Redeeming Centuries of Dishonor: Legal Education and the American Indian

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REDEEMING CENTURIES OF DISHONOR: LEGAL EDUCATION AND THE AMERICAN INDIAN

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The American Indian is a significant minority which suffers social, economic, political and educational indignities equal to or greater than that of any other disadvantaged group in America. Strickland points out the impending need for more "Indian lawyers" to provide the leadership necessary to maintain the increasing activism of the Indian people directed toward functioning within the established legal system. Programs emphasizing legal education for the Indian have just recently been inaugurated. The author proposes that in addition to providing "headstart" programs for Indians pursuing a traditional legal education, a "National Center for Law and the American Indian" should be established to coordinate programs designed to fulfill the basic legal needs of the American Indian, including legal aid, law enforcement and informal conference, consultation and education programs.

I. INTRODUCTION

In the heat of the Georgia campaign to remove the Cherokee Indians, the good citizens of Berrien County, Georgia, including a number of the illustrious members of the bar, are reported to have drunk a toast to Daniel Webster. Proposed on Independence Day, July 4, 1830, the toast was to "Webster—may his passage to Washington City, to the next

Congress, be obstructed by thorns, and should he arrive, may his food be Indian's flesh, and served up by an African."

This toast is a none-too-gentle reminder that the bar has not always led the way toward solutions of minority problems and it might suggest that present concern with the black man, while highly laudable, may ignore a minority problem which predates the landing of the first Negro slave in Virginia. The "minority question" of the American Indian survives from a time when the white colonist was himself the "minority problem" and when, as anthropologists Alice Marriott and Carol Rachlin note, "Pocahontas, like the spoiled child she was, demanded the Englishman as a plaything."

Those familiar with the American Indian as he enters the 1970's know that Helen Hunt Jackson understated the case when she wrote of A Century of Dishonor. For unless we reverse a policy trend dating from the arrival of the first European, we stand on the edge, not of a century, but of half a millennium of dishonor.

To most Americans the Indian is a quaint anacronism—a specimen of a strange species of wild animal that once roamed our forests and plains, hunting the buffalo and fishing the streams. The Indian is the vanishing American on the buffalo nickel, a remnant of the "Vietnam and Civil Rights problems of another age."

2. An excellent example of this attitude is found in an early report of a minority education committee of the Association of American Law Schools, which considered only black minority problems. Advisory Committee for Minority Groups Study, Report Ass'n Am. L. Schl., Proceedings, pt. 1 § 1, at 160 (1967).
4. To some such as Mrs. Jackson it was "dishonor" but to others it was simply "manifest destiny." But just the same, the Indian was and still is the victim of American colonialism. H.H. Jackson, A Century of Dishonor (Torshook ed. 1965); The Removal of the Cherokee Nation: Manifest Destiny or National Dishonor (Filler & Gruttman eds. 1962); C. Nammack, Fraud, Politics, and the Dispossession of the Indians (1969).
6. R. Strickland, The American Indian: Yesterday's Vietnam Still Haunts Us
The Indian, however, is not a vanishing American. The Bureau of Indian Affairs estimates that there are 600,000 Indians living within traditional Indian communities. Over 380,000 American Indians actually live on Indian reservations. More than a million Americans are said to follow Indian practices. In fact, census reports show that the Indian is the fastest growing minority group in America.\footnote{BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ANSWERS TO YOUR QUESTIONS ABOUT AMERICAN INDIANS 2-3 (1968).}

The evidence of the plight of the American Indian is truly appalling. "The red man," President Johnson reported in a special message to Congress, "is the most poverty stricken and economically deprived segment of our population [whose] plight dwarfs the situation of any other Americans in the worst ghettos." The statistics are long, cold, and hard. They are almost overpowering. Gathered together, the facts establish, as Robert Kennedy contended, that "the first American has...

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(unpublished paper in University of Arkansas Library). Stephen Vincent Benet in his unfinished poem, Western Star, focuses responsibility for what we, in our Anglo way, have come to call this Indian problem.

Americans are always moving on.
It's an old Spanish custom gone astray.
A sort of English fever, I believe,
Or just a mere desire to take French leave,
I couldn't say. I couldn't really say.
But when the whistle blows, they go away.
Sometimes there never was a whistle blown,
But they don't care, for they can blow their own
Whistles of willow-stick and rabbit-bone,
Quail-calling through the rain
A dozen tunes but only one refrain,
"We don't know where we're going, but we're on our way."

Benet, Western Star 3 (1943). Surely these twelve lines speak as eloquently and perceptively of the Indian and our problem as the millions of pages of learned tomes investigating the massacres from Martha's Vineyard to Wounded Knee. Simply stated, the Indian stood in the way of Americans moving on.

7. BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ANSWERS TO YOUR QUESTIONS ABOUT AMERICAN INDIANS 2-3 (1968). This remarkable growth is illustrated by the Navajos, who numbered 85,000 a decade ago, exceed 120,000 today and are estimated to reach 340,000 by the turn of the century. Address by Louis R. Bruce, Commissioner of Indian Affairs, Shiprock, New Mexico, Dept. of the Interior News Release, Sept. 6, 1969. For problems associated with determination of Indian population see COMMISSION ON THE RIGHTS, LIBERTIES & RESPONSIBILITIES OF THE AMERICAN INDIAN, REPORT: THE INDIAN: AMERICA'S UNFINISHED BUSINESS 11-12 (W. Brophy & S. Aberle eds. 1966).

become the last American... with the opportunity for employment, education, decent income, and the chance for a full and rewarding life."9

Whatever index is chosen to measure Indian conditions, the "statistics are the most eloquent evidence of our own failure."10 The income level,11 health conditions,12 housing standards,13

10. Id.
11. Income for the Indian is low. His $1,500 a year average income is more than seventy-five percent below the national average. Tribes such as the Pine Ridge Sioux with a yearly income of $105 and the Standing Rock Sioux with $190 are truly destitute. The reservationed Indians are unquestionably the poorest. More than fifty percent of these families have incomes under $2,000 yearly. Even the most prosperous Five Civilized Tribes (Cherokee, Creek, Choctaw, Chickasaw, and Seminole) fall below a $1,500 a year average. Surveys of Creek Indians reporting income for tax purposes show that more than a third of these families have yearly incomes of less than $1,000. Tribes such as the Papago seem relatively prosperous on a $2,377 a year family income until this is compared with the $9,249 of their white Arizona neighbors.
12. An Indian born in the twentieth century will live a life of approximately the same span as his ancestor of five-hundred years ago. The Indian has been left out of the advance of modern medicine. His life span will be from 42 to 44 years. In reservation areas the age of death is even earlier. The population as a whole will live to be more than sixty-five years of age—one-third longer than the American Indian.

The Indian health level is the lowest and disease rate the highest of all major population groups. Their incidence of tuberculosis is seven times the national average and the death rate from tuberculosis is over four-hundred percent higher. Similar statistics show that the incidence of strep infections is a thousand percent higher, meningitis is two thousand percent higher, and dysentery is ten thousand percent higher.

Disease death rates are equally shocking when Indian and non-Indian populations are compared. Influenza and pneumonia are three hundred percent greater killers among Indians. Veneral disease is not only common but death from gonorrhea is over five hundred percent more likely. Diseases such as hepatitis are at epidemic proportion with an eight-hundred percent higher chance of death.

An Indian mother could not help but weep if she knew the hazards to her child. Twice as many Indian children die at birth as white children. There are 53.7 deaths in childbirth per 1,000 for the Indian as compared to 25 deaths per 1,000 for the non-Indian population. The Indian death rate for small children is more than twice the national average. Minor diseases (chicken pox, mumps, etc.) remain a life and death question to the reservationed Indian. In one southwestern area 500 of 17,000 Indian babies will die in their first year from preventible childhood diseases.

13. Several generations are usually housed in a two or three room shack or hogan which contains no plumbing or bathing facilities. Between 50,000 and 57,000 Indian homes are considered substandard. Most of these cannot be repaired. These dwellings are not only inadequate in size but unsanitary. Over eighty-eight percent of the homes in the Pine Ridge area, for example, have been classed as substandard dwellings.
unemployment rate, educational level, statistics of crime and juvenile delinquency, all establish, as President Nixon has stressed, that "American Indians . . . suffer . . . indignities that few disadvantaged groups in America suffer in equal measure." We address ourselves to the Indian and his problem in a symposium on legal education and the disadvantaged because of a strong belief that the legal profession and especially law schools have special resources which they can bring to the aid of the American Indian. The Indian has himself recognized this potential even if the legal profession has never been alerted to the responsibility it possesses.

14. Employment is not available for most Indians. Over forty-five percent of all Indian males are unemployed. This is ten times the national average. The average employment figures hide the tragically unemployed areas. In some sections nine out of ten working-age males are chronically unemployed. Over 10,000 Pueblos are jobless. Of a working force of 880 among the Standing Rock Sioux, 500 cannot find work. Mississippi Choctaws are 86.8 percent unemployed and the Acomos have more than 89.6 percent jobless. The unemployment rate has reached 55 percent among the Five Civilized Tribes in Oklahoma. This is not a temporary seasonal or cyclical problem. Nearly half of all Indian men are chronically jobless. Thirty-eight percent of the Indians who are employed are listed as underemployed because working on a full-time basis their income does not raise them above the poverty level.

15. The unemployment level is a reflection of the general educational achievement among the Indians. The Indian averages five years of school. The educational attainment is one-half of the national average. Indian literacy rate is the lowest of any group in the United States. Over sixty percent have less than an eighth grade education. One out of every ten Indians over fourteen years of age has no education at all. The figures are not much more encouraging for the current school population. More than fifty percent will never finish high school as compared with the national average of only twenty-nine percent dropouts. On reservations as many as two out of three children are dropouts. A college graduate is a rare phenomena among most tribes. Of every one-hundred students who start out in federal schools, only one will graduate from college. For the entire Indian population, college attendance is less than one-fourth that of the non-Indian college age population. The low educational level is a secondary problem when compared with the language barrier. A Vista worker among the Navajo tribe estimated that only thirty-five out of seven hundred adults in his immediate area could speak English. A University of Chicago study found some sections of Eastern Oklahoma where ninety percent of the Cherokees lacked English fluency. Fifty to eighty percent of the Creeks in the hill country are said to have only limited use of English.

16. Crimes of Indians are more serious and more frequent than ever before. The rate of juvenile delinquency is nine times the national average. Illegitimate births among Indian girls have doubled in the last ten years. The suicide rate among Indian teenagers in certain reservations is one hundred times the teenage suicide rate for the entire teenage population.


18. A recent provocative article which has attempted to draw the attention of the
A full blooded Navajo, speaking before the Senate Subcommittee on Education, linked tribal leadership with the need for "Indian lawyers." Although the Navajo may not have articulated the basis for his premise, he seemed to adopt the reasoning which James C. Davis expressed in a plea to the organized bar to respond to the conditions in the Negro inner-city ghettos. While the issues may be faced in a different setting, the Indian community needs the skills of the lawyer as desperately as does the Negro or any other group in America. Davis states the case for the lawyer's skills quite well.

The primary need is for leadership, with the wisdom and courage not only to expose . . . causes but to point the way for their solution. I believe that lawyers, by education and experience, are better equipped than any other group in society to provide this leadership. Lawyers are still generalists, and there are few of them left. Our education has not been limited to a particular science or a specialized section of the business economy. Rather, our study of the common law has required an examination of men's social and economic experiences, in good times and bad, under a great variety of political structures . . . .

The focus of this analysis is upon the question of educating the American Indian as a lawyer. The term "Indian lawyer" is used to mean both the "Indian as lawyer" and "lawyers for Indians." In this paper we are primarily concerned with the education of Indians as lawyers. The problems are, of course, interrelated and it is hoped that many Indians trained as lawyers will choose to work with Indian legal problems.

II. Legal Dimension of the Indian Problem

American Indian activities offer ample proof of the often quoted dictum of Alexis de Tocqueville that "[s]carcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." The year 1969 bears...
eloquent testimony to the emergence of the legal dimension of the Indian problem. Only in the last year or two has the legal setting for the Indian struggle become so obvious.

More and more the Indian is framing his grievance in terms of legal issues redressable within the existing court structure. The first issue of the Renegade, a newspaper published by an organization known as Survival of the American Indian Association, illustrated the legal activism of the "New Indian movement" in a "Capsule Chronology of Events of 1968-1969." Established power structures in Indian communities are also focusing upon legal solutions to historic grievances.

As the United States Supreme Court and the Indian Claims Commission address themselves to land purchases and treaty interpretations, the full legal implications of historical documents negotiated with Indian tribes are being felt. With the New Indian and minority Red Power groups beginning to follow other protesting minorities, the forces of police power will be increasingly brought into the Indian world. Television coverage of the beach and fishing controversies and the almost Gilbert and Sullivan seizure of Alcatraz have spotlighted two dramatic events of 1969.

Legal assistance programs have, no doubt, stimulated Indian litigation. Requirements of the Civil Rights Act

24. For example, most of the actions brought before the Indian Claims Commission are initiated by the elected or appointed tribal governments. 1968 Indian Claims Comm'n Ann. Rep.
28. Legal Aid, Navajo War on Poverty 1 (1967); ONEO'S Impact on Reservation, 1 Am. Indian L. Newsletter 2 (1968); Reynoso, Change Through the Law: California Rural Legal Assistance, 19 Brief Case 3 (1969).
extending basic constitutional guarantees to Indians appearing before native courts have intensified the pressure to revise Indian concepts of justice and have introduced outside factors into traditional procedures.29

The Indian is quietly (and not so quietly in some cases) storming the gates of the American legal system. The reason is simple—"so much of the [American Indians] relationship with society at large is defined in terms . . . which lend themselves to lawyer's treatment."30 As George Duke, Director of California Indian Legal Services, Inc., explained: "Indians have special legal problems, and more of them, than any other minority group. . . ."31 The unique relationship between the Indian and the federal government distorts the function of law as conceived by the typical American community. "Because the very existence of Indian organizations is now dependent on the pleasure of Congress," Professor Monroe Price argues, "law has taken on a role in the life of Indians that it has thankfully not assumed over the life of almost any other groups. The government's power is of life and death dimensions."32

There are a number of settings, tribal and personal, in which the legal dimension of the Indian problem will certainly be present. The surging legal activism of American Indians is not indicative of new problems but simply represents a belated recognition of the legal implications of the age old problems. Based upon an analysis of the developments in Indian relations within recent years, there are essentially five contexts in which law related problems are likely to arise in the life of the American Indian. These are:

A. Tribal relations with other governmental or administrative units on a variety of issues most generally associated with treaty interpretation, land claims, governmental regulations and services;

B. Internal tribal relations including administration of law and order functions through tribal police and native courts;
C. Tribal relations with non-governmental bodies or individuals especially on questions of economic and industrial development of tribal resources;
D. Personal problems of individual Indians relating to problems of poverty and disadvantaged social status;
E. Personal problems of individual Indians associated with violations of legal regulations.

Because of what in current Washington rhetoric is denominated "that special relationship between Indian tribes and the Federal government," significant policy considerations with far-reaching legal implications are most often raised outside the litigation process within the bureaucracy of the Indian Administration or before congressional committees. Therefore, it would be a mistake to think of important legal issues being raised only in the Supreme Court or before the Claims Commission. In fact, the most serious policy questions are those which continuously face the Indian leader while guiding legislative and administrative decision makers.


34. For the shift "from a single agency involvement in the Indian field" to a "multi-agency involvement" see Statement by Louis R. Bruce before the Committee on Interior and Insular Affairs of the United States Senate, Bureau of Indian Affairs, Department of the Interior News Release (Aug. 11, 1969). For a more complete development of this approach, examine Address of Louis R. Bruce, The New BIA—The New Politics, Remarks at Meeting of Western Oklahoma Indian Leaders, Oklahoma City, Oklahoma, Bureau of Indian Affairs, Department of the Interior News Release, Oct. 24, 1969.

35. The magnitude of this task is illustrated by the fact that more than 250 bills relating to Indian problems were introduced into the 90th Congress.

A. Tribal Relations with Other Governmental or Administrative Units on a Variety of Issues Most Generally Associated with Treaty Interpretation, Land Claims, Governmental Regulation and Services.

The stereotyped Indian legal question is the one which falls into this division. In the 1970 term of the United States Supreme Court there was a classic case of this type. The central legal question was whether the Cherokee, Choctaw, and Chickasaw tribes or the State of Oklahoma and 12 oil companies are entitled to mineral resources beneath the bed of the Arkansas River. The answer rested upon the interpretation of the treaties of the 1820s and 1830s.

The Indian Claims Commission is the most frequent forum for question of land and treaty interpretation. In 1968, based on questions of this sort, the Indian Claims Commission awarded more than 36 million dollars to Indian tribes. Since 1946 the total awards have exceeded 251 million dollars. As many as one thousand separate claims have been filed on the same docket. Most of the Indian claims filed with the commission are for fair value of Indian lands ceded to the United States or taken by the government in the past.

Probably the most dramatic of current problems which the United States Congress is now considering involves the millions of acres of land claimed by tribes in Alaska. Fishing rights, beach occupancy, and grazing cases are typical of the issues presented. An interesting variation was a recent action brought to force the Bureau of Indian Affairs to provide adequate tribal schools. The author believes the most interesting of the recent


39. The scope of the Alaskan claims cases has not yet become clear but is viewed as a real test case by most students of Indian affairs. Letter from Congressman Ed Edmonson, member Indian Affairs Subcommittee, to Rennard Strickland, Nov. 5, 1969.

conflicts concerns a state-tribal conflict over the rights of the Shoshone Indians to gather more than the 25 pound per man restriction placed upon pinion nuts.\textsuperscript{41}

\textbf{B. Internal Tribal Relations Including Administration of Law and Order Functions Through Tribal Police and Native Courts.}

There are 81 operating Indian tribal courts. Only 19 of these retain absolute traditional procedure and jurisdiction.\textsuperscript{42} Maintenance of law and order functions on the reservations are generally assigned to tribes. The Bureau of Indian Affairs, however, retains limited authority and responsibility in some tribal jurisdiction.\textsuperscript{43} Administration plans call for shifting all law and order operations to the tribe.\textsuperscript{44} New programs and agencies to train police, judges, and other Indian tribal law officers have been faced with the task of formulating training methods and goals.\textsuperscript{45} Significant questions concerning the future of tribal law enforcement have been raised by the Civil Rights Act.\textsuperscript{46} States are beginning to question the power and jurisdiction of tribal police.\textsuperscript{47} The Pueblos are demanding retention of tribal structures\textsuperscript{48} and serious students of Indian legal relations argue that no unified model rights program can be adapted to all tribal

\begin{quote}
\textsuperscript{41} Indians Get Tough Over Pinon Nuts, 1 AM. INDIAN L. NEWSLETTER 13 (1968). \\
\textsuperscript{42} Staff of Subcomm. on Constitutional Rights of Senate Comm. on the Judiciary, 88th Cong., 2d Sess., Constitutional Rights of the American Indian 15 (Comm. Print 1964). These figures do not reflect informal tribal courts often held in conjunction with religious and holiday celebrations. There is strong evidence to suggest that many tribes still retain both formal and informal proceedings. Interview with Sam Tommie, Dania Seminole Reservation, Florida, Jan. 23, 1970. \\
\textsuperscript{43} Twelve courts of Indian offense were established by the Department of the Interior and fifty-three tribal courts were organized under Bureau of Indian Affairs Guidance following justice of the peace lines. Kane, The Negro and the Indian: A Comparison of Their Constitutional Rights, 7 ARIZ. L. REV. 244 (1966). \\
\textsuperscript{45} Indian Police Academy Begins Program, INDIAN RECORD. Dec. 1969, at 3. \\
\textsuperscript{47} The classic analysis of jurisdiction problems is Davis, Criminal Jurisdiction Over Indian Country in Arizona, 1 ARIZ. L. REV. 62 (1969). \\
\end{quote}
units. Indians are testing tribal organization and judicial powers in state and federal courts. Demands range from the right to counsel in tribal courts to the right to elect the tribal chief directly.

C. Tribal Relations with Non-governmental Bodies or Individuals Especially on Questions of Economic and Industrial Development of Tribal Resources.

That the United States is an ever-present party in almost all Indian relations is taken as a fact of life. Nonetheless, more and more tribes are negotiating through their own efforts with private industry to develop resources, whether timber, oil, land, or human. Tribal economic operations are multi-million dollar businesses. The opening of Fairchild Corporation on a Navajo reservation has great symbolic value and may stimulate other tribal industrial development programs.

Another dimension of resources utilization was exposed when tribes brought legal actions against independent traders who operated on or near reservations. The suits alleged a number of illegal practices which had been the basis of Indian complaints against white traders since the beginning of colonial commerce. Indians are now thinking in terms of economic cooperatives, tribal and private corporations, and computer science. The


50. *The American Indian Law Newsletter* regularly reports many of these cases which are tried on a local level and which would not appear in the national reporter systems. For the most complete picture of Indian litigation see *M. Price, American Indian Legal Problems: Cases and Materials* (tent. mimeo. ed. 1968).


55. Several years ago I.B.M. featured the Navajo use of computers in a national magazine campaign. A group of Dakota Indians have recently organized an all Indian
“Made in Japan” Indian artifact is finding it increasingly difficult to compete with homegrown “red” capitalism and the Indian tribes seem to have benefited economically from the hippie desire to wear seed-necklaces and beaded headbands.\textsuperscript{56}

\section*{D. Personal Problems of Individual Indians Relating to Poverty and Disadvantaged Social Status.}

For the urban Indian the legal dimensions of poverty are identical in almost every respect to those presented by members of other minority groups.\textsuperscript{57} The legal-poverty questions of the rural and reservationed Indian are not, however, cast in terms of the landlord-tenant problems since most of them are the owners of the dwellings in which they live.\textsuperscript{58} Most often their problems involve extension of credit and repossession of merchandise purchased on credit.\textsuperscript{59} Indians have recently begun to challenge administration of state welfare programs alleged to deny basic rights to the poor person who is an Indian.\textsuperscript{60}

Racial discrimination and disadvantaged social status is often closely related to the unemployment and poverty of the Indian. The California Indian Legal Services has filed a number of suits based upon discrimination in hiring practices—especially of state agencies.\textsuperscript{61} Some of the most serious instances of racial


\textsuperscript{57} See generally Martin, Correlates of Adjustment Among American Indians in an Urban Environment, 23 Human Organizations 290 (1964).

\textsuperscript{58} Almost two-thirds of all Indians live on federally administered reservations, some 55,000,000 acres in 21 states west of the Mississippi and the states of Florida, North Carolina, Mississippi, Wisconsin, and Michigan. Most of the rest live on state reservations, as in New York (where there are more Indians than there were when the Dutch bought their Island for $24 from a tribe without title), or in the tiny communities of their own such as the ones in southern Virginia. However, in Oklahoma many thousands of Indians have been divided from their lands.

\textsuperscript{59} One of the most eloquent statements on personal legal problems of the Indian is found in a petition drafted by members of the Rosebud Sioux Tribe in which they demand better protection for themselves and their community. Sioux Try Law. Rosebud Sioux Herald, Dec. 29, 1969, at 2.

\textsuperscript{60} CILS Files Suit Alleging Discrimination Against Indians, 1 Am. Indian L. Newsletter 3 (1968).

\textsuperscript{61} Id.
discrimination have involved abuse of the judicial process and are discussed in the next section.

E. Personal Problems of Individual Indians Associated with Violation of Legal Regulations.

These are the sort of problems associated with the highly controversial novel Nobody Likes a Drunken Indian.\(^2\) In the most basic form questions of this nature involve violation of a legal regulation of the community at large presenting the same kind of peace-breach questions raised in all such infractions. But the simple peace-breach does not remain so simple when language barriers are introduced and when members of minority groups are subjected to serious abuse.\(^6\) Sam Gorman, a Navajo, explained the problem in most basic terms:

> We had no lawyers . . . for many years. We had no one to defend us. We had no one to turn to. When we were arrested, we said, 'Guilty!' and we were confined to jail. We were locked up to suffer the consequences.\(^6^4\)

The perversion of the judicial process may begin with the "friendly joshing" of an Indian offender\(^5\) but must end, as all abuse of justice does, with a more serious violation such as the alleged shooting of a fifteen year old Indian boy by law enforcement officials in the sheriff's office of a far western town.\(^6^6\)

The kind of individual questions which arise may be unrelated to abuse of Indian offenders and may be as simple as the Legal Aid Society of Montana coming to the realization that many Indians were engaged in wholesale violation of state driving regulations because they had never taken vehicle

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\(^{62}\) Nonetheless this is a serious problem. Alcoholism is the number one social problem among Indians. In Minnesota a survey of court records showed that one-third of all arrests for drunkeness were Indian arrests. In many areas Indian drinking is so chronic that no prosecution attempts are made. For others, jailing is the common solution. One Indian, for example, has spent over two-hundred and fifty terms in a county workhouse for drunkeness.

\(^{63}\) The Navajo Times, Dec. 11, 1969, at 1.

\(^{64}\) The Navajo Times, Jul. 24, 1968, at 2.

\(^{65}\) The alleged shooting is reported to have taken place in the sheriff's office of the Yelm, Washington City Hall on Feb. 25, 1969. 2 AM. INDIAN L. NEWSLETTER 108 (1969).
operators' tests. Other typical examples include young Indian boys in violation of the draft laws and aged women seeking to publicize inadequate food by marching without permits.

The most extensively publicized case involving an Indian before the law is the prosecution of young Thomas White Hawk. White Hawk, a Sioux Indian, became the first person since 1947 to be sentenced to death for murder by the courts of South Dakota. Indians alleged that "White Hawk, with inadequate counsel and a vengeful judge was manipulated illegally into pleading guilty to a murder charge and then sentenced to death." Credence was given to the Indian story when Baxter Berry, a South Dakota rancher who leased land from the tribe, was acquitted for the murder of Norman Little Brave, a Sioux. Berry's case was dismissed by a coroner's jury and would not have been prosecuted were it not for pressures from Indian groups. The two cases provide a vivid contrast, a cogent demonstration of the problems of Indians before the law. The Governor of South Dakota has recently commuted the White Hawk sentence to life imprisonment.

III. SHORTAGE OF INDIAN LAWYERS

In view of the legal dimensions of Indian policy and the increased legal activism of Indian peoples, there is a chronic shortage of Indians who are trained as lawyers. Indians are demanding more native lawyers but the deficiency intensifies as the demand increases.

There are no accurate figures showing the number of American Indian lawyers. Although a study published in the Harvard Law Review concluded that there was no full blood American Indians who were members of a recognized state bar

71. The case seems to have stimulated interest among the Sioux in establishing tribal scholarship funds. Efforts to raise money for the White Hawk defense encouraged expanded drives so that "with few doctors, lawyers, and holy men, the Sioux Nation will live again." Let Us Continue, Rosebud Sioux Herald, Dec. 1, 1969, at 2.
association, this is not the case. There are full blood American Indian lawyers but no one seems to know quite how many. A survey reported by Lehman Brightman, a Sioux and Creek Indian from Cheyenne Agency, South Dakota who served as President of the United Native Americans, located four full bloods who are lawyers. This figure may underestimate the number but it is certainly reflective of the very small number of lawyers who come from the traditional tribal environment. There is reliable evidence that as of 1968 "not a single Indian practices law [in Arizona and New Mexico where more than 350,000 Indians live] nor has an Indian in the memory of school officials ever graduated from the law schools of the respective state universities."

Apparently there is even more confusion over the number of lawyers of Indian extraction or Indians who are of mixed blood. No figure has ever been produced to suggest how many Indian lawyers of less than full blood are members of state bar associations. Quite a number of members of the Oklahoma Bar Association claim tribal affiliation with one of the so-called "Five Civilized Tribes." It has been suggested, however, that most of these "Indian lawyers" are removed from the tribal community and Indian experience.

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73. Outstanding attorneys of Indian blood are listed in BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF INTERIOR, PROMINENT AMERICAN INDIANS (1969) and ENCYCLOPEDIA OF AMERICAN INDIANS (1967).
75. J.L. Fleshman, Need for Indian Lawyers Inspires New Mexico Project, in SCHOOL OF LAW, UNIVERSITY OF NEW MEXICO, A SPECIAL PROGRAM IN LAW FOR AMERICAN INDIANS 2 (1969). [Hereinafter cited as Special Program].
76. See testimony cited in Special Program 5.
77. The author believes the number would be quite large. For example, there are several law students of Indian blood in the School of Law at the University of Virginia where the author is a student. None of these appear in the computed figures on Indian law students. R. Strickland, Cherokee Law Ways: From Clan to Court (unpublished S.J.D. dissertation in the University of Virginia School of Law Library).
78. Each of these tribes had developed court systems adapted from the Anglo-American pattern and supported substantial tribal bars. See J.H. Payne, INDIAN JUSTICE (Grant Foreman ed. 1962); Foreman, The Indian and the Law, 17 OKLA. B.A. 82 (1946); Oklahoma and Indian Territory Bar Association, Proceedings of the Second Annual Meeting (1906).
79. There is much evidence that "mixed-blood" lawyers have provided genuine
The severity of the shortage and the confusion over the number of Indians who are lawyers emerged during a 1967 hearing before the House of Representatives Subcommittee on Indian Affairs. Mr. Saylor of Pennsylvania was, at the time, questioning Steward Udall, then Secretary of the Interior.

MR. SAYLOR: You said the acceptance of this bill would depend upon the tribes and councils and their leadership, and then you mentioned another group—who were they—who were going to advise these councils? I think you said the lawyers, is that not correct, that their lawyers were interested? How many Indian lawyers are there? I do not mean lawyers for Indians. I mean Indian lawyers.

SECRETARY UDALL: You mean Indian lawyers.

MR. SAYLOR: Yes, how many Indian lawyers are there that the Department of the Interior has approved to contract to represent tribes?

SECRETARY UDALL: I wish we had more Indian lawyers.

MR. SAYLOR: I know, but are there any?

SECRETARY UDALL: Young people from Law School. There are several, I am sure, in Oklahoma. There are not enough. But there are some very able people and some very high-minded people representing the Indian tribes as Indian lawyers, in my judgment.

MR. SAYLOR: The reason I ask that question is because in the 19 years Chairman Aspinall and I have been on this committee, I do not think we have ever had the privilege of having any Indian appear who was a lawyer representing a tribe.

MR. EDMONDSON (Oklahoma): I think there have been several from Oklahoma appearing very ably before this committee. The most recent appearance by an Indian lawyer was and responsive tribal leadership. However, William Penseno of the National Youth Council presents a strong argument against listing these lawyers as products of the Indian culture. “There is,” he argues, “an Oklahoma Indian myth about a few people with a little Indian blood who have made it in white society. I don’t want to knock these people in their jobs, but I direct my concern to the other 99 1/2 percent. I sincerely wish that tribal societies had produced these people. But there is nothing yet indicative of the great Indian success pattern. Unfortunately, the Indians who make it have little Indian blood, still less Indian contact, and almost no Indian allegiance. Sometimes the only people who call these people Indians are white people.” Hearings on Indian Education Before the Subcomm. on Indian Education of the Senate Committee on Labor and Public Welfare, 91st Cong., 1st Sess., pt. 1, at 302 (1969).

80. Special Program 5.
when Earl Boyd Pierce appeared for the Cherokee Indians in behalf of legislation before this committee, which was passed by this subcommittee at this session.

MR. SAYLOR: I am delighted to know we have one from Oklahoma.

MR. EDMONDSON: If the gentlemen would give me the time, I think I could cite some additional examples.

MR. SAYLOR: You will have some time here. You can dig them up. I would like to spread those Indian lawyers out and have them go out and see these other tribes and try to get some of these young men in the Indian tribes to go to law school and represent their own people.81

Senator Yarborough of Texas, in a hearing early in 1969, observed that "an Indian lawyer is very rare in the United States."82 To Yarborough this was especially wasteful in view of new federal poverty programs and legal assistance organizations. "I know," he reported, "several opportunities for Indian lawyers that are going begging because there are not Indian lawyers and they want them there."83

Is there any reason to figure a ratio of Indian lawyers to Indian population? Four Indian lawyers for the 600,000 Indians estimated to be living in traditional communities? Ten Lawyers for 360,000 who live on reservations? Even if Representative Edmondson found another dozen mixed blood lawyers of Indian background, what would the ratio figures show? The number of Indian lawyers for the Indian population is simply inadequate. The ratio is unsatisfactory, at best. Thomas Smithson, Oglala Sioux Legal Services, argues persuasively that "In a community of approximately 11,000 persons, more than one attorney . . . is needed to provide legal assistance to persons with long-standing and serious grievances."84

While the shortage of Indian lawyers is statistically appalling, even more shocking is the lack of effective legal representation which these statistics symbolize. Joel L.

81. Id.
83. Id.
Fleishman, Associate Provost of Yale University, expressed the cultural justification behind the demand for Indian lawyers.

Many Anglo and Spanish-speaking lawyers now attempt in good faith to represent American Indians in tribal and personal matters. The vast differences between cultures, however, makes meaningful representation often difficult and in many cases impossible. It is hardly surprising, then that there is a desperate need for Indian lawyers, for those individuals who not only have a critical skill but who also have the special understanding needed to deal effectively with the affairs of a people who have too long been described as 'forgotten Americans.'

Accepting the increased need for Indian lawyers and the present deficit at the bar, what are the prospects that this shortage of Indian lawyers will be reversed? The prognosis is not as gloomy as it might have been five or ten years ago. There are currently more than fifty law students of American Indian extraction enrolled in law schools. The prospects, however, are not as bright as this number might suggest. The attrition rate among Indian law students have proven to be very high. For example, only four of the fifty Indian law students who are enrolled are in their third year of law school. Other factors mitigating against reducing the backlogged shortage of Indian lawyers include the increased legal activism, extremely high Indian birthrate, and migration of trained lawyers from the Indian community.

Adding to the magnitude of the shortage of Indian lawyers is the chronic need for legal specialists in tribal courts and in reservation law enforcement agencies. Very few (some say none) academically trained lawyers practice regularly before the tribal courts. The result is "trial before persons without legal training, without the use of the rules of evidence, without the help of a trained attorney, without the usual specifics of due process..."

85. Special Program 2.
87. Hart Letter.
88. Some tribal advocates are said to be "almost professional." Price, Lawyers on Reservations, 1969 LAW & SOC'L ORDER 170 (1969).
89. Richards, Providing Legal Services to Montana Indians, 27 BRIEF CASE 74 (1968).
The renewed feeling of "Indianess" present in what anthropologists have called the pan-Indian movement intensifies the demand for Indian lawyers. As one Indian law student explained:

The Indian population as a whole is developing a growing awareness of itself and is much more anxious "to do things for itself." This carries over into practicing law, too. . . . The difficulty is matching the expertise with the complexity of the problems involved. The Indians lack the former, and they often resent its being brought to their attention. . . . The Indian wants to serve himself—something none too novel, really, in view of parallel developments in the black movement.90

IV. PRESENT PROGRAMS FOR LEGAL EDUCATION AND THE AMERICAN INDIAN

Only recently have organized programs begun to focus upon the question of providing legal education for the American Indian. The first formal summer enrichment session was not conducted until 196791 and to date there have been no studies, comprehensive or otherwise, considering the number of Indian lawyers or the need for lawyers among the Indian population.92 Committees of the Bar Association or the American Association of Law Schools have tended to define their tasks in terms of Negro legal education.93 Even programs genuinely interested in legal education for Indian Americans have been baffled by the maze of tribal and bureaucratic agencies.94

Indian legal education programs are small and tend to be fragmentized. There has historically been little coordination

91. Special Program 2-4.
92. Interview with Woodrow B. Sneed, Cherokee Indian, former Associate Director of Indian Law Center, University of New Mexico, currently White House Fellow and associated with Council on Indian Opportunity, Washington, D.C., Nov. 27, 1969. [Cited hereinafter as Sneed Interview].
94. Georgetown University has reported difficulty in recruitment of Indians for minority programs. Directors of the University of Virginia Law School CLEO Summer Institute, for example, report that "we had little information concerning lines of communications into the Puerto Rican or Indian communities in our areas." I. Flaherty, J. Mashaw, J.N. Moore, Final Report: The University of Virginia Council on Legal Opportunity Summer Institute 11 (1969).
among the federal Indian programs and this has been reflected in the varied approaches to the problems of the Indian and the law. There are essentially four types of programs including those aimed at law enforcement and the reservation. Many of these are beyond the traditional law school approach and all receive some outside support either from the federal government, state government, private foundations, or tribal government. These programs are:

A. Traditional Law School Programs aimed at minority groups;
B. Legal assistance, internship, and field programs;
C. Specialized law enforcement programs;
D. Informal conference, consultation, and education.

A. Law School Programs

The University of New Mexico recently established an Indian Law Center which has provided leadership for current programs in Indian legal education. The New Mexico Center's efforts have envolved two major elements: 1) a summer enrichment program aimed at prelegal or headstart for Indians who will enroll in law schools the following fall; and 2) administration of financial assistance programs for all Indian law students attending approved law schools. There has been close cooperation between the New Mexico Center, the Council on Legal Education Opportunity (CLEO), a number of Law schools in western states with a high concentration of Indians, and the Office of Economic Opportunity and the Bureau of Indian Affairs, which have financed many of the Center's projects. The recent appointment of Robert L. Bennet, former Commissioner of Indian Affairs, to the position of Director of the Indian Law Center was an important step toward achievement of New Mexico's goal of a truly professional and permanent program.

The New Mexico enrichment program, as conceived by the former Center Director, Fred Hart, is not unlike most of the special legal education programs for disadvantaged students.

95. Special Program 4.
96. Similar activities developing at another institution are discussed in Arizona State University Law School Opens Office of Indian Law, 1 AM. INDIAN L. NEWSLETTER 5 (1968).
97. Hart Letter.
summer pre-law session for American Indians is at the heart of the entire law school effort. Three years of experience with this program (begun as an Upward Bound demonstration project) has provided officials at New Mexico with ideas for additional projects including the establishment of an Indian Law Newsletter\(^98\) with a view toward editing an American Indian Law Reporter, assistance at Indian legal conferences,\(^99\) and the building of an extensive law library of Indian materials which will be loaned regularly to tribes, lawyers, and government agencies.\(^100\)

Dean Thomas W. Christopher of New Mexico's School of Law has prepared a detailed evaluation of the Special Program in Law for American Indians elsewhere in this symposium. Nevertheless, we might benefit from a brief outline of the New Mexico project. Indian students are selected for eight weeks of summer program on the basis of financial need, ability to complete law school, and an interest in Indian affairs as demonstrated by "prior participation in them."\(^101\) Those selected for the program study a curriculum "designed to approximate the first year of legal training . . . and to test their talents and motivations for the study of law."\(^102\) Those who complete the program receive financial assistance from a special scholarship program in law for American Indians and are free to attend other law schools although approximately half have chosen to remain at New Mexico which has special tutorial assistance.\(^103\)

All federal finance for Indian education scholarship is directed by the University of New Mexico. Students who are qualified for admission to law schools without participation in the summer program may also receive financial assistance from the Office of Economic Opportunity financed scholarship funds. New Mexico administers these funds regardless of the law school selected by the scholarship holder.\(^104\)

\(^98\) The subscription form explains that "the American Indian Law Newsletter is published . . . on a bimonthly basis, with special issues on important developments. The Newsletter's primary purpose is to keep those interested abreast of latest developments in Federal Indian law, legislation, and administration."

\(^99\) Sneed Interview, supra note 92.

\(^100\) See Sabatini, Material in the Indian Law Collection of the University of New Mexico School of Law Library, 2 AM. INDIAN L. NEWSLETTER 141 (1969).

\(^101\) Special Program 2-5.

\(^102\) Special Program 2-4, 6.

\(^103\) Sneed Interview.

\(^104\) Id.
The relationship between New Mexico's Center and Indian legal education in general is shown in the following statement explaining the Arizona State University Indian program.

Our immediate source of Indian students has almost entirely been the summer OEO program at the law school at the University of New Mexico. As you may know, our law school is now entering its third year. In our third-year class we have two more Indian students, one of whom is from the New Mexico program. In our second-year class we have two more Indian students, both of whom came from the New Mexico program. A third student in the same class, also from the New Mexico program, withdrew prior to completion of the third year, largely for academic reasons. In our first-year class, we have three more students, all from the New Mexico program.105

The University of California at Los Angeles operates a Legal Education Opportunity Program which also draws heavily upon New Mexico administered financial assistance for support. Assistant Dean Martin H. Kahn who directs the LEOP reports:

Under the LEOP, 95 minority students (Black, Mexican-American, and American Indian) are currently enrolled at the Law School, of a total student population of 798. Four of the minority students are American Indian. . . . These students are recipients of grants, administered by the University of New Mexico Law School, designed to meet their living expenses at Law School. We are paying their fees ($320 per year) and out-of-state tuition, when applicable ($1200 per year). In addition to these four students [name deleted], a third year student, is part American Indian, and is the recipient of a New Mexico-administered grant. He does not receive any funds from the Law School, however, and was admitted under the regular admission procedures. [name deleted], an American Indian, was a student at the Law School last year, the recipient of a New Mexico-administered grant and tuition and fees from the Law School. He transferred to the [name deleted] Law School this year.106

Twenty-six law schools participate in the New Mexico-Indian Division, Office of Economic Opportunity Program.107 Most of these schools have only one or possibly two Indian students.108 Few have developed any special programs for Indian legal education and even fewer still offer special courses in Indian

108. Id.
law. This may be a reason why most of the students are concentrated in the first year. Thirty-one of the aid recipient students are in the first year, thirteen in the second year, and only four in the last year.  

More than 50 American Indians are currently enrolled in law school programs. Less than five years ago, the number is thought to have never exceeded five. In terms of a dual goal of attracting and retaining the most qualified Indian law students, existing programs have been much more effective in attracting than in retaining. The New Mexico experience is illustrative. The first summer enrichment program attracted 17 participants of which 11 were college graduates and hence eligible for law school. Seven of those enrolled in the study of law but only two are now enrolled in the third year of law school. A former staff member of one Indian program, himself a Cherokee, concluded “many of the traits which an Indian possesses militate against making it in law school—he just doesn’t think in legal terms and patterns.”

Existing programs have tended to approach Indian legal education within the framework of the traditional concept of three years of post-graduate education in the law, the end product of these programs being visualized as the member of the state bar who is an American Indian. Considering the body of evidence which argues that this traditional framework may not even fulfill the basic objectives of legal education for the dominant white society, the University of New Mexico and other institutions have been surprisingly successful in adapting the cumbersome machinery of American legal education to the additional stress of Indian cultural variations.

B. Legal Assistance, Internships, and Field Programs.

In the summer of 1969 the Office of Economic Opportunity organized a “summer internship Program for American Indian

109. Arizona State University, the University of New Mexico, and University of California at Los Angeles have special Indian law courses.
110. Hart Letter.
111. These figures do not, of course, include those individuals of mixed-blood such as the author, who are not generally identified as members of the Indian community.
112. Figures conflict with those reported in Indian Record, Jan. 1970.
113. Sneed Interview.
The purpose of this project was "to bring interning lawyers of American Indian blood to Washington for a twelve week . . . program in which they observe and assist in the operation of the government." During the first summer of actual operation law students worked in a wide range of Indian and non-Indian associated government agencies. The program will be renewed for a second summer.

The law school at UCLA has undertaken a clinical program in cooperation with local legal aid societies in which "American Indian students (as well as non-Indians) work doing research relating to legal problems of both urban and rural (reservation and non-reservation) American Indians." Several other law schools are utilizing the clinical concept and are providing stimulus for Indian students to join poverty and the law programs. Perhaps the most innovative law school effort is the pilot Indian post-correctional rehabilitation program for Indian prison parolees being established by the Georgetown University Law Center under a $200,000 contract from the Department of Interior's Bureau of Indian Affairs.

Significant non-law school field programs in legal assistance are sponsored by tribal and federal government agencies. Lawyers are assigned to these efforts through OEO, VISTA, and other organizations. Many of the Indian legal assistance programs have professional staffs. These lawyers have been serving a vital educational function in awakening interest in legal rights and creating an understanding of the legal process. Training Indians to be tribal advocates has been most

115. Letter from Bill Burgess, Director of Indian Programs, Bacone Indian College to Rennard Strickland, Oct. 7, 1969. [Hereinafter cited as Burgess Letter].
117. Kahn Letter.
119. As many as twelve independent federal programs have been involved in addition to tribal attorney assistance.
120. The DNA (legal division of Office of Navajo Economic Opportunity) has employed from seventeen to twenty law school graduates in their legal assistance programs. Navajo War on Poverty, June 9, 1967, at 1.
rewarding. One society reports success in their work with tribal judges.121

Daily our lawyers do what they can to instill more dignity and stature in the tribal judges. We work to convince them that they are real judges. We work steadily to encourage the courts to extend their jurisdiction, and we press for recognition of the judgments and decrees of such courts.122

C. Specialized Law Enforcement Programs

Most of the specialized education programs are not designed as a substitute for legal education and are not designed to train the Indian lawyer even to function within the framework of the traditional tribal courts. In recent years, both the University of New Mexico and Arizona State University have assisted with the development of some specialized training but on a very limited scale.123

The Indian Police Training Academy at Roswell, New Mexico serves a vital educational function in law and order within the reservationed Indian system. The work of the Academy is basically technical training given in short-course form. Indians have, as a group, been most receptive to the Roswell approach.124

The Omnibus Crime Control and Safe Streets Act was amended to allow "Indian tribes [which] exercise important law and order responsibilities" to qualify for grants-in-aid for special training.125 The Secretary of the Interior has recently listed tribes which could qualify for law enforcement education supplemental grants.126 These programs will provide an additional source of specialized law enforcement training.

121. Richards, Providing Legal Services to Montana Indians, 17 Brief Case 74 (1968).
122. Id.
123. Sneed Interview; Canby Letter.
D. Informal Conference, Consultation, and Education.

The Indian people have most frequently taken the initiative in establishing informal conferences and training programs. An important example of this has been the Judicial Association of Tribal Judges. The Conference was organized more than five years ago by a group of judges from Indian tribes who felt that they might benefit from sharing common problems associated with native courts. Regional workshops have been sponsored by tribal or intertribal organizations. Members of the Arizona and New Mexico Bar have begun to visit with Indian tribal court officials and discuss approaches to legal questions. Federal standards of justice as set forth in BIA Model Codes of Tribal Justice and under the Civil Rights Act have no doubt served an informal pedagogical function.

V. A National Center for Law and the American Indian: A Multi-tract Program in Legal Education

The white man in formulating Indian policy does well to remember that the Indian, contrary to popular folklore, is neither stupid, static, nor lawless. Plains Indian culture—the horse and the gun—is an adaptation which symbolizes quite clearly that Yankee ingenuity is not within the exclusive province of the white New Englander. In fact, as early as 1828 the Cherokee Indians had combined aspects of their native jurisprudence with elements borrowed from the white culture to produce a legal system which, the New York Observer editorialized was "superior to the wisdom of Lycurgus or Solon."


128. The first tribal judges association was probably the Southwestern Tribal Judges Conference. See Southwestern Tribal Judges Conference, Programs and Proceedings: Modern American Courts (1962).


130. Sneed Interview. This new interest is reflected in the appearance of articles on Indian law in state bar journals. Indian Rights, 7 ALBUQUERQUE BAR J. 5 (1968) is typical of the many. For activities in midwestern area see Utton, Indian Rural Poor: Providing Legal Services in a Cross-Cultural Setting, 15 KAN. L. REV. 487 (1967).

131. See supra n. 29.

Apparentlly few persons in the higher worlds of policy theorizing ever thought to ask the American Indian what policy he felt would best serve his interests. More recently Indian policy formulators have begun to realize that they ought to ask the Indian himself what he might wish to achieve in the ordering of his life and institutions. While the number of Indians with legal training is not large, there are a number with sufficient expertise to be of real value in program formulation. Those Indian lawyers with whom the author has discussed the questions raised in this paper have given astute and incisive critiques of these proposals. Absent a clear statement of Indian feeling, or a conference to formulate such a statement—fools rush in.\textsuperscript{133}

In establishing a legal education program we should strive to promote the general objectives of American Indian policy. There are, however, no clear statements of basic policy goals for United States Indian programs.\textsuperscript{134} Indian policy has quite accurately been described as a "conceptual mushball, a grab-bag of every attitude...ever maintained toward the Indian."\textsuperscript{135} General objectives for American Indian policy should be to create an atmosphere, economic and political, in which Indian people are free according to general concepts of self-determination, to preserve cultural diversity, to promote tribal acculturation, or to extend dormant cultural potential.\textsuperscript{136}

\begin{itemize}
  \item \textsuperscript{133} Benjamin Franklin records an early offer by the governor of Virginia to provide education for several Indian youths at the college in Williamsburg. In refusing the early "scholarship aid", the Indian orator said much about the dangers of cross-cultural education proposals. "We know," the Indian said, "that you highly esteem the kind of learning taught in those colleges. . . . But you, who are wise, must know that different nations have different conceptions of things; and you will therefore not take it amiss if our ideas of this kind of education happen not to be the same with yours. We have had some experience of it. Several of our young people were formerly brought up at the colleges of the northern provinces; they were instructed in all your sciences; but when they came back to us they were bad runners, ignorant of every means of living in the woods, unable to bear either cold or hunger, knew neither how to build a cabin, take a deer, nor kill an enemy, spoke our language imperfectly; were therefore neither fit for hunters, warriors, nor counselors—they were therefore totally good for nothing. We are, however, not the less obliged by your kind offer, though we decline accepting it; and to show our grateful sense of it, if the gentlemen of Virginia will send us a dozen of their sons we will take great care of their education, instruct them in all we know, and make men of them." T. WILLIAMS, THE SOUL OF THE RED MEN 52-53 (1937).
  \item \textsuperscript{134} For the most complete statement of present policy see the speeches cited in note 33 supra.
  \item \textsuperscript{135} Note, Indians: Better Dead than Red?, 42 S. CAL. L. REV. 107 (1968).
  \item \textsuperscript{136} The slogan "self determination through community development" adopted
Obviously, self-determination as a goal is far beyond the scope of a program of legal education of the American Indian. In striving toward this broader objective what more specific goals must we seek to achieve within a legal education program? Our goals in Indian legal education should be twofold. We should strive both to educate sufficient numbers of Indian lawyers in order to remedy the critical shortage of legal skills and to provide high quality legal education for American indians.

A primary goal is certainly to educate Indian lawyers in an effort to alleviate this chronic shortage. We may do this by maximizing the opportunity to attract and evaluate those Indians who best possess the qualifications to achieve in and benefit from the legal education process and by maintaining a full commitment to minimize factors mitigating against achievement of legal education by qualified indians. We must not, however, let a numbers game blind us to the demand that the Indian lawyer be educated in the finest liberal, analytical and humanistic tradition. In undertaking the quest for Indian lawyers, we must have both quantitative and qualitative goals.

by the "Buy Indian Movement" seems an especially clear statement of this goal. Hearings on Public Land Management before the House Committee on Interior and Insular Affairs, 91st Cong., 1st Sess., 141 (1969). The concept of extension of dormant cultural potential was suggested to the author by Lloyd New, Director of the Institute of American Indian Art. Letter from Lloyd New to Rennard Strickland, Nov. 12, 1969. President Nixon stressed the importance of cultural diversity in a television appearance with David Frost. Nixon argued that "the greatness of America is that we have diversity . . . I don't want Americans to be just one great conglomerate mass with no distinction among them. I think having competition, the friendly competition among people is a good thing, but let's be sure that the competition is fair; and that means giving everybody an equal chance at the line and then giving those who haven't had their chance, who've been denied for a hundred years, that little extra start that they need so that it is in truth an equal chance. That's our goal." D. Frost, The Presidential Debate, 1968, at 24-25 (1968).

We should seek to attain this goal by educating skilled advocates capable of representing the interests of Indian tribes and Indian peoples in all contexts; by educating a reservoir of tribal leadership equipped with analytical tools to evaluate policy alternatives; by educating humanists with an understanding of and an ability to bridge the gap in the conflict of tribal values and the values of the Anglo-based legal system; and by providing a well-balanced program which will enable the Indian lawyer to function effectively beyond the tribal environment and outside the traditional Indian law context. In short, perhaps we are seeking to educate an Indian lawyer who is like Hardy Dillard's mythical "ideal" found in "a genial blending of Elihu Root, John W. Davis, Louis Brandeis, Henry Stimpson, and Harrison Tweed—with perhaps a dash of Aimee Semple McPherson." Dillard, CLE Around the Country: A Quasi-Charismatic Proposal, 15 PRAC. LAW. 13 (1969). We want to add Chief Joseph, Sequoyah, and Geronimo to the list.
The central core of a program for legal education of the American Indian must be the establishment of a National Center for Law and the American Indian. The function of the National Center would involve coordination of all aspects of the Indian legal education program. The Center should be given top priority in allocation of human and financial resources.

The National Center for Law and the American Indian should be established in cooperation with a recognized and accredited law school. Seemingly, the University of New Mexico Law School would be the ideal location since the school has served in a similar function with the administration of financial aid, is located in an area of high Indian population concentration, and has already developed considerable experience in questions relating to the American Indian and the law.

The Center should maintain independence from the law school through a separate administrative staff including a national director and a faculty employed possibly on a shared-time basis. Thus the center would be free to draw upon the resources and staff of the law school community but retain an independence which would promote flexibility in operation. The center should be budgeted by the federal government which would, in turn, provide contract support for the law school with which the center is affiliated.

The National Center for Law and the American Indian should be designated to: A) Establish a National Conference on Indian Legal Education; B) Organize a multi-tract approach to Indian Legal Education; C) Contract for a functional program of legal education adapted to tribal and individual distinctions; D) Coordinate a national scholarship program for Indian lawyers; E) Expand and develop summer enrichment programs; F) Coordinate law enforcement and legal education programs and provide clinical services in connection with law school programs; G) Establish a national clearinghouse for Indian lawyers; and H) Develop programs to make law meaningful in Indian life.
A. Establish a National Conference on Indian Legal Education

The first assignment of the National Center for Law and the American Indian would be to sponsor a National Conference on Indian Legal Education. The purpose of the National Conference on Indian Legal Education should be to alert the law school community to the general needs of the Indian people and the potential and responsibility which the law schools possess for assisting the American Indian. The agenda should include discussion of practical questions such as how the law school can recruit Indian students and what kind of programs may be developed within legal education whereby non-Indians can contribute to the solution of Indian legal problems.

Participants in the conference should include members of the law school community and representatives from tribal governments and councils. The officials of service organizations such as the Bureau of Indian Affairs and the Office of Economic Opportunity, groups such as the National Congress of American Indians and the Indian Youth Council plus Council on Legal Education Opportunity members and their sponsoring organizations should likewise be represented. Private citizens and Indian lawyers must also be included in the initial conference.

The conference might be held in cooperation with a CLEO symposium or study group or possibly with the AALS Annual Meeting. An entirely distinct conference, possibly in Washington in conjunction with the Office of Economic Opportunity or the Bureau of Indian Affairs, might have certain advantages. The National Conference should develop guidelines or suggestions for the National Center for Law and the American Indians. Position papers should be read exploring the questions of basic goals and implementation of proposals for legal education for Indians.

B. Organize a multi-tract approach to Indian legal education.

A multi-tract approach to legal education for the American Indian may be built upon the accomplishments of present programs and within the framework of a modified approach to traditional legal education. Such a program of legal education...
for the American Indian would recognize differences between two cultures often reflected in conflicting values.\textsuperscript{138} An implicit assumption in this suggestion is that duality of cultures is a desirable objective in Indian education. Assimilation of Indian into white culture should not be one of the basic goals of Indian legal education.

A multi-tract approach might include as many as three distinct programs. The first, and heart of the program, would be a modified law school program within the traditional framework resulting in the awarding of the academic J.D. or LL.B. degree. A second program might be a more limited effort in legal education for which graduates might receive a degree called Associate of Law. Finally, a certificate program for those specializing in areas such as police training and community legal counseling could be established. An additional graduate program in law is suggested in a later proposal.

The need for individuals with some training in the law short of the traditional three year degree program has been noted.\textsuperscript{139} A para-legal officer who might serve as a liaison between the Indian community and the community at large would be a valuable asset. These individuals might also be of great value to the Indian lawyer and help relieve this shortage by allowing the professional to concentrate on tasks demanding the highest legal skills.

Individuals are, in fact, serving informally in this function today. The advocate in the Navajo tribal court is a classic example of the native legal specialist.\textsuperscript{140} Community representatives in the Cherokee country have been used to advise

\textsuperscript{138} As Jim Hena, Governor of Tesque Pueblo explains, "I think our value system is inconsistent with the Anglo-Saxon concepts of values because in our culture we—most of us . . . still practice the Indian side of life. . . . We wonder about the advisability of the United States imposition on a proud minority’s mores and culture in the belief that the U.S. is doing good. Especially in view of world opinion that so-called Americanization is neither good nor accepted by everyone and with demonstrated ability of the Pueblo people to effectively govern themselves. The fact that we have survived in spite of the many forms of forced assimilation and acculturation policies is basis enough to allow us to find our own solutions, with much self-determined solutions to be consistent with the United States Constitution, rather than force us into foreign and unacceptable ways. Has there not been enough of this?" Exempting the Pueblo From the Civil Rights Act, 2 AM. INDIAN L. NEWSLETTER 138-139 (1969).

\textsuperscript{139} Id.

the county and state courts and the individual Indian citizen of factual, equitable, and doctrinal considerations which are not apparent in surface relations.\textsuperscript{141} The Montana Legal Services Association has made frequent and systematic use of legal service Indian aides who "translate what is necessary, but, more important, because the aide understands the client, thinks, talks, and acts like him, he can get the client to disclose what is really bothering him."\textsuperscript{142} If the tribal court system is not to be abandoned, the quality of judges, aides, prosecutors must be upgraded to guarantee due process to all Indians. Surely, this multi-tract, non-degree program would be of valuable assistance in this difficult task.

The Associate of Laws might serve in these functions with even more skill than the certified aide. An A.L. (or select another title) could become a part of the law school curriculum with the degree given by the University and encompassing a full additional year of specialized course work beyond a traditional baccalaureate degree.

An additional approach might be to develop a shorter (possibly ten, twelve, sixteen weeks) non-degree program which might be held in conjunction with the special summer enrichment program or as an extension of that program. It is possible that this sort of program could provide the basic curriculum for a summer prelaw session.

The author would strongly endorse an academic program which might provide an alternative to students who do not wish to undertake a three year course. One should, however, be alert to the danger of creating "second-class" lawyers and also the possibility of such a program offering an "easy out" for students capable of benefiting from the traditional law school program.

In this same connection, it is hoped that the national center might eventually establish a Graduate Legal Research Institute for American Indian Problems. The legal aspects of the life of the American Indian have been seriously neglected. Considerably more is known of law in the emerging nations of

\textsuperscript{141} Interview with Crosslin Smith, formerly Cherokee community representative, Smith Stomp Grounds, July 19, 1969.

\textsuperscript{142} Richards, \textit{Providing Legal Services to Montana Indians}, 17 \textit{Brief Case} 62-63 (1968).
Africa and Asia than of the American Indian tribes. The Graduate Research Institute should provide a stimulus for study of policy approaches and alternatives in Indian affairs as well as the historical and anthropological questions of Indians and the law. The program should have a genuine interdisciplinary approach.

Research conducted at the Institute should enable testing of tentative assumptions on legal education for the American Indian. More sophisticated analytical testing devices such as an LSAT geared to American Indian students might be developed. The resources of the Institute would be available to tribes seeking to evaluate tribal policy or legal procedures. Studies might contribute to our understanding of the law and the social process which could be of real value to other nations and in other contexts.

The Institute could be responsible for the organization of an Annual Conference on Indian Legal Education with a symposium and workshop to study policy aspects of education of the Indian. A permanent staff would enable law schools to assimilate and interpret the extensive historical and anthropological studies as well as findings on Indian law and education and relate these studies to legal education. Further, the Institute could encourage cooperation with other minority and disadvantaged group programs.

The national center should be given the authority to contract for establishment of programs for Indian law students in a number of institutions. Development of these contract programs would allow adaptation to functional distinctions in Indian communities.

The assumption of homogeneity among Indian tribes and between Indians of the same tribe, has been one of the major sources of confusion in discussion of education of American Indians. Students of Indian cultures are too often specialists who have worked extensively among one tribe or in one area and tend to generalize policy alternatives based only upon their own limited exposure. The result has been, even at the most

sophisticated levels, a tendency to simplify the complex problems of more than 600,000 Indians and two-hundred and fifty tribes into a stereotyped Indian problem.\footnote{The great failure of the Indian Civil Rights Act stems from the failure of Indian specialist to make essential distinctions.} The director of an Indian center in Chicago might see the problem as one of adjustment of American Indians to urban conditions; the field-representative on the Navajo Reservation views the problem as efficient utilization of land resources, and the leader of the Oklahoma Cherokees might concentrate upon the problem of promoting tourism.

Effective analysis of the issues in providing legal education for the American Indian requires a functional analysis of the varied circumstances of the individual Indian. The focus must be upon the Indian himself, not upon the tribe. The following four divisions represent, in the opinion of the author, a reasonable breakdown of Indian conditions:

1) Indians of tribes whose lands have been distributed but who, nonetheless, remain within a tribal community embracing traditional values;
2) Indians of tribes which have retained tribal lands and who live on the reservation within tribal cultures;
3) Indians who have removed from tribal setting but retain traditional cultural identification and values;
4) Indians who have broken with tribal tradition, moving into non-tribal life, who:
   a) Have "bridged" tribal culture and white "mainstream" but retain an understanding and appreciation of the tribal culture and values;
   b) Are unaware of or have rejected traditional Indian culture and values.

Such a four point breakdown is obviously artificial and does not represent the "real world" situation in that there is no magic moment when an Indian can be said to have "broken with tribal tradition." This analysis does, however, suggest a range of alternatives in which most individual Indians will be situated. There might be a convenient continuum upon which cultural variations could be placed but the author feels that this functional analysis is sufficient to suggest the need for a range of policy alternatives in legal education for the American Indian.

Use of the functional breakdown of the Indian community
could provide a framework for specialized law school programs. Demand may never become so great that multiple centers will be needed but such programs might be developed in groups no larger than a small seminar, especially since it is thought that the Indian law student enrolled in a regular LL.B. or J.D. program will generally follow the standard curriculum with only minor variations as with any of the limited programs of specialization allowed the undergraduate law student. These functional categories should be especially valuable in counseling activities of the law school Indian programs.

The following analysis is based upon application of the functional breakdown.

GROUP I: Indians of tribes whose land have been distributed, but who nonetheless remain within a tribal community embracing traditional values.

*Tribes:* Cherokee, Chickasaw, Choctaw, Creek, Seminole, Kiowa, Cheyenne, Comanche, Osage, Iroquois, Delaware, among others with a total population in Group I of more than 100,000 Indians.

*Programs:* The kind of programs and curricula for these individuals would be dictated by the practical questions of Indians generally divided from the land and would have no emphasis upon questions of tribal courts and Indian police since law and order functions are no longer exercised by these tribes.

*Location:* Programs for Indians who fall within this group might be concentrated at the University of Oklahoma or the University of Tulsa since the Plains Indians located near old Fort Sill and the Five Civilized Tribes in eastern Oklahoma constitute the largest number of Indians in this group.

GROUP II: Indians of tribes which have retained tribal lands and who live on the reservations within tribal culture.

*Tribes:* Navajo, Hopi, Pueblo, Apache, Sioux, Dakota, Seminole (Florida), Zuni, Pima, among others located on reservations with a total population of more than 360,000.

*Programs:* The potential for development of unique approaches growing out of problems of tribal courts, land contracts, and industrial development programs is obvious and should be explored with special emphasis upon the reservation tribal status.

*Location:* The University of New Mexico, Arizona State, the University of Alaska and other law schools located in the geographic areas of most of the Indian reservations should be used as the specialized contract centers for Indians in Group II.

GROUP III: Indians who have removed from tribal setting but retain traditional cultural identification and values.

*Tribes:* Some anthropologists have suggested the creation of a new
tribal status to be known as the Urban Indian Tribe but other than this designation there is no clear tribal connection for urban Indians. All tribes have tended to migrate to cities but there are some concentrations of Indians such as the famous Mohawks in New York State. There are probably more than 100,000 urban Indians who retain Indian cultural identification and values. Many Indians would fall within this group who are located in the fringe cities around reservations or in the industrial cities of Texas and Kansas to which Oklahoma Indians migrate.

Programs: Obviously programs for Indians in this group will be most concerned with problems of the urban environment and poverty in general. UCLA has already begun to utilize the resources of the urban center and the potential of integration of Indian programs with other disadvantaged urban groups.

Location: Cities with large Indian populations such as Chicago, New York, and Los Angeles are the logical location for these programs. The possibility of consortium programs should be explored.

GROUP IV: Indians who have broken with tribal tradition moving into non-tribal life, both, those have bridged tribal culture and white mainstream but retain an understanding and an appreciation of the tribal culture and values, and those who are unaware of or have rejected traditional Indian culture and values.

Tribes: Again, there is no tribal limitation to this group but certain tribes have demonstrated a frequency for their members to fall within this group. The most obvious examples are those tribes which have intermarried with the white population, especially the so-called Civilized Tribes. It would be difficult to estimate the number of Indians who would fall into this category, especially if self-designation or listing on tribal rolls are to be considered as proof of Indian tribal connection.

Programs: Scholarship or financial assistance may be the only special assistance needed for Indian students in Group IV. Quite frankly, the ideal law student from among Indian groups in terms of the standard indicators are most likely to come from this group since they will be most like the standard law school community. Special motivation to provide leadership in Indian communities should be extended to individuals who retain a sense of Indian identity but there may be only marginal utility in bringing those who do not into these Indian programs since they do not think of themselves as Indians and have rejected Indian values.

Location: Hopefully, Group IV students will be found in many programs in all areas and tend to provide leadership, or at least, a cross-culture viewpoint.

The advantages of specialized programs would stem from possible common background and experiences of the Indian students plus the fact that law schools would be providing a
service to the citizens of their state and region while recruiting in
a geographic area with which they are familiar. The potential for
adaptation of programs to individual conditions should not be
ignored.

The disadvantages to such an approach are many. The
greatest seems to be that the range of exposure of the law student
has been narrowed. Another is that the division itself tends to be
artificial. One must wonder if such grouping has much relevance
if the objective is to educate lawyers equipped with the skills of a
broad liberal legal education and not just technocrats trained in
one phase of specialized Indian law.

Such functional breakdowns and possible regional or group
centers offer real potential if they can function as the basis of
clinical services and coordinated law enforcement education. A
functional grouping also seems justified in terms of co-curricular
and in-service legal education opportunities.

However, a legal education program for American Indians
should seek to establish as broad a base as possible. Qualified
students must be encouraged to apply for admission at law
schools outside the traditional service areas of state schools
within the general Indian community. There should be little
doubt that the more catholic the exposure of Indian lawyers, the
more varied and perceptive policy alternatives may become.

Since there are American Indians living in every state the
potential for a nationwide program should be clear. A strong
case could be built that the law school community itself would
benefit in large measure from the cross-cultural exposure present
in education of American Indian lawyers.

C. Coordinate a National Scholarship Program for Indian
Lawyers.

A program of financial assistance for American Indian
students in recognized law schools should be administered by the
national center and funded by the federal government. This
financial assistance should include a reasonable living allowance.
Hopefully, the American law school community would continue

145. COMMISSION ON THE RIGHTS, LIBERTIES, & RESPONSIBILITIES OF THE
AMERICAN INDIANS, REPORT: THE INDIAN: AMERICA'S UNFINISHED BUSINESS 215-217
(W. Brophy & S. Aberle eds. 1966).
to provide supplemental financial assistance in the form of scholarship assistance and tuition waivers.

Such assistance should be coordinated with participating Law Schools through the national center. Appropriations of funds should guarantee full three year funding for all students enrolled in law school programs. To provide maximum benefit from limited funds, guidelines should be developed with regard to criteria for financial need, Indian blood, requirements of interest in Indian problems, etc.

D. Expand and Develop Summer Enrichment Programs.

The heart of a legal education program must continue to be the summer enrichment program designed to introduce Indian students to the practices and procedures of the law school world. An advantage of the national center is that it could coordinate Indian programs within individual law schools and retain central files on Indian students. It is also possible that the Center could develop effective participation by American Indians in other disadvantaged and minority enrichment programs.

Whether or not there is advantage in development of additional summer programs for American Indians will depend upon the demand and further study will be required. The current program should be expanded in scope to attract Indians from more tribal areas and from each of the functional groups. Certainly one strong program seems preferable to several diluted programs, especially if the enrichment experience can utilize the resource of the National Center.

E. Coordinate Law Enforcement and Legal Education Programs and Provide Clinical Services in Connection With Law School Programs.

The National Center for Law and the American Indian should be assigned responsibility for coordination of all legal educating programs relating to law enforcement and Indian tribes. This would include programs such as Schools for Reservation Policy, Police Academy, the Crime Control Act workshops and programs, and short courses related to probation, justice of the peace, and other similar roles in society. These efforts should be organized, staffed, and administered by
the National Center which should be free to draw upon established programs and staff such as the Police Academy at Roswell, New Mexico. In an effort to advance the standards of justice through understanding of the Indian problems in state courts, the Center should be charged with developing programs to alert white judges to cross-cultural considerations.

Programs should be adequately financed so that the staff may develop more than "weekend wonders" with three days of exposure to legal and law enforcement programs. These would be full-courses with texts, lectures, and problem solutions—programs which merit certification of competence. Hopefully such programs might identify potential participants in summer institutes and the three year law courses.

The question of providing legal assistance for American Indians is generally beyond the scope of this paper except to the extent that practical clinical experience and field work may become a core function in the legal education process. Experience has demonstrated that law students derive definite benefits from participation in clinical services programs when those programs are adequately structured and supervised. UCLA has used this approach quite effectively in integrating practical experience for the Indian student.

However, it must be emphasized that the legal aid programs should have separate full-time professional staffing so that the student's clinical experience does not cease to become educational by becoming a cheap source of legal assistance. There are almost limitless opportunities for imaginative development of co-curricular activities for students in the LL.B. program to aid with other programs in the multi-tract especially with certificate programs, tribal courts, workshops, and short courses.

F. Establish a National Clearinghouse for Indian Lawyers.

The National Center must maximize the free movement into law careers by serving as a clearinghouse for placement in industry, government, private firms, clerkships, and graduate

146. Kahn Letter.
education. Central files of all Indian lawyers would be valuable to those seeking to hire legal counsel in a number of contexts. Efforts should be made to develop additional opportunities for employment of Indians trained in the law including non-degree persons. City, county, and state government in areas with high concentration of Indians should be alerted to the potential advantages of using Associate of Laws and certificate holders in their law enforcement programs. Records of placement and salary figures should serve as a recruitment aid.

The Indian lawyer must be made aware of all potential uses of his skills including those beyond the immediate area of Indian law. Tribes have had too much bitter experience with the over-educated Indian serving his people out of a sense of obligation. The Indian who is a lawyer must be free to choose to practice in a number of settings. An Indian may wish to break all tribal ties, join the mainstream, and follow a professional legal career unrelated to his ethnic background. Should the Indian lawyer, however, select a career in Indian law, he must have open to him all ranges of opportunity. He must be able to operate in one or more of the following settings: (1) counsel in a tribal court setting; (2) counsel for an individual Indian citizen in non-tribal court setting; (3) counsel for a tribe or Indian interest in a state or national policy setting; (4) counsel for a governmental agency or group other than a tribe in state or national policy setting. The term counsel is not intended to be limited to a litigation context but might apply to policy formulation, representation in seeking industry, or in any of the countless ways lawyers serve the interests of their clients.

G. Develop Programs to Make Law Meaningful in Indian Life.

The Center should be responsible for what we might roughly call pre-legal education at the high school and college level. This would include developing programs and materials for schools which will emphasize the skills of the legal profession and which would encourage interest in the legal and governmental process. Recently Indian students have been involved in student governments and national conferences. The Cherokees at the height of their legal and educational systems had remarkable
results with competitive debate programs as a stimulus to interest in the law.\textsuperscript{148}

This effort should not be limited to potential law students. Most Indians have a negative impression of the law and officers of the law. In fact, the Indians experience "has taught him that lawyers, particularly, are the bearers of bad tidings and are certainly not to be trusted."\textsuperscript{149} The program should include an adult education section which would acquaint the general Indian population with the operation of law and how the law may be used to protect Indian interests and the Indian himself.\textsuperscript{150} The DNA achieved remarkable success in community action legal orientation on the Navajo reservation. The Field Foundation experiences with public health education and their program to develop confidence in the medical profession might serve as a model for similar programs in law.\textsuperscript{151}

The major advantage to the proposed National Center is that the program is unified and coordinated. Building upon the existing law school programs, a National Center could centralize the highly informal aspects of a variety of diverse special programs. Inherent within the structure is the added potential to encourage the multi-tract and functional approaches adopted to the needs of Indians in circumstances varying from the reservation to the urban ghetto.

The new program, it is hoped, would have advantages in terms of both attracting and retaining Indian law students. The joint effects of the New Mexico-Office of Economic Opportunity program have located many highly qualified Indians who might never have received legal training.\textsuperscript{152} The expanded shortcourse and certificate programs may open new avenues for attracting potential law students. A unified program with systematic and long-range encouragement may do even more to draw the best Indian minds to the study of law.\textsuperscript{153}

\textsuperscript{148} Cherokee Advocate, Nov. 18, 1876.
\textsuperscript{149} West Letter.
\textsuperscript{150} The Navajo program has been especially strong in building these feelings. However, the DNA has generated hostility among certain portions of the tribe and resulted in open confrontations.
\textsuperscript{151} Saeger, \textit{Bilingual Guide to Hospital Clinic to be Distributed During National Hospital Week}, \textit{Indian Voices}, Feb.-Mar. 1967, at 36.
\textsuperscript{153} There has long been a feeling that the study of anthropology was attracting
VI. Conclusion

The title of this article—Redeeming Centuries of Dishonor—might convey the idea that the legal profession must atone for some prior conduct, hopefully not the intemperate slur to Mr. Webster cited in the introduction, but possibly the ancient atrocities which dwarf Vietnam-sized massacres. Atonement or redemption is impossible and should not set the tone of a plea for action in behalf of the American Indian. There are sound, logical reasons which justify special efforts to help the American Indian obtain legal education. The shortage of Indian lawyers is chronic. The demand for Indians armed with the lawyer's skill will continue to grow. The Indian has cast his struggle within the framework of the American legal tradition.

Once before the Indian cast his fate into the mainstream of the American legal process. In 1808 a group of Cherokees "anxious to engage in the industrious pursuits of . . . the civilized life" turned to Thomas Jefferson for assistance. He advised them to proceed "to establish laws suited to their conditions" and that the United States would "counsel and assist." The Cherokees kept faith with Jefferson's dream. In their great struggle to retain their ancestral homes, they turned not to the bow which symbolized war but to the book and the law which it contained. The John Marshall court supported the Cherokee cause but the whites turned away from the book and took up the bow as 15,000 Cherokees were driven by General Winfield Scott and his troops from their beloved southern mountains. Only 11,000 finished the journey which has come to be known among the Indians as The Trail of Tears.

the top Indian students going into graduate study. This trend may be reversing as shown by the increased number of Indians attending law school. Ten Sioux Try Law, Rosebud Sioux Herald, Dec. 15, 1969, at 2.

154. 16 Writings of Jefferson 456-458 (Century ed. 1904). From a speech by Thomas Jefferson to deputies of the Cherokee Upper Towns, Jan. 9, 1809.

155. As the Cherokees awaited John Marshall and the Supreme Court's decision on their case, Elias Boudinot wrote the following in an editorial in their Cherokee newspaper. "The Cherokees are for justice and they are trying to obtain it in a peaceable manner by a regular course of law. If the last and legitimate tribunal decides against them, as honest men they will submit and 'the agony will be over.' Will Georgia be as honest and submit to her own (U.S.) courts?" Cherokee Phoenix, Mar. 5, 1831.


157. G. Foreman, Indian Removal 312 n. 21 (1932); Starr, History of the
Again the Indian has turned to the book and to the legal system which it symbolizes. We cannot break faith with him. The legal profession and especially the law school community must help him develop the full potential within the human resource of the Indian mind.

One final word. There is a legend which says that in the beginning the Indian was given both the book and the bow but did not use the book and so was left only the bow.\textsuperscript{168} Old men say that is why the whites have been able to conquer the redman. We should not expect that if we help the Indian regain the book that he will not use it with the ferocity of the bow.

Stirrings from these programs are even now beginning to be felt. The classes of 1970 included only a few Indian lawyers but among their numbers were men like Vine Deloria, Jr., dynamic author of \textit{Custer Died for Your Sins} and former Executive Director of the National Council of American Indians. “It was apparent to me,” Deloria noted in explaining his decision to become a lawyer, “that the Indian revolution was well under way and that someone had better get a legal education so that we could have our own legal program. . . .” The future? Deloria predicts that “within four years I forsee another radical shift in Indian leadership as the growing local movements are affected by the new Indian lawyers.”\textsuperscript{159}

\textsuperscript{158} J. Gregory and R. Strickland eds. 1967).
\textsuperscript{159} Deloria, \textit{This Country Was a Lot Better Off When the Indian Were Running It}, The New York Times Magazine, March 8, 1970, 32 at 56. In June of 1970, Kent Ware, a Kiowa, became the “the first American Indian to receive a juris doctor degree from the first graduating class of the College of Law at Arizona State University . . . and could also become the first Indian in private law practice in the state, which has the largest population of Indians in the United States, yet not a single Indian practicing law.” \textit{The Warpath}, Vol. II, No. 3, 3. “The ratio of Indian lawyers to the thousands of Indians needing legal help is pitifully small, we need far more,” Ware noted. He believes that Indians are reluctant to approach a white lawyer because, “They are a product of more than a century of having been taught that ‘white people don’t keep their word.’”