

# ANNOUNCEMENTS

Native American Rights Fund

December 1977

## The Swift Bird Project:

## An Alternative Rehabilitation Center



*"... it is my firm belief that Indians can rehabilitate their own people better than anyone else."*

Wayne Ducheneaux, Chairman  
Cheyenne River Sioux Tribe

By October, 1978, the Cheyenne River Sioux Tribe of South Dakota plans to open the doors of a new pre-release corrections facility which will serve as an alternative method to incarceration for Indian inmates in a five-state Northern Great Plains area. The facility will be known as the Cheyenne River Swift Bird Project and will be governed by a five-member board of directors appointed by the Tribal Council.

The Tribe has been working with the Native American Rights Fund for over three years in development of this project. The idea for the alternative method of incarceration grew out of NARF's litigation work in Indian corrections, and has been endorsed by the federal Law Enforcement Assistance Administration, the Bureau of Indian Affairs and other officials in the corrections field. According to staff attorney Walter Echo-Hawk, who has spent most of his five years at NARF in corrections work, the concept for developing an alternative corrections facility grew out of NARF's work on behalf of Indian inmates in state and federal penal institutions around the country.

During the early years of NARF's development, staff attorneys received many requests for assistance from Indian inmates who complained of poor prison conditions, the lack of cultural and religious programs geared to the special needs of Indian people, and a general insensitivity to Indian customs and practices. It became apparent that there existed no legal precedents for the protection of cultural rights of Indian prisoners.

NARF's early litigation activities were undertaken in an effort to sensitize penal authorities to those special cultural needs of Indians which are critical to their rehabilitation. Where the officials were not responsive, litigation proceeded in an effort to obtain judgements compelling special treatment to meet Indian needs. Through the past five years, NARF has been successful in developing that body of law for the cultural rights of Indian inmates. This body of law has been developed so that Indian inmates could have access to Indian experiences which the dominant society has stolen or distorted—experiences without which Indian people are lost.

NARF's legal efforts in the Indian corrections field were first made possible through a grant from the Irwin-Sweeney Miller Foundation, of Columbus, Indiana. This supported the time of two full-time attorneys for a two-year period, until November, 1975; since that time NARF has had to rely on the general support of the Ford Foundation in order to see that the



cultural rights of Indian inmates were assured in the prison setting.

Because the traditional criminal corrections system has failed to adequately rehabilitate Indian people, the concept for an alternative method of rehabilitation was developed. Staff attorneys working in the Indian corrections field felt that there was only so much relief that could be accomplished through lawsuits. More work had to be done in changing individual attitudes and in getting Indian people employed in corrections administration. Although much relief for Indian inmates was secured through NARF's litigation efforts, staff attorneys felt that they were "spinning their wheels" in trying to alleviate problems within the traditional criminal corrections system. They therefore, felt that time would be well spent in developing an alternative to the traditional Anglo incarceration system which would assist inmates in getting out of prison and incorporate Indian rehabilitative techniques and concepts in a pre-release environment.

In 1973, the Native American Rights Fund Corrections staff began discussions with the United Sioux Tribes of South Dakota to assess the feasibility of locating an Indian-controlled corrections program somewhere in South Dakota. The program would serve Indian offenders incarcerated in five

target states (South Dakota, North Dakota, Nebraska, Minnesota, and Montana). These states were selected because of the cultural compatibility of the Northern Plains Tribes and because the large number of Indian inmates made the Project feasible.

The Cheyenne River Sioux Reservation was proposed by NARF as an ideal setting for the establishment of a facility for Indian offenders because the reservation was centrally located and the tribe owned an abandoned facility—the Swift Bird Job Corps Camp. This facility was built in 1968 and was scheduled for opening in 1969. However, with a change in the Washington Administration, the intended job corps facility was never opened and funds were never appropriated for its operation. The Swift Bird Camp has remained idle and unused for almost ten years. It was built at a cost of nearly \$3 million and is used only to store foods and for recreational activities. NARF had explored at least two other Indian reservations—the San Carlos Apache Reservation in Arizona and the Potawatomi Reservation in Kansas. Both of these sites were deemed unacceptable for use and rejected.

It was felt that the ideal sponsoring agency for an alternative corrections facility should be an incorporated Indian tribe, since they are considered local units of government

## NARF Prison Cases

The Indian Corrections Project is a litigation unit of the Native American Rights Fund, which has represented Indian prisoners in a number of proceedings challenging conditions and policies of state and federal prisons, parole boards, and local county jails.

Many of NARF's prison cases involve discrimination against Indian inmates and access to their native religion and culture while in prison. *Teterud v. Burns*, 522 F.2d 537 (8th Cir. 1975) was a case involving the policy of the Iowa State Penitentiary requiring all inmates to wear short hair. The court held that traditional Indian hairstyles are a tenet of Indian religion protected by the first amendment in the prison context. This particular aspect of Indian religion was successfully litigated in other NARF prison cases.<sup>1</sup> In a related case, *Crowe v. Erickson*, No. 72-4101 (D.S.D., Order of May 4, 1977), the Fund obtained a comprehensive order regarding Indian religion, culture, discrimination, affirmative action hiring, rehabilitation, medical treatment, and access to the courts on behalf of Indian inmates confined at the South Dakota Penitentiary. In *Indian Inmates of the Nebraska Penitentiary v. Vitek*, No. 72-L-156, (D. Neb., Order of October 31, 1974), a similar comprehensive decree was obtained at the Nebraska Penitentiary, which provided for access to Indian religion including a sweatlodge, Indian studies classes, and medicine men. *Calf Looking v. Richardson*, No. 1591-73 (D.D.C., Order of February 24, 1974), involved the right of access of federal Indian inmates to their outside spiritual advisor. This case was successfully resolved by consent order.

More recently, NARF has become involved in a number of issues in Oklahoma and in California. *Little Raven v. Crisp*,

No. 77-165-C (E.D. Okla., filed May 23, 1977), is a case against the Oklahoma State Penitentiary on behalf of Indian inmates seeking access to their Indian culture and religion while confined at that prison. *Bearibs v. Grossman*, No. 77-3895 RJK(G) C.D. Cal., filed October 25, 1977), is a case against the Federal Bureau of Prisons on behalf of Indian inmates who are seeking access to an Indian sweatlodge for religious purposes. *Inmates v. Greenholtz*, 436 F. Supp. 432, (D. Neb. 1977), affirmed, — F.2d —, No. 77-1031, (8th Cir. 1977), is a class action suit claiming racial discrimination in the Nebraska parole process.

In bringing the above cases, NARF hopes to establish a body of law to protect the rights of Native American inmates in the practice of their religion and culture; and at the same time to free them from racial discrimination. Additionally, it is hoped these cases will serve to sensitize correction officials to the unique needs of Indian prisoners.

NARF is also investigating conditions of some county jails. *Kinale v. Dowe*, No. 73-374-GT (S.D. Cal., filed Sept. 6, 1973), and *Cotton v. Jarvis*, No. E-75-10 [R] (E.D. Miss., filed March 5, 1975), were county jail cases brought in California and Mississippi, challenging the conditions of confinement wherein successful consent decrees were obtained. Recently, NARF has filed a similar case *White Eagle v. Storie*, No. 77-L-245 (D. Neb., filed December 2, 1977), challenging the conditions of confinement in a Nebraska county jail on behalf of Indian prisoners.

In addition to the above litigation activities, NARF has represented Indian inmates in state prisons in negotiations with prison authorities. Specifically in the States of Montana, Oregon, Idaho, New Mexico, Arizona, California, Kansas, New York, and Massachusetts. NARF's work in this area has resulted in collection of data regarding Indian offenders and their problems, and the development of a body of experts from various disciplines who are knowledgeable about Indian correctional problems.

<sup>1</sup>*Bender v. Wolff*, No. R-77-0055 BRT (D. Nev., Order of July 5, 1977) [Nevada State Prison]; *Crowe v. Erickson*, No. 72-4101 (D.S.D., Order of April 4, 1975) [South Dakota Penitentiary]; *Indian Inmates of the Nebraska Penitentiary v. Vitek*, No. 72-L-156 (D. Neb., Order of October 31, 1974) [Nebraska Penitentiary].

eligible for a variety of funds and able to enter into contracts for governmental and legal purposes. As originally conceived by NARF, this alternative setting would be an Indian-run facility and would reflect the cultural and religious values of Indian people. It was originally projected that Indian offenders who were planning to return to reservation settings would be most interested and best served, in such an alternative facility.

In a resolution dated August 21, 1974, the United Sioux Tribes formally endorsed the concept of an alternative corrections center for Indian offenders. In November, 1974, NARF staff, United Sioux Tribes staff, and a correctional Architect-Planner visited the Swift Bird Job Corps facility located on the Cheyenne River Sioux Reservation. As a result of this inspection visit, NARF, the Cheyenne River Sioux Tribe, and the United Sioux Tribes began to further evaluate the potential of the Swift Bird facility as the location for an alternative corrections center.

During the spring of 1975, the Cheyenne River Sioux Tribal Council formally endorsed the concept of converting the facility into a correctional center for Indian offenders. In May, 1975, the Nebraska Indian Commission also formally endorsed the concept and offered its assistance.

Later in 1975, the Tribe and NARF submitted a funding request to the Law Enforcement Assistance Administration (LEAA). LEAA administrators responded favorably, but felt that the concept had not been thoroughly developed from a correctional perspective.

However, late in 1975, LEAA allocated \$15,000 to the Cheyenne River Sioux Tribe for a feasibility study, and in June, 1976, the Community Corrections Resource Programs, Inc. (CCRP) of Ann Arbor, Michigan was selected to do the study. CCRP began its work immediately and completed a summary report and feasibility study in December, 1976.

## DEVELOPMENT

The Swift Bird Project is now being developed with funds from LEAA and the Bureau of Indian Affairs, (BIA). NARF has received the continued support and cooperation of LEAA Indian Desk Director Mr. Dale Wing since preliminary discussions began on the alternative to incarceration concept. In addition, Mr. Eugene Suarez, Chief of the Division of Law Enforcement Services for the BIA, has given his enthusiastic support.

In addition to the \$15,000 grant awarded to the Cheyenne River Sioux Tribe for development of a feasibility study, NARF was able to secure \$181,000 from LEAA and \$30,000 from the BIA for development of an Operations Manual for the proposed facility. In October, 1977, NARF submitted the first draft of the Operations Guide to the BIA and LEAA. It represents current plans for the development and operation of the Project, and serves as a consensus of the key development participants. The draft contained substantial input from the Cheyenne River Sioux Tribe, primarily through the Tribal Development Board. It also reflected input from a National Advisory Board, composed of correctional officials and Indian people from the five target states and throughout the United States.

The initial draft will be revised on a regular basis, and NARF staff and corrections consultants anticipate that the final draft of the Operations Manual will be submitted to LEAA, BIA and other governmental officials by February of 1978.

Although NARF has served as the principal development coordinator for the Swift Bird Project, much of the research and coordination on the project has been done by the Community Corrections Resource Programs. CCRP served as primary consultants for the Swift Bird Feasibility Study and has been subcontracted to do a large part of the work in development of the Operations Manual.

Mr. Rodney Miller, President of CCRP, and NARF staff members have met with the Tribal Development Board and the National Advisory Board throughout the summer and fall of 1977. Those who devoted their time and energies to the Tribal Development Board included Tribal council members Robert Blue Coat, Jr., Blane Clown and Delma Traversie; BIA representatives G.H. Grandboi and Noble LaCroix from the Department of Social Services, and Lewis White from Law Enforcement; Tribal Planning Staff Zane S. Arpan and Michael Claymore; Tribal Administrator Gregg Ducheneaux; Police Chief Andrew T. Condon, Sr.; Chief Judge Gilbert LeBeau; Housing Authority Director Lloyd LeBeau; Community Health Representative Joan C. LeBeau; Tribal Prosecutor Jim McCurdy; Alcoholism Counselors Walter Carlin and Greg Jewett; Dawn Little Sky, Culture Center; Walter Low Dog, resident; Victor On The Tree, resident and Board Chairman and Reverend Leslie R. Campbell.

On September 7, 1977, the Cheyenne River Tribal Council enacted an ordinance which chartered the Cheyenne River Swift Bird Project as a public corporation for governmental and legal purposes. Tribal Chairman Wayne Ducheneaux explained in a recent interview that the Swift Bird Project was chartered as a public corporation for liability and insurance purposes. The ordinance allows the project to sue and be sued as well as to enter into contracts with governmental authorities for financial and other purposes.

Pursuant to this ordinance, the Council appointed a five member Board of Directors from the original Tribal Development Board. Those appointed to serve staggered terms were Delma Traversie and Joan LaBeau, who will be co-chairpersons for the board; Mona Cudmore, a voting member, who is also the elected Tribal Treasurer; Lloyd LaBeau, Housing Authority Director and Walter Low Dog, a member of the community of Marksville, located a quarter mile from the Swift Bird facility. The Board of Directors will be the official governing authority for the Swift Bird Project. They will serve in an advisory capacity to the Director of the Project and assist him in approval of written employment standards, guidelines and qualifications for the Project. They will also assist him in the screening and selecting of residents;\* hear appeals and perform other duties as assigned by the Tribal Council.

Mr. Ducheneaux said the Tribal Council intends to keep politics out of the operation of Swift Bird; he personally believes that the alternatives to incarceration concept will work. He commented, "I feel the Project is a good idea and I've been behind the concept 100 percent since it was proposed. There are a lot of questions which will be answered as the project develops. However, it is my firm belief that Indians can rehabilitate their own people better than anyone else." He added that in his analysis of prison statistics, "Indian people have the highest proportion of inmates incarcerated in the nation's prisons compared to their tribal populations. At Swift Bird, we

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\*The term resident will be used at Swift Bird rather than inmate or prisoner since the Project is designed as a pre-release center.

are hoping for extensive counselling in order to reduce those numbers. The recidivism rate among Indian people has been high because the existing criminal justice system has failed them in many ways."

Tribal Chairman Ducheneaux has served as a major supporter of the Swift Bird Project and assisted NARF in its early efforts aimed at securing funds for the facility. He believes that the Swift Bird Project will help serve as a source of jobs for Cheyenne River tribal members and will upgrade the reservation economy.

## NATIONAL ADVISORY BOARD

In an effort to secure a wide range of ideas and development theories for the Swift Bird Project, NARF initiated the formation of a National Advisory Board made up of corrections officials and Indian people from throughout the United States. The first National Advisory Board meeting was held in Eagle Butte, South Dakota on July 22 and 23, 1977. A second meeting was held in Boulder, Colorado, at the NARF central office on September 1 and 2, 1977. The following is a listing of those individuals who serve on this board: Delmar Hamilton, Counselor, Community College of Denver, Denver, Colorado; John Brown, Corrections Consultant, Livermore, California; Renee Howell, Ex-offender Project, Rapid City, South Dakota; George Cuff, Chief, Probation and Parole Bureau, Helena, Montana; Jase Kennedy, Ex-offender Project, Rapid City, South Dakota; Roy Haber, Attorney, Grenada, Mississippi; John Poupart, Minnesota Department of Corrections, Minneapolis, Minnesota; Joseph Havener, Warden, North Dakota Penitentiary, Bismarck, North Dakota; Delma Traversie, Alternate Representative, Cheyenne River Sioux Tribe, Eagle Butte, South Dakota; Robert Sarver, Professor, University of Arkansas, Little Rock, Arkansas; Kenneth West, Representative, Cheyenne River Sioux Tribe, Eagle Butte, South Dakota; Jim Smith, Executive Director, Board of Charities and Corrections, Pierre, South Dakota; Douglas Van Zant, Warden, Washington State Penitentiary, Walla Walla, Washington; Joseph Vitek, Director, Department of Correctional Services, Lincoln, Nebraska; and Edwin Zuern, Director of Institutions, Bismarck, North Dakota.

It is anticipated that members of the National Advisory Board will be called upon from time to time to provide additional consultation and advice in development of the Swift Bird Project.

In addition to the Tribal Development Board and the National Advisory Board, many consultants have been retained to offer specific insights and a series of surveys have involved hundreds of persons in the development process. Probably the most significant resource of consultants are Indian medicine men. While the medicine men are not elected leaders of tribal government, they are held in great respect by the Indian people. NARF has established a working relationship with medicine men of several tribes. As a part of NARF's litigation efforts, they have been of much assistance in testifying for as well as speaking to inmates and helping community groups interested in Indian penal reform. The medicine men realize the potential of incarcerated Indians in terms of future leaders and traditionalists, provided these prisoners can be brought back to their Indian and spiritual ways. One individual who has provided spiritual guidance for NARF's staff attorneys and others involved in the Indian corrections area is Mr. Wallace Black Elk, Lakota Medicine Man and grandson of the

famed Black Elk. Black Elk will be called upon to serve as one of Swift Bird's advisors.

## GOALS

A comprehensive list of goals has been defined for the Swift Bird Project by all those individuals involved in the development process. The basic goals are summarized as follows.

**Residents:** Swift Bird residents will be encouraged to re-enter the mainstream of their respective societies after release. Swift Bird will help to build each resident's self-esteem, to improve his health and to improve his general condition after release; residents should be re-adjusted and self-supporting after release.

**Cheyenne River Sioux Tribe:** Swift Bird should be a successful correctional program and should be a means of renovating and using facilities which are currently deteriorated and unused. It should offer Tribal members new resources and opportunities.

**Correctional Agencies, Professionals, Other Tribes, Indian People, and Communities:** Swift Bird should offer services and settings which do not currently exist. It should show that Indian offenders' special needs and different values can be met by Indian people successfully helping their own people. It should stimulate others to adopt similar approaches, and encourage the development of more "all-Indian" correctional settings.

## STAFFING

The Cheyenne River Tribe, NARF and its correctional consultants realize that the staff will be critical to the successful operation of the Swift Bird Project. If the Project is to succeed, qualified, competent, and dedicated staff must be recruited and trained on an on-going basis. To this end, the Swift Bird Project Board of Directors has hired a core staff to coordinate and supervise all development activities at the Project.

On October 26, 1977, Richard B. Williams, an Oglala Sioux, assumed the position of Director for the Swift Bird Project. Mr. Williams is not a newcomer to the corrections field, having worked with NARF for the past two years as a paralegal. In this capacity, he devoted much of his time to development of the Swift Bird concept. He also has conducted numerous workshops concerning problems of Indian inmates at meetings of the National Congress of American Indians, the National Indian Youth Council and the National Indian Education Association.

Mr. Williams has an undergraduate degree from the University of Nebraska with a major in University Studies. He has completed an internship in correctional management from the State of Arizona Department of Corrections as well as a program in Prison Grievance Mechanisms sponsored by the National Institute of Law Enforcement and Criminal Justice. He feels that it is a necessity to get Indian people involved in the rehabilitation process of other Indians in order to change those methods which have proved unsuccessful in the rehabilitation of Indian clients. The Project will attempt to coordinate Swift Bird's operations with the community and traditional Indian values. Swift Bird will offer a familiar environment to residents since it is located in a rural setting on a reservation. Many of the residents of the facility will be re-



*Richard B. Williams, Director of the Cheyenne River Swift Bird Project, on left, and Walter R. Echo-Hawk, NARF staff attorney.*

turning to a similar reservation environment upon their release.

Mr. Williams feels strongly that the existing penal institutions are simply not designed to meet the needs of the Indian offender, and therefore, fail completely in efforts to rehabilitate the individual. He stated, "the treatment that Indian people get in prisons is horrendous. The criminal justice system fails Indian people completely. It is not designed to meet the needs of Indians. There are negative concepts used in the criminal justice system which stifle the Indian way of life. As an example, friends and relatives of inmates are not encouraged to visit in the traditional setting; however, they will be encouraged at Swift Bird. The Indian individual is encouraged by the family and this idea will be incorporated into the Swift Bird model. There is virtually no follow up for Indian offenders when they are released from prisons. Follow up will be a major rehabilitation tool at Swift Bird since continual contact will be maintained with the released resident and he will in most cases be assigned a spiritual advisor."

The Swift Bird Board has hired as its Deputy Director of Administration, Ms. Susan Barnes, a Seneca Indian from New York, who has been working with the Project since July. She holds a masters degree in Criminology from the University of California at Berkeley and has worked in the Indian corrections field for the past several years.



*Photo by Edward Klamm*

*Wallace Black Elk, traditional Sioux medicine man, has provided spiritual guidance to the Swift Bird Project and NARF Correctional staff attorneys.*

Since 1973, Ms. Barnes has worked with the Native American Rehabilitation Program in Berkeley. In this capacity she was responsible for the organization and coordination of programs, parole plans, and counselling for Native American inmates at San Quentin, Vacaville and Soledad State prisons.

As a part of her duties in the organization of the Swift Bird Project, Ms. Barnes will have the responsibility for program and educational development. She points out that the Swift Bird Project is designed to benefit Indian people and future generations of Indian people by offering individual Indian offenders an opportunity to define and meet their needs; to expand their strengths so that they may return to their homes and communities and assume their responsibilities as traditional Indian persons. All programs and activities offered at Swift Bird will be consistent with Indian traditions, culture and values.

The Swift Bird Project intends to offer job opportunities to reservation residents and has hired Ms. Charlene Woods, a local Marksville resident, to serve as secretary to the Project.

In addition to the core staff at Swift Bird, there have been several other individuals who have worked on program development. Walter Echo-Hawk, NARF attorney has served as Development Project Director since the first discussions were held on the alternative to incarceration concept. CCRP has



been a subcontractor on the project since 1976 and will continue to work on the development aspects until February, 1978. Mr. Robert Frazier, a Choctaw Indian from Oklahoma and Ms. Rebecca Romero have worked in the NARF Boulder office as Project researchers since October. Both Mr. Frazier and Ms. Romero have been researching traditional methods of dealing with deviant behavior among Indian tribes. Mr. James Robideau, an Oglala Sioux has also served as a Project researcher. He has been contacting Indian medicine men and other spiritual leaders so that they may offer their services and guidance to the Project. He has also assisted in coordinating a spiritual conference which was held during mid-December on the Cheyenne River Reservation. This conference was held in order to bring together those individuals who will serve as spiritual and cultural leaders for the Project. Mr. Robideau explained that the conference was necessary to bring about a good understanding of how the tribes can come together and pray together in the atmosphere of Swift Bird, and it is necessary that Swift Bird offer something of spiritual value that will be acceptable to everyone and every tribe.

The Swift Bird Board of Directors is expected to advertise for additional staff during the latter part of December. They anticipate they will be able to hire a deputy director for operations, a business manager, team leaders for the development of the administration component, and some support staff. Already, the Tribe has secured assurance from the BIA and LEAA that these agencies will allocate funds for operation, renovation and start up costs.

## RESIDENT SELECTION

The Swift Bird Project will obtain its residents through a contracting procedure and will develop transfer arrangements through six corrections agencies. Those agencies shall include the Federal Bureau of Prisons and the States of Montana, Minnesota, Nebraska, North Dakota and South Dakota.

All corrections agencies routinely transfer inmates on a interstate basis pursuant to a variety of laws. The Swift Bird Project has been designed so that it too may participate in these interstate transfers with other corrections agencies.

As part of Swift Bird's general contracting procedures, all residents at the Project will be state or federal inmates who voluntarily transfer from various state or federal correctional institutions. All of the Swift Bird residents will be legally in the custody of the sending institutions and must be treated for all intents and purposes as residents of their respective sending institutions regarding release, parole and other matters.

It is anticipated that there will be approximately 70 residents at Swift Bird during peak operation. The Project will contract with the Bureau of Prisons for approximately 30 residents. It is expected that no more than 2 residents will be at the Project from North Dakota; Nebraska and Minnesota are expected to contract 5 residents each; 10 residents are scheduled to be transferred from Montana; and 20 from South Dakota.

The selection of residents for Swift Bird is a very important function and the results will have a major impact on all facets of the Project. The determination of criteria for resident selection has been a topic of continuous discussion and has caused many controversies. The Cheyenne River Sioux Tribe is understandably concerned that the Swift Bird operation does not pose a threat to the safety of Tribal members, particularly those situated in the nearby Marksville community.

The Board of Directors has decided that only male inmates will be accepted for the initial phase of operations. Residents will be added at a pace which allows the staff and Tribe to feel comfortable and capable of expansion. During its initial operation, Swift Bird will not accept high-risk residents. They may be accepted in the future if the staff, the Tribe and contractors feel that the Project is able to handle them.

The length of stay for offenders will range from three to twelve months. Detailed screening processes will be developed by the first of the new year.

## PROGRAM OFFERINGS

Swift Bird is being designed to offer each resident a wide range of programs which will emphasize individual treatment.

A concerted effort will be made to reduce duplication of programs for each individual resident. A group form of management will be developed and implemented, at first requiring a minimum of management time and expense; however, as the Project operates and develops, increasing time will be allocated to the management function.

All programs will be closely coordinated with each resident's home release area to assure that they will be beneficial and relevant after release.

Programs will be gradually integrated into the surrounding communities. Participation at Swift Bird programs by local community members will increase as development continues. The Swift Bird administration is developing a variety of programs through the use of community and area consultants. Included among the offerings will be courses in survival skills (the development of basic skills needed after release), cultural skills, counselling, education and vocational job development, recreation, work and study release and follow up programs after release.

## IN SUMMARY: Impact on Tribal Sovereignty

The Swift Bird Project is viewed as an arm of tribal sovereignty in many respects. The Cheyenne River Sioux Tribe along with other cooperating tribes will be exercising its inherent power to deal with tribal deviant behavior as a part of its criminal justice system which has fallen into disuse over the last 100 years. The Swift Bird Project can be termed a revival of tribal governmental powers and a reaffirmation that tribes do have and always will have the authority to correct the behavior of tribal members who have deviated from acceptable tribal norms.

What is especially significant about this revival of tribal sovereignty is that Swift Bird will be using traditional methods of dealing with deviant behavior which have fallen into disuse and now will be applied and incorporated into the 20th Century corrections experience.

*For more information on the Swift Bird Project, contact Mr. Richard B. Williams, Director, Swift Bird Alternative Corrections Center, Box 159, Eagle Butte, South Dakota 57625. Phone (605) 964-8980.*

# Major Developments

## Tribe Restored to Federal Status

On November 18, 1977, President Carter signed Public Law 95-195, a bill which restored federal status to the terminated Siletz Tribes of Western Oregon.

The law, only the second restoration act enacted by Congress provides for the restoration of the trust relationship between the Tribe and the federal government and restores the Siletz Tribe as a sovereign-recognized Indian tribe. Because of strong commercial and sports fishing opposition, as well as opposition from the Oregon Fish and Game Department, the bill does not restore hunting, fishing and trapping rights to the Siletz.

However, if the Siletz' pre-termination hunting and fishing rights were not extinguished by the 1954 Termination Act, the Siletz would retain those rights today; as is the case with the Menominee of Wisconsin and the Klamath Tribe of Oregon. Therefore, while the Restoration Act granted no new hunting and fishing rights neither did it affect, in any manner, those pre-termination rights to hunt and fish, which the Tribe and its members still possess.

The law does not provide for the establishment of a reservation at this time, but rather requires the Secretary of the Interior to negotiate with the Tribe and draw up a reservation plan within two years of the Act's passage and submit the plan to the appropriate committees in each house. An additional act of Congress will thus be required for the establishment of a Siletz Reservation. With the passage of the Siletz Restoration Act, the Tribe will be eligible for participation in federal programs, ranging from Johnson-O'Malley Act funds for school children, federal scholarships for post-secondary education and health benefits through HEW's Indian Health Service. NARF served as lead counsel in this legislative proceeding.

## School Desegregation Case

Last June, NARF was called upon to assist Indian parents in Cannonball, North Dakota, in efforts aimed at integrating the elementary schools in Cannonball and Solen, North Dakota.

Cannonball is an Indian community located on the North Dakota portion of the Standing Rock Sioux Reservation. Historically, the school district in which Cannonball and Solen are located employed a "freedom of choice" attendance scheme. Under this plan the elementary school located in Cannonball remained virtually all-Indian while the school located in Solen was essentially all-white.

Because the Solen School District received a substantial portion of its operating budget from the federal government, the Office of Civil Rights (OCR) began an investigation in 1974 to determine whether the school district was in compliance with the applicable civil rights legislation. As a result of this extensive investigation, OCR in June of 1977 informed

the school district that there was a possibility that the district could lose all federal funding absent compliance with Title VII of the Civil Rights Act of 1964.

The Solen School Board's immediate reaction was to propose the closing down of the Indian school in Cannonball and then busing all students to the school located in Solen. It was at this point that the Indian parents contacted NARF for assistance. Subsequently the NARF attorneys convinced the school district that the proposed plan was not only unfair to the Indian children, but that the plan was illegal since it is well established in law that a minority group may not be forced to take the brunt of any desegregation effort.

Thereafter, on August 4, 1977, the Solen School Board, the Indian parents with the advice of NARF, and the OCR agreed that all children in the district in grades 1-3 would attend the Solen School and all children in grades 4-6 would use the Cannonball School, with all Junior and Senior High students attending school in Solen. The OCR found this plan acceptable to bring the school district into compliance with the Title VII provisions.

On September 20, 1977, a month after the school started, a group of non-Indian parents sued the school district and OCR officials in federal court claiming that the integration plan was illegal and that it violated their constitutional rights. NARF, on behalf of the Indian parents, immediately intervened to insure that the rights of the Indian children were protected. Trial was held in Bismarck, North Dakota on October 6 and 7, 1977. On October 25, 1977, the Honorable Bruce Von Sickle held that the School Board's plan was legal and that there was no violation of the constitutional rights of the non-Indian plaintiffs. [Berger v. Califano, Civil No. A77-1060 (D.N.D. 1977)].

## Indian's Land Exempt from State Taxation

An Indiana Federal District Court Judge ruled in August that the great-grandson of a Miami Indian war chief does not have to pay state taxes on his land. District Judge Allen Sharp ruled that Swimming Turtle, whose non-Indian name is Oliver Godfroy, does not have to pay taxes on 79 acres of land in Miami County and is entitled to recover about \$1,000 in taxes he paid since 1959. The land in question was a portion of the property which had been reserved for Francis Godfroy, the Chief of the Miami Indians. Chief Godfroy was permitted to remain in Indiana with his children after the remainder of his Tribe was removed West by federal act, and the land is now held by his great-grandson.

The *Godfroy* case was filed to assert the validity of the tradition of Indian tax-exemption for reservation property against state taxation for an Eastern tribe.

Judge Sharp, in making his ruling in this case, consulted the Northwest Ordinance, originally passed by the Continental Congress in 1787 and approved for the second time in 1789 by the first U. S. Congress under the Constitution. Judge Sharp said Swimming Turtle was right in insisting his land should be tax exempt according to Article 3 of the Ordinance. The Judge went on to rule that the descendants of Swimming Turtle's great grandfather, War Chief Francis Godfroy, had owned the land since the federal government released the title in 1849 in accordance with the Treaty of 1838. Judge Sharp said Godfroy has "a vested right which cannot be taken by the State of Indiana or its political subdivisions without just compensation." [*Godfroy (Swimming Turtle) v. Miami County*



*Commissioners, Civil No. S-74-98, U.S.D.C., Indiana, decided August 25, 1977.]*

### Federal Agency has Jurisdiction Over Power Facility

On October 28, 1977, the Federal Energy Regulatory Commission (formerly the Federal Power Commission) issued a decision in a proceeding known as Puget Sound Power and Light Co., Project No. 2494. In the early 1900's, Puget Sound Power and Light Company constructed a hydro-electric facility on the White River. Those facilities included a diversion dam located at a point on the river above the Muckleshoot Indian Reservation, which diverted a large amount of the water through a flume and canal system into a lake known as Lake Tapps. At the outlet of that lake some energy is generated and the water is returned to the White River below the Muckleshoot Reservation. The effect on the reservation of course, is to deprive it of almost all the water that would normally run down the White River, through the reservation. This has had a serious impact on the Tribe's on-reservation fishery.

Puget had applied for a license from the Federal Power Commission several years ago and then tried to withdraw its application because it claimed the FPC lacked jurisdiction. NARF intervened on behalf of the Muckleshoot Tribe and argued that Puget should not be allowed to withdraw its license application because the facility was jurisdictional, i.e., it was subject to license by the Federal Power Commission.

A hearing was held on the jurisdictional issues in 1974, which was followed by an adverse decision by the Administrative Law Judge. He ruled that the Commission had no jurisdiction over this facility for a variety of reasons.

NARF appealed his decision to the full-five member Federal Power Commission. On behalf of the Tribe, NARF urged that the Commission had jurisdiction to control this facility on four separate theories. The Commission agreed with the Tribe

on one theory and refused to rule on the other three grounds which were raised. Thus, NARF won a very important victory for the Muckleshoot Tribe.

The next step is to appear before the Commission on the question of the appropriateness of a license for the power company and NARF will continue to represent the Tribe's interest.

### Indian Treaty Rights Upheld

On November 10, 1977, U. S. District Judge Robert C. Belloni issued a decision in a case involving the fishing rights of the Confederated Bands of Umatilla Indians, located near Pendleton, Oregon. NARF had filed suit on behalf of the Umatilla Tribe in December, 1974 opposing the construction of a dam by the Army Corps of Engineers across Catherine Creek, near the Umatilla Reservation. NARF claimed that construction of the dam would impair the exercise of the Tribe's treaty rights to fish, hunt and gather traditional foods in the area. The Tribe claimed that the Corps lacked express Congressional authority to abrogate the tribe's treaty rights in construction of the dam.

In rendering his decision in the case, Judge Belloni said the Confederated Umatilla Tribes have usual and accustomed fishing stations on Catherine Creek, reserved by the Treaty of June 9, 1855 and that those usual and accustomed fishing stations would be flooded and destroyed by the reservoir created by the proposed Catherine Creek dam.

Furthermore, the proposed flooding would deprive the Indians of their right to occupy the fishing stations and their right of access for fishing purposes. Finally, the Judge stated that the steelhead fishery would be eliminated entirely at all stations upstream from the dam. Judge Belloni concluded in his opinion that Congressional authority is specifically needed by the Corps for construction of the dam. [*Confederated Tribes of Umatilla Reservation v. Clifford L. Alexander, Jr., et. al., Civil No. 74-991, decided November 10, 1977.*]



# News Notes

## National Indian Law Library

Shortly after its own beginning in 1971, the Native American Rights Fund established the National Indian Law Library (NILL) as a special project to serve as a clearinghouse for materials on American Indian law. Carnegie Corporation provided the funding for the first three years, and since then NILL has been supported by NARF's general funds and by HEW's Office of Native American Programs.

The holdings of the Library consist of briefs and court decisions in Indian cases since the mid-1950's; law reviews; congressional legislative materials on Indian laws; legal opinions and memoranda; monographs and studies; and various other materials on American Indian law.

In order that these materials could be available to those not able to visit the Library in person, NILL provides a catalogue service listing all the holdings of the Library. The 700-page catalogue includes a subject listing, a numerical listing, a table of cases and an author-

tle index. The catalogue is in a loose leaf binder format and is supplemented quarterly.

At present, both the catalogue and copies of the materials are provided free of charge to tribes, legal services, Indian organizations and Indian individuals. For others, the catalogue is \$20 and the materials are available at ten cents per page. NARF asks that those who are entitled to the waiver of costs but can afford to pay, to please do so. A coupon for ordering the catalogue is on the inside back cover. All inquiries and requests regarding NILL should be directed to the librarian at the Boulder office.

NARF is a non-profit, 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, and 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.

## Contributions to NARF

The work of the Native American Rights Fund is supported solely by grants from private foundations, federal funds for special projects, and individual donations.

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## NATIVE AMERICAN RIGHTS FUND OFFICES

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

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Telephone 303/447-8760

or to the Washington, D.C. office:  
Directing Attorney  
Native American Rights Fund  
1712 N Street, N.W.  
Washington, D.C. 20036  
Telephone 202/785-4166



## NARF DIRECTORSHIP

On October 15, 1977, Mr. John E. Echohawk was officially appointed by the NARF Steering Committee as Executive Director. Mr. Echohawk had served as Acting Director of the organization since the July departure of Mr. Thomas W. Fredericks.

Mr. Echohawk, a Pawnee Indian, has been with NARF since its beginning. He served as Executive Director for two years, previously, from 1973 - 1975. He is a graduate of the University of New Mexico Law School and is a member of the Bar of Colorado as well as a member of the American Indian Bar Association.



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