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National American Indian Court Judges Association

1000 Connecticut Avenue, N.W., Suite 401, Washington, D.C. 20036 (202) 296-0685
South 813 1/2 Pines Road, Spokane, Washington 99206 (509) 924-4763

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SEP. 7, 1982

Reply to:
 Washington, D.C., office
 Spokane, WA, office

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August 23, 1982

Hon. James A. Baker, III
Chief of Staff and
Assistant to the President
The White House
Washington, D. C.

Dear Mr. Baker:

We are requesting a favor from you. The National American Indian Court Judges Association and Arrow, Inc., have sponsored training programs for Indian Court Judges, Clerks and other Court personnel for several years and the record shows that the training has been constructive and useful. Last year NAICJA had Stanford Research Institute undertake an evaluation of the program and a copy of that report is enclosed for your information and use.

The Indian Court Judges Association will undertake two training sessions in September. We are asking that you appear at one of them and offer a few words of encouragement. The sessions will be held:

- National Judicial College
University of Nevada
Reno, Nevada
September 20-23, 1982
- University Club
George Washington University
Washington, D. C.
September 20-23, 1982

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IN CASE THEY WANT TO
SEND SOMEONE -
9/7
MDT

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- HOLLIS CHOUGH, Fountain Hills, Arizona

Hon. James A. Baker, III
August 23, 1982
Page 2

You are knowledgeable about the Indian field and you know how important the court system should be to Tribal governments and the Indian people.

We expect 150 Chief Judges, Associate Judges, Court Administrators, Clerks and other court related personnel to participate as trainees. Your involvement would help in our efforts to enhance the integrity and capability of the Indian Court system and to upgrade it. Please help us to achieve these goals.

Thank you.

Sincerely,

Tom Colosimo
E. Thomas Colosimo
Executive Secretary

Enclosures

THIS IS THE NIB

The National Information Bureau's point of view is that of prospective givers; it believes that they are entitled to a reasonable value of public service for every dollar they contribute.

NIB evaluates national, not-for-profit organizations against NIB's eight basic standards through its reports about individual agencies. Each agency listing in this Wise Giving Guide represents an NIB report (except for certain agencies listed under Have Not Provided Adequate Information). The Guide summarizes the conclusions of the latest NIB reports. Reports are revised regularly. While reports are being substantially revised, agencies are listed under Report Being Updated.

Each NIB report (generally four-to-eight pages) includes a cover page summarizing selected facts and NIB Comment and stating NIB Conclusion. The body of each report contains:

- a brief statement of the agency's origin and purpose
- a description of its program activities
- a listing of its controlling Board and paid staff head
- an analysis of the agency's financial statements
- information on its tax deductibility status, salary ranges and current budget
- NIB Comment
- NIB Conclusion.

NIB does not generally undertake to report about religious, fraternal or political organizations and single or local institutions. However, NIB reports on the social welfare activities of some of these organizations and institutions which solicit contributions nationally from the general public. When new agencies are created or existing ones become national in scope, NIB undertakes to prepare reports about them.

In preparing its reports, NIB cooperates with organizations to encourage them to meet NIB standards. NIB refers to this as standard maintenance, part of its two-fold purpose.

NIB also publishes Wise Giving Bulletins covering timely subjects related to philanthropy and The Volunteer Board Member in Philanthropy, a booklet analyzing the responsibilities and duties of a good volunteer Board member.

Wise Giving Guide

RATINGS OF NATIONAL NOT-FOR-PROFIT
ORGANIZATIONS BASED ON NIB'S BASIC
STANDARDS IN PHILANTHROPY

RATINGS AS OF DECEMBER 1, 1981

NEXT ISSUE JANUARY 4, 1982

NATIONAL
INFORMATION
BUREAU, INC.



NOT-FOR-PROFIT
419 Park Avenue South
New York, N.Y. 10016
(212)-532-8595

BASIC STANDARDS IN PHILANTHROPY

Philanthropic organizations have a high degree of responsibility because of the public trusteeship involved. Compliance with the following standards, with reasonable evidence supplied on request, is considered essential for approval by the NIB:

1. **BOARD**—An active and responsible governing body, holding regular meetings, whose members have no material conflict of interest and serve without compensation.
2. **PURPOSE**—A clear statement of purpose in the public interest.
3. **PROGRAM**—A program consistent with the organization's stated purpose and its personnel and financial resources, and involving interagency cooperation to avoid duplication of work.
4. **EXPENSES**—Reasonable program, management and fund-raising expenses.
5. **PROMOTION**—Ethical publicity and promotion excluding exaggerated or misleading claims.
6. **FUND-RAISING**—Solicitation of contributions without payment of commissions or undue pressure, such as mailing unordered tickets or merchandise, general telephone solicitation and use of identified government employees as solicitors.
7. **ACCOUNTABILITY**—An annual report available on request that describes program activities and supporting services in relation to expenses and that contains financial statements comprising a balance sheet, a statement of support/revenue and expenses and changes in fund balances, a statement of functional expenses, and notes to financial statements, that are accompanied by the report of an independent public accountant. National organizations operating with affiliates should provide combined or acceptably compiled financial statements prepared in the foregoing manner. For its analysis NIB may request disclosure of accounting treatment of various items included in the financial statements.
8. **BUDGET**—Detailed annual budget approved by the governing body in a form consistent with annual financial statements.

Revised September 1981

NIB reports are advisory to donors and evaluate organizations against NIB's eight standards. NIB does not advise donors to give or not to give. NIB encourages donors to request its detailed reports about national organizations in which they are interested. Up to three reports at a time are available to the public upon written request and without charge.

MEET **NB** STANDARDS

AFS International/Intercultural Programs
 AIESEC-U.S.
 Action for Children's Television
 Action on Smoking and Health
 Africa Fund
 America the Beautiful Fund
 American Bureau for Medical Advancement in China
 American Cancer Society
 American Committee on Africa
 American Diabetes Association
 American Enterprise Institute
 American Friends Service Committee
 American Fund for Dental Health
 American Leprosy Missions
 American National Red Cross
 American Near East Refugee Aid
 American Refugee Committee
 American Social Health Association
 Amnesty International of the USA
 Amyotrophic Lateral Sclerosis Society of America
 Animal Welfare Institute
 Arrow
 Association for Voluntary Sterilization
 Big Brothers/Big Sisters of America — Philadelphia, PA,
national service center only — see Note
 Boys' Clubs of America — New York, NY,
national service center only — see Note
 Camp Fire, Inc. — Kansas City, MO, *national service center only — see Note*
 Cancer Crusade (American Cancer Society)
 Cancer Research Institute
 CARE
 Catalyst for Women
 Child Welfare League of America
 Children, Incorporated
 Children's Defense Fund
 Christian Children's Fund
 Christian Record Braille Foundation (Camps for the Blind)
 Citizens' Scholarship Foundation of America —
 Concord, NH, *national service center only — see Note*
 College Placement Services
 Committee to Combat Huntington's Disease
 Community Development Fdn. (Save the Children Fed.)
 Consortium for Graduate Study in Management
 Council for Basic Education
 Council for Financial Aid to Education
 Council on Foreign Relations
 Council on Social Work Education
 Cystic Fibrosis Foundation
 Direct Relief Foundation
 Dysautonomia Foundation
 Economic Education for Clergy
 Family Service Association of America
 Fight for Sight (Nat'l Council to Combat Blindness)
 Foreign Policy Association
 Foster Parents Plan
 Fund for Peace
 Futures for Children
 Girl Scouts of the U.S.A.
 Girls Clubs of America — New York, NY, *national service center only — see Note*
 Goodwill Industries of America — Washington, DC.

MEET **NB** STANDARDS (continued)

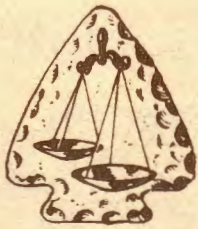
National Medical Fellowships
 National Multiple Sclerosis Society
 National Municipal League
 National Retinitis Pigmentosa Foundation
 National Sharecroppers Fund (Rural Advancement Fund)
 National Urban League — New York, NY,
national service center only — see Note
 Native American Rights Fund
 Natural Resources Defense Council
 Nature Conservancy
 New Eyes for the Needy
 NOW Legal Defense & Education Fund
 Oxfam-America
 Pacific Legal Foundation
 Pearl S. Buck Foundation
 Planned Parenthood Federation of America
 Population Council
 Population Crisis Committee
 Population Institute
 Project Hope
 Puerto Rican Legal Defense and Education Fund
 Recording for the Blind
 Red Cross
 Rural Advancement Fund
 Save the Children Federation
 Sex Information and Education Council of the U.S.
 Sierra Club
 Sierra Club Foundation
 Sierra Club Legal Defense Fund
 Spanish Refugee Aid
 Starr Commonwealth for Boys
 Taxation With Representation Fund
 Tolstoy Foundation
 United Cerebral Palsy Associations
 United Negro College Fund
 United Neighborhood Centers of America
 United Seamen's Service
 U.S. Committee for UNICEF
 United Way of America* — Alexandria, VA, *national service center only — see Note*
 VITA (Volunteers in Technical Assistance)
 World Neighbors
 World Rehabilitation Fund
 YMCA of the United States
 YWCA (National Board) — New York, NY, *national service center only — see Note*
 Youth for Understanding
 Zero Population Growth

*In 1981 NIB received about 6% of its unrestricted funds budget from United Way of America on behalf of its local United Ways which are substantial users of NIB services.

NB FINDING

(Questions about these agencies make it impossible to state that they meet NIB standards. However, these questions are not so substantial as to lead to the conclusion that they do not meet NIB standards. NIB's comments are offered for the contributor's consideration.)

Accion International/AITEC
 African Student Aid Fund (Phelps-Stokes Fund)
 American Council of the Blind
 Arthritis Foundation
 Atlantic Council of the United States
 Cal Farley's Boys Ranch
 Clergy and Laity Concerned
 Concern for Dying
 Council on Municipal Performance (COMP)
 Damon Runyon-Walter Winchell Cancer Fund
 Deafness Research Foundation
 Defenders of Wildlife
 Guide Dog Foundation for the Blind
 Hugh O'Brian Youth Foundation
 Human Growth Foundation
 Indian Rights Association
 Institute of Cultural Affairs
 Institute for Humane Studies
 NAACP Legal Defense & Educational Fund
 National Foundation for Cancer Research
 National Society to Prevent Blindness
 Near East Foundation
 Negative Population Growth
 Overseas Development Council
 Pan American Development Foundation
 Parkinson's Disease Foundation
 People-to-People International
 Phelps-Stokes Fund
 Research to Prevent Blindness
 Save-the-Redwoods League
 Tax Foundation
 Travelers Aid Association of America
 UN We Believe



INDIAN COURTS

Newsletter

NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION

1000 Connecticut Ave., N.W.

Washington, D.C. 20036

(202) 296-0685

Tribal Courts Move to Full Faith and Credit

by Gwendolyn Packard

In order for tribal courts to be respected as arbiters of justice within their own jurisdictions, they must be able to have their judgments enforced in other jurisdictions. Almost all tribal courts have had state courts refuse to grant "full faith and credit" to their judgments. The extension of full faith and credit to the decisions of Indian courts by state courts is an important current issue, especially as interaction between Indian and non-Indian communities increases and the need to enforce tribal judgments outside reservation boundaries grows.

The Indian Child Welfare Act of 1978 mandates that all courts in the United States grant "full faith and credit" to all tribal court decisions regarding child welfare matters. In Public Law 280 states, a tribe may, with the approval of the Secretary of the Interior, set up a tribal court and reassume jurisdiction over child custody cases. Notwithstanding this Congressional delegation of exclusive jurisdiction in child welfare cases, state courts continue to withhold enforcement of other tribal court judgments. It is apparent, that short of a Congressional mandate, the only other way in which tribal court judgments can be accorded "full faith and credit" would be through administrative negotiations or tribal/state agreements.

NAICJA recently submitted a proposal entitled "Model Court Development Project" to LEAA, Indian Justice Section, Office of Criminal Justice Programs.

In implementing this project, national in scope, NAICJA proposes to: 1) study, define and document all the reasons state courts may have for refusing to grant "full faith and credit" to tribal court judgements; and 2) as necessary, provide some of the needed technical assistance to tribes to help them improve and upgrade their court systems.

The NAICJA Board of Directors has selected twelve tribal courts, in eight states, which are willing to participate in this project. The twelve courts selected represent a cross-section of all the existing tribal courts in terms of size,

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NAICJA RECEIVES HIGH SCORES IN EVALUATION

High scores on effectiveness and impact were given to NAICJA's judicial training program by a comprehensive evaluation recently completed by SRI International, a consulting firm contracted with LEAA program funds.

The evaluation was initiated last year in response to a requirement by the Law Enforcement Assistance Administration that programs continuing under its funding must pass a vigorous evaluation. Since NAICJA had been receiving LEAA program funds and was, at the time, entering a new contract for criminal law training, an evaluation component was written into the NAICJA grant.

SRI International was selected to conduct the evaluation with Dwight K. Hunter of Pleasanton, California, acting as the principal evaluator. The evaluation was conducted in the manner of a management audit or operations research. As information was gathered and findings began to emerge, NAICJA's Board of Directors were

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Tribal court judges and instructors assemble on steps of the Judicial College Building at the University of Nevada, Reno, during National American Indian Court Judges training.

Indian Court Clerks Charter National Association



Indian court clerks gather for photo at recent NAICJA training session. The newly incorporated Clerks Association represents 175 tribal court clerks.

Three years of NAICJA-sponsored activities directed towards recognizing the importance of tribal court clerks to the Indian Justice System reached an important milestone on January 31, 1980, when the National American Indian Court Clerks Association (NAICCA) was chartered as a non-profit corporation by the State of Delaware.

The newly incorporated association was originally organized in July 1979 as the NAICJA Clerk's Planning Committee. Its purpose was to help NAICJA to implement a Department of Labor

CETA contract for training Indian Court Clerks. Articles of Incorporation and Bylaws for the Clerk's Association were approved by a general assembly of clerks on October 24, 1979.

The National American Indian Court Clerks Association will continue to operate as a sister organization to the National American Indian Court Judges Association, sharing the same goals. The Indian Court Clerks group received assistance from ARROW, Inc., in their efforts to become a national organization.

Officers for the National American

Indian Court Clerks Association include: President Sherrie Chapoose, Uintah and Ouray Tribal Court; Vice President Norma Smith, Warm Springs Tribal Court; Secretary-Treasurer Bonnie Martinez, Acoma Tribal Court; and Associate Project Director Les Hendrick, Coeur d'Alene Tribal Court.



MODEL CODE OF JUDICIAL ETHICS PLANNED FOR TRIBAL COURTS

The need for a Model Code of Judicial Ethics, tailored to Indian Courts, has long been recognized by the National American Indian Court Judges Association. NAICJA Instructor Ralph Johnson notes that "the creation of (a Model Code of Judicial Ethics for Indian Courts) would seem to be essential not only to engender a spirit of rendering fair treatment to persons under tribal court jurisdiction, but to give notice to the tribal community and to other jurisdictions that fundamental fairness and due process exist in tribal court proceedings."

To answer this need, Professor Johnson, who is a faculty member at the University of Washington School of Law, has agreed to draft a model code.

In outlining his plan for the code, Mr. Johnson examined the American Bar Association's Code of Judicial Conduct to determine its potential adaptability as a model code for tribal courts. He concluded that "while the ABA Code certainly represents an adequate framework from which to build, it appears that in light of the special context within which tribal courts must work, significant revisions are necessary in order for the code to provide functional and appropriate guidelines for tribal court systems."

Once the code is drafted, it will be circulated for review to tribal court judges and to various NAICJA associates. Professor Johnson has donated his work on this project to NAICJA.

DIRECTORY UPDATED FOR TRIBAL COURTS

One thousand copies of a third edition of the *Indian Court Judges Telephone Directory* have been printed. This new directory, updated by NAICJA staff from the August 1979 Second Edition, was prepared using funds from NAICJA's LEAA and BIA contracts.

The purpose of the directory is to provide an up-to-date listing of Indian tribal courts including judges' names, court addresses, and telephone numbers. The name of each tribe's chairman is also listed.

The new directory was mailed to tribal court personnel, to BIA superintendents and area social workers, to LEAA personnel and to requesting state and local agencies. Copies can be obtained by contacting: NAICJA, 1000 Connecticut Avenue, N.W., Suite 401, Washington, D.C. 20036.

TWO CRIMINAL LAW PUBLICATIONS REVISED & EXPANDED BY NAICJA

Two of NAICJA's criminal law training publications were revised and expanded this summer to update their content for continued use in judges' training and as court reference books.

The *Criminal Court Procedures Benchbook*, introduced into NAICJA's training curriculum in 1976-77, is designed for day-to-day courtroom use to assist Indian judges in quickly finding answers to those questions which frequently arise in court proceedings. It presents, in simple abbreviated form, the standard procedural steps used in most criminal trials. In a recent LEAA-funded evaluation, the *Benchbook* was identified as one of "the most valuable (reference) items found in nearly all reservations (surveyed)."

To make the *Benchbook* even more useful, its author, Robert Bennett was contracted to expand the text. The major addition is a section on Opening and Closing Ceremonies of the Court. This is added to the five existing sections: Arraignment; Criminal Trial Procedures before the Court without a Jury; Trial by Jury; Sentencing; and Post-trial Proceedings.

The revised *Criminal Court Procedures Benchbook* will be distributed at training sessions to be held later this year.

The second NAICJA publication revised this summer is the *Basic Criminal Law Studies* collection. This text, intended to provide a basic theoretical and conceptual introduction to criminal law, was originally assembled as a collection of study lessons. The lessons were written by a number of NAICJA training instructors. As originally published, the *Basic Criminal Law Studies* collection was not an integrated book and large gaps existed in its content. In addition, recent court decisions (i.e. Martinez and Oliphant) out-dated certain portions of the text.

Professor Ralph Johnson of the University of Washington School of Law was contracted to up-date, expand and revise the *Basic Criminal Law Studies* book. He has done this work in cooperation with John Milne, Instructor at the University of Washington Law School.

Changes were made to the book's organizational format. The appendices were reworked, and duplication was omitted. Major editorial changes, concentrating particularly on simplifying the presentations, were accomplished along with extensive substantive

changes to the text. These substantive changes were primarily in the topic areas of Jurisdiction, Juvenile Justice, Evidence, Due Process/Equal Protection, and the Duties and Responsibilities of Trial Judges.

Professor Johnson also prepared suggested answers for the practice questions which follow each major section of this book. He also wrote a syllabus and a set of instructions on the proper use of the book by NAICJA instructors.

The revised *Basic Criminal Law Studies* collection will be distributed to all NAICJA judges.

ASSOCIATION GRANTED FUNDS FOR CONTINUING CLERKS TRAINING

Proposal negotiations have recently been concluded between NAICJA, representing the National American Indian Court Clerks Association, and the Department of Child Welfare Services, Bureau of Indian Affairs. The negotiations centered on a request by the Association for funds available under Title II of the Indian Child Welfare Act.

Under the agreement reached, NAICJA will receive \$16,211 for training tribal court clerks. The award amount was determined according to the ICWA funding formula. NAICJA's original request was for \$70,000 and included a larger number of contract deliverables.

The grant will provide a means of continuing activities and momentum generated under NAICJA's 1978-80 Court Clerks training grant from the Department of Labor, CETA, and under the Court Clerk's component of NAICJA's current LEAA grant.

Ms. Sherrie Chapoose, Tribal Clerk of the Uintah and Ouray Tribal Court and President of the Clerks Association, has been appointed Project Director for the grant. Ms. Leslie Hendrick, Clerk of the Coeur d'Alene Tribal Court, will be Associate Project Director.

NAICJA's Executive Committee has recommended that funds remaining in the Court Clerk component of NAICJA's LEAA training grant be used to send several experienced clerks to a basic judges' training. This recommendation formalized a growing trend within the Judges' Association to encourage experienced court clerks to at-

WHITE HOUSE SENDS REPRESENTATIVE TO NAICJA TRAINING

White House staff member Robert Malson attended NAICJA's Family Law/Child Welfare training session in Reno earlier this year. He also attended a NAICJA Board of Directors Executive Committee meeting in Washington, DC.

NAICJA Board President Judge Cranston Hawley and Secretary-Treasurer Tom Colosimo have met with Mr. Malson and Ms. Allison Thomas, both representatives of the White House Domestic Policy Staff, to discuss topics of concern to the Indian Court Judicial System.

tend and participate in basic judges' training.

According to Robert Bennett, Instructor/Organizer for many of NAICJA's trainings, attendance of selected clerks at judges' training has two advantages: (1) to provide specific clerks with the expertise to render more professional assistance to their courts by teaching them to screen complaints and documents before they reach court, and (2) to develop a reservoir of clerks with advanced educational background and experience from which to draw future tribal judges.

Fruitful results of this philosophy have already been realized in the promotion of several court clerks to the position of tribal judge. More court clerks are expected to attend judges' training sessions in the future.



Sherrie Chapoose is Project Director for the new clerks training program. Ms. Chapoose, Tribal Clerk for the Uintah and Ouray Reservation, has worked with NAICJA since June 1977 when she was appointed to the Association's first Court Clerks Advisory Committee.

Coordinated Approach to Implementing ICWA Is Stressed by Association's Training Series

Identifying and testing workable processes for implementing the Indian Child Welfare Act (ICWA) has been the focus of this year's NAICJA-BIA Family Law/Child Welfare conference series. Training designs and participant composition for the series have been based on a recognition that successful implementation of the Act depends on cooperation and coordination of tribal and state court resources with the resources of involved social service personnel.

The training series, funded by a grant from the BIA's Division of Social Services, was designed to include two national sessions and six regional sessions.

National Session to Introduce Series

The series began with a national session held (February 11-14, 1980) at the National Judicial College in Reno. This session, attended by over 110 Indian and State court judges, social workers and attorneys, provided participants a thorough orientation to the legal framework and content of the Indian Child Welfare Act. A presentation on tribal sovereignty and the inherent powers of tribes initiated the conference. This was followed by an explanation of the Act's legislative history and a description of the opinions issued to date by the Solicitor's Office concerning the Act.

The presentations on the content of the Act were divided into five main phases: pre-hearing procedures; tribal responsibilities; state court hearings; voluntary and involuntary dispositions; and post-trial rights.

Individuals appearing on the agenda included: Judge Ernst Watts, Dean of the National Judicial College; Louis W. McHardy, Executive Director and Dean of the National College of Juvenile Justice; Judge Cranston Hawley, NAICJA President; Robert L. Bennett, NAICJA Consultant; Louise Zokan, Child Welfare Specialist, Division of Social Services, BIA; Robert Malsom, Assistant to the Director, Domestic Policy Staff, The White House; Alan R. Parker, American Indian Lawyer Training Program; Peter S. Taylor, Counsel, Senate Select Committee on Indian Affairs; David Etheridge, Solicitor's Office, Department of the Interior; Milva McCaw Kearn, Tribal Attorney; Jerry Bridges, Anadarko Area Social Worker, BIA; Virginia Cain, Assistant Training Director, National Council of Juvenile and Family Court Judges; Rodney Lewis, Tribal Attorney; George Colby, Tribal Attorney; Bob Carr, Albuquerque Area Social Worker, BIA; C. Kimball Rose, Superior Court Judge, Phoenix, Arizona; Maryetta Tsosie, Chief Judge, Colorado River Indian Tribes; and Katherine Ryan, Assistant States Attorney and Coordinator of Child Abuse and Neglect Unit, Chicago.

Regional Sessions

With the Reno national session providing basic information on the Indian Child Welfare Act, the regional sessions were scheduled as forums to discuss and develop workable procedures to accommodate specific local situations. In designing these sessions, there was an emphasis on providing an atmosphere

which would improve communication and cooperation among tribal and state judges and social workers.

Each regional session was designed individually, using a method uniquely suited to the particular local situation. Two sessions (the Albuquerque and Reno sessions) were organized by Indian organizations contracted directly by the BIA. In these sessions NAICJA provided support services. The remaining sessions were organized by NAICJA working in close cooperation with the BIA Area Social Worker of the particular region involved.

In all of the sessions, the purpose of joint planning and coordination was to make the training proceedings more relevant to all attendees and to develop working relations between the coordinating parties. An attempt was also made to provide a balance of input into each regional session by obtaining speakers representing the views of the tribes, the state and the Bureau.

Four of the regional sessions (Phoenix, Albuquerque, Bismarck and Reno) have been held and two (Portland and Oklahoma) are scheduled for later this year.

Phoenix Session

The first regional session was held on June 6 in Phoenix, Arizona. This one-day session, attended by approximately 50 people, was coordinated by Maryetta Tsosie, NAICJA Consultant and Chief Judge of the Colorado River Indian Tribal Court. Judge C. Kimball Rose, Presiding Judge of the Maricopa County (Arizona) Superior Court, and Joe

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Dr. Vincent DeFrancis, Retired Director of the American Humane Association's Childrens Division, lectures to a group of tribal court judges at one of NAICJA's family law/child welfare trainings.



Tribal court judges confer at NAICJA-sponsored Family Law/Child Welfare training. An evaluation recently conducted by SRI International indicated that learning from each other and knowledge of where to go for help with court-related concerns are two important impacts of NAICJA training reported by tribal judges.

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Braswell, Phoenix Area Social Worker for the BIA, worked with Judge Tsosie to design the training agenda and formulate the participant list.

Judge Tsosie, NAICJA President Cranston Hawley, and Justice Frank X. Gordon of the Arizona Supreme Court provided opening remarks for the session. The main topics on the Phoenix agenda included: The Legal Responsibilities of the Bureau; Procedures for Transfer; Tribal State Agreements; and Social Service Provision Issues.

Albuquerque Session

The Albuquerque regional session, held on June 11-12, was attended by approximately 100 people. Marcella Wolf, Conference Coordinator for RAMAH Navajo School Board, Inc., took the lead in organizing this session. NAICJA consultant Robert Bennett, Julia Provost of NAICJA's staff, and Bob Carr, BIA Albuquerque Area Social Worker, participated in the planning.

Marcella Wolf and Nelson Thompson, Director, Division of Health and Social Services, RAMAH, Navajo, gave the opening remarks for the session. The Honorable Dan Sosa, Chief Justice of the New Mexico State Supreme Court provided the keynote address. After an overview and summary of the ICWA legislation, the conference was divided into 7 workshops. These workshops were concerned with exploring the roles and responsibilities

of the following, in implementing the ICWA: the social worker; the tribal contact agency; the tribal court; the traditional Indian court; advocacy services; tribal government; and New Mexico state and county departments of social services. The seven workshops were led by a total of 21 instructors and facilitators. These included social workers, legal education specialists, attorneys and tribal judges. The tribal judges were Judge Jerry Bean, Southern Ute Tribal Court; Judge Dwain Clark, Acoma Tribal Court; and Judge Benito Mondragon, Taos Pueblo Court.

Bismarck Session

The Aberdeen, Minneapolis and Billings regions held a joint session in Bismarck, North Dakota on June 24-25. Approximately 60 participants attended. Unfortunately, many BIA personnel who had planned to attend were unable to do so because of a BIA freeze on travel.

Nancy Gale, NAICJA consultant, coordinated the training. Ms. Gale worked closely with Roger Lonnevik, Jack Burkhardt, and Harold Smith, BIA Area Social Workers for the Aberdeen, Billings and Minneapolis areas respectively.

Cranston Hawley, NAICJA President, and Roger Lonnevik opened the session. The keynote address, outlining the activities of the South Dakota State Court system in implementing the ICWA, was given by the Honorable

Roger Wollman, Chief Justice of the South Dakota Supreme Court. Other agenda topics included: The Social Worker's Role in Implementing the ICWA; the Tribal Role in Implementing the ICWA; Transferring Cases from State to Tribal Courts; Reassumption of Jurisdiction; Issues in Providing Social Services for Implementing the ICWA; Tribal-State Agreements; and the Urban Indian Organizations' Role in Implementing the Act.

Reno Session

The Reno session was held September 4-5 at the National Council of Family Court Judges facilities on the Reno Campus of the University of Nevada. It was organized by Alice Drengson, Social Work Supervisor of the Intertribal Council of Nevada with assistance from Virginia Cain of the National Council of Juvenile and Family Court Judges and from Maryetta Tsosie and Nancy Gale, NAICJA consultants.

The keynote address for the session covered the topic of Tribal Authority Basis for Child Welfare Services and was given by David Dunbar, Director of Legal Programs for the National Tribal Chairman's Association. Concurrent workshops on the topics of Dispositional Options for the Tribal Child, Alcohol Abuse and Child Welfare, and Foster Care followed the keynote address.

The second day of the session covered the topics: "The Child Victim of Neglect and Abuse" and "The Indian Child Welfare Act: An Overview of Problems Encountered and the Development of Solutions."

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Judge George R. Armstrong

Judge George R. Armstrong, a founder and board member of the National American Indian Court Judges Association died in September 1980.

Judge Armstrong had been Chief Judge for the Hopi, the Southern Ute and the Ute Mountain Ute Tribal Courts. He was also Juvenile Court Judge for the Uintah and Ouray Reservation. He was a well-known NAICJA instructor and wrote a number of publications for the Association.

Judge Armstrong will be missed by all those who had the privilege of knowing and working with him.

After a lull of one year, NAICJA initiated its current 2-year LEAA-funded Criminal Law training program in December 1978. The new program, which has consisted of seven separate sessions, instituted several new concepts in NAICJA's criminal law training approach.

Recognizing that the experience and tenure of its members are becoming more and more diverse, NAICJA has, with its 1978-80 program, given a great deal of attention to dividing course offerings into beginning and advanced levels. This, in turn, has enabled NAICJA to offer a more specialized training content providing in-depth training in specific areas.

In addition, the 1978-80 criminal law offerings have been designed to simulate a college classroom atmosphere with a majority of the material being offered in a presentation method patterned on that used by the National Judicial College. Indeed, six of the seven criminal law sessions offered under NAICJA's 1978-80 contract were held at the National Judicial College facilities on the University of Nevada's Reno campus. All of the seven sessions were designed to offer trainees a series of one-to-two hour lectures, each followed by small group discussions.

In implementing its 1978-80 criminal law training contract, NAICJA made a



NAICJA Supports Related Training

NAICJA continues to encourage its membership to participate in training provided by other organizations when that training is relevant to the Indian tribal court system. For example, this year NAICJA arranged for four of its members to attend two non-lawyer training sessions held by the National Judicial College in Reno: a one-week session from April 13-18 on the topic of Alcohol and Drugs, and a two-week general session beginning June 29.

Tuition, room and board, and the conference fee for the four judges were paid by NAICJA from LEAA funds. The National Judicial College provided a \$100 expense waiver for the NAICJA participants.



NAICJA Instructors Genevieve Chato, Attorney, and Instructor/Organizer Ralph Johnson, Professor at the University of Washington School of Law, at Criminal Law training for tribal judges.

concerted effort to provide training opportunity to as broad a range of member judges as possible. Careful records were kept to assure that every judge had a chance to attend at least one training.

The 1978-80 NAICJA criminal law training series was designed by NAICJA instructor Ralph Johnson, Professor at the University of Washington School of Law, Seattle. Professor Johnson, in cooperation with the NAICJA Board of Directors and with the assistance of various NAICJA instructors, planned the sessions to meet the practical day-to-day courtroom information needs of tribal court judges. He selected instructors for the session based on their legal experience, their teaching ability and their ability to relate to the particular situations facing American Indian courts.

To maintain a high level of relevance and quality to the trainings, Professor Johnson obtained participant evaluation of each presentation made. Information from these evaluation was used to plan and design subsequent trainings. Robert L. Bennett, NAICJA instructor and consultant, worked with Professor Johnson in coordinating several of the sessions, and was the primary organizer for the recent session held in Albuquerque for beginning judges.

The first training in the 1978-80 Criminal Law series was held at the National Judicial College in Reno on January 29 through February 1, 1979. Junior and senior judges and court

clerks attended the session. The following topics were offered to all participants: The Importance of Tribal Courts; Dual Judicial Power; Judicial Administration Conducted by the Court; Tribal Court Administration; Recent and Pending Cases in Federal Indian Law; and Judicial Discretion in Tribal Courts. Moot court slices were also offered.

During the last two days of the training the participants were assigned to classes based on their experience level. The following topics were presented: Contracts; Legal Bibliography; Introduction to Library; Torts; and Procedures in Juvenile Cases.

The second training, also at the Judicial College, was held April 2-5, 1979. It covered: Preliminary Proceedings; Arraignment and Preparation for Trial; Trial Procedures; Judgement; Appellate Procedures; the Indian Civil Rights Act; Search and Seizure; and Evidence.

The third training, again at the Judicial College, was held June 11-14, 1979. Topics included: Sources and Basic Theory of Evidence Law; Relevance, Competency and Privilege; Burdens: Production and Persuasion; Judicial Notice, and Presumptions; Opinion and Expert Testimony; Hearsay Defined; Hearsay Exceptions; Testimonial, Documentary and Demonstrative Evidence; Impeachment and Rehabilitation; Constitutional ICRA Issues; and the Role of the Judge in Evidentiary Process.

NEW CRIMINAL LAW SERIES OFFERED TO TRIBAL JUDGES

The fourth training, held on September 16-20, 1979, covered: Criminal/Civil Jurisdiction; Basics and Limitations of Criminal/Civil Jurisdiction; Sources/Choice of Law; Review of Criminal Procedure; Basic Procedure in Nine Complex Cases; Comparison of Criminal/Civil Cases; Specialized Procedural Matters; Introduction to Complex Cases; Consumer Contracts; Defective Consumer Goods; Rentals, Leases, and Bailments; Restraining Orders and Injunctions; and Execution of Judgement.

The fifth session, held November 26-29, 1979, concentrated on Quasi Judicial Rules and the topic of Search and Seizure. Specific presentations and discussions were held on: Political and Legal Implications of *Santa Clara Pueblo v. Martinez*; Judicial Review and Tribal Courts; and the Indian Civil Rights Act. Other topics presented included: Police/Judge Relations; The Growing Trend to Decriminalize Minor Crimes; Decriminalization of Traffic Offenses; a Report from the National Highway Safety Advisory Board; Scientific Evidence in Traffic Cases; the Roles of the Advocate and Judge in Handling Driving While Intoxicated Cases; and Sentencing Alternatives in Traffic Cases.

The sixth training was held in Albuquerque, New Mexico, on February 6-8, 1980 and was designed for those judges who had less than one year's experience. Trainees were given reading assignments from NAICJA's *Criminal Law and Procedure* text. Presentations and group discussions were based on these readings. The topics included: Jurisdiction of Indian Courts; the Roles of the Judge, Clerk, and Counsel; Pre-trial, Trial and Post-trial Procedures; and the Indian Civil Rights Act.

The last training in the current series was held July 14-17, 1980. This training was designed for intermediate and advanced tribal court judges. A pre-and post-test were given to trainees at this session and certificates of credit were awarded to those passing the post-test. Twenty judges received certificates showing they had completed the course with honors.

The following topics were included in the July 14-17 session: Structure of Criminal Law; Elements of Criminal

Offenses; Establishing and Defeating the Existence of Required Mental Status; Attempting and Aiding the Commission of a Crime; An Introduction to Defenses and Responsibility; Justification; Additional Defenses and General Questions; Habeas Corpus and Tribal Courts: Special Evidentiary Problems of Criminal Trials; the Meaning of Jurisdiction (Judicial vs. Legislative Jurisdiction); Federal and State Court Jurisdiction in Indian Country; Tribal Court Jurisdiction; Moot Court Slices; and Special Problems of Criminal Procedure, Motions and Discovery.

Instructors and discussion leaders for the criminal law training series included the following: James Adams, University of the Pacific School of Law; George Armstrong, Chief Judge, Ute Mt Ute Tribal Court; Robert Aronson, University of Washington School of Law; Stan Barnhill, Dept. of Criminal Justice, Reno; Robert Bennett, Consultant on American Indians; Charles Blackwell, President, Am Indian Tribal Gov't & Policy Consultants; Steve Boyden, Attorney, Salt Lake City; Genevieve Chato, Attorney, Ft. Defiance; Philip S. Deloria, Director, American Indian

Law Center; Brenda Desmond, Attorney, Crow Agency, MT; Kathryn Duffy, U of NV College of Bus Adm; Judge Tom Ewing, Stark County, ND; Frank Fahrenkopf, Nat'l Judicial College; Tonya Garcia, Idaho Legal Services; David Getches, Attorney, Boulder; Cranston Hawley, NAICJA President; Ralph Johnson, U of WA School of Law; John Junker, U of WA School of Law; Rod Lewis, Attorney, Sacaton, AZ; Anthony Little, Indian Pueblo Legal Ser., Bernalillo, NM; Hilda Manuel, Attorney, Sells, AZ; John Milne, U of WA School of Law; Peter A. Ozanne, U of Oregon School of Law; Steven Palmberg, Colville Legal Office; Browning Pipestem, Chief Judge, Western Tribes of OK; Steve Quesenberry, CA Indian Legal Ser.; Dan Raas, Attorney, Bellingham, WA; Anita Remerowski, SD Legal Services; Thomas Schlosser, Attorney, Seattle; Peter Sferrazza, Nat'l Judicial College; Virginia Silva, Director-Public Affairs & Safety-AAA, Albuquerque; Felix Stumpf, Director-Academic Dept., Nat'l Judicial College; Regina Superneau, Attorney, NAICJA Staff; Ray Sweazey, Alamo, CA; Mike Taylor, Indian Pueblo Legal Ser.; Mary Turgeon, Chief Judge, NW Intertribal Court System; Dean Ernst Watts, Nat'l Judicial College; Barbara Yanick, Judge, Seattle; and Alvin J. Ziontz, Attorney, Seattle.



NAICJA trainees listen to lecture on criminal law. All of the seven criminal law trainings in NAICJA's 1978-80 program were designed to provide a series of one-to-two hour lectures, each followed by small group discussions.

LEAA Ends Funding for Indian Court Judges Training

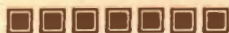
NAICJA has received notice from Dale Wing, Chief of the Indian Justice Section of LEAA, that no additional criminal justice training funds would be forthcoming in FY 1980 from LEAA to NAICJA.

Over the years, NAICJA has organized and conducted a training program for a special group of Indians functioning in very responsible tribal government positions. Indian court judges face problems presented by Indians day after day and the training they receive helps them cope with their many responsibilities.

Although there is a high turnover of Indian court judges, neither the court system or the Indian Court Judges Association has any power to prevent the turnover—except that better trained judges are perhaps more likely to survive.

The cost of training is very low and alternative plans have been considered by NAICJA and rejected because of tremendous cost, or not meeting the reality of Indian reservation life and circumstances.

The Indian Court Judges Association regrets the decision made by the Department of Justice's LEAA.



Audits Performed for ARROW/NAICJA

The annual independent audit of ARROW, Inc., for 1979 was completed in March, 1980, by the Certified Public Accounting firm of Hutchinson, Johnston and Hugins. ARROW, Inc., continues to provide corporate and financial management for NAICJA programs, thus aspects of NAICJA finances were also reviewed in the ARROW audit.

In June and July, Robert Scott, LEAA auditor, spent several weeks in the NAICJA offices doing an audit and review of NAICJA's LEAA-funded program. All of NAICJA's files and records, including those of other programs were opened to him.

The LEAA audit was initiated on NAICJA request so that the Association would have the authority to clear its files of items stored only for audit purposes.

COURT ADVISORS PROVIDE TECHNICAL ASSISTANCE

NAICJA frequently receives requests from tribal courts for specific on-site technical assistance. This year, the Court Advisory component of its program grants has enabled NAICJA to respond formally to those requests.

The following are examples of the types of requests received this summer by NAICJA's Court Advisory component.

The Navajo Tribe requested an on-site workshop for its Supreme Judicial Council.

The Chairman of the Colorado River Indian Tribes, in conjunction with the Chief Judge, requested that the Association conduct an evaluation of the Colorado River Tribal Court.

The Mescalero Tribal Court requested that a NAICJA consultant visit for the purpose of evaluating procedures of the tribal court and its relationship with other departments of tribal govern-

ment and the Bureau of Indian Affairs. The out-growth of this consultant visit was a formal request to the BIA for a training session involving tribal court personnel, law enforcement officials and tribal officials to which state judges and law enforcement personnel from surrounding counties would be invited.

The Nooksack Indian Tribe of Washington, which is establishing a tribal court with the services of the Northwest Inter-tribal Court System, requested information which would assist in setting up a workable system specific to its situation.

The Oregon Legal Services Corporation requested NAICJA assistance for the Klamath Tribe concerning the structure and administration of its newly evolving judicial system.

Requests were also received from the Oneida, Pine Ridge and Papago Tribal Courts.

FULL FAITH AND CREDIT SOUGHT

continued from page 1

volume of cases handled, geographic location and level of sophistication.

Contact will be made with state and local courts in the eight states encompassing the twelve selected tribal courts in order to: 1) ask for their participation in this project; and 2) find out what reasons state courts may have for not granting "full faith and credit" to tribal court decisions.

NAICJA believes the lack of comity between tribal and state courts can be attributed to: 1) lack of communication and interaction between tribal and state courts; and 2) the failure of many tribal courts to meet state requirements as "courts of record." For these reasons, the Model Court Development project has been designed to include consultation meetings in the eight states involving tribal council members, tribal leaders, tribal court judges, state court administrators and judges, and NAICJA staff and consultants. These consultation meetings will move to solve any lack of communication between tribal and state courts, as well as bring about more interaction and improved relations.

If it is determined, at any of these consultation meetings, that one of the

reasons state courts have for not extending "full faith and credit" to tribal court judgments is because tribal courts fail to meet state court requirements as "courts of record," then technical assistance where needed will be offered to those tribal courts.

In addressing the problem of inadequate record systems in tribal courts, experienced consultants will be used to provide the needed technical and practical on-site assistance to help those tribal courts establish a uniform record-keeping and data collection system. The results of this technical and practical on-site assistance, as well as state minimum records requirements and NAICJA's recommended model standards will be compiled in a "Model Records Standards Manual." This uniform record-keeping and data collecting system will be intended for use by all tribal courts.

The principal objective of this project is improved tribal and state court relations resulting in enforcement of Indian court judgments by state courts. A valuable by-product in the attainment of this objective is the development of a practical yet detailed model records system tailored to meet tribal court needs.

Recent Court Decisions and Legislation Relevant to Indian Courts

by Ralph W. Johnson with assistance from Michael Elsass

This newsletter starts a new idea, of providing brief descriptions of the federal and state court decisions and federal legislation, that Indian court judges should know about. Over the past few years many important decisions have been rendered by these courts which affect Indian court jurisdiction, or affect the substantive law that is applied by courts on the different reservations. Few Indian courts have access to the Federal Reports, or state reports; thus, Indian judges find it difficult to keep current with the opinions now being published in this field.

It is, therefore, the purpose of the following summary to describe these cases briefly, giving enough information to tell the judges the general nature of the cases, and their significance to Indian courts.

Decisions that are important to Indian reservations generally, but are of little direct importance to tribal courts, have also been summarized. This was done so Indian court judges might be aware of changes in the larger framework of federal/state law in which the reservation courts operate.

Lastly, a brief description has been included of federal legislation that has, or can have, an impact on the jurisdiction of Indian courts.

The descriptions which follow have been broken down by issues, as shown in the table of contents.

In each case report, the reader should carefully note the court that is the source of the opinion. U.S. Supreme Court opinions are, of course, controlling on all Indian and other courts in the nation. Federal courts of appeals' decisions are controlling in that particular circuit (e.g., the 9th Circuit) and are entitled to great weight elsewhere. Federal district court decisions are binding on the parties to the litigation and should be given serious consideration, but are not so noteworthy as the court of appeals decisions. State court decisions are generally useful to Indian courts only for their reasoning or inherent persuasiveness. Such decisions reflect the considered judgment of a state appellate tribunal, and should be studied for the wisdom that may be reflected in the opinion, however only in a few exceptional circumstances are they binding on tribal courts.

Most of the citations are to the *Indian Law Reporter*, which is now widely available. It is cited, for example, as 6 ILR D-54 (1979). This means the case can be found in volume 6 of the *Indian Law Reporter* at page D-54, and that it was decided in 1979. The *Indian Law Reporter* citations are used because of its wide availability, and because most of these cases have not yet appeared in the official federal or state reporter systems.



NAICJA Publication Distribution Policy

All publications prepared and printed by NAICJA are financed by government grants or contract funds. The publications are first distributed to tribal court judges who are NAICJA members and to relevant agency personnel. When additional copies remain, they may be obtained by written request to the NAICJA Washington Office. NAICJA regularly mails requested copies of its publications to tribal personnel, Indian attorneys, law libraries, state and county courts, and to various state and local agencies.



Professor Ralph Johnson

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I. JURISDICTIONAL ISSUES

This section discusses recent cases involving jurisdictional questions that affect Indian courts. The three most important facts to look for in these cases are (1) who was involved, i.e., Indian or non-Indian; (2) where did the events occur, i.e., on or off the reservation (or partly on, etc.); and (3) what was the nature of the litigation, the subject matter of the suit. These are the critical elements in all cases dealing with jurisdictional questions.

A. General Jurisdictional Questions

1. Cases Decided by the United States Courts of Appeal

• **On-reservation hunting violation.** An enrolled Indian cannot be prosecuted under federal law, 18 USC 1165, for hunting without tribal permission on his own reservation. The 9th Circuit held, in *U.S. v. Jackson*, 6 ILR D-54 (1979) that jurisdiction to prosecute such tribal members rests exclusively in the tribal courts.

• **State Regulation of on-reservation sales of liquor.** In *United States v. New Mexico*, 6 ILR E-1 (1979) the 10th Circuit held that the State of New Mexico had no authority to regulate liquor traffic within the boundaries of the Mescalero Apache Reservation. This decision relied on *United States v. Mazurie*, where the U.S. Supreme Court had held that under a 1953 federal statute the Wind River Tribe had jurisdiction to regulate liquor sales on the reservation, even over a non-Indian tavern owner operating a tavern on fee patent land. A similar result was later reached by a federal district court in *Muckleshoot Indian Tribe v. Washington*, 6 ILR F-36 (1979) where the court said the State of Washington

could not regulate the sale or distribution of liquor on the Muckleshoot Reservation.

• **The Major Crimes Act is not Unconstitutional.** In *U.S. v. Broncheau*, 6 ILR D-50 (1979) the 9th Circuit upheld conviction of an enrolled Nez Perce Indian under the Major Crimes Act, rejecting his claims that (1) this Act was unconstitutionally vague in its definition of "Indian", and that the Act was unconstitutional as a denial of equal protection to Indians (it applies only to Indians). The court declined to decide whether the Major Crimes Act was exclusive, or whether tribal courts still had concurrent jurisdiction over the same offenses.

• **Lesser-included offense instructions under Major Crimes Act prosecutions.** In *United States v. Pino*, 6 ILR E-58 (1979) the 10th Circuit held that in prosecutions under the Major Crimes Act, the judge is required to instruct the jury on lesser included offenses even though the lesser offense is not one of those enumerated in the Major Crimes Act. Thus, in *Pino*, where the defendant was charged with manslaughter, the court should have given a jury instruction on the lesser-included offense of careless driving.

2. Cases Decided in United States District Courts

• **Tribal power to zone non-Indian land on the reservation.** The issue of zoning power on Indian reservations has become increasingly important. In *Trans-Canada Enterprises v. Muckleshoot Indian Tribe*, 6 ILR F-1 (1979) the court held that the tribe did not have authority to regulate non-Indian use of fee patent land on the reservation. Tribal zoning ordinances

were held not applicable to these lands.

However, an opposite result was reached in *Shoshone and Arapahoe Indian Tribes of Wind River Reservation of Wyoming v. James P. Knight et al.*, 7 ILR p.3116 (1980) where the court held that the tribe did have power to zone non-Indian fee patent land on the reservation and said it was "skeptical" whether the county's zoning power extended onto the reservation at all.

• **State jurisdiction on the Warm Springs Reservation under P.L. 280.** The district court in *United States v. E. K.*, 6 ILR F-113 (1979) held that the State of Oregon does not have jurisdiction to try an Indian youth for an offense occurring on the Warm Springs Indian Reservation, as that reservation was specifically excluded from state jurisdiction by Public Law 280 [28 U.S.C. Section 1360(a)]. See also *U.S. v. Allan*, 574 F.2d 435, 438, n.5.

• **An off-reservation housing project is held to be "Indian Country".** In *U.S. v. Mound*, 6 ILR F-159 (1979) the federal court held that it had jurisdiction to try an Indian for an offense committed under the Major Crimes Act on land that was not within an Indian reservation. The court found that the land, which was a low-income housing project, was a "dependent Indian Community" and thus "Indian Country" under 18 U.S.C. 1151. This finding was based on the facts that: the title to the land was held by the United States in trust for the tribe; the housing project community had a close relationship with the tribe and was being given the same services by the tribe as its other communities; and the community had close ties with the federal government with federal moneys be-

ing spent for water supply, sewers, roads, medical services, and a portion of the educational needs. The court said the above facts made the project a "dependent Indian Community" even though some non-Indians lived there.

Under this holding a tribal court would also have jurisdiction over such a housing project area.

3. State Court Decisions

These decisions ordinarily have relatively less weight outside the state, or in the federal courts. They are not binding on Indian courts, although the reasoning in them may be useful to Indian court judges.

• **A state court has jurisdiction to try a civil, tort action occurring on the Eastern Band of Cherokee Reservation in spite of the fact that the Band was a "recognized" Indian tribe.** In *Sasser v. Beck*, 6 ILR G-32 (1979) a North Carolina court held that the state court had jurisdiction to try a civil action brought by a non-Indian against an Indian for personal injuries sustained in defendant's motel swimming pool located on the reservation of the Eastern Band of Cherokees. The court said that the Eastern Band of Cherokees ceased to be part of the Cherokee Nation when they refused to emigrate to Oklahoma in 1835. The band later incorporated under state law and submitted itself to state jurisdiction. Neither subsequent federal recognition of the band nor passage of P.L. 280 altered this state jurisdiction.

The facts of this case are sufficiently unique that the ruling will have little application to most other reservations.

• **Chilocco Indian School in Oklahoma is a "dependent Indian Community" where the federal, not state, courts**

have jurisdiction. In *C.M.G., a Juvenile v. Oklahoma*, 6 ILR G-17 (1979), an Oklahoma court held that the Chilocco Indian School is a dependent Indian community under 18 USC 1151 defining Indian Country and thus the federal courts have exclusive jurisdiction to prosecute offenses occurring there; the state courts do not have any jurisdiction.

4. Other Developments

• A recent U.S. Justice Department memorandum reported in 6 ILR K-15 (1979) addressed the question of jurisdiction to prosecute non-Indians who commit victimless crimes such as traffic offenses, prostitution, or vagrancy on Indian reservations. The memorandum concluded that, as a general rule, the state has exclusive jurisdiction over these offenses under the *McBratney* rule (N.I. v. N.I. offense comes under state jurisdiction). However, where Indian lives, property or tribal interests are directly threatened by the offense the federal courts would also have concurrent jurisdiction under the General Crimes Act, 18 USC 1152.

• An Oklahoma State Attorney General's Opinion, reported in 6 ILR M-1 (1979), concluded that the state lacked jurisdiction to prosecute a crime committed by an Indian against an Indian on trust allotted land, defined as "Indian Country" by 18 USC 1151, even though the land was not on any reservation. This A.G.'s opinion is consistent with recent federal court cases which reversed a long-standing Oklahoma court practice of asserting state jurisdiction over these trust allotment lands.

The Attorney General recommended that state officials work out cooperative arrange-

ments with the U.S. Department of the Interior so that, when appropriate, state law enforcement officers could receive Deputy Special Officer Commissions from Interior and could thus assist in maintaining law and order on these scattered parcels of trust allotment lands.

B. Decisions Relating to Public Law 280

Washington v. Yakima Indian Nation, 6 ILR A-5 (1979) is an especially important case because it was decided by the United States Supreme Court, and thus is binding on all other courts.

It is important to know some of the background to understand the significance of the case. In 1963 the State of Washington, under the authority of P.L. 280, assumed partial civil and criminal jurisdiction over Indians and Indian country within the state. This jurisdiction was limited in that it extended to only eight subject areas (school attendance, welfare, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles) and to fee patent land, unless a tribe specifically requested that the state assume complete jurisdiction over all subjects and lands.

The Yakima Nation argued in the Supreme Court that the state's scheme was invalid because P.L. 280 jurisdiction cannot be asserted in this "piecemeal" way, and further, because Washington had not amended its state constitution as required by Public Law 280 to allow for jurisdiction over Indians. The Yakima Tribe also argued that such piecemeal jurisdiction "checkerboarded" the reservation, making law enforcement impossible and thus denying the Indians equal protection under the federal Constitution.

The U.S. Supreme Court rejected the Indians' arguments

and held that the state's assertion of jurisdiction was valid and was not unconstitutional, and that it was for Washington to determine whether a state constitutional amendment was necessary before asserting P.L. 280 jurisdiction.

The *Yakima* decision is significant for those states which had asserted P.L. 280 jurisdiction before 1968. After the 1968 Indian Civil Rights Act, P.L. 280 jurisdiction could only be asserted with tribal consent.

One issue which the Supreme Court did not decide is whether the assertion of Public Law 280 jurisdiction by the state means that the state jurisdiction is exclusive and that Indian tribes no longer have jurisdiction in those areas. An opinion by the Solicitor, written for Assistant Secretary for Indian Affairs in the Department of the Interior, in November 1978, concluded that even though the State of Florida asserted P.L. 280 jurisdiction over the Seminole reservation, the tribe retained its own power to enact a law and order code, establish a tribal court, and authorize tribal police to enforce tribal law. While the Solicitor's opinion does not have the status of a judicial decision, it nonetheless reflects the official view of the Department of the Interior on the question of concurrent tribal/ state jurisdiction.

The Washington State Attorney General recently took the position that tribal/state jurisdiction was concurrent under P.L. 280 in his brief in *Yakima Nation v. Washington*, No. 74-1225 (CCA 9th 1979). A 1978 decision by a federal district court in the case of *Confederated Tribes of the Colville Indian Reservation v. Beck*, 6 ILR F-8 (1979) stated that the fact that a state has asserted jurisdiction under P.L. 280 does not mean that a tribe loses criminal jurisdiction over its members.

One other case involving P.L. 280 was decided in a state court.

The Montana Supreme Court held in *Larrivee v. Morigeau*, 6 ILR G-67 (1979) that under P.L. 280 and a tribal ordinance the Confederated Salish and Kootenai Tribes had granted the state concurrent jurisdiction over the operation of motor vehicles on the reservation. Thus, the state trial court had jurisdiction to hear a negligence action brought by a non-Indian plaintiff against an Indian defendant arising from an auto accident on the reservation.

C. Cases Involving the Sovereign Immunity of Indian Tribes

Indian tribes may not be sued unless the United States Congress enacts a law consenting to such suit. This is because Indian tribes possess "sovereign immunity"; the same concept protects the United States government and state governments from suit unless they consent. The doctrine of sovereign immunity protects not only the tribe, but also tribal officers who are acting under tribal authority. Individual members of the tribe, acting on their own and not as official representatives of the tribe, are *not* immune from suit, however.

An important case decided by the United States Supreme Court in 1978, *Santo Clara Pueblo v. Martinez*, 436 US 49 (1978) involved a question of tribal sovereign immunity. In *Martinez*, the Court held that if Congress desires to waive tribal sovereign immunity it must do so explicitly. The court held that the Indian Civil Rights Act of 1968 did not constitute such an explicit waiver of tribal immunity, and thus the federal courts do not have jurisdiction to hear suits based on the ICRA. The Court went on to say that aggrieved persons must seek a remedy within the tribal court system, with the narrow exception of *habeas corpus* cases, that is, where the party seeking relief claims to be imprisoned unlawfully. That is the only situation where

federal courts may hear ICRA suits against the tribe.

Two important cases were decided in United States circuit courts in the past year on the issue of tribal immunity from suit. In *Bottomly v. Passamaquoddy Tribe*, 6 ILR B-22 (1979) the court addressed the question whether the tribe and three of its former governors could be sued for fees by an attorney who had represented the tribe. The court held that the tribe was protected from such a suit by its sovereign immunity, reasoning that the "mere passage of time with its erosion of the full exercise of the sovereign powers of a tribal organization" does not amount to a waiver of sovereign immunity. Even though the tribe had not been exercising many of its powers, and had not been specifically recognized by the federal government, it still retained its immunity until Congress explicitly removed it.

In another important decision, the 9th Circuit Court of Appeals held in *People of the State of California ex rel California Department of Fish & Game v. Quechan Tribe of Indians*, 6 ILR D-41 (1979) that P.L. 280 does not constitute a waiver of sovereign immunity. The court stated that, like the United States, Indian tribes cannot be sued without the consent of Congress, citing the United States Supreme Court decision *Santa Clara Pueblo v. Martinez*. P.L. 280, the court concluded, does not waive tribal immunity because it does not do so explicitly.

Three federal district courts also handed down decisions involving tribal sovereign immunity in the past year. In *Wilson v. Turtle Mtn. Band of Chippewa Indians*, 6 ILR F-2 (1979) the court held that the Indian Civil Rights Act did not constitute a waiver of tribal immunity from suit, whether the plaintiff is a tribal member or not. (*Martinez* had held that the ICRA did not allow a tribal member to sue the tribe.)

In *Sechrist v. Quinault Indian Nation*, 6 ILR F-138 (1979) the district court held that sovereign immunity protects the tribe itself, but *not* individual members.

In *Trejo v. United States*, 6 ILR F-19 (1979) the federal district court held that actions against policemen employed by the BIA for an alleged illegal search and seizure must be dismissed when it is shown that they acted in good faith reliance on a search warrant issued by a tribal judge. The court further held that the tribe, and the judge, were immune from suit.

The Washington State Supreme Court also handed down a decision last year on the issue of sovereign immunity. The court held in *North Sea Products, Ltd., v. Clipper Sea Foods Company*, 6 ILR G-27 (1979) that the operation of a tribal business off the reservation does *not* constitute an implied waiver of tribal sovereign immunity.

It should be remembered that sovereign immunity does not ordinarily protect tribal officers who are acting illegally, i.e., outside the scope of their authority. In such cases suits can be brought against them, but only to enjoin threatened illegal actions, not for money damages.

Also, a different question is posed if suit is brought by a tribal member in *tribal* court. In such a case it is within the discretion of the tribal judge to determine whether the doctrine of sovereign immunity applies in *that* court. Even if the tribal judge allows the defense of sovereign immunity, he may nonetheless allow suits for injunctions against tribal officers if they are found to be acting outside the scope of their authority.

II. INDIAN HUNTING AND FISHING RIGHTS CASES

A. Off-Reservation Fishing Rights in State of Washington

Probably the most important case in the area of hunting and

fishing rights decided in the past year is *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 6 ILR A-89, 99 S.Ct. 3055 (1979). In this case the United States Supreme Court upheld most of the important aspects of the controversial "Boldt" decision, which had held that, as a result of treaties, Indian tribes in Washington are entitled to have the opportunity to take up to 50% of the available fish harvest at their traditional off-reservation fishing grounds. Further, the Court specifically held that the State of Washington must comply with the decision, and that the federal district court in Washington has the authority to enforce the treaty provisions if the state will not.

The Supreme Court modified the lower court decision by ruling that the on-reservation catch, and fish caught for ceremonial and subsistence needs, are to be included in the Indians' 50% share. The court also stated that the 50% figure represented the maximum amount that would be allocated to the tribes as their treaty share. If over time the Indians abandon their fisheries, their share might be reduced.

B. Regulation of Non-Indian, On-Reservation Fishing & Hunting

In another case from Washington State, the 9th Circuit Court of Appeals held that the state has the power to regulate on-reservation fishing activities by non-Indians. In *Confederated Tribes of the Colville Indian Reservation v. Washington*, 6 ILR D-27 (1979) the court reasoned that neither Congress nor the tribe intended to exclude totally the state from exercising jurisdiction on the reservation. Significantly, the court looked on the tribes' own code to determine tribal intent. However, the court stopped short of saying that if the tribe has made it clear that it wanted to exclude the state, the state would have no jurisdiction.

United States v. Montana, 6 ILR

D-43 (1979) is another case involving the issue of regulation of on-reservation fishing by non-Indians. In this case the 9th Circuit Court of Appeals ruled that the Crow Tribe has the power to prohibit non-members from hunting or fishing on the reservation unless they own fee land within the reservation. If they own such land, they cannot be prohibited entirely from hunting and fishing on the land where they reside; however they can be subjected to reasonable tribal regulations.

If the tribe allows other non-members to hunt and fish on the reservation, the tribe may fix seasons and limits and require payment of license fees, although it cannot use criminal sanctions for enforcement. Forfeiture of the arms or other property of non-Indians is not permissible.

The state has no power to regulate on-reservation hunting and fishing by tribal members. However, the state may regulate all non-members' hunting and fishing. Thus non-members must obtain licenses from the state as well as the tribe and are subject to both tribal and state regulations. State regulations cannot authorize hunting or fishing in violation of tribal rules, and vice versa.

In *Mescalero Apache Tribe v. New Mexico* No. 78-1790 Slip Opinion (10th Cir., August 13, 1980), the 10th Circuit Court of Appeals held that the adoption by the tribe of a comprehensive game management code pre-empted state game management laws. As a result both tribal members and non-members, including non-Indians, were subject to the tribal code and not to state game laws. In upholding this tribal pre-emption of game management, the court distinguished (*Confederated Tribes of the Colville Indian Reservation v. Washington*, 6 ILR D-27 (1979) which held that a tribe had no power to pre-empt state taxation of cigarette sales to non-Indians,

saying that the management of game involved a "significant interest" of the tribe, whereas the taxation of cigarette sales to non-Indians was merely a revenue-raising measure.

In January 1979, the 9th Circuit Court of Appeals decided a case involving the treaty hunting and fishing rights of the members of the Klamath Tribe, which had been terminated under federal law. *Kimball v. Callahan*, 6 ILR D-22 (1979), the Klamath Termination Act, provided that the tribal roll would close in 1954 and, at that time, any member could withdraw from the tribe and participate in a management plan. The case arose when persons who withdrew, or whose ancestors withdrew, were subjected to Oregon regulation when hunting on land which had formerly been part of the reservation. The court held that treaty rights to hunt and fish on those lands which had been part of the reservation survived for all persons who were on the tribal roll at the time of termination, or where their ancestors were on the roll. Even persons who withdrew from the tribe at the time of termination retained their treaty hunting and fishing rights. The court concluded that the State of Oregon could regulate treaty right hunters and fishermen only when necessary for conservation.

In a federal district court case involving off-reservation fishing, *United States v. State of Michigan*, 6 ILR F-67 (1979) the court held that the Ottawa & Chippewa Tribes had treaty rights to fish in certain parts of the great lakes, and that the right was not limited by species of fish, the origin of the fish, the purpose for which the fish were caught, or how and when the fish were caught. The court also said the state had no authority to regulate the Indian off-reservation fishing because such authority had been preempted by the treaties and by subsequent federal and tribal regulation.

In a Washington case, *State v. Reed*, 6 ILR G-30 (1979) the Washington Supreme Court held that the state may regulate treaty fishermen who are fishing in a usual, off-reservation tribal fishing ground, when the regulation is necessary for conservation of the fishing resource.

In another state case, the South Dakota Supreme Court held in *South Dakota v. Hero*, 6 ILR G-64 (1979) that when the Rosebud Sioux Tribe surrendered to the United States all "claim, right, title, and interest" to certain portions of their reservation, they also surrendered their treaty hunting and fishing rights. Thus, Indians' hunting and fishing on these lands must now comply with applicable state law. In order to retain treaty rights in the face of such broad cession language, the court reasoned, Congress must specifically state that the rights are reserved.

III. CASES INVOLVING INDIAN WATER RIGHTS

The *Winters* doctrine provides that when the federal government created a reservation of any kind, it impliedly reserved enough water to carry out the purposes of the reservation, even though the water is not immediately put to use. This right does not disappear if not used, and the amount which is reserved (the amount necessary to fulfill the purposes of the reservation) is not reduced because less is actually used.

In *Jicarilla Apache Tribe v. United States*, 6 ILR E-26 (1979) the 10th Circuit Court of Appeals held that a New Mexico state court has jurisdiction to adjudicate, that is determine the extent of, all federal reserved water rights, including rights reserved for Indian tribes. This decision is based on the McCarran Amendment of 1953 and the recent U.S. Supreme Court decision of *United States v. New Mexico*, 238 U.S. 696 (1978). Thus, state courts may validly determine the extent of Indian reserved water rights. *Jicarilla* specifically held that state courts

have this power even if the state constitution says that the state has no power over Indians.

In *Colville Confederated Tribes v. Walton*, decided by the 9th Circuit Court of Appeals, August 20, 1980, the court addressed the question whether reserved water rights were transferred along with allotted land when it was sold to non-Indians. The court concluded that reserved rights do not pass with the land, but that the new non-Indian owner has a right to continue to receive as much water as was actually being used on the land at the time of transfer. Also, while reserved rights date back at least to the creation of the reservation, the rights which are transferred when allotted land is sold in fee to a non-Indian date from the time when the water was actually put to use on the land. Thus, the new non-Indian owner received the right to only as much water as was actually being used on the land, and the "priority date" is from the time of first use, not from the time of the creation of the reservation. The court held that the tribes reserved water right is diminished, or lapses, when allotted land passes out of trust, and this portion of the right returns to the state.

The court said the state can apportion surplus water (i.e. water above and beyond the Indians' needs) among non-Indian fee owners on the reservation but declined to decide whether the state's regulatory authority extends to other water management. It also said that the tribal adoption of a comprehensive water code did not preempt state apportionment of surplus waters.

A federal district court decision, *U.S. v. Anderson*, 6 ILR F-129 (1979) held that the date *Winters'* rights vest, that is become good against all others, is the date when the reservation was created. Thus, the Indians' right is superior to all those who seek to appropriate water after the creation of the reservation. The court went on to determine the extent of the reserved water right, and held that sufficient water for irrigation and to maintain fishing areas was reserved.

IV. TRIBAL AFFAIRS

A. Tribal Property

In June 1979 the United States Supreme Court decided *Wilson v. Omaha Indian Tribe*, 6 ILR A-64 (1979), a case involving the determination of reservation boundaries. At issue was the boundary of the Omaha reservation. The Court relied upon a federal statute, 25 U.S.C. §194, which provides that:

In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

The Court held that this statute applies in disputes between individual Indians or a tribe on one side, and other non-Indian individuals or corporations on the other. The term "white person" does *not*, however, include states. In a land dispute falling within the statute, the Indian or tribe must show only prior title or possession of lands in question, and it is then up to the parties questioning Indian ownership to prove that they, not the Indians or the tribes, are the rightful owners. Thus, the non-Indians have the burden of proving that they are the owners. If they fail to meet this burden, the Indians will prevail.

In another case involving tribal property, a federal district court in Montana held that when a non-Indian leases tribal lands for the purpose of mining coal, that coal may be taxed by the state. In *Crow Tribe of Indians v. State of Montana*, 6 ILR F-53 (1979) the court reasoned that, because the tax was not assessed on tribal lands or on the tribe, the state tax was proper.

B. Tribal Government

In September 1978, the Bureau of Indian Affairs pro-

mulgated rules and regulations setting forth procedures for establishing that an Indian group exists as a tribe, and thus should be granted federal recognition, 25 CFR 54. These procedures will replace the case-by-case method formerly used by the Bureau. They went into effect in October 1978. All requests for recognition should follow the procedures set out in the rules.

The general procedure is described below. However, any Indian group seeking recognition should first obtain from the BIA the "Guidelines for Preparing a Petition for Federal Acknowledgment as an Indian Tribe". The guidelines contain specific and helpful ideas on how a group can make its petition as complete as possible and improve its chances for recognition.

Any Indian group in the continental U.S. which believes it should be acknowledged as an Indian tribe must file a petition with the Department of the Interior. If a tribe is not sure whether it has already been recognized, it should contact the Department of the Interior. The petition itself may be in any form, but it *must* contain the following:

- a) a statement of facts establishing that the group has been identified throughout history, more or less continuously, as American Indian or aboriginal;
- b) evidence that a substantial portion of the group lives in a certain area or community viewed as American Indian, and that its members are descendants of a tribe which historically inhabited a specific area;
- c) a statement of facts establishing that the group has maintained tribal or political influence or authority over its members;
- d) a copy of the group's governing document, such as its constitution, or else a statement of membership criteria

- e) and governing procedures;
- e) a copy of a list of all current members, and, if available, past lists of members;
- f) an indication that the group is not composed principally of persons who are members of another tribe;
- g) an indication that the group has been expressly terminated or forbidden tribal status.

When the department receives the petition it publishes a notice of receipt in the *Federal Register*. The Governor and the Attorney General of the state where the group is located are notified, and the department will publish a notice in a local newspaper which requests comments in support or opposition to the petition. The group has the opportunity to respond to these comments before a decision is made.

The department will notify the group of any obvious omission in the petition, and allow the group time to correct them. When a decision is made, on the basis of the petition, or, if necessary, additional research conducted by the department, prepared findings will be published in the *Federal Register*. After a period during which interested persons may comment, the decision is made. If the criteria described above are satisfied the department must acknowledge the group; if they are not satisfied, the department cannot acknowledge the group. The decision becomes final in 60 days unless the Secretary of the Interior requests reconsideration.

If the decision is favorable, the group becomes eligible for the benefits and services accorded recognized tribes, and is henceforth entitled to enter into a government-to-government relationship to the United States.

C. Domestic Relations & Probate Matters

The following administrative decisions were issued by the Department of the Interior, Board of Indian Appeals.

On the question of the validity

of Indian Custom marriages, the administrative law judge wrote that:

(a) marriage contract between members of an Indian tribe in accordance with the customs of such tribe, where the tribal relations and government existed at the time of such marriage, and there is no federal statute rendering the tribal customs invalid, will be recognized and upheld by the courts of (the state) as a regular and valid marriage for all purposes.

In the *Estate of Guo-La a/k/a Thomas Jones*, 6 ILR I-23 (1979) the administrative law judge described the effect of a tribal custom divorce in stating that (1) "a divorce in accordance with Indian or tribal custom has long been recognized by the Congress, the courts, and the Department (of the Interior)", (2) "the courts have held that so long as the Indians continue in tribal relations, their domestic affairs are controlled by their peculiar customs", (3) "no distinction is made in the kind of marriage which such divorce dissolves so long as the parties contracting the marriage and effecting the divorce are Indian wards of the Government and living in tribal relation", and (4) a divorce may be accomplished unilaterally.

In *Estate of Harold Dompny*, 6 ILR I-6 (1979), a case involving a question about the capacity to make a will, the judge ruled that:

Being aged and uneducated, being unable to read or write, being unable to speak or understand the English language, and possessing impaired hearing and poor eyesight are conditions that do not necessarily disqualify one from making a will.

Mental competency is the determining factor. Also, Department of the Interior regulations do not require that witnesses speak the language of the person making the will, only that they know they are acting as

witnesses [*Estate of Family Newrohe Choate*, 6 ILR I-18 (1979)].

D. Miscellaneous — An "Equal Protection" Issue

The 10th Circuit Court of Appeals recently upheld New Mexico's practice of allowing only Indians to sell their arts and crafts on the veranda of the state-owned museum in Santa Fe, while excluding non-Indian craftsmen [*Livingston v. Ewing*, 6 ILR E -39 (1979)]. That state action was upheld because the court found that the state's scheme furthered legitimate educational, artistic, and cultural interests of the Indians of the region. The court said it did not constitute unconstitutional discrimination, or denial of, equal protection to non-Indian craftsmen.

V. AMENDMENTS TO THE FEDERAL CRIMINAL CODE

The Congress of the United States is currently in the process of revising the Federal Criminal Code. Several of the proposed changes would have an impact on the Indian community. Some of special interest to Indian court judges are discussed below. It is important to keep in mind, however, that these are proposed changes being considered by Congress. They are not now the law and will never become the law if they are not passed by Congress. Further, even if these proposals are contained in the revised criminal code, they may be passed in a different form than that described here.

(1) It is stated as a general principle in the introduction to the proposed amendments that none of the proposals is meant to expand *state* or *tribal* jurisdiction. Federal jurisdiction is not referred to, and indeed, some of the proposals would expand federal jurisdiction with reference to Indians.

(2) The proposed amendments would change the Major Crimes Act in two ways. First, several new crimes would be added to the Act, including negligent homicide, terrorizing, kidnap-

ping, aggravated criminal entry, extortion, and receiving or trafficking in stolen property. Second, there is a suggestion that the current judicial rule—that lesser-included offenses are encompassed within federal jurisdiction under the Major Crimes Act—will be codified in the amendments. This means that when a person is tried for a crime listed in the Major Crimes Act, federal jurisdiction is expanded to allow the person to be convicted of a lesser-included offense. Thus the defendant is entitled to a jury instruction on the lesser charge, even though that charge is not one of the crimes listed in the Act. This is, of course, consistent with recent federal court cases on this subject.

(3) The Federal Assimilative Crimes Act provides that in certain situations state law will be used to define offenses which are then prosecuted by federal authorities pursuant to the Assimilative Crimes Act. The proposed criminal code revision may contain an amendment which would provide that state law would not be incorporated into the ACA when to do so would conflict with an express federal policy or law. Thus, federal authorities would not be able to prosecute Indians for crimes defined by state law when it would conflict with an express federal policy.

(4) Under current law, state action is required before P.L. 280 jurisdiction may be withdrawn from the state and retroceded to the tribe. Under the proposed amendments, state action would *not* be required for retrocession to take place; only the tribe and the Secretary of the Interior would need to act.

Again, it should be emphasized that these are *proposed* amendments only. They have not been signed into law and may not be. However, if enacted these amendments could have a significant impact on the Indian community.

Indian Court Clerks Attend Management and Writing Training

Fifty-seven tribal court clerks from ten states attended a three-day workshop sponsored by the National American Indian Court Clerks Association on the topics of Court Administration, Legal Writing, and Improving the Image and Status of Court Clerks. The workshop was held in Albuquerque and was primarily financed by funds from the Court Clerks' component of NAICJA's LEAA grant.

The first day of training was spent on the topic of Court Administration. The subjects of Cash Accounting, Court Budgeting, Financial Management, and Personnel Management were covered by the Instructor, James G. Farrar, Senior Staff Attorney for the National Center for State Courts.

The "one-write" bookkeeping system was presented to the clerks as one system which is both time-saving and relatively simple yet would meet the needs of most tribal courts. Clerks who have not been involved in the budget preparation for tribal judicial systems were urged to become involved so that they might be aware of their court's financial situation throughout the fiscal year. Techniques for budget preparation and monitoring were presented.

During Mr. Farrar's presentation, there was also considerable discussion of personnel management. The need was recognized to develop organization



Tribal court clerks at NAICJA-sponsored training.

charts for tribal judiciaries to show lines of authority and communication. Necessity for developing and up-dating position descriptions to reflect the current duties of clerks and other personnel in the judicial system was stressed and a method for accomplishing this was explained.

Mr. Farrar also led a discussion on the need for property accountability.

On the morning of the second training day, Robert L. Bennett, American Indian Consultant, presented the material contained in a draft of a Handbook on Court Procedures. The draft will be

forwarded to the Washington office of NAICJA for printing in booklet form for use by the clerks. Procedures discussed by Mr. Bennett included: the file inventory for the judge; arrangement of documents in the case folder; and the necessity and method for maintaining accurate records in the minutes of trials.

Also that morning, Howard Rainer, Assistant Director of American Indian Services at Brigham Young University, gave a presentation entitled "Your Self-Image as a Court Clerk." According to Conference Organizer Bob Bennett, the

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CIVIL PROCEDURES BENCHBOOK PREPARED FOR TRIBAL JUDGES

Tribal judges at the NAICJA-sponsored Civil Law training session were introduced to the new *Civil Procedures Benchbook* recently printed by the Association.

The Benchbook, written by NAICJA Instructor Robert L. Bennett, is designed to assist Indian judges in quickly answering questions which arise in the handling of civil law cases. It presents, in simple abbreviated form, four main topics: Examination of File; Civil Trial Procedures before the Court without a Jury; Trial by Jury; and Appearance of Judgement Debtor.

The Benchbook was reviewed by Pro-

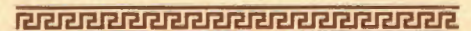
fessor Ralph Johnson from the University of Washington Law School; by Pat Hayes, Tribal Government Services, Bureau of Indian Affairs; and by the NAICJA Board of Directors. Funds from the Judicial Services branch of the BIA were used for its preparation and printing.

Mr. Bennett, author of the new reference book, is also author of NAICJA's *Criminal Court Procedures Benchbook*. This latter book was first printed in 1976-77 and has become recognized as an invaluable reference for tribal courtroom use.

History Gives Outline of NAICJA Courses

A Brief History of NAICJA's Training Program, from its inception in 1970 to the present, has recently been completed. The purpose of the document is to outline the subject matter, the approximate classroom hours, and the resources and materials used for each of NAICJA's criminal, civil and family law trainings.

The History was prepared by Robert L. Bennett, American Indian Consultant; Ralph W. Johnson, University of Washington School of Law; and William Canby, formerly of the Arizona State University College of Law and now a federal judge.



NAICJA UNDERTAKES PROJECT TO MICROFILM TRIBAL CODES

A project to make copies of tribal codes readily available to courts, libraries and the general public is being undertaken by NAICJA. The process to be used is microfiling, a process which will transfer the tribal codes, page by page, to sheets of microfilm cut to the form of file index cards.

Microfiche machines for reading the microfiched tribal codes are presently available in most law firms, law libraries and public records offices. Many tribal governments also own the machines. Where necessary to purchase a reading machine, the cost is nominal and is recommended.

NAICJA intends to proceed immediately to microfiche a number of tribal codes it presently has in its collection. They will be compiled into a single loose-leaf notebook package which will contain a printed introduction about Indian tribal codes; printed information on how to use the microfiche and index; a printed index and table of contents; microfiched copies of the tribal codes

slipped into plastic frames and mounted in the ringbook; and a printed appendix with name, address and phone numbers of all the tribal courts whose codes appear in the microfiched collection. After the first codes have been processed, NAICJA will collect as many of the remaining codes as it can. These will also be microfiched as they become available.

The advantages of preparing the codes with the microfiche method include: use of a popular and readily accessible system; low cost of the microfiling process and the reading equipment; and compactness of finished product. NAICJA estimates that it would cost approximately \$70 to produce a single finished notebook. Notebooks will be made available to requesting parties at cost.

NAICJA made numerous efforts without success to raise \$75,000 to organize, prepare, typeset, and have printed tribal codes in standard uniform publications similar to State and Federal Codes which can be seen in law offices and law libraries. Because that amount of funds was not made available to NAICJA, it was decided that the microfiche approach would be a useful alternative and within the reach of accessible funds in the current year's LEAA training program grant.

NAICJA Instructor Ralph Johnson, Professor at the University of Washington School of Law, has been working on this project for NAICJA. He is being assisted by Susan Lupton, who is a third year law student and has a master's degree in librarianship.

TRIBAL COURTS INCREASE

The number of tribal courts in the United States has increased from 98 in 1977 to 126 in 1980, according to NAICJA records. This represents an increase of 29 percent. During that same time, there was a net gain of 74 new judicial positions.

Arrow Board Members Attend Civil Law Training

The Board of Directors for ARROW, Inc., held their annual meeting in Albuquerque to coincide with NAICJA's first civil law training session. This gave ARROW board members a first-hand opportunity to observe NAICJA training activities and to meet with judges and instructors.

Those ARROW Indian board members attending included: Robert L. Bennett; Will Rogers, Jr.; Ben Reifel; Dolores Tidrick; and Leo Vocu.

ARROW Inc., a non-profit tax-exempt organization operating since 1949 for the betterment of the American Indian, provides corporate and financial management services for NAICJA programs.

Tribal Chairmen Join Judges in Resolution

Members of the National Tribal Chairmen's Association and of the National American Indian Court Judges Association have joined forces in an effort to coordinate resources towards solving problems which affect both tribal governments and tribal courts.

Late last year the two organizations formalized their desire to work together by each passing resolutions which state their intent: 1) to undertake joint efforts in developing programs and obtaining funds for those programs in areas of mutual interest and concern; and 2) to organize a joint Project Committee to accomplish their purposes.

Two problems which have been identified for joint NTCA/NAICJA consideration are: first, the high turnover of tribal judges and the need to curtail this turnover to gain a more stable tribal judicial system; and secondly, the need for mutual respect for, and understanding of, the respective responsibilities faced by the Executive and Judicial Branches of Tribal Government.

Declination Rate High

U.S. Attorneys, in 1978, declined a startling 68 percent of the major crime cases referred from Indian country, according to the evaluation conducted by SRI for NAICJA. In theory, declined cases can and should be brought back to Indian court and tried as lesser offenses if in violation of tribal criminal codes, but there are no statistics available on the numbers which do receive Indian court trial.

WASHINGTON BAR ASSOCIATION CERTIFIES NAICJA COURSE

An indication of the quality of NAICJA's training programs is the degree of acceptance they receive from the legal profession outside the Indian Court System.

In many states, practicing attorneys are required by law to participate in some sort of legal education each year to keep their licenses current. Each state sets the criteria (i.e., quality of faculty and subject matter) for the courses it will approve.

In 1979, the Washington State Bar

Association approved the NAICJA criminal law session held in Reno at the National Judicial College for 24 credit hours of continuing legal education. Since then, NAICJA has identified more of its training instructors and participants who would benefit from such accreditation. The Association, therefore, is applying for certification of other of its training programs from the states of California, Colorado, Idaho, Washington, Arizona and New Mexico.

NAICJA President Testifies for BIA Funding Increase

Testimony requesting that the BIA be allocated \$8,000,000 in FY 81 for the specific use of tribal courts was given by NAICJA President Cranston Hawley as he appeared before the U.S. Senate Committee on Appropriations. The Committee will to review and take action on the proposed BIA budget this fall.

The \$8,000,000 requested represents a sizeable increase over FY '80, a year in which no increase had been granted. As justification of the proposed FY '81 increase, President Hawley cited the following.

First, the number of Indian courts and the extent of the jurisdiction they will exercise is increasing. In the coming year 14 tribes, whose governing authority has recently been restored, will be establishing judicial systems. This will raise, to 132, the number of Indian courts sharing the requested appropriation. In addition, it is estimated that, in 1980 alone, at least 40 tribes will reassume jurisdiction over child welfare proceedings under the provisions of the Indian Child Welfare Act of 1978.

Second, the number of cases handled by Tribal Courts is increasing. In 1981, it is predicted that at least 125,000 cases will be heard in Indian courts, up 25 percent since 1976. These numbers will continue to rise, President Hawley said, particularly as state courts refer more and more child placement cases to tribal courts in compliance with the ICWA.

In addition, more civil cases of all kinds will be heard in tribal courts. This is partly the result of federal courts' having recognized the jurisdictional authority of Indian courts in the civil area. [See *Williams v. Lee*, 358 U.S. 217 (1959) and *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1974)].

Third, the complexity of Indian courts is greatly increasing. It is a fact, desirable

or not, that tribal courts are adopting more of the ways of non-Indian courts. This adds to the complexity of courtroom procedures. In addition, the Indian Bill of Rights has added enormously to the complexity of the work of tribal courts. Ten years after Congress passed the Indian Civil Rights Act, the Supreme Court of the United States, in 1978, decided in *Martinez v. Santa Clara Pueblo*, 436 U.S. 48 (1978) that, except in matters for which the writ of *habeas corpus* was appropriate relief, Indian courts were the only proper forums to adjudicate the questions arising under that Act.

Finally, inflation is hitting tribal courts as it is every other aspect of American society. From FY '76 to FY '80, the Indian court system received an additional \$1.5 million in federal budget allocations over the FY '76 base. Inflation ate away most of that increase.

In order to meet the increasing demands being placed upon it, in order to comply with the laws which Congress passes and with the rulings of the federal courts, and in order to attain full faith and credit for their decisions, the Indian judicial system must strive to build ever more sophisticated and better qualified courts. More judges and court clerks are needed. Support systems must be developed. Probation officers, child case workers, prosecutors and defense counsels are urgently needed. All these personnel must be trained, first to guarantee the civil rights of those who appear



NAICJA President Cranston Hawley, Chief Judge of the Fort Belknap Tribal Court

before Indian courts and secondly to provide proper recognition of the traditions and customs of Indian peoples. They must be trained to collect and record needed information and to document the court's caseload and progress.

President Hawley stressed that, although a growing number of tribes are supporting a major portion of their court's financial needs, federal funds continue to be vital to the Indian judicial system. Strong financial support from Congress is necessary to the efforts of American Indian Tribes to provide justice to their own people in their own courts. "The competence and integrity of the courts," said President Hawley, "can affect every other aspect of life in society—the safety of people's lives and property, the guarantee of tribal constitutional rights and privileges, the stability of economic enterprise—that is, everything that contributes to the orderly and peaceful progress of our daily lives."

Handbook Describes Activities for ICWA

Another new NAICJA publication was completed this summer and is available for training use. The publication, a *Handbook on the Indian Child Welfare Act*, provides a narrative description of the activities prescribed by the ICWA for each stage of a child placement or custody proceeding. Ten flow charts accompany the narrative to clarify the steps which must be taken to implement the various provisions of the Act.

The *Handbook* was prepared by Robert L. Bennett and reviewed by Louise Zokan, BIA Child Welfare Specialist, and by members of the NAICJA Board of Directors.

NAICJA PRINTS GUIDELINES FOR INTERPRETERS IN TRIBAL COURT

Receipt of many questions concerning the use of interpreters in tribal court spurred NAICJA to print a 3-page information statement entitled *Guidelines for Interpreters in Tribal Court*.

The guidelines were prepared by George Armstrong, a Judge for the Ute Mountain Ute Tribal Court, and Robert Bennett, NAICJA consultant. They include a statement of the purpose of an interpreter in a tribal court. They also outline the procedures to be follow-

ed by the interpreter and give a number of suggestions for facilitating the interpretation process.

The *Guidelines for Interpreters in Tribal Court* were based upon a document used in Federal District Courts in New Mexico, but are tailored to the specific needs of tribal courts.

Guidelines for Interpreters in Tribal Court are available on request from NAICJA's Washington office.

Over 75 Tribal Judges Attend NAICJA's First Civil Law Training

To prepare themselves to effectively handle their increasing civil caseload, tribal court judges throughout the country are seeking specialized training in the area of civil law. To meet this need, NAICJA designed a civil law training plan which has received initial funding from the Judicial Services Division of the Bureau of Indian Affairs. NAICJA's first civil law training program was offered in May 1980. Its second is scheduled for Fall 1980. These are, hopefully, the beginning of a series of sessions which will parallel the success and impact of NAICJA's criminal law and child welfare trainings.

Over 75 American Indian court judges participated in NAICJA's first national civil law training session.

The session, held at the University of New Mexico School of Law in Albuquerque under a new NAICJA contract with the Judicial Services Division of the Bureau of Indian Affairs, included the following topics: Separation of Powers—Tribal Court Civil Jurisdiction; Family Law Benchbook; Analyses of Criminal and Civil Penalties and Forfeitures; Basic Law of Contracts; Installment Contracts and Consumer Protection; Leasing and Housing Rental Contracts, Covenants and Land-



Bob Bennett, Instructor/Organizer for NAICJA's first national civil law training, confers outside the American Indian Law Center where the training was held.

lord/Tenant Rights; Basic Law and Torts; and Civil Law Benchbook.

The agenda for the civil law training was prepared under the direction of Robert L. Bennett, NAICJA consultant. Mr. Bennett received input into its development from Ralph Johnson, Professor, University of Washington School

of Law; from E. Thomas Colosimo, NAICJA Secretary-Treasurer; from Pat Hayes, Chief of the BIA's Division of Tribal Government Services; and from members of the NAICJA Executive Committee.

The agenda utilized a combination of lecture presentations and small group discussions. Presenters for the main training topics included: Professor Ralph Johnson; the Honorable James Delaney, Judge of the 17th District Court, Colorado; Charles W. Blackwell, President, American Indian Tribal Government and Policy Consultants; Ralph Gonzales, Executive Assistant to the Commissioner of Indian Affairs; Genevieve Chato, Attorney-at-Law; and Robert L. Bennett. The following participated in the civil law training as discussion group leaders: Kevin Gover; Hilda Manuel; and G. Paul Dumas. Cranston Hawley, NAICJA President; Will Rogers, Jr., ARROW Board Member; Dr. Robert Desiderio, Dean of the School of Law, University of New Mexico; Philip S. Deloria, Director of the American Indian Law Center; and Pat Hayes participated in the opening session of the training.

Mr. Bennett, Instructor/Organizer for the training session, reported that overall participant response to the training activities was very good. Some of the major presentations at the training were video-taped for future training sessions and for use by judges not present at the training.

CIVIL CASES INCREASE FOR TRIBAL COURTS

In recent years, the number and types of civil law cases adjudicated in tribal courts have increased. These cases are coming to Indian courts from several different sources.

First, with the implementation of the Indian Child Welfare Act of 1978, state courts are increasingly transferring child custody and placement proceedings to tribal courts.

Secondly, many tribes are developing new Civil Law ordinances in a number of subject areas. In many cases, the proposed civil ordinances involve moving specific actions (i.e. traffic offenses) from their current place in the tribe's Criminal Code of Actions and reclassifying these actions as violations in the Civil Code of Rules and Regulations. These new ordinances will bring more civil cases to tribal courts.

Third, more and more cases involving creditor-debtor relationships are finding their way to Indian courts. While one usually thinks in terms of creditors being non-Indian businesses, it is becoming increasingly evident that many creditors coming before tribal courts are Indian-owned businesses. As a result, processes are needed, for example, for repossessing items located within the jurisdiction of the Indian courts.

Fourth, as tribal housing authorities become more common and more active on reservations, many Indian courts are seeing greater numbers of leasing and housing rental cases. To handle these cases, the judge must be familiar with contracts, covenants and landlord-tenant rights.

Fifth, tribal courts are handling more tort cases as greater numbers of plaintiffs ask recompense for wrongful injury sustained. The judge must be skilled in distinguishing intentional from negligent wrongful acts and must clearly recognize and adhere to the differences between criminal and tort cases.

Family and Child Welfare Series Stresses Coordinated Approach

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Portland Session

The Portland regional session will be held later this year and is being co-sponsored by the Social Service Division of the Portland BIA Area Office and by NAICJA. June McKellar, Portland Area Social Worker, is coordinating the session. She is being assisted by Nancy Gale, NAICJA Consultant and Gwendolyn Packard, NAICJA Staff Assistant.

This session is being designed in two segments. The first day will include state and tribal judges and social workers. The second day will be limited to tribal judges and BIA social workers.

Ms. McKellar and her staff have designed a series of videotapes which will be used on the second day as simulated case examples to stimulate discussion between social workers and judges. Each case will be presented outlining some background facts; the social workers evaluation of the case; and the action recommended by the social worker. The judges will be asked to respond to the social workers' recommendations and indicate how the court would react to the case.

It is anticipated that this method would serve to generate meaningful discussion about real and relevant situations.

Oklahoma Session

In Oklahoma, a unique format has been developed for achieving the regional training goals. Every month, a group of CFR judges, state judges and social service personnel has been meeting at the University of Oklahoma to discuss the Indian Child Welfare Act. Organized by Gerry Bridges, Assistant Area Social Worker for the BIA's Anadarko Office, the group has stated its primary purpose as the need to discuss coordination of judicial procedures, services and efforts necessary to achieve full implementation of ICWA.

Active participants in the Oklahoma monthly sessions include: State Judges Glen Dale Carter of Potawatomi County, Alan J. Couch of Cleveland County, Roger Mullins of Ponca City, Haskell Pond of Garvin County, and Thomas Walker of Carter County; Browning Pipestem, Chief Magistrate of the Courts of Indian Offenses; CFR Magistrates Howard Goodbear of Con-

cho Agency Jurisdiction; Vincent Knight of Pawnee Agency Jurisdiction; Ryland Rivas of Anadarko Agency Jurisdiction; JoAnn Dodson, Graduate School of Social Work, University of Oklahoma; Angela Gullatt, Legal Division, Department of Human Services; Debra Roth, State Child Welfare Supervisor; and Gerry Bridges.

National Session to Conclude Series

The final session of NAICJA's 1980 Family Law/Child Welfare training series will be the national summary session to be held in Phoenix, Arizona on November 18-20, 1980. Over 200 participants are expected.

The conference will offer six general sessions on the following topics: Protecting the Best Interests of Indian Children and Families; The Roles and Responsibilities of Courts and Agencies in Implementing ICWA; Children in Placement; Tribal Government/Tribal Courts; Developing Future Resources; and Recommendations for Future Directions.

Ten workshops will be offered. They include: Intervention and Identification of Alternatives to Prevent Breakup of Indian Families; Exploration of Resources for Providing Services to Indian Children and Families; Intake and Investigation; Development of Tribal Codes and Child Care Standards for Service Providers; Culture and the Indian Family; Accountability; Communication between State and Tribal Courts and their Perspectives on ICWA; Transfer of Cases between State and Tribal Courts; Tribal/State Agreements; and Custody Alternatives.

Planning for the agenda has been done by a committee including the Honorable John P. Stekete, Juvenile Court Center, Grand Rapids, Michigan; Louise Zokan, Child Welfare Specialist, BIA; Alberta Tippiconic, Arizona Inter-tribal Council; Gwendolyn Packard, NAICJA Staff; and Nancy Gale, NAICJA Consultant.



NAICJA Seeks Funds to Help Implement ICWA Provisions

A proposal to help tribes identify resources for implementing the Indian Child Welfare Act was submitted by NAICJA to the Offices of Human Development Services, HEW. The proposal was prepared in response to a solicitation from HEW's Administration for Children, Youth and Families.

The primary goal outlined in the proposal is to help tribes, as they begin to implement the ICWA, obtain access to financial and technical resources already existing within the established federal, state and local social service systems. The plan of action contained in the proposal provides for developing linkages between tribal governments and state governments, child welfare agencies and the courts. These linkages would be developed through research, information transfer, advocacy and referral services.

The proposal was submitted earlier this year and final approval is expected in September.

CLERKS RECOMMEND ICWA DESIGNATION

An interesting sidelight to the proceedings at the National Family Law/Child Welfare conference was a presentation made by a group representing the National American Indian Court Clerks Association. This group outlined their perception of the court clerk's responsibilities under the Indian Child Welfare Act and urged that tribes designate their court clerks as agents to receive notice of any involuntary proceeding in a State Court where an Indian child is involved. Such designation, it was proposed, is logical since record keeping and procedural concerns are primary court clerk responsibilities.

VIDEOTAPES PURCHASED

Using BIA Judicial Services and LEAA funds, NAICJA has purchased a \$600 set of videotapes developed by the Legal Services Corporation. NAICJA will use these tapes for its judges training. The tapes primarily discuss Indian legal history; trust responsibility; property rights; judicial jurisdiction; regulatory jurisdiction; and fishing, hunting and treaty rights.



Tribal court clerks take notes during workshop sponsored by the National American Indian Court Clerks Association. The workshop was financed primarily by funds from the Court Clerks component of NAICJA's LEAA grant.

57 COURT CLERKS ATTEND TRAINING

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presentation produced a noticeable effect on the clerks. Mr. Bennett stated that he believed the clerks left the training with greater confidence in their own abilities.

After the lunch break on June 25, Jesse Casaus, Clerk of Courts for the U.S. District Court in Albuquerque, spoke. Mr. Casaus emphasized the need for each Clerk's Office to establish a mission to render effective and courteous service. He talked in terms of: (a) responsibilities; (b) functions; (c) statistical reporting; (d) office services; (e) other services; and (f) organization. He also provided a copy of the Code of Conduct for the United States Clerks of Court. It was recommended that this Code be used as a guideline for developing a Code of Conduct for Indian Court Clerks and that the topic be considered at the next general meeting of the National American Indian Court Clerks Association.

Later that afternoon, Earl J. Ross, Chief, Operations Training Branch of the Federal Judicial Center, spoke on the topic of Report Writing and the Basics of Record Keeping. Mr. Ross placed great emphasis on the Clerk's responsibility for the care and safety of court records from fire, vandalism and unlawful use. Records management was discussed thoroughly.

On the third training day, the major course was Legal Writing, Part I. This was presented by Steve Wall, J.D., University of New Mexico School of Law. Emphasis was given to basic composition and the necessity for applying rules of composition to Court Documents, Brief Writing and Opinion Writing. Mr. Wall stressed the need for proper word usage, good organization and sound sentence structure. Mr. Wall also discussed the importance of modern legal writing, tracing its evolution from a historical oral tradition.

In reviewing the requirements of preparing modern legal documents, Mr. Wall discussed the complexity of cases and disputes, the need for clearly defined orders and dispositions, and the due process requirement. He also discussed the various kinds of legal writings (court documents such as petitions and motions, brief writing and opinions). He talked about writing the initiation of proceedings, motions during proceedings, and orders and dispositions.

HANDBOOK SERIES PREPARED FOR TRIBAL COURT CLERK REFERENCE

Three handbooks, designed as reference guides for Indian court clerks, are being prepared and printed by the National American Indian Court Judges Association using funds from the court clerk component of NAICJA's LEAA grant. Initial work on the handbook series had been undertaken earlier using funds from a Labor Department grant for court clerk training.

The first handbook, entitled **SECRETARIAL GUIDELINES FOR INDIAN COURT CLERKS**, was printed and distributed late last year. The second, **JURY TRIALS HANDBOOK FOR INDIAN CLERKS**, was completed this spring and was distributed at the June Albuquerque clerks training session.

Work has recently begun on the third handbook in the series. This book will be entitled **CRIMINAL ACTIONS MATERIAL FOR INDIAN COURT CLERKS**.

The handbooks are prepared by NAICJA staff working closely with Indian court clerks. For the first two handbooks, NAICJA Staff Assistant Johnye Drapeaux worked with the Officers and committee members of the National American Indian Court Clerks Association. These clerks helped formulate the original concept for the handbooks and provided suggestions, review and final approval for the publications. Julia Provost, Staff Assistant in NAICJA's new Albuquerque branch office, will work with NAICJA on the third publication.

Each of the handbooks will be available in a handy 5 x 7 inch booklet form.

NAICJA Participates in Navajo Workshop

NAICJA has participated in a workshop for the Supreme Judicial Court of the Navajo Nation. The workshop focused on the areas of Indian law and tribal government and on the responsibilities of the Navajo Nation under the Indian Child Welfare Act and the Indian Civil Rights Act.

Robert L. Bennett was instructor for the workshop and former Chief Justice Virgil L. Kirk, Sr., outlined the Council's participation in the judicial processes on the Navajo Reservation.

Evaluation of NAICJA Programs Offers Findings and Recommendations

continued from page 1

briefed so they could raise questions and give advice.

Information for the evaluation was gathered from an intensive review of NAICJA documents, publications and training materials, from a background survey of 104 tribal court judges, from questionnaires administered at NAICJA trainings, and from on-site reservation visits to 15 tribal courts. During the site visits, the evaluation team met with various people who were in a position to have knowledge about the tribal courts. Because of the way in which the evaluation was designed, many of its findings are applicable to all NAICJA's various training programs.

The primary findings of the evaluation are summarized below.

1. Tribal judges rated NAICJA training high on all aspects, including subject matter content.
2. Approximately 79 percent of the 100 judges polled felt they needed more training in 14 criminal law subjects.
3. When asked what they have gained from NAICJA training, most judges indicated they have learned about proper court procedures and changes in the law. Many indicated an increase in their confidence, resulting from the knowledge received. Learning from other judges in the training sessions and knowledge of where to go for help were two other important gains the judges reported.
4. A pre- and post test given to new judge trainees at a criminal law training showed that NAICJA training made a difference, especially in specific subjects. An increase of 100 percent accuracy was demonstrated in the topic of the Indian Civil Rights

Act; a 22 percent increase was indicated in the subjects of a judge's role and jurisdiction of a tribal court.

5. The scores judges got on the criminal law quiz correlated positively with the number of training sessions they had attended to demonstrate that training makes a difference.
6. A survey of 10 reservations showed that prosecutors, defenders, clerks and police rated NAICJA-trained judges as generally adhering to a set of performance criteria developed by the evaluator and a panel of veteran Indian court judges. This was interpreted to mean that judges are applying what they learn at NAICJA sessions.
7. NAICJA compares favorably with the eight other court training programs funded in part by LEAA. All 9 programs share some of the same problems and weaknesses, but NAICJA trainees rated their program higher than did the trainees of the other programs on the same parameters.

Preliminary recommendations to NAICJA from the evaluation include the suggestions that the Association: hold a long planning session to develop specific training objectives and outline a long-range policy strategy; develop a plan to achieve funding stability; develop standardized lesson plans, stated course outlines, requirements and sequences; focus on fewer subjects; re-introduce more variety in training methods; institute a testing and certification process; identify and use a central training location; and expand staff to add capability for management, evaluation-research, and curriculum development.

Regulations Drawn for Child Welfare Act of 1980

The new Adoption Assistance and Child Welfare Act of 1980, P.L. 96-272, allows for direct Title IVB (Child Welfare Services) payments to Indian tribal organizations. The Office of Human Development Services in the Department of Health and Human Services is in the process of developing federal regulations to implement this law. Section 428 which is of particular importance to Indian tribal organizations follows:

"Sec 428. (a) The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this part directly to an Indian tribal organization within any State which has a plan for child welfare services approved under this part. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

(b) Amounts paid under subsection (a) shall be deemed to be a part of the allotment (as determined under section 421) for the State in which such Indian tribal organization is located."

Some important questions to be considered are:

1) Under what circumstances will grants be made?

2) What formula will be used for payments to Indian tribal organizations?

3) What criteria will be used to determine eligibility?

Individuals or organizations interested in obtaining further information or commenting on regulatory issues in P.L. 96-272 should write to Dorothy Sortor Stimpson, Office of the Secretary, Planning and Evaluation, 200 Independence Avenue, S.W., Washington, D.C. 20201 (202) 245-6665.

Funding Cycle for ICWA Grants

The second application and funding cycle for the Indian Child Welfare Act grants will soon be under way. A tentative schedule for this cycle follows:

Mid September

- New draft grant regulation will be published in the Federal Register

Beginning of November

- Final grant regulations will be published in Federal Register

November—Early January, 1981

- Open grant application period

Mid January—Mid March, 1981

- Bureau Agency & Area Office review of grants

April 1, 1981

- Beginning of funding for second year of Indian Child Welfare Act grants

Further grant information and application kits should be available through Bureau of Indian Affairs agency and area offices by mid October.

CRITERIA ARE HIGH FOR NAICJA INSTRUCTORS

Selection of quality instructors is a continual concern to the National American Indian Court Judges Association. The following criteria are employed. NAICJA Instructors must possess: 1) good knowledge of the law; 2) an understanding of Indian culture and the ability to adapt material to the Indian environment; and 3) good teaching skills.

Over 50 percent of NAICJA's instructors, for all its training programs, are Indian.



Technical Assistance Available to Tribal Courts

Tribal courts desiring technical assistance should make a written request to NAICJA's Washington office. The request should include a statement of the need and any pertinent background information. The name and position of the requesting party should be given along with the location and phone number of the tribal court involved.

NAICJA staff will contact the requesting party to make appropriate arrangements for assistance. Where necessary, on-site consultation visits may be arranged. Consultants will be selected by NAICJA in coordination with the requesting party.

NAICJA does not get involved with legislation either at the tribal or congressional level.

NAICJA

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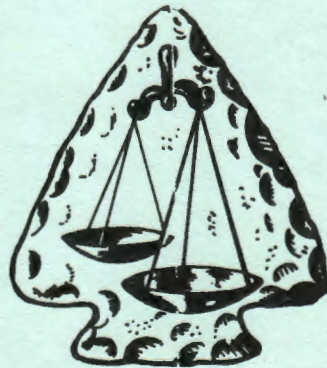
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**AN EVALUATION OF THE JUDICIAL TRAINING PROGRAM
OF THE NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION**



September, 1980

Prepared For

THE NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION
Suite 401-1000 Connecticut Avenue, NW, Washington, D.C.
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The National American Indian Court Judges Association contracted with SRI International of Menlo Park, California, to undertake an extensive evaluation of the Indian Court Judges Training Program funded by LEAA. Indian Court Judges and many others cooperated with the evaluators to enable them to reach objective conclusions as reflected in this report. Mr. Dwight K. Hunter who now has his own Research Company, in Pleasanton, California, was the Principal Consultant for the Project.

This study was funded in part by the Indian Justice Section of the Law Enforcement Assistance Administration of the United States Department of Justice. All judgements and opinions stated herein are those of the author and do not necessarily represent the sentiments of the above agencies or the National American Indian Court Judges Association.

I INTRODUCTION

The National American Indian Court Judges Association (NAICJA) was formed in 1968 by a small group of Indian court judges who were concerned about the impact of the Indian Civil Rights Act of 1968 (ICRA) upon the Indian communities and the courts. The Association announced its intent to enlist all American Indian court judges and to act to "improve the Indian court system and to upgrade their profession through the implementation of recommendations adopted after research is undertaken on specific matters."

Arrow, Incorporated, a private, non-profit corporation, which had funded and sponsored a number of training and leadership programs for native americans from 1965, agreed to provide the initial funding for NAICJA and to serve as a secretariat for the organization.

In 1970, the Law Enforcement Assistance Administration (LEAA) awarded the organization two grants; one for research on Indian court needs and the other for training Indian court judges. The Donner Foundation also provided the funds needed for a cash match of these two grants.

The early training sessions were held in several regional locations, and the judges convened once per month, on weekends to participate in their training. There were 76 presiding and associate judges trained in the first year.

From an evaluation standpoint, much would have been gained if a thorough study of the conditions of the Indian courts and the qualifications of Indian judges would have been made at that time, prior to the commencement of the training. This would have allowed the NAICJA or an outside evaluator to make assessments from time to time to determine the influence of NAICJA's programs on the judges and the courts. However, as is common in most training programs funded during that period, benchmark data were not gathered. Therefore this evaluation, performed 10 years after the fact depends on historical data, subjective assessment by participants and nonparticipants, testing, and professional observations to ascertain the impact of the NAICJA training on the judges and the quality of justice dispensed in the Indian courts.

The evaluators informed the NAICJA board at the beginning of the evaluation that the effort was not to be a "report card" evaluation done to the program, but instead it would be conducted like a management audit or operations research. As information was gathered and findings began to emerge, they would be briefed, so that they could raise questions and objections, give advice and make any changes in the program they desired to even

before the evaluation was completed. This is the manner in which the evaluation was carried out, and several key recommendations have been implemented earlier.

Both the NAICJA and representatives of Arrow, Inc. have been extremely helpful and cooperative in the evaluation, providing access to all financial and program records. Mailings of all information going to the judges, to LEAA, or other principals have been forwarded to the evaluators. Progress discussions with the board members have been received with interest, enthusiasm and a very healthy attitude of introspection. The individual judges that have been burdened by many questionnaires have been very cooperative in assisting in the evaluation with their judgments. Without their assistance, the evaluation could not have been successfully completed.

EXECUTIVE SUMMARY OF FINDINGS AND RECOMMENDATIONS

1. How Do the Judges Rate NAICJA Training?

They rate it very high on all aspects. On a scale of 1 to 4 with 1 being "good" and 4 being "poor", NAICJA training received a rating of 1.6.

2. How Do They Rate NAICJA's Training in Subject Matter?

This also was rated very high. On a scale of 1 to 6, NAICJA was given an average rating of 2.6 on 18 different subjects selected as "critical" by a panel of veteran Indian court judges.

3. Do the Judges Feel That They Have Received Enough Training in Criminal Law?

No they do not. Approximately 79% of the 100 judges polled indicated their need for more training on 14 criminal law subjects.

4. What Have the Judges Gained From the Training?

Most of them have indicated they have learned about proper court procedures and changes in the law. Many indicate an increase in their confidence, because of the knowledge they have received. Learning from other judges in the training sessions and knowledge of where to go for help were too other important gains the judges reported.

5. What Level of Knowledge Do the Judges Have as a Group

A criminal law exam (closed book) was given to 70 judges of different levels of experience and background, and 68% of them passed. They scored highest on jurisdiction and judicial conduct and lowest on the ICRA and Procedures.

6. Does the Training Make a Difference?

Yes it does, especially in specific subjects. A pre-test was administered to new judges, prior to criminal law training. The same test, with questions rearranged was given after their training. An increase of 100% was made in ICRA and 22% each in the role of a judge and jurisdiction.

7. Is There a Difference Between Trained and Untrained Judges?

Yes there is. A correlation of the scores judges got on the criminal law quiz with the number of training sessions they had attended showed a positive correlation.

8. Are the Judges Applying What They Learn at NAICJA Sessions?

Apparently they are, according to a sample survey of 10 reservations, where everyone but the judges were asked to assess the degree to which the courts on their reservation conform with a set of performance criteria developed by Hunter Research and a panel of veteran, Indian court judges. Prosecutors, defenders, clerks, police and others rated the courts and indicated that they generally adhere to the criteria.

9. How Does NAICJA Training Compare With Other Court Training

NAICJA compares favorably with the eight other court train-

ing programs funded in part by LEAA. All 9 programs share some of the same problems and weaknesses, but NAICJA training is rated higher by their trainees than are the other programs. Also NAICJA uses a much higher percentage of its training resources for direct services, rather than staff costs, and a lower cost per trainee than most of the others.

10. What Recommendations Does the Evaluator Make To NAICJA?

There are ten recommendations that have been made to NAICJA, and some of them have already been implemented. Most of these recommendations are dependent on NAICJA obtaining a steady source of funding.

1. The NAICJA Board needs some long planning sessions to develop their specific training objectives for who, what, when and how they wish to train the judges.
2. The NAICJA needs to develop a short range plan for stability in their funding, so that long range plans can be made and implemented.
3. Standardized lesson plans for the core NAICJA courses should developed, with learning objectives and Indian relevance built in.
4. NAICJA should continue to tighten its course offerings to fewer subjects, with more time and emphasis being given to those that are critical to the performance of the courts.
5. A curriculum brochure listing NAICJA's courses should be created and distributed to judges and tribal councils. It should list the subject, the contents, the level of difficulty, and the requirements for the trainees for each course.
6. NAICJA should re-introduce more variety into its training methods to maintain interest and stimulate learning.
7. NAICJA should continue to use testing as a part of its training, so that the judges and NAICJA will know what they are achieving on an on-going basis.
8. NAICJA should further develop its certification process as a means of certifying to tribal councils, reservation communities, state and federal courts, and the judges themselves, that they are proficient in specific subject areas.
9. Most of the training should be done in central locations, like the National Judicial College, since this is preferred by the majority of the judges.
10. NAICJA is understaffed and needs to increase capability for management, evaluation-research, and curriculum and training development.

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II DESCRIPTION OF THE INDIAN COURTS

A. Introduction

Tasks 1 and 2 of the evaluation dealt with documentation of the judicial environment in which the Indian courts operate. This includes the background of the judges themselves, in terms of their prior education and vocational experience, before becoming judges and coming in contact with the NAICJA training. It also included the organizational structure and physical environment of the courts, courtrooms, equipment, supplies and so forth.

The purpose was to separate out those aspects of a judges performance that can be attributeable to NAICJA training from those that are due to some other factor. For instance, an Indian court judge with a law degree and a number of years experience in the courts would be expected to need different types of training from NAICJA than would one with less background in the law. Likewise a judge who operates in a system with poor facilities, lack of support personnel and heavy influence of the tribal council probably cannot perform in the ideal manner that might be prescribed in NAICJA training.

The findings on the court environment and the background of the Indian court judges emanating from this evaluation are provided below.

B. Nearly 50% of the Judges Have Over 4 years of Experience

While the amount of turnover among judges has been discussed in much of the literature on the Indian courts, a random sample of 105 judges found that 53% had from a few months to 3 years of experience and 47% have 4 or more years of tenure. There are a core of nearly 21 judges of the sample group that were judges in the early years when NAICJA training began.

C. The Indian Courts are Growing and Changing

A review of the status of the Indian courts in a 30 month period from October 1977 through March of 1980 shows 28 courts were either created or re-established during that period. In 1977 there were 98 Indian courts identified on the records of NAICJA. In 1980 there were 126. This represents an increase of 29% and means that the absolute number of courts that could have their judges trained by NAICJA has increased substantially in the last 30 months.

During that same period, among all the courts, there was a net gain of 74 new judicial positions created. Some courts reduced the number of positions or never refilled a vacancy, but the net gain of 74 new judicial positions represents a 36% increase in the number of judges filling the new positions. What are the reasons for the new positions? Some are additional associate justices to handle increased caseload, some are juvenile

judges to specialize in that area, several are newly created appellate panels to handle appeals at the tribal level, and a few are pro tem judges who back up the sitting judges in times of vacations, illness or potential conflict on specific cases.

There were 43 courts in which at least one new chief justice was selected, who was not already an associate during the 30 month period. In most of the courts the chief justice was changed only once in the study period, but a visual inspection of Table 1 shows that in some courts, especially among the Pueblos, where annual elections are part of the selection process, the turnover has been 2 to 3 times among the chief justices.

In 25 courts there was a change in the chief judges position, but the manner in which it was made should not be considered to be turnover, since a chief justice and an associate have either changes places or the new chief had been an associate previously and was therefore eligible for NAICJA training.

The turnover among associate justices has been much higher with 55% of the courts experiencing turnover among their associates and 45% with no change. (see Table 1)

What impact does the growth and change have upon NAICJA? It means that the universe of judges that NAICJA desires to train is for the most part constantly changing. There were 98 courts and 202 judges known to the organization in 1977, but by the early part of 1980 there were 126 courts and 269 judges. The courts on a core of reservations show many years of stability in the tenure of their judges. The implications for NAICJA is that their training must take into account the latter group who have many years of experience and have participated in many training sessions sponsored by NAICJA. On the other hand, a steady flow of new judges will probably continue for several years, and the NAICJA will need to isolate the new judges and orient them to their new roles as soon as possible and in a concentrated fashion.

Turnover is Not Necessarily Bad

The issue of turnover among the judges should be addressed, because it is assumed to be a negative aspect of the Indian court. The argument as it relates to NAICJA is stated that because the turnover is high, relative to non-Indian courts, NAICJA efforts, costs and energy are wasted on judges that are only in their positions for a short time. This view is very simplistic and shortsighted. Other sides of the issue are:

- Among many of the Pueblos, persons elected as the administrators of the tribes are also the judges. This is done on an annual basis and results in a frequent turnover, but this is a part of the culture. While the advocates for turnover want to see stability in the same judges in their positions year after year, the Pueblo tradition provides opportunity for many community members to serve and bring

TABLE 1: ANALYSIS OF TURNOVER AMONG INDIAN COURT JUDGES
OVER A 30 MONTH PERIOD FROM 1977-1980

AREA AND COURT	NEW CHIEF JUSTICE	NEW ASSOCIATE JUSTICE	CHIEF JUSTICE ROTATED	NEW POSITION CREATED	NEW COURT CREATED
ABERDEEN					
1 Cheyenne River	-	1	-	1	-
2 Crow Creek	-	-	-	-	-
3 Flandreau	1	1	-	-	-
4 Fort Berthold	-	4	-	-	-
5 Fort Totten	-	-	1	1	-
6 Lake Traverse	-	1	-	-	-
7 Lower Brule	-	1	-	-	-
8 Omaha	-	-	-	2	-
9 Pine Ridge	2	4	-	2	-
10 Rosebud	-	1	1	-	-
11 Standing Rock	1	1	-	-	-
12 Turtle Mountain	1	1	-	1	-
13 Yankton	1	-	-	1	-
ALBUQUERQUE					
14 Nambe	1	1	1	2	-
15 Picuris	1	-	-	-1	-
16 Pojoaque	1	4	1	-1	-
17 San Ildefonso	3	2	-	1	-
18 San Juan	2	3	-	-2	-
19 Santa Clara	2	5	-	2	-
20 Taos	3	2	-	1	-
21 Tesuque	3	1	-	-	-
22 Acoma	-	-	-	-1	-
23 Cochiti	1	1	-	2	-
24 Isleta	-	4	1	1	-
25 Jemez	3	6	-	-	-
26 Laguna	1	2	1	1	-
27 Sandia	-	1	1	1	-
28 San Felipe	1	2	-	1	-
29 Santa Ana	-	1	-	-4	-
30 Santo Domingo	2	2	-	2	-
31 Zia	2	3	-	-1	-
32 Zuni	1	1	1	1	-
33 Ramah	-	1	1	-1	-
34 Jicarilla	-	2	-	-	-
35 Mescalero	1	-	1	2	-
36 Southern Ute	1	-	-	1	-
37 Ute Mountain	-	-	-	2	-
BILLINGS					
38 Blackfeet	-	5	1	-3	-
39 Crow	1	1	1	1	-

AREA AND COURT	NEW CHIEF JUSTICE	NEW ASSOCIATE JUSTICE	CHIEF JUSTICE ROTATED	NEW POSITION CREATED	NEW COURT CREATED
40 Flathead	-	3	-	-	-
41 Fort Belknap	-	-	-	-	-
42 Fort Peck	1	1	1	1	-
43 No. Cheyenne	-	1	1	-3	-
44 Rocky Boys	2	1	1	2	-
45 Wind River	-	1	-	1	-
ANADARKO					
46 West. Oklahoma	-	-	-	4	3
EASTERN					
47 Cattaraugus	-	-	1	7	1
48 Choctaw	-	-	-	1	-
49 Cherokee	-	-	-	2	1
MINNEAPOLIS					
50 Bay Mills	-	1	1	1	-
51 Fond du Lac	-	-	1	2	1
52 Nett Lake	-	-	1	-	-
53 Hannahville	1	-	-	1	-
54 Isabella	-	-	-	1	1
55 Lac Courte Or.	-	-	-	-	-
56 L'Anse	-	-	-	-	-
57 Leech Lake	-	-	-	-	-
58 Menominee	-	1	-	3	-
59 Red Lake	-	-	-	1	-
60 Sault Ste. Marie	-	-	-	1	1
61 White Earth	-	-	-	3	1
63 Bad River	-	-	-	1	1
64 Red Cliff	-	-	-	1	1
PHOENIX					
65 Ak Chin	-	-	-	1	1
66 Camp Verde	-	-	-	1	1
67 TeMoak	-	-	-	1	1
68 Battle Mtn.	-	-	-	-	-
69 Duck Valley	1	1	-	-	-
70 Duckwater	-	-	-	-	-
71 Elko	1	-	-	-	-
72 Fallon	-	-	-	1	1
73 Ft. Yuma	-	-	-	1	-
74 Colorado River	-	-	-	-	-
75 Fort McDowell	-	1	-	3	1
76 Fort Apache	-	-	-	2	1
77 Fort Mojave	-	-	-	1	-
78 Gila River	-	1	-	-1	-
79 Goshute	-	-	-	-	-

AREA AND COURT	NEW CHIEF JUSTICE	NEW ASSOCIATE JUSTICE	CHIEF JUSTICE ROTATED	NEW POSITION CREATED	NEW COURT CREATED
80 Havasupai	1	1	-	1	-
81 Hopi	-	1	1	3	-
82 Joint Use	-	-	1	-	-
83 Kaibab	-	-	-	1	1
84 Las Vegas	-	-	-	2	1
85 Lovelock	-	-	-	-1	-
86 Moapa	2	-	-	-	-
87 Uintah-Ouray	-	1	-	-	-
88 Papago	2	1	-	-	-
89 Pyramid Lake	1	-	-	-	-
90 Reno Sparks	-	-	1	1	-
91 Salt River	1	1	-	1	-
92 San Carlos	-	-	1	-	-
93 South Fork	-	-	-	-1	-
94 Washoe	-	-	-	-	-
95 Walker River	2	-	-	-1	-
96 Yavapai Pres.	-	-	-	1	1
97 Yerington	1	-	-	-1	-
98 Yomba	-	-	-	1	1
PORTLAND					
100 Burns Paiute	1	-	-	1	1
101 Coer d' Alene	-	1	-	-	-
102 Colville	1	1	-	-	-
103 Ft. Hall	1	2	-	-	-
104 Hoh	-	-	-	1	1
105 Kalispel	-	-	-	-	-
106 Lummi	-	-	-	-	-
107 Makah	-	-	-	-2	-
108 Muckleshoot	-	-	-	1	-
109 Port Gamble	1	1	-	1	-
110 Port Madison	-	-	-	-	-
111 Puyallup	-	-	-	-1	-
112 Quileute	-	-	-	1	-
113 Quinault	1	-	-	-3	-
114 Skagit System	1	-	-	2	1
115 Skokomish	1	-	-	-	-
116 Swinomish	1	-	-	-	-
117 Spokane	-	1	-	1	-
118 Tulalip	-	-	1	2	1
119 Kootenai	-	-	-	1	1
120 Umatilla	-	-	-	-	-
121 Warm Springs	-	-	-	-	-
122 Yakima	-	-	-	1	-
123 Annette Island	-	1	-	1	-
NAVAJO	-	3	1	-3	-

AREA AND COURT	NEW CHIEF JUSTICE	NEW ASSOCIATE JUSTICE	CHIEF JUSTICE ROTATED	NEW POSITION CREATED	NEW COURT CREATED
125 Hoopa Valley	-	-	-	5	1
126 Trinidad Ranch	-	-	-	-	1
Totals	60	93	25	74	28

new ideas into tribal government. In the long run, when one considers the large number of persons among the Pueblos that have received some training in the law by NAICJA since 1970, and the number of family and community members they influence, the result may be a more knowledgeable and law abiding community. In this regard, the crime rates among the Pueblos are lower than half of the other reservations in the country.*

- While the advocates of low turnover may wish to see stability among the judges being trained, the community and defendants probably hope that the judge who operates in their courtroom has as much training as is available. Any exposure to judicial training, no matter how brief, is probably preferable to trial and error.
- Some signs are beginning to appear that more stability in Indian courts is coming, influenced perhaps by what the judges have been learning in the NAICJA training. These signs are (1) the hiring of judges from outside the boundaries of reservations to reduce the appearance of conflict in specific cases, (2) the growing awareness of tribal councils of the benefits of an independent judiciary, and (3) consideration of election versus appointment of judges in courts that are being created or reformed.

D. Most of the Indian Courts Consider themselves to be Adversary in Structure With Cultural Application of the Laws.

Of the 90 judges who were asked to describe the type of court they operated within, 80% stated that their courts were a mixture of adversary structure and some procedures, mixed with tribal and traditional values. This view confirms the observation of NAICJA's Long Range Planning Study, that with the exception of some of the Pueblos and some subject matter, such as domestic relations and hunting and fishing cases, non-Indian procedures and adversary structures are generally adhered to.**

E. In What Directions Do the Judges Want Their Courts to Grow in the Future?

This question is critical to NAICJA, because one feels a certain ambivalence among the judges, regarding the overall training objectives of NAICJA. Should NAICJA be solely providing instruction and assistance to the judges in setting up model, adversary courts with prosecutors, defenders, discovery proceedings and other Anglo oriented procedures, or should instructions on strengthening traditional courts and procedures and cultural values in the community be provided as well.?

*Hunter, Dwight, Crime in Indian Country (not yet published), BIA, 1980, page 7

**NAICJA, Indian Courts and the Future, 1978, pp 42-43

Of the 84 judges who responded to the question of what direction their courts should evolve in the coming years 56% stated they liked the status quo, essentially a mixed system. Interestingly, 15% want their courts to become more Anglo, while the same percentage want theirs to become more traditional, and 13% are just not sure. This is an issue that each court and tribal council should consider.

Until a more formal consideration is forthcoming from the courts, the implications for the NAICJA are that the instruction should probably continue in improving the judges knowledge on adversary structures and procedures, but with more consideration of traditional values and methods of conflict resolution. Some of the courts are using pre-trial conferences to resolve issues, which are settled out of the formal court procedures in a traditional manner. For the most part, at present, little is said in the training about the traditional aspect of the court operations and, in fact, there is little discussion among the judges on how and when to utilize these methods in judicial performance.

F. Many Indian Court Facilities Appear to be Incomplete

Nearly every judge that was visited by the evaluation team as well as those queried by them had a courtroom, and most had judges chambers and clerks offices, but the other facilities of a court system are generally not available or are inadequate, such as space for juries. Although the number of jury trials in Indian courts is not yet large (238 jury trials in 1977), 64% of the judges indicated they had no place for a jury to be gathered or sequestered. The same was true of space for prosecutors and defense to have a place to confer with the principles in cases.

Separation of powers or at least the appearance of separation is a problem with respect to Indian court facilities in that 44% of the courts share facilities with law enforcement or tribal administration, 30% share personnel (usually clerks), 31% share equipment and supplies.

From the standpoint of professional development of the judges and the prestige of the Indian courts in and out of the community, the most glaring deficiency is in the area of law libraries and reference materials. The most common resources available to the judges are small bookshelves, with only a few of the NAICJA reference and training materials on them. This represents an on-going challenge to NAICJA, which has published 28 documents specifically for the use of the courts and clerks and has obtained and distributed 12 other volumes from other authors. With the turnover of judges, outgoing judges often take these documents with them when they leave office. Some of the judges stated to the evaluation team that they kept their offices locked at all times or took their most valued documents, especially the NAICJA bench books, home with them each day.

The lack of sufficient reference materials is a significant

problem for the judges and for NAICJA. One of the criticisms made by defenders and prosecutors among the reservations visited was that the judges do not write opinions or do legal research. Some of the judges were very pleased with the training they had received from NAICJA on legal research and opinion writing. They look forward to the time when all judges are writing opinions on significant cases, when a body of Indian court decisions will begin to be published and available for other judges consideration. Such decisions would demonstrate more than any other method, short of court watching, how Indian tradition, culture and values are integrated into the justice process and the quality of the Indian courts.

Is it feasible for the tribes or a funding agency to finance the development of a fully stocked and maintained legal library? The answer is "probably not", yet many of the courts are located some distance from library resources of other courts and educational institutions. Some borrow volumes from the legal aid offices or private attorneys, but these are not sufficiently complete. The Indian courts average 161 miles in distance from their respective U.S. attorneys offices, and 36 miles from the county seats, where library materials could be looked at. The distance is too great to facilitate daily reference.

A solution that might be explored is the use of computer terminals at the courts, which can be tied into an automated legal research system like the LEXIS service marketed by Mead Data Central or similar programs, which don't require purchase or maintenance of libraries at the reservation level, but still give the interested judge access to legal documents.

Of the judges queried on the adequacy of their facilities, nearly 67% felt their courtrooms, clerks facilities and chambers were adequate to good. While this is a subjective judgement, the evaluators observed a great disparity in facilities and equipment among the courts. Some were borrowing supplies and space from other agencies and paying court travel costs out of their own pockets, while others had very modern facilities, recording devices, paper shredders and modern sound systems. Some courtrooms were in need of significant repair, and some were so entwined with the busy operations of the law and order department, that the separation and respect needed for the courts were nearly impossible to obtain.

G. The Attitude of the Tribal Councils Seem to Determine the Degree to Which the Courts Have Adequate Resources

There is no empirical evidence to support this notion on a national basis, but in the limited site visits to 15 reservations, this was the impression left on the minds of the evaluators. Why did one court have excellent facilities, an annual operating budget, good equipment and the apparent support of the council, regardless of who was in power, while others are so sadly neglected? The one common thread found by the team was that where the tribal government was active in commercial activities,

they had found a strong need for legal structure and procedures in their dealing with mining or timber companies or recreational interests. In discussions with tribal chairmen or council members the court was a very vital part of their plans for developing and safeguarding tribal business ventures.

This observation also held true for reservations that were not so blessed in natural resources. In these locations if the tribal council was active in obtaining federal funds for schools, housing, tribal government facilities, and manufacturing concerns, then the council had also looked after the court by obtaining federal grants to improve their facilities and equipment.

The converse was true on reservations, where the courts had poor facilities and low levels of support from their council. In this context, the communities in general were not developing or being improved very quickly, and the court was equally underdeveloped. In these communities the courts operate under the most trying of circumstances, and high morale must be difficult to maintain. In these communities it appeared that councils had not yet seen the benefits to the community of a well developed and operated court system. An attitude of neglect and even antagonism was apparent in some places, with frequent turnover of judges, inadequate facilities and insufficient supplies, and intervention in the functions of the courts by council members, tribal attorneys and others.

H. The Court Environment Impacts the Degree to Which NAICJA Training Principles Can be Implemented

In evaluating the contributions of NAICJA's programs to reservation justice, one might compare NAICJA materials and the principles they project with the manner in which the court system is conducted. In doing so, one might be misled to the conclusion that if practice doesn't conform with the training, that the training is not effective. This is not necessarily true.

For instance, on the matter of separation of powers, a doctrine stressed in the training, many of the tribal constitutions and codes do not enable such separation, and acting more independent than the council would like has shortened the tenure of some very capable judges. Of the 91 judges that responded to the question, 44% stated that they receive pressure from the council in the form of complaints, threats of firing, holding back court funds, or other methods.

In the same vein, if one finds a court that is backlogged in its filings versus disposition, a conclusion can be reached again that the courts have not been trained properly, but in cases where this condition was found, training was not the problem at all. Instead the council had not granted (even though the courts had made repeated requests) sufficient personnel, supplies, or facilities for conducting the courts business in a more timely manner. Many of the other factors, besides NAICJA training that impact the performance of the Indian courts are identified in

Figure 1. Consequently, the NAICJA instructors can present and even advocate certain standards of performance to the judges, but each judge must adopt, adapt or modify the doctrine according to their environment and what they can or are allowed to do.

JUDICIAL BACKGROUND

Education
Experience
Abilities
Attitudes

TRIBAL LEGACY

Traditions
Culture conflict

LEGAL STRUCTURES

Tribal Government
Court Structure
Codes, laws

TRIBAL-COURT
RELATIONS

Power separation
Judicial selection
Resource Commitment

FEDERAL LAWS AND
REGULATIONS

Legislation
Case law
Regulations
Grant programs

ANGLO COMMUNITY
RELATIONS

Community attitudes
Law enforcement
Comity
Full faith & credit
Agency respect

COURT SUPPORT

Facilities
Personnel
Equipment
Resources



NAICJA TRAINING PROGRAM

Criminal law
Criminal Procedure
Civil Law
Civil Procedures
Juvenile Procedures
Child Welfare/Family Law
Etc.



JUDICIAL PERFORMANCE

Knowledge
Competence
Fairness
Legality
In court
In community
Etc.



FIGURE 1: FACTORS OTHER THAN NAICJA TRAINING THAT IMPACT A JUDGES PERFORMANCE IN THE COURT AND COMMUNITY

III DESCRIPTION OF THE NAICJA JUDICIAL TRAINING PROGRAM

A. Determining Training Needs

In the beginning and since that time the NAICJA Board, staff and the judges have collaborated on determining the training needs of the Indian court judges. Questionnaires have been used to determine specific subjects in which the judges would like to be trained and the different training methods they prefer.

The rationale for the formation of the NAICJA in 1968 was the concern over the impact of the Indian Civil Rights Act of 1968 on the community and the courts. As other legislative or Supreme court decisions have emerged, such as the Indian Child Welfare Act and the Oliphant and Martinez decisions, the NAICJA has acted quickly to address them in their training programs.

In the April, 1979 session and again in the June, 1979 sessions the judges were asked to indicate their priorities among a number of subjects.

A review of the 8 non-Indian training programs evaluated by LEAA shows that two of them survey their trainees for this information and the rest use informal means, such as staff meetings, discussions with prominent persons, etc.

During the NAICJA evaluation, a panel of experienced judges (none of them NAICJA Board members) were selected by the President and were asked to select from among a list of criminal and civil subjects to determine the most important subjects that a judge needs to know. The results are shown in Table 2, where the subjects with the higher scores are deemed to be the most critical to the judges.

In general, the training provided to the judges is based on the elements and procedures of the Anglo Saxon system, with adversary structure and discovery procedures. While the instructors that are expert in the law, procedures and aware of the reservation environment are able to adapt the former to the latter, instructors that are not knowledgeable of Indian affairs present the material, and the judges then have to make the application. The selection of instructors with (1) good teach skills, (2) good knowledge of the law, and (3) ability to adapt the material to the Indian environment is a continual concern of NAICJA.

Little training or emphasis is given to traditional or customary methods of dealing with disputes or violations. While there are 16 courts characterized as being "traditional" in their structure and operation, the majority of the judges (80%) feel they are able to blend traditional and cultural values with their adversary structure and procedures. Yet few examples of how that takes place are evident, except in out of court, or informal-in-court settlements, and the use of the native tongue in many courts. A small proportion of the judges (15%) said they would like to see their courts become more traditional in structure and

**TABLE 2: RELATIVE IMPORTANCE OF DIFFERENT TRAINING SUBJECTS
AS DETERMINED BY A PANEL OF INDIAN COURT JUDGES**

The 21 experienced judges were asked to rate each of the subjects below as to whether they were (1) critical, (2) important, (3) helpful, or (4) not very important. Numerical values were assigned to each rating and the totals are as follows: The judges were also asked to add any subjects not on the list.

LAWS, ORDINANCES, STATUTES

Tribal codes, laws, etc.....110
 State laws and ordinances..... 82
 Federal Statutes, regulations. 92
 State-Federal decisions..... 88

INDIAN COURT JURISDICTION

Indians and non-Indians..... 87
 Criminal matters.....106
 Traffic..... 97
 Fish and Game.....100
 Civil matters.....104
 Child and family welfare.....108

INDIAN CIVIL RIGHTS

Indian Civil Rights Act..... 98
 Warrants, searches, arrests...100

JUVENILECRIME AND DELINQUENCY

Hearings..... 98
 Dispositions, orders.....102

ELEMENTS OF CRIMES-DEFENSES

Major Crimes..... 88
 Alcohol Related Crimes..... 90
 Other Crimes..... 86

GENERAL TRIAL PROCEDURES

Arraignments, pre-trial..... 92
 The order of a trial..... 90
 Judges role in trials.....102
 Enpaneling-instructing jury...108
 Swearing in, exam. of witness. 94
 Defense motions, challenges...106
 Attorneys in the courtroom.... 97
 Jury verdicts, judge decision.100
 Orders, decrees, sentencing...104
 Appeals at tribal level.....104
 Appeals to federal courts..... 96

INDIAN COURT RELATIONSHIPS

Tribal councils and the court...106
 BIA, IHS, federal agencies..... 92
 Federal prosecutors, solicitors. 94
 State courts, comity.....100

DOMESTIC RELATIONSHIPS

Marriage, annulment, divorce.... 81
 Child abuse and neglect.....102
 Child placement.....100
 Adoption..... 98
 Paternity suits..... 94
 Tribal enrollment..... 94
 Competency hearings..... 89
 Guardianship, legal custody..... 92

RULES OF EVIDENCE

Relevance of evidence.....100
 Materiality of evidence..... 96
 Degree of proof required..... 98
 Hearsay evidence..... 93
 Exclusion of evidence..... 90

COURT MANAGEMENT

Facilities,equipment, personnel..106
 Personnel Management.....100
 Court records, reporting.....104
 Budgeting, fiscal management....102

JUDICIAL SKILL DEVELOPMENT

Legal research..... 94
 Writing legal opinions.....106
 Establishing a law library..... 96
 Alcohol-drug dependency cases... 92
 Mental incapacity cases..... 96

procedure. Should some NAICJA training be addressed specifically to this group and the 16 traditional tribes? This is a well known, but unresolved issue for NAICJA. There has been some criticism of NAICJA in this regard, but the demand had not been established.

B. Development of Lesson Plans and Instructional Methods

After the curriculum for a training session has been determined, the instructional method, selection of instructors and methods of training are determined collegially by the NAICJA Board, staff and the two senior instructors, Professor Ralph Johnson and Robert Bennett. NAICJA endeavors to obtain persons to instruct that have knowledge and experience with Indian courts and Indian affairs. Sometimes the instructors they have selected and depended upon have dropped out at the last minute, leaving NAICJA with the problem of finding someone else of equal ability or substituting persons with less background.

The lesson plans are dependent upon whomever has been selected as the instructors. There is no requirement that instructors submit their lesson outlines early for review. In the earlier years the training sessions included quite a variety of teaching approaches, such as video taping and critique, role playing, panel discussion and moot court. In the last several years the plenary session lecture, followed by small group discussions has been used almost exclusively.

This is also true of the other 8 comparison, non-Indian court training programs. Only 2 of the programs used methods other than lecture and discussion to any degree. Three of them require the instructors to submit lesson outlines from 60-90 days ahead of the training session.

C. Selection of Trainees

In the early years, the training was focused upon Chief Justices, until a demand was found for the associate judges to be included in the training. Over the years as a need has been discovered by NAICJA to extend the training to other groups that are critical to the operation of the courts, courses have been developed to meet the need. Cases in point are the training sessions to which the clerks of the Indian courts have been invited, those for BIA and tribal social service workers and joint sessions for tribal chairmen, governors and tribal council members.*

In the beginning, persons that expressed an interest were invited, including many tribal leaders from tribes which had no courts but were interested in forming one. In later years, due to funding restrictions, the project director selects those who he feels should attend each session. In many instances persons that have not been invited, learn of the session and will request

*Many clerk training sessions have been sponsored by NAICJA, and a clerks association has been formed, independent of NAICJA.

permission to attend and NAICJA re-imbusement of approved costs. Most of the latter group are persons that were not originally invited, because (1) they had already attended several sessions on the upcoming subject, or (2) they were not invited because one or more judges had already been invited from their court.

Assisted by the Arrow Secretariat, the Project Director sends invitations to the group of judges who are most in need. As soon as it is known how many will attend, additional judges are invited from back-up lists of judges with lesser needs, until the session is full.

The number of persons invited depends on the state of NAICJA finances at the time and the scope of the training. Some sessions will be focused upon one group of judges, such as those with less than one year experience, in which case the number of trainees will be 25-35. Other sessions will be of general interest, such as those dealing with family law and child welfare, in which case 65-100 judges and non-judges may attend.

IV MANAGEMENT AND ORGANIZATIONAL STRUCTURE OF NAICJA

A. Policy Making and Administration

The policy setting functions for guiding the NAICJA organization are performed by the NAICJA Board, assisted by the Steering Committee and Alternate Steering Committee. These are composed exclusively of Indian court judges, most of whom have years of experience.

Board and steering committee meetings are held frequently, often in conjunction with the training sessions, so as to minimize travel expenses. The meetings are conducted by the President, Judge Cranston Hawley or the Vice President, Judge Lawrence Miller, in the President's absence.

A carefully prepared and usually lengthy agenda of matters are considered at each meeting, with the meeting packets having been mailed out by the Arrow Secretariat-NAICJA staff, ahead of time. Matters of business are thoroughly discussed, with those that require additional consideration being carried over to the next meeting or assigned to an ad hoc committee appointed for specific purposes

The role of Arrow, Inc. has been a significant one for NAICJA, in that this organization assisted in the formation of the group in 1968 and was the sole funder of the earliest training and organizational efforts. Each year the NAICJA has passed a resolution assigning Arrow to continue as the Secretariat for the organization. Under this arrangement Arrow provides the following services to NAICJA:

1. Financial services and program management
2. The Executive Director of Arrow, Mr. E. Thomas Colosimo, serves as the Finance/Corporate Officer of NAICJA.
3. Make certain NAICJA complies with reasonable and appropriate regulations required by funding agencies as well as all legal requirements.
4. Arrow will provide an independent audit by a CPA of NAICJA books and records.
5. Indians will be given employment preference in selection of staff

B. Roles in the Conduct of NAICJA Programs

Grants management and overall management of NAICJA programs is handled through the Arrow secretariat, with guidance and input from the NAICJA board and the instructors. The same is true of the administration of the program office in Washington, D.C., which is co-located in the Arrow, Inc. headquarters.

The board approves of training curricula and methods, but the majority of course outlines and materials preparation for the training is performed by Professor Johnson and Bob Bennett, with assistance from the NAICJA Staff. Individual instructors, other

than Mr. Johnson and Mr Bennett prepare their own outlines and often bring their own handouts to the training sessions. When the training is conducted in the facilities of the National Judicial College in Reno, that organization generally contracts to prepare all folders and handout materials.

Preparations for the trainings session are a joint effort between the NAICJA staff and the President of NAICJA, Judge Hawley. The management of the training sessions is primarily handled by the President, assisted by Mr. Johnson and Mr. Bennett.

The marketing of NAICJA programs, both to the Indian court judges and to potential funders is mostly undertaken by the NAICJA staff, with assistance from individual board members and the senior instructors, Johnson and Bennett. Many contacts by letter, telephone and invitations to NAICJA activities are extended by Mr. Colosimo to congressional members, administration officials and representatives of federal agencies and foundations.

Evaluation is done informally by the senior instructors who submit memorandums as well as verbal comments on the training and training needs to the board and the Secretariat. Instructor evaluation sheets are passed out at most training sessions, but are not formally analyzed and interpreted.

V HOW THE JUDGES RATE THE NAICJA TRAINING PROGRAMS

A. Introduction

The attitudes of the judges toward the training programs were obtained through several methods. All questionnaires that NAICJA had distributed over the years to the trainees, which asked for the judges assessments were analyzed as were all NAICJA minutes and correspondence files from 1968 through 1980.

Assessment instruments were distributed at the training sessions to approximately 40 judges at the training sessions. An additional 20 judges were queried on site, when the evaluation team visited.

These 60 judges were asked to give their assessment of the NAICJA training programs. The results are presented and analyzed below.

B. Judges' Overall Assessment of NAICJA Training is High

A random sample of 60 judges were asked to assess the quality of the NAICJA training approach by responding to a series of questions. They rated each aspect of the NAICJA training program on a scale of good, alright, fair or poor. Numerical scores were given to these opinions, so that the overall judgement could be calculated. The results are shown below in Table 3.

TABLE 13: THE JUDGES' OVERALL RATING OF NAICJA TRAINING

QUESTIONS JUDGES WERE ASKED	GOOD	ALRIGHT	FAIR	POOR	TOTAL
	1	2	3	4	SCORE
1. Do you feel the subjects you need to learn about are the ones being taught and discussed?	—				1.5
2. Is the training adapted to your circumstances in your court and reservations?	—				1.8
3. Do you leave each training session with ideas, skills, and techniques that you can use in your judicial functions?	—				1.4
4. Do NAICJA training sessions and written materials provide your BEST source of information on the law and the judicial function?	—				1.4
5. Would you say that you FULLY UNDERSTAND the concepts being taught in the NAICJA training?	—				1.8

The scores on the far right indicate the overall assessment by the judges. All of them are between "alright" and "good", which is a positive assessment of these aspects of the program. On these elements, the judges rated NAICJA's training higher than did the trainees of the 8 other programs evaluated by the LEAA.

C. NAICJA "Critical Subjects" Training is Rated Fairly High

A closer look was taken at the curricula NAICJA teaches to determine how well they present the subjects that are critical for a judge to know. The ad hoc panel of judges referenced above identified the "critical" subjects. Then approximately 50 judges randomly selected were asked to rate NAICJA training in those subjects. Their responses are shown in Table 4.

TABLE 4: JUDGES' RATING OF NAICJA TRAINING BY SUBJECT

TRAINING SUBJECTS	VERY GOOD		AVERAGE		POOR		TOTAL SCORE
	1	2	3	4	5	6	
1. LAWS AND COURT DECISIONS	██████████						2.0
2. JURISDICTION OF INDIAN COURTS							
Over criminal matters	██████████						2.1
Over fish and game matters			██████████				2.9
Over civil matters	██████████						2.1
In child and family matters		██████████					2.3
3. INDIAN CIVIL RIGHTS							
Indian Civil Rights Act of 1968	██████████						2.1
Warrants, searches, arrests	██████████						2.2
4. GENERAL TRIAL PROCEDURES							
Enpaneling-instructing a jury			██████████				3.0
Defense motions, challenges			██████████				3.0
Sentences, orders, decrees			██████████				2.7
Tribal court appeals			██████████				3.0
5. COURT-COUNCIL RELATIONS							
			██████████				2.7
6. DOMESTIC RELATIONS							
Child abuse		██████████					2.3
Adoption			██████████				2.7
7. COURT MANAGEMENT							
Securing facilities, equip.,			██████████				3.0
Personnel Management			██████████				3.0
Court records and reporting			██████████				2.5
8. WRITING LEGAL OPINIONS							
			██████████				3.0
Average			██████████				2.6

A score of 3.5 would represent an "average" rating for these subjects in that it lies half way between 1 and 6. The rating of 2.6 is better than average. The evaluation on the other eight training programs did not assess the adequacy of subject matter coverage by specific subject, so comparison is not possible.

D. The Majority of the Judges Want More Training on Selected Subjects

A relatively small minority of judges feel they have received sufficient training in selected subjects. The results are shown in Table 5, where the responses of nearly 100 judges are shown.

TABLE 5: HAVE YOU RECEIVED ENOUGH TRAINING?

TRAINING SUBJECTS	HAD ENOUGH NO.	NEED MORE NO.	RECIEVED NONE NO.	PERCENTAGE WANTING MORE
Jurisdiction	22	47	8	71%
Indian civil Rights	26	61	8	73%
Trial Procedures	20	69	7	79%
Evidence	15	71	10	84%
Elements of crimes-defenses	18	61	16	81%
Motions and Challenges	12	74	12	88%
Sentencing	34	50	7	63%
Appellate Procedures	17	63	18	83%
Tribal Sovereignty	22	64	13	78%
Tribal Council and the Courts	29	57	11	70%
Juvenile Law	13	72	12	87%
Major Crimes	18	57	16	80%
Legal Research and Opinions	13	59	25	87%
State Laws and Comity	19	57	22	81%
Average	20	62	13	79%

The above are the perceptions of the judges as to whether they have received sufficient training in the various subjects. Counting the judges that have received no training, a large number of judges want additional training. A good method for determining how well versed the individual judges are these subjects would be to provide some feedback to them through some type of testing, since their actual knowledge may or may not match with their perceptions of knowledge.

E. Judges Report Gains in Knowledge and Confidence From NAICJA Training Programs

The judges were asked an open ended, essay type question in the training sessions and in the on-site visits to indicate how NAICJA training had helped them in their roles as a judge. Their responses are grouped in unscientific fashion in Table 6. The numbers in parentheses (33) following each item are the numbers of judges making a similar comment.

TABLE 6: HOW HAS NAICJA TRAINING HELPED YOU?

<u>GAINING KNOWLEDGE</u>	<u>CHANGES IN OUR COURT SYSTEM</u>
Court procedures (33)*	Change court procedures (33)
Changes in the Laws (30)	Upgrade our courts (2)
Reading materials (17)	Established our court (1)
General knowledge (15)	
Case Decisions (6)	
Jurisdiction (4)	
Evidence (2)	
Indian viewpoint (1)	
Major Crimes (1)	<u>JUDICIAL PERFORMANCE</u>
ICRA of 1968 (1)	Raise Judges' confidence (28)
How Anglo system works (1)	Learn from other judges (23)
	Learn where to get help (6)

*Number of judges mentioning each item

VI HOW MUCH KNOWLEDGE DO THE JUDGES GAIN FROM THE TRAINING?

The judges were given a quiz on the fundamental of criminal law in Indian country. The questions were prepared by the evaluator and reviewed by one of the senior instructors to ensure that the questions, answers and subjects were consistent with what had been taught in the training. The instructions attempted to eliminate guessing, by telling the judges that the training program, not the judges was being tested, and that they should mark "I'm not certain" in the multiple choice answers if they were not sure of the answer. To further discourage guessing, the responses "all of the above" and "none of the above" were included with each question.

A. The Judges Score High on Jurisdiction and Judicial Conduct

Approximately 70 judges took the ungraded exam on Indian criminal law. Their total scores show a wide range in their understanding among the different subjects. The results are as follows:

TABLE 7: OVERALL SCORES ON INDIAN CRIMINAL LAW

SUBJECT AREAS	QUESTIONS	PERCENTAGE CORRECT
ROLE OF JUDGE	8	71%
PROCEDURES	7	64%
JUDICIAL CONDUCT	5	78%
ICRA of 1968	8	48%
JURISDICTION	6	87%
Total	34	68%

The judges seem to have a fairly good understanding of the jurisdictional issues, (at least those included in the questionnaire) and those on judicial conduct in the court and in the community. The judges scored less well in trial procedures and the Indian Civil Rights Act of 1968. It should be noted that the questions were administered in closed book form, and the judges had no advance warning or preparations time. They answered the questions on the basis of what they knew. They may well have scored higher if they had prepared or if they had access to reference materials.

If the judges exams had been graded in the non-curve method, 64% of the judges would have received a passing grade.

B. The Judges Make Significant Gains in Some Subjects Due to the NAICJA training

In order to isolate the educational impact of NAICJA training and to measure the amount of knowledge the judges gain from the training, the evaluator administered the same criminal law questions to a group of 16 new judges (in office less than 1

year). This was conducted at the NAICJA training session in Albuquerque in February of 1980. On the first day of the criminal law training session, before any instruction had taken place, the questionnaire was administered. The instructors had reviewed the questions, and those for which no training was planned were dropped out of the exam. After 4 days of instruction in Indian criminal law, the judges were administered the same questions, but in a different sequence. They had not been told the correct answers on either occasion. The results are interesting, because they show large gains in some subject areas and less in others, suggesting either that the training was not as clear in one subject as in another or that some of the subjects are very complex and require more time and attention. In any event the overall gain in knowledge of all the judges appears to be significant.*

TABLE 8 : KNOWLEDGE GAINS BY SUBJECT MATTER

SUBJECT MATTER	PRE-TEST SCORE	POST TEST SCORE	PERCENTAGE GAIN IN JUDGES' SCORE
Role of the Judge	60%	73%	+ 22%
Trial Procedures	42%	67%	+ 16%
Judicial Conduct	64%	66%	+ 3%
Indian Civil Rights	29%	58%	+100%
Jurisdiction	60%	73%	+ 22%
All Judges and Subjects	49%	65%	+ 33%

C. Is There a Significant Difference in Knowledge Between the Trained and Untrained Judges?

Yes, even with a number of law trained judges, who had not received NAICJA training, there is a statistically significant difference between the trained and the untrained judges. Using a Z test methodology for comparing judges with from 0-4 NAICJA training sessions with judges having more than 4 sessions, the more highly trained judges scored higher at a 90% confidence level than would be likely due to chance.

Further analysis and extraction of judges with law degrees will probably show the difference between NAICJA trained and the untrained or minimally trained judges to be even stronger.

* Using a T-ratio test for non-independent means, the gains made in the post test were statistically very significant. A T-score of 2.947 was required at the 99% confidence level, and the analysis produced a T-score of 12.0900.

VII WHAT HAS THE IMPACT OF NAICJA PROGRAMS BEEN ON THE INDIAN COURTS AND THE COMMUNITIES?

A. Introduction

From the beginning this has been the most elusive and troublesome aspect of the study. It was presumed by some that a visit to the reservation courts could reveal objective information that would demonstrate the impact of the NAICJA training. The evaluator's experience with the workload and records system of several courts, suggested that this would be difficult to do.

Nonetheless a sample of 15 courts were selected to visit, based upon their approximate representativeness to the rest of the courts. Population size, workload, geography, and previous visit data from (1) the long range planning study of NAICJA, (2) the 1977 survey of AILTP and (3) the 1977 survey of Doug Robinson of LEAA, and the number of trained and untrained judges were among the selection criteria.

The evaluators went to the reservations looking for objective and subjective evidence of NAICJA impact. The results of their assessment are discussed below:

B. NAICJA Training Materials are Generally in Evidence

The NAICJA has produced and distributed approximately 40 documents and training aids, most of their own creation, over the 10 years they have been training the judges. NAICJA sponsored volumes constitute the major portion of the scanty library and resource materials most judges have access to. The most valuable items found in nearly all reservations were the criminal law bench book, and the bench book for family law and child welfare. Many of the textbook, reference materials NAICJA has distributed over the years were not in evidence.

Some of the judges provided the reasons for this, namely that with a turnover in judges, previous judges had taken the materials with them, when they left office. In some instances the judges keep their materials at home for individual study and safekeeping. The evaluators sat in (hopefully unobtrusively) in arraignments or trials on nearly every reservations. In the majority of instances, the judges read from or referred to the bench books of NAICJA. The visits preceded the distribution of the Civil Law bench book, at least they were not in evidence, nor known of by any of the judges.

C. Record Keeping Systems on Sample Reservations are Not Set Up to Provide Workload Data

While case files, dockets, court orders, fine ledgers and other work records of the courts are generally current and organized (although there is wide variation of systems), most of the courts visited do not keep annual reports on the number of cases filed, numbers disposed of, types of dispositions, appeals

to tribal court, appeals to federal court, jury trials, and so forth. It had been hoped that such information would be available, especially appeal data, that might indicate the reasons for reversals, if any, of trial court decisions. If reversals were due to defects in the trial court procedures, rather than errors in the police procedures or tribal codes and constitutions, one might make the supposition that the NAICJA training was or was not improving the performance of the courts. However the records of appellate numbers and results are not readily available, and the impression gained by the evaluators is that there are not very many. (AILTP reports 213 appeals at the tribal court level in 1977 for 93 Indian courts.)

The exception to the lack of reporting are those courts under a 638 contract that are required to make regular workload reports.

There are several other areas of need in the recording and reporting area. The BIA Division of Law Enforcement Services in past required law and order departments to record dispositions on individual cases. These dispositions were dropped because of insufficient recording by the courts. All courts visited do make a record of dispositions in the case files and in several other places, but most do not report back to the police department for their rap sheets, with the exception of release and custody orders. The clerks usually stated that the officers could come up and look at the record if they were interested, or that many of them knew the outcome of the case, because of their presence in the court.

Another serious problem (not in magnitude, but in its impact upon the community) are the major crime cases that are declined by the U.S. Attorney. In theory those cases when declined can and should be brought back and tried as a lesser offenses in the Indian court. There is little information about the number of these cases, nor how many actually come back and enter into the system. The BIA Special Officer usually has a record of how many were declined, but not what happened to them. This information was sought because declinations have long been a problem and the reasons for declination might have some bearing on the respect of the federal attorneys for the Indian courts.

Table 9 shows the high percentage of major crimes that were declined by the U.S. attorneys in Indian country in 1978. These cases do not enter the Indian court system as reduced charges unless they enter as a complaint from the law and order department. How many are being brought back to the Indian courts are not known, nor are they flagged as such, when they are brought in.

TABLE 9: MAJOR CRIMES DECLINED BY U.S. ATTORNEYS--1978

BIA AREA	1978 MAJOR CRIMES	MAJOR CRIMES CLEARED	PER CENT CLEARED	MAJOR CRIMES TRIED	MAJOR CASES DECLINED	% CLEARED CASES DECLINED
Aberdeen	814	449	55%	166	283	63%
Albuquerque	311	133	43%	78	55	41%
Anadarko	1	1	100%	1	0	0
Billings	348	185	53%	86	99	54%
Eastern	64	34	53%	6	28	82%
Juneau	17	4	24%	1	3	75%
Minneapolis	228	158	69%	60	98	62%
Navajo	1,373	608	44%	70	538	89%
Phoenix	678	323	48%	124	199	62%
Portland	693	278	40%	101	177	64%
Total	4,527	2,173	48%	693	1,480	68%

D. The Judges Call Upon NAICJA Instructors and Other NAICJA Judges for Assistance

The judges were given a multiple choice list of persons they go to regularly for assistance on legal matters. There were 41 judges that indicated they usually contact NAICJA instructors or other Indian court judges for information and assistance. The judges stated that prior to NAICJA sessions, they knew only a few judges from neighboring reservations. After participating in the training, they felt they knew the instructors and many of their peers well enough to call and ask for advice.

Next in order of contacts for assistance were tribal attorneys, the U.S. Solicitor, and the U.S. Attorney.

As was shown earlier, the judges rated NAICJA very highly as the best source of information they have on the law and the judicial function.

E. How Does Judicial Performance Compare with Training Principles

Without concrete data to conclusively prove the impact of NAICJA's training on the behavior and performance of the Indian Courts, the evaluators looked for subjective clues. A meeting was held at each site with the judges, prosecutors, defenders, police chiefs, BIA special officers, court clerks, law and order committee representatives, and in many cases members of the tribal council. The purpose of the study was explained as was the evaluation team's desire for objectivity on its part. The judges were asked a number of questions regarding the NAICJA program, the attitude of the community toward the court, and the court's relationship with state courts in the vicinity.

Persons other than the judges were asked to respond to a number of standards on "How a judge should perform his/her judicial function. These standards were developed by the study

team with assistance from the ad hoc panel of Indian court judges. The standards were further reviewed by one of the senior instructors to make certain that the standards complied with the principles being taught in the NAICJA training. Those that did not conform, and those that were not absolute were dropped from the standards.

Obviously in an adversary system of justice some of the actors will probably have judgements about the court that reflect their interest in how justice is carried out. The police might be expected to have a different view than the defenders or the clerks, for instance.

The evaluators stressed that they were not evaluating the judges, but NAICJA's impact upon the courts. Therefore the reservation officials were asked to assess the performance of the courts, not individual judges.

Using the 16 standards of performance for Indian courts, the performance of the 10 courts were rated by knowledgeable persons on the reservation other than the judges. Their collective responses are found in Table 10, where on a scale of from 1 to 3 with 1.0 meaning the courts always meet the criteria, "2" meaning the sometimes do, and "3" meaning they never do, all respondents on all 10 reservations rated the judges at a 1.8 or somewhere between always and sometimes. In Table 11 the responses are broken down by the respondents position in the justice system. i.e., the police, prosecutors, clerks, and others (defense, tribal council members, law and order committee members). It is not surprising that the police rate the courts lower than do the clerks and others. The prosecutors who should have the same goals in specific cases as the police give the courts a higher rating.

This assessment indicates that for the 10 sample courts, at least, the courts are generally performing their roles in the courts and the community in conformance with the NAICJA principles. It can not be proven that the NAICJA training is the reason for this, but that assumption is compelling.

To further distinguish the impacts of the NAICJA training on the performance of the judges, the evaluators might have had the respondents assess each of the judges. Then a difference between the trained and the untrained, if any, could be determined. The evaluators did not penetrate any further, because (1) it would have exceeded the researchers authority and (2) might have fomented negative feelings among the court, police, clerks, etc. As it was, extreme caution was taken to make certain individual judges were not discussed by the respondents, when interviewed.

TABLE 10: ASSESSMENT OF JUDICIAL PERFORMANCE BY OTHER JUSTICE SYSTEM OFFICIALS ON 10 SAMPLE RESERVATIONS

PERFORMANCE CRITERIA	MEETS STANDARD	MEETS IT SOMETIMES	DOESN'T MEET
	1.....	2.....	3
1. The judge withdraws from any case in which he/she is closely related to the principles by blood, marriage or business	(1.5)		
2. The judge NEVER confers with the police or prosecution on specific cases outside the court	(2.1)		
3. The judge NEVER confers with the defendant or counsel on specific cases, outside the court	(2.0)		
4. If there is no prosecutor, or an ineffective one, the judge MAY assist in the inquiry	(2.2)		
5. If a defendant cannot afford counsel and needs one, the judge MAY assist	(1.8)		
6. The judge is fair and impartial	(1.8)		
7. The judge is well organized, confident and clear in his/her instructions to principals and the jury	(1.9)		
8. The judge is firm, but polite in conducting court	(1.8)		
9. The judge always acts in an exemplary and respectable way in the community	(1.5)		
10 The judge never takes an active role in political activities (except Pueblos) on or off the reservation	(1.5)		
11 The judge maintains strict separation of powers between the courts and Council	(1.8)		
12 The judge doesn't allow the council to influence the outcome of specific cases	(1.7)		

MEETS MEETS IT DOESN'T
 STANDARDS SOMETIMES MEET
 1.....2.....3

PERFORMANCE CRITERIA

13. The judge always strives to learn the job through training, self study, etc.

(1.8)

14. The court subscribes to professional journals, newsletters, etc. to keep current

(1.7)

15. The judge strives to secure adequate facilities, equipment, and personnel for the court

(1.7)

16. The judge oversees the operation and management of the court

(1.5)

OVERALL AVERAGE ASSESSMENT

1.8

TABLE 11: ASSESSMENT OF JUDICIAL PERFORMANCE BY OTHER JUSTICE SYSTEM OFFICIALS ON 10 SAMPLE RESERVATIONS

PERFORMANCE CRITERIA	RATINGS BY THESE GROUPS			
	POLICE	PROSEC.	CLERKS	OTHERS
1. The judge withdraws from any case in which he/she is closely related to the principles by blood, marriage or business	1.6	1.0	1.9	1.3
2. The judge NEVER confers with the police or prosecution on specific cases outside the court	2.0	1.4	2.2	2.7
3. The judge NEVER confers with the defendant or counsel on specific cases, outside the court	2.3	1.6	1.9	2.2
4. If there is no prosecutor, or an ineffective one, the judge MAY assist in the inquiry	2.2	2.2	2.2	2.2
5. If a defendant cannot afford counsel and needs one, the judge MAY assist	1.8	1.8	1.7	1.8
6. The judge is fair and impartial	2.0	1.2	1.9	2.0
7. The judge is well organized, confident and clear in his/her instructions to principals and the jury	1.8	1.6	1.8	2.3
8. The judge is firm, but polite in conducting court	2.0	1.4	1.9	2.0
9. The judge always acts in an exemplary and respectable way in the community	1.8	1.4	1.5	1.2
10 The judge never takes an active role in political activities (except Pueblos) on or off the reservation	2.0	1.4	1.8	1.8
11 The judge maintains strict separation of powers between the courts and Council	2.4	1.5	1.9	1.2
12 The judge doesn't allow the council to influence the outcome of specific cases	2.0	1.2	1.7	2.0

PERFORMANCE CRITERIA	RATINGS BY THE GROUPS			
	POLICE	PROSEC.	CLERKS	OTHERS
13. The judge always strives to learn the job through training, self study, etc.	2.0	1.4	1.9	2.0
14. The court subscribes to professional journals, newsletters, etc. to keep current	1.6	1.8	1.3	1.9
15. The judge strives to secure adequate facilities, equipment, and personnel for the court	2.0	1.4	1.7	1.7
16. The judge oversees the operation and management of the court	1.8	1.4	1.5	1.3
OVERALL AVERAGE ASSESSMENT	2.0	1.5	1.8	1.9

VIII HOW DOES NAICJA TRAINING COMPARE WITH OTHER COURT TRAINING PROGRAMS

The evaluators attempted to gain access to the evaluation design of McManus Associates, Inc. of Washington, D.C., who were awarded the contract by LEAA to evaluate 8 other court training programs, that were partially funded by LEAA. The purpose of the request was so that in addition to what was in the NAICJA design, the team might make certain they were collecting some of the same information, so that comparisons across training programs could be made. However neither the Courts Section of LEAA nor McManus Associates responded with this request, even though the McManus evaluation was nearly complete, when the NAICJA evaluation began.

A copy of the McManus evaluation results was obtained recently from another source and some comparisons can be made among the NAICJA and the other 8 courts training projects, where similar data are available, although data definitions may not be identical.

A review of the summary information in Table 12 reveals that there are many similarities among the programs and some major differences. The similarities are that most of them started close to the time that LEAA funding programs began, in the late 1960's and early 1970's. All of them had overall organizational goals, but few, specific training objectives.

They vary greatly in the numbers and types of training programs they undertake. Generally, over the years, they have seen a training or a publication need and have developed a program to address it. The number of staff they use and the costs per trainee probably vary greatly, but the non-uniform methods by which the budgets and training inputs are calculated make comparisons difficult.

In 1977, a base year for comparison, NAICJA trained 754 persons in its 8 training sessions held in that fiscal year. Yet each of the 181 judges trained during that period attended an average of 4 of the eight criminal law sessions. The per trainee cost for the criminal law training for NAICJA in the current LEAA grant over a two year period was \$559. The cost for training the 246 clerks in 1978-80 was \$813. The cost per judge for the BIA funded civil law sessions and family law-child welfare training cannot be calculated at this time, since several more sessions are yet to be held.

On the matter of cost, it is important to point out that over the years NAICJA has paid most of the costs of travel, per diem, and books for the judges. There is no information in the McManus evaluation on what is included in the training costs of the other 8 program. However, NAICJA has allocated approximately 73% of its training budget directly to the trainees, with only 27% being used in administrative salaries. This is the lowest personnel cost ratio of any of the other programs, which range from 32% to 57% of their budgets.

TABLE 12: COMPARISON OF NAICJA AND OTHER COURT TRAINING PROGRAMS

CHARACTERISTICS	COURT TRAINING PROGRAMS								
	IJA	AJC	NJC	AAJE	ICM	NCDA	NCCD	NITA	NAICJA
BACKGROUND									
1. Year started	1956	1971	1963	1969	1970	1970	1973	1971	1968
2. Training site	NY	Var.	Reno	Var.	Colo	Hous	Hous	----	Var.
3. Annual sessions	2	5	41	28	25	11	7	9	6
4. Session Days	10	4	5-20	2-4	2-8	2-15	2-15	----	4
TRAINING NEEDS									
5. Determine need	Surv	Inf	Inf	Inf	Delphi	Inf	Inf	Inf	Inf
6. Dev. Curricula	----	----	----	----	-----	----	----	Comm.	Staff
7. Objectives	no	gen	yes	gen	-----	----	no	no	no
8. Lesson Plans	3 mo	2 mo	----	----	-----	2 mo	----	----	Instructor
9. Assess trainee	Inst	----	----	----	-----	----	----	Eval	Instructor
10. Assess Instr.	Trne	Trne	Trne	Trne	-----	----	Trne	Trne	Judges
11. Teaching Meth.	Lec	Lec	Lec	Lec	Lec	Lec	Mix	Mix	Lecture
TRAINING COSTS									
12. 1978 Budget	\$91K	200	1724	437	562	518	571	653	\$408,000
13. Perm. Staff	2	5	36	7	11	13	12	6	4
14. No. Trainees	40	296	1271	1296	1027	1000	695	564	754
15. Cost/trainee	2250	858	1633	338	475	708	832	1124	\$541
PROGRAM EVALUATION									
									AVE*
16. Learn Roles	1.8	3.1	2.7	3.1	3.3	4.3	3.2	3.1	---**3.1
17. Learn Skills	1.8	2.6	2.6	2.7	2.9	2.4	2.3	2.0	1.4 2.4
18. Substantive	2.2	1.7	2.8	2.9	2.5	2.8	2.7	2.9	1.8**2.6
19. Peer Contacts	3.8	3.6	4.0	4.2	4.5	4.3	3.6	4.5	--- 4.1
20. Make Changes	4.2	4.5	4.5	4.6	3.6	5.0	5.2	5.6	--- 4.7
21. Good Subjects	1.6	1.2	1.8	1.4	2.4	1.9	1.7	1.9	1.5 1.7
22. Skill Practice	3.5	3.3	2.9	1.5	3.0	3.4	2.8	1.5	--- 2.7
23. Give Feedback	4.7	4.8	4.1	2.9	4.0	4.4	3.7	1.8	--- 3.8
Average Score	3.0	3.1	3.2	3.3	3.3	3.6	3.2	2.9	1.6 3.1
OTHER									
24. Good Instruct.	93%	90%	92%	100%	77%	98%	89%	78%	---
25. Good Facility	93%	91%	95%	97%	97%	92%	94%	100%	---

* The average rating given all 8 (excluding NAICJA) training programs by their respective trainees

**The NAICJA judges 71% of the questions on the role of a judge correctly and 65% of the judges passed the criminal law exam.

Of interest to the NAICJA are the variety of funding sources each of the other programs enjoy. While the LEAA contribution to their budgets have decreased over the past several years, the total training budget of these programs has increased, due to their other sources of revenue, which more than make up the difference. (see Table 13 for the comparison)

None of the other programs, except one, assess the progress of the trainees, as is true with NAICJA, except by informal and intuitional means. All use the lecture and small group discussion methods of instruction as the predominant training means.

NAICJA trainees rate the NAICJA training higher than do the trainees of the other programs on the few criteria in common among the two evaluations.

An indication of the level of quality of the NAICJA training is the acceptance by the legal profession outside of the Indian court system. In the State of Washington, every practicing attorney is required by law to participate in 15 hours of continuing legal education each year in courses approved by the Washington State Bar Association. The Bar sets the criteria, which address the quality of faculty, facilities and subject matter. In 1979, the Bar approved the NAICJA training session held in Reno at the National Judicial College for 24 credit hours.

Another impact of NAICJA that ripples out past the training sessions is the number of tribes that contact the Association for advice and sometimes technical assistance in setting up their court system, remodeling their procedures and structure, or revising their code. The Association is also called upon from time to time to come on a reservation or Indian community and assess the quality of their court system. This was done for many years informally, usually initiated by a telephone call from the tribe to the NAICJA Secretariat with Arrow, Inc. In later years it was formalized for a time under NAICJA's Court Advisor program. The correspondence files and officers of NAICJA list over 34 instances in which NAICJA was called upon for this assistance.

In conclusion, the NAICJA training program has performed very well in presenting the principles of criminal law to the judges and providing any that would take advantage of it with a fairly good background. Over the years the program has gone through changes in format, curricula and training methods. The overall understanding of the judges is fairly high, even with the amount of turnover and the new judges in the Association.

NAICJA is now facing new challenges, the major of which is to find a sound and stable financial base to underwrite their programs. Closely related is their need to standardize their training and to demonstrate the quality of instruction they are providing through testing, certification or other means. The Association has come a long ways since they organized in 1968.

TABLE 13 : COMPARISON OF 1978 SOURCES OF REVENUE

TRAINING PROGRAM	LEAA	TUI- TION	SALES	FOUND ATION	CON- TRACTS	INTER EST	OTHER	TOTAL
Institute of Judicial Administration	\$ 40*			\$ 26		\$ 25		\$ 91
Appellate Judges Conference	109			25				134
National Judicial College	210	455		812				1,477
American Academy of Judicial Education	250	100	154					504
Institute for Court Management	227	241	22	20	72			582
National College of District Attorneys	450	208		50				708
National College of Criminal Defense	350	161		53			7	571
National Institute for Trial Advocacy	121	352	100	61				634
National Association of Indian Court Judges	421**							421

* Budget in thousands

** Criminal law training only for 1976-77

They are now well known within Indian country and becoming better known in non-Indian, legal circles. Their overall challenge now is make the association an institution that will survive because of demonstrated needs they fulfill and the improvement they lend to the quality of justice in the Indian courts.

IX RECOMMENDATIONS FOR THE NAICJA TRAINING PROGRAM

A. Introduction

In this section are the policy recommendations of Hunter Research for the consideration of the NAICJA Board, officers, instructors and membership. They are based upon the data analyzed and impressions obtained during the three years that the research team has been attending NAICJA training sessions, the visits and discussions with court and other personnel on a number of reservations and visual inspection of their facilities and records. Included with the recommendations are the justifications and rationale supporting the research teams recommendations.

B. OVERALL PLANNING FOR THE TRAINING PROGRAM

Due to interruptions in the flow of project funds and other factors, the NAICJA board, staff, instructors, and Arrow personnel have not taken the opportunity to sit down and carefully lay out the 1-2 year training plan and objectives for the training program. Once they have been assured that funds were forthcoming, a training session has been hastily planned and scheduled, and notices have been sent out to the judges. An analysis of the history of the project reveals the reason why, namely the many hurdles the program has had to overcome in qualifying and obtaining the funds from several state planning agencies and the various regional agencies of LEAA. Yet this type of short range planning is critical to ensuring that all parties are in agreement on where the program is heading and what it should be doing. To this end the following are recommended.

1. As soon as possible, a two day planning session of the NAICJA Board and staff should be held to develop the following:
 - a. A statement of training objectives of the NAICJA on the subjects they will teach, judges they want to reach, what skills they want the judges to gain, how they will determine their effectiveness, etc.
 - b. A preliminary two-year schedule of training sessions, subjects, and types of judges to be invited, locations, and preferred instructors.

This kind of up front planning can address several of the problems faced by NAICJA, the largest of which is the lack of an overall strategy of exactly where they are headed. They have done remarkably well, considering the ad hoc, and rushed fashion in which they have had to put their training programs together at times, but not without stress on the part of some of the staff and the instructors.

2. NAICJA Must Establish at Least a Short Range, Stable, Steady Source of Funding.

One of the major constraints NAICJA has had to work around has been the uncertain source of funding and the shifting requirements they have had to deal with in planning and carrying out their training. A review of the brief history shown in the appendix will bear this out.

With the funding being slow and uncertain, NAICJA has taken a conservative approach in the past and has not made long or short range plans, until they were certain they had the funds in hand. As a result, when the funds have been received, hurried preparations for training sessions were often required because of short deadlines and expiration dates set by some of the funders. This had made it difficult for the judges, tribal councils, NAICJA instructors and the Arrow Secretariat to make plans very far in advance.

For the criminal law training, the LEAA has been the major source of funds for 8 of the 10 years NAICJA has been providing criminal law training. Because of LEAA's current difficulties in obtaining appropriation funding, they may not be a viable source of funding in the very near future. Thus other sources need to be found. The most obvious would be the BIA, with its trust responsibility, to provide a steady, annual allocation for training of Indian court judges. This could be augmented by funds from a variety of foundations as well as other federal agency, special purpose funds.

All of the other court training projects have received reductions in their LEAA allocations over the past several years, yet most of them have increased their total training budget but obtaining larger proportions from foundations, interest on investments, tuition from the judges, or other sources.

To continue to be a major contribution to the quality of the Indian courts, the NAICJA must become institutionalized to survive, and a stable funding source is the major step in that process.

C. CURRICULUM DEVELOPMENT

3. Development of a Standardized Set of Lesson Plans To Be Used in the Training

NAICJA has developed standardized lesson plans in the past with cassettes, lesson outlines, workbooks and so forth, but over the years as the instruction has centralized to national sessions and new instructors have been retained, or substitutes have been obtained, several advantages may have been lost, namely

- a. A clear statement of what the judges are to know or be able to do when the training is concluded (instructional and learning objectives)
- b. When substitutes must be obtained at the last moment to replace an instructor who has cancelled, the standard

NAICJA outline can be given to substitute, with the Indian relevance and learning objectives built in.

Some judges have complained that many persons without background in reservation life or knowledge of Indian courts teach subjects in a law school approach, without being able to apply to the Indian court environment with examples. While NAICJA works diligently to get qualified instructors, when one falls through at the last minute must find a replacement in a hurry, who often is qualified in the subject, but not the application to the Indian community. In such cases, the substitutes could be given the standard course outline with its Indian court relevance built in.

- c. Another criticism leveled at NAICJA is that more of the judges themselves are not involved in the training. This presumes that any judge can be an effective teacher, which is not necessarily so. However, a standardized lesson plan could be made available to those judges who have the capacity to teach. They could also be given teacher training to build up their confidence in instructing.

4. NAICJA Should Develop and Publish a Catalogue of its Course Offerings.

After NAICJA accomplishes recommendation 5 below, they should publish a catalogue of the courses they intend to teach. This would include criminal, civil, child and family law and others. A brief description of what the course entails and what level of judges should take it would be included. For instance a course on legal research and advanced opinion writing would be open to judges that had already demonstrated competence in the basic courses. A special course could be devised for traditional court judges on how to improve their efficiency and effectiveness in this special area. A course dealing strictly with fish and game matters could be included, as could a course on dealing with state and local governments in the Public Law 280 states.

This will help NAICJA stay focused on what it wants to achieve with the judges, it will help the judges take more of a role in the selection of their own training schedule and content. It is also necessary to demonstrate to other courts and organizations of the quality and coverage of NAICJA's training.

The certification guidelines (see recommendation #9) should also be included, so that the judges know they are expected to attend all classes during a session, complete all assignments, and take the certification quizzes, when they feel ready for them.

5. NAICJA Should Focus its Instruction on the Most Critical Subjects the Judges Need to Know

There are so many subjects that the judges can be exposed to, that if all were addressed, the impact of the training may be

to familiarize the judges with many concepts, without a working knowledge of those subjects, which are the most critical.

It is doubtful that much of the academic ground the NAICJA might like to make up, because of the small number of judges having legal training, can be accomplished in the part time approach. One training approach is to familiarize the trainee with as many concepts as possible in a explorative and discovery process, but the judges are very practical and have very practical problems. They need knowledge they can apply every day, such as the ICRA and trial procedures. These are the two areas in the testing of all of the judges that they had the most difficulty with.

A core lesson plan for the most critical subjects should be developed for all non-veteran judges. A panel of judges with an average tenure of 5 years was convened at one of the training sessions to address this question. They were given a list of criminal and civil subjects (some of which NAICJA has taught and some that they have not) and were asked to indicate which ones were critical, important, helpful, and not very important. Their aggregated response is shown in Table 14, where only those subjects determined to be critical or important by them are listed.

**TABLE 14 SUBJECT AREA DEEMED CRITICAL BY THE NAICJA
PANEL OF VETERAN INDIAN COURT JUDGES**

A. KEY LAWS AND COURT DECISIONS	E. COURT-TRIBAL RELATIONSHIPS
B. JURISDICTION OF INDIAN COURTS <ul style="list-style-type: none">● over criminal matters● over civil matters● in fish and game cases● in child and family matters	F. DOMESTIC RELATIONS <ul style="list-style-type: none">● Child abuse and neglect● Adoption
C. INDIAN CIVIL RIGHTS <ul style="list-style-type: none">● the ICRA of 1968● warrants, searches, arrests	G. COURT ADMINISTRATION <ul style="list-style-type: none">● Securing facilities, equipment, and personnel● Personnel management● Court records-reporting
D. GENERAL TRIAL PROCEDURES <ul style="list-style-type: none">● empaneling, instructing a jury● defense motions-challenges● sentences, orders, decrees● tribal court appeals	H. WRITING LEGAL OPINIONS

NAICJA should consider the above subjects and others that from their perspective are considered to be critical and build the core curriculum in just those areas.

Again in the choice between broad, but shallow coverage of many subjects versus intensive training in the critical subjects,

the latter is recommended to NAICJA as a way of ensuring the most impact on the judges and the Indian courts.

The core curriculum can be split between fundamental training for new judges and advanced, problem solving approaches for the judges that have demonstrated their grasp of the basics.

Focusing on the "critical" subjects does not rule out the introduction and discussion of other subjects that emerge, but NAICJA should be careful about the amount of time devoted to them and the number of new subjects introduced, since dilution of the basic, critical subjects can result.

In response to the question, "Do you fully understand the concepts and subjects taught in the NAICJA training?" the aggregate response of the 55 judges asked was "alright". Only 20 of the judges (36%) said that they fully understood the training. It is the author's opinion that this response should not be interpreted that the quality of teaching is low, but that the scope and coverage of too many subjects for too short a period is the cause.

D. THE OVERALL TRAINING APPROACH

There are many opinions by educators, trainers and trainees on what constitutes the best instructional methods. The teacher (presumed to have more knowledge) imparting information directly to the student (pedagogy) is the traditional approach, while a current trend, though not proven to be superior, is where the teacher provides the learning environment and the students discover information and participate in the teaching (Androgogy).

Some judges like the passive approach, where they listen or take notes from lecturers; others like an active role with pre-course assignments or role playing. In the early and middle years of NAICJA training many methods, some fairly innovative, were used, but in latter years a pattern of lectures to the whole group of trainees, followed by small group discussions has emerged as the principle method.

The lecture and small discussion group approach actually uses both of the above mentioned approaches. The lecture method is essentially a pedagogical approach, while the small group discussions with a discussion leader represents the other. Of all the possible methods for training, the eight other court training projects funded by LEAA utilize lectures and discussion almost exclusively. There is probably a reason for this, and that is time, money and fatigue. A great deal more effort is required of training developers and instructors if role playing, moot court, case studies, panel discussions, etc., are used. Much more preparation time is required. A lecture outline can be used over and over again with different (and even the same) classes, but case studies, scripts for role playing and so forth require frequent changes and adaptation, if given to the same groups of people.

6. NAICJA Should Introduce More Variety of Methods in its Training Approaches

Four consecutive days of the same training patterns can diminish the interest and commitment of the judges in the training. NAICJA has been concerned about the amount of fallout of judges as the training sessions progress, especially in the small groups, where it is most noticeable. Some of this may be unavoidable, but some variation of routine may help.

In most cases the discussion leaders have no agenda of objectives on what they are to achieve in the small groups* Sometimes very general subjects, unrelated to the lectures are discussed, and often the discussion leaders are not successful in taking the subject of the lecture and helping the judges interpret and adapt it to their courts and communities. With some exceptions the specific application of the general information discussed in the lecture probably does not take place. The low percentage of judges who felt they "fully understand" the concepts taught (35%) verifies this judgement.

As a minimum, it is recommended that a uniform set of questions for each subject be provided the discussion leaders. In addition, a set of discussion objectives on what the discussion leaders should be accomplishing should be provided. These discussion leaders should be knowledgeable about the Indian courts and communities and should be able to (1) give Indian relevant examples, (2) apply general lecture concepts to specific cases, (3) help judges problem solve specific dilemmas and (4) assess the degree to which the judges have gained knowledge or skills.

One of the criteria on which training methods should be used is the preference of the judges. Of the 57 judges that were asked their preference in training methods, their responses were as follows: (The judges made more than one choice)

1. A workbook with self test blanks
to test my knowledge and refer to.....42
2. The present method of lecture and
small group discussion.....35
3. Visual presentations, movies, role
playing, mock trials, etc.....29
4. Panel Discussions.....28
5. Small group discussion only
with my fellow judges.....22
6. Cassette recordings of instructions.....22

*In the July, 1970 session, the discussion leaders were given a set of questions to be covered in the small groups

Note: The intensive pre-training planning session for the NAICJA board and/or instructors recommended above is critical if this recommendation is to be carried out. The preparation necessary to use the above, non-lecture methods cannot be done with just a few weeks or months notice, especially by part-time curricula developers, who have other full time responsibilities.

If subsequent recommendations are implemented, few judges would be exposed to the same presentations of the above lessons, unless they had difficulty with the concepts, so most of the preparation materials would be useful with slight modifications for years to come.

7. NAICJA Should Increase Accountability on the Part of the Judges.

For the most part the judges that attend the training sessions are sincere in their desire to learn all they can from the experience. Most attend the majority of the session. Most take notes, and some even record the proceedings to study later. Yet neither the judges, nor the instructors and NAICJA board can be certain of what the judges have learned. In the past, NAICJA has provided self test questions for some subjects, but these have never been followed up on by the judges or NAICJA.

As a minimum, some testing should be done to accomplish the following:

- Let judges and NAICJA know what concepts are being learned
- Let instructors know where to alter the training, by omitting concepts that are well understood and emphasizing problem areas.
- Increase attendance on each day of the training session, the judges know they will be asked to respond on an exam.
- Assure funding agencies that the NAICJA is effectively imparting knowledge
- Increase the self confidence of the judges
- Demonstrate to state and Federal courts the quality of instruction and the judges' competence.
- Assure tribal councils and communities that the justice is being meted out by qualified judges.

For the first year, and occasionally thereafter, NAICJA may want to do pre-training and post-training testing on some subjects to verify the degree of change in judges' knowledge due to the NAICJA training. This provides a basepoint against which to compare the judges scores in future years. After the first cycle of pre and post testing has been done, a pre-test would not be necessary in subsequent years, except for a spot check on various subjects or classes.

8. Certification of Subject Competence Should be Instituted

Correlated with the above recommendation is the judgement that NAICJA would do a great service to itself, the judges, the

tribes, the Indian community and the prestige of the Indian courts by instituting a certification system.

The certification would be carried out by testing the understanding of the judges at the conclusion of each training session. A pass or no pass grading system is all that would be necessary for determining competency. After a judge has demonstrated knowledge competency in criminal law for instance, he/she would receive a certificate of competency (not attendance). This would assure the judge, defendants, the community and state courts that the judge is knowledgeable in this area. Later, after having civil law, child welfare, juvenile law, and trial procedures, certificates of competence can be granted to the judge.

The certificated judges need not be invited to subsequent training session on their certificated subjects, except for periodic refresher courses.

The new judges and those that (1) had difficulty with the previous training (no pass) or (2) did not take the test would be invited to the next session or the certificated subjects.

For the certificated judges, NAICJA can provide the refresher courses, new courses and advanced courses on the basic subjects they have been certificated in.

This approach is a rifle, rather than a shotgun method for the training. This would allow NAICJA to hold sessions for special groups of judges, such as traditional courts or CFR courts.

In a multiple choice of alternative methods for the judges to undertake training, certification was not the first choice. As is probably consistent with human nature, 40% of the judges wanted the present system, where courses on different subjects are held periodically, and the judges come when they can. Surprisingly (at least to the evaluator) the last choice of the judges was for the veteran judges to teach the new judges in small discussion groups. Only 22% of the judges indicated a preference for the certification process, although in the questionnaire it was not detailed, nor were the benefits detailed, to avoid leading the judges to a choice.

Only one of the other 8 court training programs evaluated by LEAA provided any feedback to the trainees on how they were progressing, and the one that does uses an informal, self assessment model. The trainees in these other 8 programs gave their training programs a low rating for failing to give them feedback on their progress.

Certification will mean more work for the NAICJA staff and the instructors in keeping track of each judge and his/her progress, but great benefits should result, such as

- Increased confidence of certificated judges
- Evidence for the council of the technical qualification

of their judges.

- Evidence of quality of NAICJA training
- Increased respect for the Indian courts

9. The Judges Prefer National Sessions Held in a Central Place

One of the dilemmas faced by NAICJA has been the issue of location of the training. National sessions were felt to produce some excitement and enthusiasm as well as exposure to more judges and instructors. Regional sessions are thought to attract some judges that won't travel long distances to national sessions. The cost trade-offs between the two have not been calculated, although that can be easily done.

When given their choice between (1) a central location, (2) the Reno Judicial college as a specific, central location, (3) regional training sessions in their area, or (4) it doesn't matter where the training is held, the largest number of judges chose Reno, with any other central location selected as second choice. Regional session were clearly the last choice.

E. FISCAL MANAGEMENT

There are no recommendations to be made in the area of fiscal management, other than the one made above that NAICJA wrestle with the challenge of finding a steady source of funding, so that their programs can be scheduled well in advance and all judges, instructors and board members can make their plans accordingly. Arrow, Inc., functioning as the secretariat for the NAICJA organization has done an outstanding job of accounting for all expenditures. Fiscal records for all training programs have been maintained as have all vouchers for expenses of judges and instructors and consultants. Annual audits have shown no irregularities and have shown all records and procedures to conform with generally acceptable accounting principles.

From time to time as the flow of grant funds have been delayed, Arrow, Inc. has used its resources to keep the program going and has been re-imbursed when the grant funds were received. Likewise, in particular circumstances where specific judges have been unable to obtain their own travel funds, Arrow has assisted them, so that they might participate in the training. Counting the training they underwrote in 1968 as well as the incidentals over the years, Arrow, Inc. has contributed approximately \$55,000 to the NAICJA training, not including contributed time.

F. PROGRAM MANAGEMENT

The program management of the NAICJA training has been conducted in a team approach, with policies being established or ratified by the NAICJA board and steering committee and the planning and implementation carried out by Arrow, Inc. staff, the NAICJA President, and the instructors. In general, the roles carried out in the training process are as follows:

Grants management	Arrow Secretariat
Operations management.....	Arrow
Curriculum Development.....	Instructors, Board
Training materials preparation..	Instructors, Arrow
Training session preparation....	Arrow, President, Instructors
Training session management.....	President, Instructors
Marketing of NAICJA.....	Arrow, President, Board
Seeking Funding.....	Arrow
Problem Solving.....	Board, Arrow, Instructors
Evaluation	Instructors, Arrow
Special Projects.....	Arrow, President, Instructors, Board

The full time equivalent staff devoted to the training program is roughly 4 persons. The training staff of the other 8 programs funded by LEAA range from 2 persons to 36 for the National Judicial College. The ratio of NAICJA staff to trainees is lower than that of 7 of the 8 programs.

The ratio of staff salary and benefits as a proportion of the total training budget is very low (27%), indicating that most of the funds are used for the delivery of training, rather than for administrative overhead. This ratio for the National Judicial College is 61%. The American Academy of Judicial Education, which is the training program closest in characteristics to that of NAICJA had 57% of its budget in 1978 for salaries and benefits.

10. NAICJA Should Increase the Size of Its Staff and Formalize Roles and Assignments Among Them

Based upon the amount of training programs and activities that it conducts, a comparison with other judicial programs, and a certain amount of job stress among staff members, it is evident that the NAICJA staff is too small to easily handle the number and diversity of programs it is undertaking.

NAICJA is to be commended for the cost conscious manner in which they have held down costs and directed the major share of their funds to the delivery of training. However if some of the structural and procedural changes recommended herein are carried out, additional staff workload will be required. It is the evaluators opinion that the NAICJA training can be even more effective if at least two positions are added to the program and some functions are reassigned.

A review of the other courts training programs shows a variety of management styles and organization. The most common is to have an Director, an Associate Director and then a series of persons responsible for functional aspects of the training programs or office management. This is illustrated below for the eight court training programs, funded in part by LEAA.

TABLE 15: COMPARISON OF TRAINING PROGRAM STAFFING

STAFF POSITIONS	IJA	AJC	NJC	AAJE	ICM	NCDA	NCCD	NITA	NAICJA
DIRECTOR-DEAN	•	•	•	•	•	•	•	•	•
ASSOCIATE DIRECTOR	•	•	•	•	•	•	•		•
CHIEF-ADMINISTRATION			•	•	•				
CHIEF-TRAINING			•	•	•	•	•	•	
CHIEF-CURRICULUM		•				•			
CHIEF-RESEARCH		•				•	•		
CHIEF-FINANCE			•	•	•	•			•
CHIEF-FUND RAISING								•	
PUBLICATIONS			•			•	•		
EVALUATOR								•	
REGISTRAR						•	•		
ADMINISTRATIVE ASST.		•				•	•		•
LIBRARIAN			•						
CLERKS	•	•	•	•	•	•	•	•	
SECRETARYS	•	•	•	•	•	•	•	•	•
DATA SERVICES							•		
PRINTER					•				
Training Budget	\$90*	200	1724	437	562	518	571	653	421
Full Time Staff	2	5	36	7	11	13	12	6	4
Persons Trained/year	40	296	1271	1296	1027	1000	695	564	754

An Assistant Director

The first position that should be added is an assistant to the Project Director. The Project Director is able, because of other commitments to devote three-fourths time to the training programs. Thus additional administrative detail, logistical planning for training sessions, seeking funding, drafting grant applications and following up on training session details falls back on the Secretary-Treasurer. An Assistant Project Director should be knowledgeable of the Indian courts, the judges and the NAICJA program, so that he/she can stand in for the Project Director and the Secretary-Treasurer on all important matters and assist them in all program activities.

An Evaluator-Researcher

Another position that should be filled as soon as possible is that of an evaluator-researcher. This individual would take continual readings on the effectiveness of the training and the needs of the judges. NAICJA has attempted many evaluation efforts over the years, but has never had the personnel to follow up on the analysis. Questionnaires on instructors, curriculum and even small exams on subject matter have been fielded in the training, but the results have not been analyzed, interpreted or fed back into the curriculum development and training processes.

* Budget in thousands

Most of the forms and methodologies needed for on-going assessment have been developed by Hunter Research during the course of this evaluation. They can be used and modified as needed at little additional cost.

Another function the evaluator could perform would be to keep track of the training each Indian court judge in the nation has received and how he/she has gained from it. The key to more targeted training of the judges according to their respective needs is a tracking system, which lets the NAICJA and the instructors know how each court is doing from a knowledge standpoint.

Director of Curriculum and Training

Another vital assignment the new staff or existing ones should undertake is a continual responsibility is the establishment of standardized course outlines and lesson plans as recommended above. The individual that performs this should have a background in the NAICJA programs, be aware of training techniques, and should function as a director of curriculum and training methods. It is not vital that the individual also instruct. In fact it may be preferable that they do not, so that they can objectively focus on the impact of all courses.

In the early days of NAICJA there was a creativity and an excitement about the training programs as many experimental approaches were used. It appears that some fatigue has set in for both the judges and the instructors due to repetition and the fast pace with which training programs have been organized and instituted. A director of curriculum, assisted by a curriculum committee of the Board could focus on recreating the enthusiasm and variety of the earlier years. The evaluative data being fed in after each course can assist the developer in this function.

While it is obvious these new positions or functions will increase NAICJA staffing costs, they can probably be recouped by reducing the number of judges that are repeating many of the courses. If NAICJA institutes the trainee selection processes discussed above, more of their budget can be reallocated to staffing. While NAICJA has held down its staffing costs as a proportion of its budget, it is the lowest among all of the training programs (less than half of two of the programs) and can afford to redirect some of the funds to tightening up the program development and evaluation.



APPENDIX

APPENDIX A

A BRIEF HISTORY OF THE NAICJA INDIAN COURT TRAINING PROGRAM (1968-1979)

A. Purpose

The purpose of this section is to provide a brief, but fairly complete history of the NAICJA Indian Court Training Program and to describe the historical framework and context within which it has developed and operated since 1968. This chronology will provide the following types of information that are necessary in order to determine the impacts of this program upon reservation justice systems and perhaps community life thereon:

1. The original concepts and intent for the training program, including goals and objectives and intended results
2. The evolution of the program including changes in types of training, curricula and training methods
3. Other significant events that occurred outside of the NAICJA program, but which impacted the carrying out of its purposes, such as new funding programs, new legislation, and new policies from the funding agencies.

An evaluation that is done after a program has been in operation for a number of years is often at a disadvantage, because the records needed to document pre-program conditions (baseline data) are usually not available in the form needed. Thus this chronology helps to recreate the conditions of the Indian court environment by piecing together whatever historical and descriptive data can be assembled, after the fact.

The chronology is separated into 6 general phases of NAICJA evolution. These phases are by no means clearly separable from each other, but are arbitrary stages of development the program has gone through as viewed by SRI. The six stages are:

1. The pre-NAICJA period, when Arrow, Inc., in conjunction with a number of University and other organizations sponsored many management training and leadership development programs for reservation leaders.
2. The formation of NAICJA and some of the early training programs of the new organization, before stable funding sources were found, when Arrow, Inc. provided all of the financial support.
3. The development of NAICJA court training curricula and program, when LEAA funding was obtained and lesson materials and resource documents were created or obtained. Intensive training then got underway on an organized and regular schedule.
4. The addition of civil subjects to the criminal training curricula

and the award of BIA grants to address this area of a judge's responsibilities.

5. The introduction of bi-level training where the needs of new judges were distinguished from those of the veterans and curricula were structured to meet the different needs. Also veteran judges became involved as instructors of the new judges.
6. The evolution to a more formalized, comprehensive training program, with the introduction of many training and resource aids custom designed for Indian courts, the completion of the Long Range Planning Study and a more formalized, institutional format of training conducted at the National Judicial College.

B. Chronology of Major Events

1. Arrow Management Training Programs - Pre NAICJA

- 1965 Arrow, Inc., a non-profit organization based in Washington, D.C., applied unsuccessfully to the National Legal Aid and Defender's Association for a grant to establish a model public defender project for the Rosebud Sioux in South Dakota.
- 1967 A two week training course for Indian police from 24 tribes in 5 states was held at Idaho State University (ISU) in Pocatello, Idaho. It was sponsored by ISU, the Federal Bureau of Investigation (FBI) and Arrow, Inc.
- Arrow, Inc., New Mexico State University (NMSU), the Bureau of Indian Affairs (BIA), the FBI, the New Mexico Sheriffs' and Police Association sponsored beginning and advanced police training courses for 50 Indian policemen at NMSU in Las Cruces, New Mexico.
- ISU, Arrow, Inc., and the BIA sponsored a 12 day community development institute at ISU for 17 leaders of South Dakota Sioux tribes. Among the subjects discussed were justice, education, and health.
- 1968 The Fort Lewis College of Durango, Colorado and Arrow, Inc., sponsored a 5 day Indian Health Institute for 25 Indian health officials. Six subsequent sessions were held in Bemidji, Minnesota; Albuquerque, New Mexico; and Oklahoma City, Oklahoma.
- A week long police training institute was conducted at NMSU for 24 Indian policemen from 11 tribes in Colorado, Arizona and New Mexico. It was sponsored by NMSU, New Mexico State Police and Arrow, Inc., which funded the program.

Approximately 45 management training seminars were conducted by Arrow, Inc., and different universities for Indian leaders from 1966-1969.

2. Formation of NAICJA

Due to the concern over the impact of the Indian Civil Rights Act (Title II, Sec. 202, Pl 90-284) enacted by congress in April of 1968, a national association of American Indian court judges was discussed in June of 1968 by Judges Cranston Hawley (Ft. Belknap), Lawrence Miller (Wind River), Henry Upchego (Ft. Duchesne), George Armstrong (Ute Mountain and Southern Ute), Josephine Newman (Flathead), Virgil Kirk (Navajo) and Betty Laverdure (Turtle Mountain).

The Association announced its intent to enlist all American Indian Court judges and to act to

"Improve the Indian court system and to upgrade their profession through the implementation of recommendations adopted after research is undertaken on specific matters."

Arrow, Inc., offered to provide the initial funding and agreed to serve as secretariat for the organization.

1969 The Articles of Incorporation and by-laws for NAICJA were reviewed and adopted in March of 1969*, and the National American Indian Court Judges Association was officially formed and was later registered as a corporation in the state of Delaware.

NAICJA sponsored a three day management training institute for tribal court judges and other tribal court personnel at the UNMLS in Albuquerque, New Mexico. 57 persons from the Phoenix, Navajo and Albuquerque areas attended.

NAICJA expressed another goal, which was to "initiate and facilitate communications between Indian courts and local, state and Federal agencies and among the courts themselves."

* The NAICJA, aided by a group of tribal court judges also drew up a list of 9 physical and 18 non-physical needs of the Indian courts. Included in the non-physical needs were (1) training and (2) reference material for the judges.

In September, the second NAICJA Management Training Institute was held in Custer, South Dakota and was attended by 54 persons.

1970 The third Management Training Institute was held in Reno, Nevada and was attended by 40 judges from the Pacific Northwest and guests from other areas. The major subjects discussed were jurisdiction, procedures and evidence in juvenile courts, torts, duties of the trial judge and the possible transfer of court programs from the BIA's branch of Law and Order.

Between September 1968 and June 9, 1970, Arrow, Inc., spent approximately \$24,000 on NAICJA's training activities.

3. Curricula Development and Early Training

1970 The National Institute of Law Enforcement and Criminal Justice of the LEAA granted \$66,140 to the NAICJA for performing research and developing a criminal court procedures manual.

The LEAA also awarded the NAICJA \$60,000 for the training of Indian Court judges.

In August of 1970, Mr. William Meredith was temporarily assigned from the BIA Branch of Law and Order to act as the project director of the two projects.

The Donner Foundation provided \$30,000 in cash to provide the matching funds for the two LEAA grants.

Training materials for use of the judges were secured, including Black's Law Dictionary, McCormicks Evidence Text, the Webster New Collegiate Dictionary, the Complete Secretary's Handbook and the film series, "The Adversaries."

The first 24 lessons were written by Judge Jamison and associates at the University of Denver Law Center, with assistance from Mr. Robert Bennett and colleagues at the University of New Mexico. They were written in work-book form.

1971 Between January and June of 1971, 76 presiding and associate judges* from 45 reservations were trained. (The course planned for 42.) The sessions were held in Albuquerque, Bismarck, Billings, Window Rock, Spokane and Phoenix.

The training was held once per month, on the weekends, with each trainee completing 4 lessons per month or 24 in six months.

Virgil L. Kirk, Sr., President of NAICJA appointed Judges George Armstrong, Cranston Hawley and Henry Upchego to a committee to review the research and training programs.

Judge George Armstrong was appointed Project Director for the second NAICJA training grant received from LEAA. He replaced William Meredith, who returned to his duties in Washington, D.C. with the BIA. The subgrant was for \$174,391 and was made through the Colorado State Planning Agency to the Southern Ute Tribe. The grant period was from 7/71 to 4/73.

16 lessons were recorded on cassette tapes for home study by the judges in conjunction with the 24 lessons in the workbook. The were recorded by Jack McDermott, Ralph Johnson and Jay White.

79 tape recorders were purchased and distributed to judges and instructors for playing and studying the tapes with their workbooks.

The training had originally been intended for chief judges, but the NAICJA board approved the training and reimbursement of training costs for associate judges in 1971.

50,000 copies of the pamphlet, "You and Your Court" were prepared and distributed to Indian courts for the benefit of those persons that come before them.

The Criminal Court Procedures Manual: A Guide for American Indian Court Judges was published and distributed, along with the research document supporting it. They were the results of the first LEAA grant and were prepared by the University of New Mexico Law School, Arizona State University and the University of South Dakota. Principal researchers were Louis Stewart, Warren Cohen and Edward Bubak.

* The course had been planned and budgeted for only 42 judges. The transportation and training costs for the additional judges were provided by the Phoenix Area Office of the BIA.

1972 Professor Thomas B. Russell of the University of Nevada in Reno was retained by the LEAA, through a contract with American University in Washington, D.C. to assess the NAICJA training project. He made some recommendations of a management nature, some of which were implemented.

The NAICJA obtained a subgrant of \$124,949 from the LEAA to perform research and develop 5 documents regarding justice and the American Indian. The award was made through the Wahington State Planning Agency to the Yakima Indian Nation for 6/72 - 2/74.

1973 The third LEAA training subgrant of \$225,908 was awarded to NAICJA through the Arizona State Planning Agency to the Kaibab Paiute Tribe and was to run from 7/73 through 1/75.

A subgrant of \$22,078 was awarded to NAICJA through the Colorado SPA to the Southern Ute Tribe for the training of Indian Court clerks. Two week training sessions were held in Missoula, Montana and in Window Rock, Arizona. A clerks handbook was also developed and distributed to tribal court clerks.

Judge Cranston Hawley, Chief Judge from Ft. Belknap in Montana, was named the new Project Director for the NAICJA judicial training program. Judge Hawley estimated that he could devote approximately 75% of his time to managing the project.

1974 The first national training session of NAICJA was held in Scottsdale, Arizona and was attended by 83 judges. All previous training had been conducted at regional locations.

5 NAICJA documents on Justice and the American Indian were completed as the products of an LEAA grant. They were:

- o The Impact of Public Law 280 upon the Administration of Justice on Indian Reservations
- o The Indian Judiciary and the Concept of Separation of Powers
- o The Effect of Having no Extradition Procedures for Indian Reservations

- o Examination of the Basis of Tribal Law and Order Authority
- o Federal Prosecution of Crimes Committed on Indian Reservations

4. Addition of Civil Law Training

1974 At the national training session of NAICJA held in Denver, Colorado, lessons on family law and child welfare were added to the criminal law curriculum for the first time. The overall NAICJA curriculum included the following:

Criminal Law

- o Trial procedure/mock trial
- o Laws of Evidence
- o Judicial Ethics
- o Indian Civil Rights Act of 1968
- o Appellate Procedures
- o Juvenile Law and Indian Case Law

Civil Matters

- o Marriage and Divorce
- o Adoption
- o Parental Rights
- o Child Neglect and Abuse
- o Guardianship

1975 NAICJA completed an updated supplement to the Court Procedures Manual and supporting research document, that was previously published in 1971.

NAICJA completed a manual for Indian Court judges on legal research and case analysis.

NAICJA also completed a publication entitled Handbook on Family Law/Child Welfare, which included a summary of areas of the laws of domestic relations as they exist in the majority of jurisdictions in the United States.

The fourth LEAA training subgrant was awarded through the Nevada SPA to the Moapa-Paiute Tribe of Nevada.

A national training workshop of NAICJA was held in Phoenix, Arizona. The training format provided two days of criminal law and one day of civil matters in the regional training program.

In July of 1975, 14 Nevada tribes retroceded from state jurisdiction and became eligible to establish tribal or CFR courts.

Mr. Robert Bennett, Sharon Blackwell and others completed a syllabus for the basic criminal law course.

Professor Ralph Johnson and Mr. Jay White compiled a syllabus for advanced criminal law and procedures.

Judge DeLaney prepared a questionnaire to be completed by judges participating in the training on personnel, materials, equipment, facilities and services in the Tribal courts.

NAICJA added a section on legal research, library use and legal opinion preparation to the training curriculum.

Ted Krenzke, the Director of the Office of Indian Affairs announced that the BIA Law and Order budget was increased from 10.1 million dollars to 24.5 million in 1976. He further stated that \$300,000 were earmarked for tribal court improvements.

Mr. Krenzke announced the creation of a Tribal Judicial Service Branch within the BIA, which would function separately from the Law and Order Division.

5. Introduction of Bi-Level Training

1975 82 Tribal court judges attended the NAICJA national training session, which incorporated a bi-level approach with beginning judges receiving basic training and veteran judges working with the advanced courses.

Mock trial sessions and audio visual presentations were used in the training.

1976 Clare Jerdone, Child Welfare Specialist of the BIA requested that BIA social service workers be allowed to attend the NAICJA training sessions.

Copies of a Criminal Justice Bench Book were developed by Judge George Armstrong and were distributed to the judges.

A special training sessions for court clerks was held by the BIA at the police academy in Brigham City, Utah.

12 veteran judges began serving as instructor aides and took part in the presentation of NAICJA training.

During the summer of 1976, the American Indian Lawyer's Training Program, under contract with the BIA conducted a survey of court services on 93 Indian reservations. The results of the on-site survey were published in a document entitled, Indian Self Determination and the Role of the Tribal Courts.

NAICJA published and distributed a publication entitled Child Welfare and Family Law as an outgrowth of two years of training efforts in substantive and procedural law on reservation domestic relations cases.

Indian Child Welfare: A Review of the Literature was published by the Center for Social Research and Development in Denver.

NAICJA began its Indian Court Advisor Program in which advisors visit Indian courts and the judges request to observe proceedings and discuss their impressions, and generally provide advice and counsel.

Membership in NAICJA reached a total of 199 chief and associate judges.

NAICJA developed a casebook specifically for Indian court judges, which contains appellate court opinions, explanatory notes and comments for (1) sovereignty and jurisdiction, (2) criminal law, (3) criminal procedure, and (4) the Indian Civil Rights Act of 1968.

Mr. Dale Wing of the LEAA Indian desk explained LEAA's desire for the NAICJA program to be evaluated in 1977, with the evaluator to be selected by NAICJA. Mr. Wing recommended the Western Interstate Council on Higher Education (WICHE) located in Boulder, Colorado.

Mr. Ted Krenzke announced the Congress had granted a special increase of \$2,500,000 for Indian Courts. He also announced the creation of a position in the BIA to be a focal point for Indian judiciary problems.

1977 NAICJA conducted a national training workshop on family law/child welfare in Albuquerque, New Mexico with 100 judges and 85 BIA social workers in attendance.

Dale Wing, David Etheridge and Dennis Peterson announced their intentions to develop a master chart which would show on a reservation by reservation basis, (1) legal

problems, (2) funding levels, and (3) sources of funding.

Three organizations (WICHE, NITRIC and the AILC) submitted evaluation proposals to NIACJA, but none were accepted. The LEAA offered \$5000 for someone to develop an evaluation design.

After discussions with Judges Blossom and Fredericks, the National College of the State Judiciary in Reno extended an invitation to any of the NAICJA judges to participate in their summer session.

6. More Formal Comprehensive Programs

1977 NAICJA obtained a grant of \$125,828 from the BIA to undertake a Long Range Planning Study to (1) determine needs of a sample of Indian courts, (2) establish model standards for Indian courts and (3) select 4 Indian courts to implement the model standards.

Judge Cranston Hawley, President of NAICJA appointed a committee of court clerks and NAICJA Board members to design a clerk training program.

A new case book entitled, Cases and Materials on the Law of Evidence was developed by NAICJA and distributed to the judges.

Two national training sessions were held at Reno, Nevada on the campus of the National College of the State Judiciary (now called the National Judicial College).

Mr. Robert L. Bennett produced for NAICJA a bench book for use of the Indian court judges. It includes sections on (1) arraignment, (2) non-jury, criminal trial procedure, (3) criminal, jury trial procedure, (4) sentencing, and (5) post trial proceedings.

Judge George Armstrong and Ms Kathleen Imig Perkins developed a Model Indian Court Rules of Criminal Procedures for training and reference by the judges.

Mr. Stephen G. Boyden and Ms Kathleen Imig Perkins prepared a Model Appellate Procedures Code, including (1) provisions to make an Indian Court a court of record, (2) procedures for establishing an Indian appellate court, (3) procedures for establishing an Indian circuit court.

The NAICJA Long Range Planning Study got underway, with Judge Orville Olney as the Project Director and David H. Getches as the Project Coordinator.

195 judges from 118 Indian courts were trained during the year.

1978 The Long Range Planning Study was concluded and a large number of the final report, "Indian Courts and the Future" were printed and distributed.

The Indian Court Clerks Training project got underway through a subcontract from the department of Labor, through the Antioch School of Law to the NAICJA. The contract was for \$200,000. The first training sessions were held in Albuquerque, Bismarck, Seattle and Utah.

Additional funds from the BIA for the Family Law/Child Welfare training were obtained in the amount of \$115,204 which were to expire on January 31, 1979.

The National Conference of Special Fourt Judges invited the membership of the NAICJA to become members of the ABA sponsored conference.

An add on grant of \$51,000 was obtained from the BIA for the Long Range Planning Study to develop a strategy for creating model courts on four reservations.

NAICJA received a grant of \$10,000 from the BIA to develop a plan for observing the International Year of the Child, a United Nations sponsored initiative. The scope of the plan was to deal with improving adjudication in family law/child welfare matters.

1979 A benchbook and textbook for Family Law/Child Welfare cases was prepared as resource material for the courts.

A grant of _____ was received by the NAICJA to hold hearings on proposed regulations for the Indian Child Welfare Act of 1978. These were held in Phoenix, Seattle, Window Rock, Billings, Juneau and Sacramento. Hearings on the east coast were conducted by the National Council of American Indians.

APPENDIX B
CHARACTERISTICS OF SELECTED INDIAN COURTS

**Data
Sources:**

Most of the data on the profile of selected Indian courts was synthesized from a report prepared by the American Indian Lawyer Training Program (AILTP), entitled Indian Self-Determination and the Role of Tribal Courts. The report was based upon a survey of approximately 93 tribal courts during the summer of 1976.

Additional information was obtained from the working papers of the NAICJA Long Range Planning Study, which was performed in 1977.

ABERDEEN		CHEYENNE RIVER	CROW CREEK	FLANDREAU	FORT BERTHOLD	FORT TOTTEN	LAKE TRAVERSE	LOWER BRULE	OMAHA	PINE RIDGE	ROSEBUD	STANDING ROCK	TURTLE MOUNTAIN
COURT CHARACTERISTICS													
A. LEGAL BASIS													
Tribal Government	IRA	CONST	IRA	IRA			CONST	LAW	IRA	IRA	IRA	IRA	IRA
Tribal Court	CONST	LAW	CFR	LAW			CONST	LAW	CFR	CFR	CONST	LAW	CONST
Written Procedures	NO	-	CFR	-			YES	YES	CFR	NO	YES	NO	YES
B. COURT FACILITIES													
Court Rooms	1	1	0	1			1	1	1	1	1	1	1
Judges Chambers	2	1	0	0			2	1	1	1	1	1	1
C. COURT PERSONNEL													
Number of Judges	1+3	1+0	1+1	1+2			1+2	1+2	1	1+2	1+2	1+2	1+2
No. of Prosecutors	1	0	0	0			0	0	0	1	1½	0	1PT
No. of Defenders	0	-	1	0			0	0	0	0	1	0	0
No. of Advocates	0	0	0	0			0	1	0	0	0	0	2
Legal Aid *	YES	0	0	0			0	YES	0	YES	YES	0	0
No. of Clerks	1	1	1	1			1	1	1	2	1½	2	2
Court Admin.	0	0	0	0			0	0	0	1	0		0
D. ANNUAL CASELOAD-76													
Court days per wk.	5	2	-	3			5	4	2	5	6	5	5
Criminal cases	-	1104	-	-			896	-	-	-	-	667	-
Other cases	-	80	-	-			365	-	-	-	-	333	-
Total Cases (Annual)	2940	1184	-	-			1261	-	-	1500	-	1000	-
76 Population	4,487	1,432	55	3,051			3,241	743	1,362	9,237	8,410	5,159	4,581
Cases Per Capita	.65	.83	-	-			.39	-	-	.16	-	.19	-
Appeals	0	0	0	-			5	0	4	100	2	4	10
Jury Trials	0	0	0	0			3	0	-	-	-	10	-
E. JUDICIAL SELECTION													
Elected	-	-	-	E			-	E	-	E	-	-	E
Appointed	A	A	A	-			A	A	A	-	A	A	-
Other	-	-	-	-			-	-	-	-	-	-	-

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

COURTS	YANKTON	WINNEBAGO	SANTEE										
COURT CHARACTERISTICS													
A. LEGAL BASIS													
Tribal Government	CONST												
Tribal Court	CFR												
Written Procedures	YES												
B. COURT FACILITIES													
Court Rooms	1												
Judges Chambers	1												
C. COURT PERSONNEL													
Number of Judges	1+1												
No. of Prosecutors	0												
No. of Defenders	0												
No. of Advocates	2												
Legal Aid *	YES												
No. of Clerks	1½												
Court Admin.	-												
D. ANNUAL CASELOAD-76													
Court days per wk.	2												
Criminal cases	-												
Other cases	-												
Total Cases (Annual)	27												
76 Population	1,227												
Cases Per Capita	.02												
Appeals	0												
Jury Trials	0												
E. JUDICIAL SELECTION													
Elected	E												
Appointed	-												
Other	-												

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

ANADARKO

COURTS

IOWA

KICKAPOO

POTAWATOMI

SAC AND FOX

ANADARKO
(OKLAHOMA)

CONCHO

PAWNEE

SHAWNEE

COURT CHARACTERISTICS

A. LEGAL BASIS

Tribal Government

Tribal Court

Written Procedures

B. COURT FACILITIES

Court Rooms

Judges Chambers

C. COURT PERSONNEL

Number of Judges

No. of Prosecutors

No. of Defenders

No. of Advocates

Legal Aid *

No. of Clerks

Court Admin.

D. ANNUAL CASELOAD-76

Court days per wk.

Criminal cases

Other cases

Total Cases (Annual)

76 Population

Cases Per Capita

Appeals

Jury Trials

E. JUDICIAL SELECTION

Elected

Appointed

Other

* Available to Defendants on or off reservation.

MUSKOGIE	COURTS	ARDMORE	MIAMI	OMULGEE	OSAGE	TAHLOQUAH	TALIHINA	WEWOKA						
COURT CHARACTERISTICS														
A. LEGAL BASIS														
Tribal Government														
Tribal Court														
Written Procedures														
B. COURT FACILITIES														
Court Rooms														
Judges Chambers														
C. COURT PERSONNEL														
Number of Judges														
No. of Prosecutors														
No. of Defenders														
No. of Advocates														
Legal Aid *														
No. of Clerks														
Court Admin.														
D. ANNUAL CASELOAD-76														
Court days per wk.														
Criminal cases														
Other cases														
Total Cases (Annual)														
76 Population														
Cases Per Capita														
Appeals														
Jury Trials														
E. JUDICIAL SELECTION														
Elected														
Appointed														
Other														

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

ALBUQUERQUE	COURTS	RAMAH	ACOMA	COCHITI	ISLETA	JEMEZ	LAGUNA	SANDIA	SAN FELIPE	SANTA ANA	SANTA DOMINGO	ZIA	ZUNI
COURT CHARACTERISTICS													
A. LEGAL BASIS													
Tribal Government		0	0	IRA	0	IRA	0	0	0	0	0	0	IRA
Tribal Court		CODE	0	CONST	0	CODE	0	0	0	0	0	0	CONST
Written Procedures		NO	NO	YES	NO	NO	NO	NO	NO	NO	NO	NO	NO
B. COURT FACILITIES													
Court Rooms		1	1	1	0	1	1	1	1	1	0	0	1
Judges Chambers		1	0	1	0	1	0	0	0	0	0	0	1
C. COURT PERSONNEL													
Number of Judges		1	G+C	1+2	G+C	1+0	G+C	G	G+C	G	G+C	G+C	1+0
No. of Prosecutors		0	0	0	0	0	0	0	0	0	0	0	0
No. of Defenders		0	0	0	0	0	0	0	0	0	0	0	0
No. of Advocates		0	0	0	0	0	0	0	0	0	0	0	0
Legal Aid *		0	0	0	0	0	0	0	0	0	0	0	YES
No. of Clerks		1	0	1	0	1	0	0	0	0	0	0	1
Court Admin.		0	0	0	0	0	0	0	0	0	0	0	0
D. ANNUAL CASELOAD-76													
Court days per wk.		3	0	3	1	5	-	irreg.	-	irreg.	irreg.	irreg.	1
Criminal cases		203	-	-	-	-	-	284	-	-	-	-	2000
Other cases		87	-	-	-	-	-	-	-	-	-	-	2000
Total Cases (Annual)		290	-	496*	-	-	-	-	15	-	-	-	4000
76 Population		2,129	544	2,255	1,756	3,258	1,248	421	-	-	-	-	3,258
Cases Per Capita		.14	-	.22*	-	-	-	.04	-	-	-	-	1.23
Appeals		2	0	10	0	3	0	0	0	0	0	0	0
Jury Trials		0	0	0	0	10	0	0	0	0	0	0	0
E. JUDICIAL SELECTION													
Elected		-	E	-	E	-	-	E	E	-	-	E	-
Appointed		A	-	A	-	A	-	-	-	-	-	-	A
Other		-	-	-	-	-	-	-	-	-	-	-	-

* Available to Defendants on or off reservation.

* LONG RANGE PLANNING STUDY

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

COURTS	SOUTHERN UTE	UTE MOUNTAIN	JICARILLA	MESCALERO	NAMBE	PICURIS	POJOAQUE	SAN ILDEFONSO	SAN JUAN	SANTA CLARA	TAOS	TESUQUE
COURT CHARACTERISTICS												
A. LEGAL BASIS												
Tribal Government	IRA	IRA	IRA	IRA	0		CONST	0	0	IRA		
Tribal Court	CODE	LAW	CODE	CODE	0		CODE	CODE	CODE	CONST		
Written Procedures	YES	NO	YES	YES	NO		NO	YES	YES	NO		
B. COURT FACILITIES												
Court Rooms	1	1	1	1	0		1	1	1	1		
Judges Chambers	1	1	1	1	0		0	1	0	1		
C. COURT PERSONNEL												
Number of Judges	1+1	1	3	1+2	1		G	1	G+C	1+0		
No. of Prosecutors	0	0	0	0	-		0	0	0	0		
No. of Defenders	0	0	0	0	-		0	0	0	0		
No. of Advocates	0	0	0	;	-		0	0	0	0		
Legal Aid *	YES	YES	YES	0	-		0	0	0	0		
No. of Clerks	1	1	2	1	-		0	1	1	1PT		
Court Admin.	0	0	0	0	-		0	0	0	0		
D. ANNUAL CASELOAD-76												
Court days per wk.	1	2	5	1	0		1	1	1	4		
Criminal cases	213	550	-	-	-		-	100	-	267		
Other cases	37	50	-	-	-		-	-	-	10		
Total Cases (Annual)	250	600	1100*	-	-		-	-	60*	297		
76 Population	792	1,299	1,976	2,253	383		104	304	1,666	1,035		
Cases Per Capita	.32	.46	.56*	-	-		-	-	.04*	.29		
Appeals	0	-	6	0	0		0	1	0	0		
Jury Trials	0	-	23	0	0		0	0	0	0		
E. JUDICIAL SELECTION												
Elected	-	-	-	-	-		E	-	E	-		
Appointed	A	A	A	A	A		-	A	-	A		
Other	-	-	-	-	-		-	-	-	-		

* Available to Defendants on or off reservation.

*

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

BILLINGS	COURTS	BLACKFEET	CROW	FLATHEAD	Fort Belknap	Fort Peck	Northern Cheyenne	Rocky Boys	Wind River				
COURT CHARACTERISTICS													
A. LEGAL BASIS													
Tribal Government		IRA	IRA	IRA	CONST	CONST	IRA	IRA	NO				
Tribal Court		CONST	CONST	CONST	CONST	CONST	CONST	CONST	LAW-CFR				
Written Procedures		YES	NO	YES	PART	PART	NO	NO	YES				
B. COURT FACILITIES													
Court Rooms		1	1	0	1	1	1	0	1				
Judges Chambers		2	1	1	1	1	2	0	1				
C. COURT PERSONNEL													
Number of Judges		1+2	1+1	1+2	1+2	1+2	1+0	1+1	1+2				
No. of Prosecutors		2	0	0	0	0	1PT	0	1				
No. of Defenders		2	0	-	0	0	0	0	0				
No. of Advocates		0	0	-	0	0	0	0	0				
Legal Aid *		0	YES	-	0	YES	YES	YES	YES				
No. of Clerks		2	1	1	1	1+1PT	1	1	2				
Court Admin.		1	0	0	0	0	0						
D. ANNUAL CASELOAD-76													
Court days per wk.		5	5	5	2	6	6	3	3				
Criminal cases		5250	740	300	332	-	2720	296	1200				
Other cases			185	200	268	-	680	4	900				
Total Cases (Annual)		7000	925	500	600	6000	3400	300	2100				
76 Population		5,676	4,269	2,910	1,603	3,812	2,959	1,528	4,677				
Cases Per Capita		1.23	.22	.17	.37	1.57	1.15	.20	.45				
Appeals		10	0	0	2	1	0	12	-				
Jury Trials		-	0	0	0	-	25	2	1				
E. JUDICIAL SELECTION													
Elected		-	E	-	-	-	-	E	-				
Appointed		A	-	A	A	A	A	-	A				
Other		-	-	-	-	-	-	-	-				

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

EASTERN	COURTS	MICCOSUKEE	SEMINOLE	CHOCTAW	ALLEGANY	CATTARAUGUS	ONONDAGO	ST. REGIS MOHAWK	TONAWANDA	TUSCARORA	QUALIA		
COURT CHARACTERISTICS													
A. LEGAL BASIS													
	Tribal Government	IRA	IRA	IRA	CONST						IRA		
	Tribal Court	-	-	CONST	CONST						CONST		
	Written Procedures	-	-	YES	YES								
B. COURT FACILITIES													
	Court Rooms			1	0								
	Judges Chambers			2	0								
C. COURT PERSONNEL													
	Number of Judges			1+2	1+2						1		
	No. of Prosecutors			0	0								
	No. of Defenders			0	0								
	No. of Advocates			0	0								
	Legal Aid *			0	0								
	No. of Clerks			1	0								
	Court Admin.			0	0								
D. ANNUAL CASELOAD-76													
	Court days per wk.			2	0								
	Criminal cases			1248	0								
	Other cases			220	30								
	Total Cases (Annual)			1468	30								
	76 Population	229	907	1,612	3,907						5,500		
	Cases Per Capita			.91	.01						-		
	Appeals			0	1								
	Jury Trials			3	0								
E. JUDICIAL SELECTION													
	Elected			-	E								
	Appointed			A	-								
	Other			-	-								

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

MINNEAPOLIS	COURTS	RED	SAINT	STOCKBRIDGE	WINNEBAGO	MENOMINEE	FOND DU LAC	GRAND	LEECH LAKE	LOWER LAKE	MILLE LAC	GREATER
		CLIFF	CROIX	MUNSEE				PORTAGE				NETT LAKE
COURT CHARACTERISTICS												
A. LEGAL BASIS												
Tribal Government						-						IRA
Tribal Court						CFR						CFR
Written Procedures						CFR						CFR
B. COURT FACILITIES												
Court Rooms						0						1
Judges Chambers						0						1
C. COURT PERSONNEL												
Number of Judges						1+2						1+1
No. of Prosecutors						0						0
No. of Defenders						0						0
No. of Advocates						0						0
Legal Aid *						0						0
No. of Clerks						1						1
Court Admin.						0						0
D. ANNUAL CASELOAD-76												
Court days per wk.						5						1
Criminal cases						-						83
Other cases						-						9
Total Cases (Annual)						1000*						92
76 Population						2,707						650
Cases Per Capita						.37						.14
Appeals						0						0
Jury Trials						0						0
E. JUDICIAL SELECTION												
Elected						-						E
Appointed						A						-
Other						-						-

* Available to Defendants on or off reservation.

COURTS	SAC AND FOX	SAULT STE. MARIE	BAY MILLS	HANNAHVILLE	ISABELLA	L'ANSE	BAD RIVER	LAC COURT OPELLES	LAC DU FLAMBEAU	MOLE LAKE	ONEIDA	POTAWATOMI
COURT CHARACTERISTICS												
A. LEGAL BASIS												
Tribal Government			IRA			IRA						
Tribal Court			CONST			CONST						
Written Procedures			YES			YES						
B. COURT FACILITIES												
Court Rooms			0			1						
Judges Chambers			0			0						
C. COURT PERSONNEL												
Number of Judges			1+3			1+1						
No. of Prosecutors			0			0						
No. of Defenders			-			0						
No. of Advocates			-			0						
Legal Aid *			-			YES						
No. of Clerks			1			1						
Court Admin.			0			0						
D. ANNUAL CASELOAD-76												
Court days per wk.			0			1						
Criminal cases			5			-						
Other cases			5			-						
Total Cases (Annual)			10			-						
76 Population			304			758						
Cases Per Capita			.03			-						
Appeals			0			0						
Jury Trials			0			0						
E. JUDICIAL SELECTION												
Elected			E			E						
Appointed			A			-						
Other			-			-						

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

COURTS	PRARIE	PRIOR LAKE	UPPER SIOUX	WHITE EARTH	RED LAKE								
	ISLAND												
COURT CHARACTERISTICS													
A. LEGAL BASIS													
Tribal Government													
Tribal Court													
Written Procedures													
B. COURT FACILITIES													
Court Rooms													
Judges Chambers													
C. COURT PERSONNEL													
Number of Judges													
No. of Prosecutors													
No. of Defenders													
No. of Advocates													
Legal Aid *													
No. of Clerks													
Court Admin.													
D. ANNUAL CASELOAD-76													
Court days per wk.													
Criminal cases													
Other cases													
Total Cases (Annual)													
76 Population													
Cases Per Capita													
Appeals													
Jury Trials													
E. JUDICIAL SELECTION													
Elected													
Appointed													
Other													

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

NAVAJO		COURTS	CHINLE	FORT DEFIANCE	TUBA CITY	EASTERN NAVAJO	SHIPROCK	TOTAL NAVAJO						
COURT CHARACTERISTICS														
A. LEGAL BASIS														
	Tribal Government							CODE						
	Tribal Court							CODE						
	Written Procedures							YES						
B. COURT FACILITIES														
	Court Rooms							3						
	Judges Chambers													
C. COURT PERSONNEL														
	Number of Judges							1+5						
	No. of Prosecutors							0						
	No. of Defenders							0						
	No. of Advocates							-						
	Legal Aid *							YES						
	No. of Clerks							1						
	Court Admin.							0						
D. ANNUAL CASELOAD-76														
	Court days per wk.							5						
	Criminal cases							14,000						
	Other cases							16,000						
	Total Cases (Annual)							30,000						
	76 Population							25,520						
	Cases Per Capita							.24						
	Appeals							100						
	Jury Trials							30						
E. JUDICIAL SELECTION														
	Elected							-						
	Appointed							A						
	Other							-						

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

PHOENIX	COURTS	COLORADO RIVER	COCOPAH	FORT MOHAVE	FORT YUMA	FORT APACHE	KAIBAB	HOPI	FORT MCDOWELL	PAPAGO	AK CHIN	GILA RIVER	SALT RIBER
COURT CHARACTERISTICS													
A. LEGAL BASIS													
Tribal Government		IRA	IRA	IRA		IRA	IRA	IRA	CONST	IRA	IRA	IRA	IRA
Tribal Court		LAW	CODE-CFR	CFR		CODE	CFR	CONST	SALT-CODE	CONST	CONST	LAW	CODE
Written Procedures		NO	NO	NO		SOME	NO	SOME	NO	YES	YES	YES	NO
B. COURT FACILITIES													
Court Rooms		1	1	1		1	1	1		1	1	1	1
Judges Chambers		1	1	1		1	1	1	SEE SALT RIVER	2	0	1	1
C. COURT PERSONNEL													
Number of Judges		1+1	1	1		1+1	1	1	SEE SALT RIVER	1+2	1	1+2	1+1
No. of Prosecutors		0	0	0		0	0	1+1PT	SEE SALT RIVER	1	0	1	1
No. of Defenders		0	0	0		0	0	-	SEE SALT RIVER	0	-	0	0
No. of Advocates		2	0	0		0	0	-	SEE SALT RIVER	3	-	3	1
Legal Aid *		0	0	0		0	0	-	SEE SALT RIVER	-	-	YES	0
No. of Clerks		1	0	1		2	0	1	SEE SALT RIVER	3	0	4	1
Court Admin.		0	0	0		0	0	0	SEE SALT RIVER	0	0	1	0
D. ANNUAL CASELOAD-76													
Court days per wk.		5	3	0		5	0	5		5	1	5	5
Criminal cases		1500	60	11		2821	15	maj		2372	200	779	571
Other cases		900	1	1		831	-			238	20	1148	170
Total Cases (Annual)		2,400	61	12		3,652	15	804		2,610	220	1,927	741
76 Population		1,673	360	374		8,077	122	5,673	330	8,707	312	6,405	2,809
Cases Per Capita		1.43	.17	.03		.45	.12	.14		.30	.71	.30	.26
Appeals		2	0	0		10	0	3		-	0	3	2
Jury Trials		0	0	0		3	0	2		0	0	6	1
E. JUDICIAL SELECTION													
Elected		-	-	-		E	-	-	E	-	-	E	E
Appointed		A	A	A		-	A	A	-	A	A	-	-
Other		-	-	-		-	-	-	-	-	-	-	-

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

COURTS	SAN CARLOS	CAMP VERDE	HAVASUPAI	HUALAPAI	YAVAPAI/ PRESCOTT	BATTLE MOUNTAIN	DUCK VALLEY	DUCKWATER	ELY COLONY	FALLON COLONY	FORT MCDERMITT	GOSHUTE
COURT CHARACTERISTICS												
A. LEGAL BASIS					Articles							
Tribal Government	IRA	IRA	IRA	IRA	of 1962		IRA				IRA	IRA
Tribal Court	LAW	CODE	CODE	CONST	CFR		LAW				LAW	CONST
Written Procedures	NO	NO	SOME	NO	NO		PART				PART	NO
B. COURT FACILITIES												
Court Rooms	1	1	1	1	1		1				0	1
Judges Chambers	1	1	1	1	1		1				1	1
C. COURT PERSONNEL												
Number of Judges	1+2	1+1	1	1+1	1		1+2				1	1
No. of Prosecutors	0	0	0	1	0		0				0	0
No. of Defenders	0	0	0	0	0		0				0	0
No. of Advocates	3	0	0	0	0		0				0	0
Legal Aid *	0	0	0	0	0		0				0	YES
No. of Clerks	2	1PT.	1	1	0		1PT.				1	1
Court Admin.	0	0	0	0	0		0				0	0
D. ANNUAL CASELOAD-76												
Court days per wk.	7	2	5	3	0		5				1	1
Criminal cases	2726	102	50	475	0		200				80	-
Other cases	74	2	16	25	0		200				40	-
Total Cases (Annual)	3000	104	66	500	0		400				120	-
76 Population	5,619	280	308	703	280		1,007				407	126
Cases Per Capita	.53	.37	.21	.71	-		.40				.29	-
Appeals	4	0	1	1	0		0				0	0
Jury Trials	-	0	0	1	0		0				0	0
E. JUDICIAL SELECTION												
Elected	-	-	E	-	-		-				-	-
Appointed	A	A	-	A	A		A				A	A
Other	-	-	-	-	-		-				-	-

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

COURTS	LAS VEGAS	LOVELOCK	MOAPA	PYRAMID LAKE	RENO/SPARKS	RUBY VALLEY	SOUTH FORK	WALKER RIVER	WASHOE	YERINGTON	UINTA-OURAY	HOPÍ
COURT CHARACTERISTICS												
A. LEGAL BASIS												
Tribal Government		IRA			IRA			IRA			IRA	
Tribal Court		CFR			CFR			CFR			LAW	
Written Procedures		NO			YES			YES			YES	
B. COURT FACILITIES												
Court Rooms		1			0			1			1	
Judges Chambers		1			0			1			2	
C. COURT PERSONNEL												
Number of Judges		1			1			1			1	
No. of Prosecutors		0			1			1			2	
No. of Defenders		0			0			0			1	
No. of Advocates		0			0			0			0	
Legal Aid *		0			YES			0			0	
No. of Clerks		0			1			0			3	
Court Admin.		0			0			0			0	
D. ANNUAL CASELOAD-76												
Court days per wk.		0			2			1			5	
Criminal cases		5			-			-			1400	
Other cases		11			-			-			100	
Total Cases (Annual)		16			-			500			1500	
76 Population		117			503			452			1,645	
Cases Per Capita		.14			-			1.11			.91	
Appeals		0			0			2			0	
Jury Trials		0			2			1			100	
E. JUDICIAL SELECTION												
Elected		-			-			-			-	
Appointed		A			A			A			A	
Other		-			-			-			-	

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

PORTLAND	COURTS	FORT HALL	COEUR d'ALEN	KOOTENAI	NEZ PERCE	UMATILLA	WARM SPRINGS	BURNS PAIUTE	COLVILLE	KALISPELL	SPOKANE	CHEHALIS	LOWER ELWAH
COURT CHARACTERISTICS													
A. LEGAL BASIS													
	Tribal Government	IRA	CONST' 49			CONST' 49	IRA	CONST	IRA	IRA	IRA		
	Tribal Court	CONST	CONST			CODE	LAW	LAW	LAW	LAW	LAW		
	Written Procedures	YES	YES			NO	YES	YES	YES	YES	YES		
B. COURT FACILITIES													
	Court Rooms	1	1			0	1	0	1	0	1		
	Judges Chambers	1	1			0	2	0	2	0	0		
C. COURT PERSONNEL													
	Number of Judges	1+2	1+1			0	1+1	1	-	1	1+3		
	No. of Prosecutors	0	0			0	0	0	0	0	0		
	No. of Defenders	0	0			0	0	0	0	0	0		
	No. of Advocates	0	0			0	0	0	0	0	0		
	Legal Aid *	0	0			0	YES	YES	YES	YES	YES		
	No. of Clerks	2	1			0	1	1	1	0	0		
	Court Admin.	0	0			0	0	0	0	0	0		
D. ANNUAL CASELOAD--76													
	Court days per wk.	3	2			0	5	?	1	A/N	2		
	Criminal cases	1468	71			0	889	23	262	-	360		
	Other cases	112	7			0	569	0	95	-	40		
	Total Cases (Annual)	1580	78			0	1458	23	357	75	400		
	76 Population	2,258	450			719	1,922	129	2,560	123	743		
	Cases Per Capita	.70	.17			-	.76	.18	.14	.61	.54		
	Appeals	8	0			0	3	0	0	0	0		
	Jury Trials	0	2			0	3	0	-	0	0		
E. JUDICIAL SELECTION													
	Elected	E-CJ	-			-	-	-	-	-	E		
	Appointed	A-A	A			-	-	-	A	A	-		
	Other	-	-			-	-	-	-	-	-		

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

COURTS	LUMMI	MAKAH	MUCKLESHOOT	NI-SQUALLY	NOOKSACK	PORT GAMBLE	PORT MADISON	PUYALLUP	QUILEUTE	QUINAULT	SKOKOMISH	SWINOMISH
COURT CHARACTERISTICS												
A. LEGAL BASIS												
Tribal Government	CONST70	IRA		IRA		IRA	IRA			CONST75	IRA	IRA
Tribal Court	LAW	LAW		LAW		LAW	LAW			CONST	CONST	LAW
Written Procedures	NO	YES		YES		-	YES			YES	PART	NO
B. COURT FACILITIES												
Court Rooms	1	1		0		1	1			1	0	0
Judges Chambers	1	1		0		1	0			1	0	0
C. COURT PERSONNEL												
Number of Judges	1+1	1+2		1+1		1+1	1+1			1+1	1+0	1
No. of Prosecutors	0	POL. JUD.		1		0	0			PT	0	0
No. of Defenders	0	0		0		0	0			0	0	0
No. of Advocates	0	0		0		0	0			1PT	0	0
Legal Aid *	0	0		0		YES	0			0	0	0
No. of Clerks	1	1		1		1PT	1			1	1	0
Court Admin.	0	0		0		0	0			0	0	0
D. ANNUAL CASELOAD-76												
Court days per wk.	2	2		1		1	0			5	0	1
Criminal cases	245	105		50		-	2			296	2	16
Other cases	50	60		0		-	0			52	0	0
Total Cases (Annual)	295	165		50		-	2			348	2	16
76 Population	1,305	920		111		263	176			1,153	255	386
Cases Per Capita	.23	.18		.45		-	.01			.30	.01	.04
Appeals	0	0		0		-	0			-	NA	0
Jury Trials	0	0		0		-	0			9	0	0
E. JUDICIAL SELECTION												
Elected	-	-		-		-	E			-	-	-
Appointed	A	A		A		A	-			A	A	A
Other	-	-		-		-	-			-	-	-

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976

COURTS	TULALIP	YAKIMA	METLAKATLA															
COURT CHARACTERISTICS																		
A. LEGAL BASIS		NO																
Tribal Government		WRITTEN	IRA															
Tribal Court		RESOLUT	CONST															
Written Procedures		NO	-															
B. COURT FACILITIES																		
Court Rooms		1	1															
Judges Chambers		1	1															
C. COURT PERSONNEL																		
Number of Judges		1+5	1+2															
No. of Prosecutors		1	0															
No. of Defenders		1	0															
No. of Advocates		0	0															
Legal Aid *		0	YES															
No. of Clerks		1	1PT															
Court Admin.		0	0															
D. ANNUAL CASELOAD-76																		
Court days per wk.		5	1															
Criminal cases		960	248															
Other cases		240	2															
Total Cases (Annual)		1200	250															
76 Population		5,210	1,042															
Cases Per Capita		.23	.24															
Appeals		0	1															
Jury Trials		1	0															
E. JUDICIAL SELECTION																		
Elected		-	-															
Appointed		A	A															
Other		-	-															

* Available to Defendants on or off reservation.

TABLE PROFILE OF TRIBAL COURT CHARACTERISTICS

SOURCE: AILTP-1976



