their responsibility under the Hawai'i State Constitution to consider Native Hawaiian rights in all permitting rather than forcing traditional access practitioners to resort to litigation in order to continue such customary usage. NARF continues to wait for the court ruling which has now been pending for four years.



THE DEVELOPMENT OF INDIAN LAW

The systematic development of Indian law is essential for the continued protection of Indian rights. This process involves distributing Indian law materials to, and communicating with, those groups and individuals working on behalf of Indian people. NARF has two ongoing projects which are aimed at achieving this goal.

THE NATIONAL INDIAN LAW LIBRARY

The National Indian Law Library (NILL) is the only law library specializing in legal practice materials which are essential for practitioners of Indian law. An important component of NILL is its collection of pleadings filed in important Indian law cases, dating back to the 1950's. NILL houses legal pleadings in cases ranging from tribal courts to the United States Supreme Court. These pleadings are an invaluable resource for attorneys associated with tribes, and with Indian legal service programs, because these attorneys and programs are generally in remote areas of the country, without access to adequate law libraries. NILL fills the needs of the often-forgotten areas of the nation known as Indian country. NILL handles close to one thousand information requests per year and serves a wide variety of public patrons including attorneys, tribal governments, tribal organizations, researchers, students, prisoners, the media, and the general public.

The National Indian Law Library recently launched its library catalog on its improved Internet website. This searchable catalog provides free access to current descriptions of over 12,000 holdings in the library collection. For the past twenty-eight years, NILL has been collecting a wealth of materials relating to federal Indian law and tribal law which include such tribal self-governance materials as constitutions, codes and ordinances; legal pleadings from major Native American law cases; law review articles; handbooks; conference materials, and other information. Now the general public can access bibliographic descriptions of these materials from the electronic catalog on the NILL website. Once relevant documents are located, patrons can review materials at the Boulder, Colorado library, request copies for a nominal fee, or borrow materials

through interlibrary loan. To reach the catalog and other Native American law resources on the NILL website, point your Internet browser to the Native American Rights Fund (NARF) website at www.narf.org and click on the National Indian Law Library link.

In September 2000 the newly-developed National Tribal Justice Resource Center (NTJRC), established by the National American Indian Court Judges Association, and funded by a grant from the U.S. Department of Justice, opened its doors at the National Indian Law Library. NTJRC will provide legal resources to tribal court personnel and assist with legal inquiries from American Indian and Alaska Native justice systems. NTJRC will work to meet the expanding needs of tribal justice systems and will offer an impressive list of services, including plans to create a clearinghouse of existing judicial resource materials, and provide training and technical assistance; publish an on-line newsletter informing tribal justice systems of their resources & services; establish a 800# Helpline; provide a free, internet-searchable database of tribal justice system opinions; offer on-line reference & research assistance services through the Resource Center's website; and set up a mentoring system.

INDIAN LAW SUPPORT CENTER

Since 1972 the Indian Law Support Center (ILSC) of the Native American Rights Fund had received funding from the Legal Services Corporation to serve as a national support center on Indian law and policy for the national Indian legal services community and the 32 basic field programs serving Native American clients. Literally hundreds of requests for assistance in all areas of Indian law were answered annually. Because of the unique and complex nature of Indian law and the geographic remoteness of Indian legal services programs, complicated by the difficulty of attracting and maintaining experienced staff, ILSC performed a vital and cost-effective support function to Indian programs and other legal services providers across the country.

NARF was impacted by the federal budget-cutting in Washington in 1995 as Congress eliminated NARF's ILSC annual funding from the Legal Services Corporation. ILSC, which has been assisting Indian legal services field programs as a project of NARF, now functions at a greatly reduced level on NARF general support funds. Due to the loss of Legal Services Corporation funding, ILSC has been unable to carry on at traditional levels its program of working with Indian legal services lawyers nationwide through advice, research, recent Indian legal information, litigation and training. In December 2000 ILSC and other Indian legal services were successful in securing the passage of the Indian Tribal Justice Act which will provide a more stable funding base for Indian legal services programs and tribal courts from Congress. ILSC also worked with the Indian Legal Services community to organize an Indian Law Conference at the University of California at Berkeley in July 2000.

OTHER ACTIVITIES

In addition to its major projects, NARF continued its participation in numerous conferences and meetings of Indian and non-Indian organizations in order to share its knowledge and expertise in Indian law. During the past fiscal year, NARF attorneys and staff served in formal or informal speaking and leadership capacities at numerous Indian and Indian-related conferences and meetings such as the National Congress of American Indians Executive Council, Midyear and Annual Conventions and the Federal Bar Association's Indian Law Conference. NARF remains firmly committed to continuing its effort to share the legal expertise which NARF possesses with these groups and individuals working in support of Indian rights and to foster the recognition of Indian rights in mainstream society.



2000 TREASURER'S REPORT

Based on our *audited* financial statements for the fiscal year ending September 30, 2000, the Native American Rights Fund reports total unrestricted revenues of \$7,098,455 against total expenditures of \$6,862,212. Due to presentation requirements of the audited financial statements in terms of recognizing the *timing* of certain revenues, they do not reflect the fact that, based on NARF's internal reporting, revenue actually exceeded operating expenses and other cash outlays by \$326,512, allowing for a modest increase to NARF's reserve fund. This increase is largely attributed to additional grants from foundations, combined with a fortuitous gain in investments.

Expenditures increased by \$314,312 due, in the most part, to an increase in consultant costs for fiscal year 2000's case-related activity. Total management and fund raising costs constituted 27.9% of total revenues in fiscal year 2000. Support and Revenue comparisons between fiscal year 2000 and fiscal year 1999 are shown below.

SUPPORT AND REVENUE COMPARISON

	2000		1999	
	\$	%	\$	%
Contributions	\$ 2,927,937	41.3%	\$3,126,321	46.5%
Federal Grants	1,532,444	21.6%	1,506,839	22.4%
Foundation Grants	1,173,411	16.5%	610,914	9.1%
Return on Investments	1,288,862	18.2%	1,130,329	16.8%
Legal Fees	137,440	1.9%	299,664	4.5%
Other	38,361	0.5%	45,217	0.7%
TOTALS	\$ 7,098,455	100%	\$6,719,284	100%

Note: This summary of financial information has been extracted from NARF's audited financial statements on which the accounting firm of JDS Professional Group expressed an unqualified opinion. Complete audited financials are available, upon request, through our Boulder office or at www.narf.org.

NARF ACKNOWLEDGMENT OF CONTRIBUTIONS: *Fiscal Year 2000*

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Development/Public Relations
Administrator

Beverly Gittens - Legal Assistant

Sandra R. Janis (Oglala Lakota)
Accountant

Marla Keckler (Cheyenne River Sioux)
Development Projects Coordinator

Michael Kennedy - Assistant Controller

Mereille Martinez
Development Administrative Assistant

Christine Pereira
Micro Computer Specialist

Donald M. Ragona
(Mattinecock/Oglala Lakota)
Director of Planned Giving/Development
House Counsel

Rhoda M. Riggs (Navajo)
Legal Assistant

Joanne Soklin - Legal Assistant

Debbie Raymond-Thomas (Navajo)
Assistant Controller

Johanna Zeh - Accountant



NATIONAL INDIAN LAW LIBRARY

David Selden - Librarian

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