CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

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CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN

TUESDAY, AUGUST 29, 1961

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2 p.m., in room 357, Old Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee), presiding.

Present: Senators Ervin and Keating.

Also present: William A. Creech, chief counsel and staff director; Bernard Waters, minority counsel; and Helen Maynor, professional staff member.

Senator ERVIN. The subcommittee will come to order.

This afternoon the Subcommittee on Constitutional Rights begins its initial series of hearings on the constitutional rights of the American Indian. This study, to my knowledge, is the first congressional inquiry into this most important and all too long neglected area of the law. Beginning today, the subcommittee will hold 4 days of hearings here in Washington. During the congressional recess, the subcommittee will hold field hearings in various areas throughout the country to hear from Indian citizens and other individuals active in Indian affairs.

The 500,000 "First Americans" are among the most diverse and unique groups of our citizens. There are still 350 distinct tribal groups and 150 languages spoken among American Indians. Within these distinct tribal and language groups exist three types of Indian citizens: Indians born on the reservation; Indians who have been relocated by the Federal Government (these are referred to as "off-reservation" Indians); and Indians who have never lived on a reservation but lived in Indian communities (these are referred to as "non-reservation" Indians).

The subcommittee will view each of these groups and their particular constitutional rights problems separately. Thus, the reservation Indian's rights will be investigated in relation to how Federal law, tribal authority, administrative regulation, or State law may restrict his full exercise of constitutional rights. Later the subcommittee will undertake to determine whether there is any denial of constitutional rights to the non-reservation and off-reservation Indians.

The hearings during the next 4 days will be concerned with whether reservation Indians enjoy the same constitutional protections afforded other citizens. With this view in mind the subcommittee will receive testimony from various individuals in the Department of Interior,

members of the Secretary of Interior's Task Force on Indian Affairs, and private individuals and organizations active in Indian affairs.

Since June 2, 1924, all Indians born within the territorial limits of the United States have been citizens, by virtue of the act of that date. This act provides—

> That all noncitizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States: *Provided*, That the granting of such citizenship shall not in any manner impair or otherwise affect the right of an Indian to tribal or other property.

The substance of this section was incorporated in the Nationality Act of October 14, 1940, which declared:

> The following shall be nationals and citizens of the United States at birth:
>
> * * * * * * *
>
> (b) A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.

Prior to the Citizenship Act of 1924, approximately two-thirds of the Indians of the United States had already acquired citizenship. They had acquired their citizenship by treaties with Indian tribes, special statutes naturalizing named tribes or individuals, general statutes naturalizing Indians who took allotments, and general statutes naturalizing other Indians such as the Indian women who married white men or Indian men who served in the Armed Forces.

Under the Citizenship Act of 1924, the Indians who had not acquired citizenship by the various methods enumerated above occupied a peculiar status under Federal law. Not only were they noncitizens, but they were barred from the ordinary processes of naturalization open to foreigners. The status of these Indians living in the United States who were born in Canada, Mexico, or other foreign lands, remained restricted until the Nationality Act of 1940.

The Citizenship Act granted the American Indian citizenship within the meaning of the Federal Constitution. Thus, the Indian is allegedly entitled to every protection and guarantee accorded to all other citizens of the United States.

For example, when the Indian is off the reservation, he is subject and responsible both to State and Federal law in the same manner and to the same extent as other citizens. He may be sued by a non-Indian citizen in a State court for civil damages, and he is amenable to the criminal process of a State should he transgress any State law. By the same token, the Federal law is available to him in his capacity as a citizen of the United States should either the Federal Government or the State seek to deprive him of any substantial right guaranteed under the laws of the United States or the Constitution.

However, in our considerations during the next 4 days of the status of the rights of the reservation Indians, it is necessary to understand the nature of Indian tribal authority and the exercise of this authority in tribal government.

According to the handbook on Federal Indian law—

> The whole course of judicial decision on the nature of Indian tribal powers has been marked by adherence to three fundamental principles:
>
> (1) The Indian tribe possesses, in the first instance, all the powers of any sovereign state;
>
> (2) Conquest rendered the tribe subject to the legislative power of the United States, and in substance, terminated the external powers of sovereignty of the tribe; e.g., its power to enter into treaties with foreign nations, but did not, by

itself affect the internal sovereignty of the tribe; i.e., its power of local self-government;

(3) These powers are subject to qualification by treaties and by express legislation by Congress, but save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of governments.

Attorney General Robert F. Kennedy has stated in a recent letter to the subcommittee:

It is not entirely clear to what extent the constitutional restrictions applicable to the Federal Government, or its branches, and to the State governments are applicable to tribal governments, but the decided cases indicate that there are large areas in which such restrictions are not applicable.

The Attorney General cited the following cases to illustrate the powers of tribal governments:

Talton v. *Mayes* (163 U.S. 376 (1896)), in which the Court stated:

By the treaties and statutes of the United States the right of the Cherokee Nation to exist as an autonomous body, subject always to the paramount authority of the United States, has been recognized. Hence, with this recognition there has been conceded to exist in that nation a power to define crimes and provide punishment therefor when committed by one member of the tribe against another within the territory of the nation.

Native American Church v. *Navajo Tribal Council* (272 F. 2d 131 (C.A.10, 1959)), in which the court said:

No law * * * has been found which undertakes to subject the Navajo Tribe to the laws of the United States with respect to their external affairs, such as police powers and ordinances, for the purpose of regulating the conduct of members of the tribe on the reservation.

And *Barta* v. *Oglala Sioux Tribe* (259 F. 2d 533 (C.A. 6, 1958)), in which the court stated:

The 14th amendment places limitations on the legislative actions by the State, but the Indian tribes are not States and the Constitution section has no application to the legislative enactments of the tribe.

Thus, it appears that a tribe may constitutionally deprive its members of property and liberty without due process of law and not come under the constitutional limitations applicable to Federal and State Governments as stated in the Bill of Rights. However, the sovereignty of an Indian tribe can be limited by acts of the Congress.

In a letter to this subcommittee regarding the investigation of the rights of reservation Indians, the distinguished chairman of the Senate Interior and Insular Affairs Committee has commented:

* * * an Indian citizen has all the constitutional rights of other citizens while he is off the reservation, but on the reservation (in the absence of Federal legislation) he has only the rights given to him by the tribal governing body.

Very succinctly, this is the major problem area with which our initial hearings will be concerned.

I am very much interested in the problems of the American Indian. In my own State of North Carolina, we have a tribe of Indians living on the Cherokee Reservation in the western part of North Carolina.

These Indians are often referred to and known as the Eastern Band of Cherokees.

In Robeson County, North Carolina, which is in the southern part of the State, there are more than 25,000 Indians who, for generations have been living in and near the town of Pembroke. These

Indians have never lived on a reservation, but rather in a municipal system of government like all other American citizens.

The Chair is delighted to have with us today a member of the subcommittee, Senator Keating, who represents the great State of New York in the Senate. He is very much interested in this investigation by reason of the fact that various Indian nations still reside in the State of New York.

The Chair will be delighted if Senator Keating has a statement he would like to make at this time.

Senator KEATING. Thank you, Mr. Chairman.

I appreciate the courtesy of the chairman, and I fully concur in the purposes of these hearings.

We are moving into a very important field, in which we may well find that existing situations require correction or reform through legislative remedies.

As we look about us in the world we see many examples of whole peoples that are subjected to tyranny and oppression. We very properly criticize these situations where we find them, and take all possible steps to bring freedom and justice to the oppressed peoples of the world.

It is very necessary, then, that we should not permit instances of large-scale injustice to go uncorrected within our own country. We have been struggling for the last several years to deal with the problems created by discrimination against minority groups in the United States. We have made some progress with these problems, but they are to a great extent still with us.

In our concentration on the problems of minority groups that are most numerous and most heavily represented in our urban centers, we must never forget the problems of the original inhabitants of the North American continent, who are now not so numerous and are dispersed over the open spaces of our great country.

The American Indian exists in a special relationship to the rest of his fellow citizens. He can with some right maintain that the rest of us are prospering from the natural wealth that was originally his. The American Indian, almost alone among the peoples of the world, has had the experience of being deprived of his property through conquest by the Government of the United States.

We must feel that in this case the end has justified the means. It is better that the Indian should have lost his homeland than that the United States of America should never have come into existence. North America now contributes much more to the general good of the human race than it did in the days when it was ruled by the Indians. All the same, we owe a special debt to the Indians. We should always be prepared to lean over backward to make sure that their remaining rights are maintained.

Over the years we have experimented with various means of repaying this debt, none of which have been very successful. In the early days we seemed bent on exterminating, or at least segregating and forgetting, the remaining Indian tribes. Humanitarian impulses led to the abandonment of this policy, and for a while the attempt was made simply to assimilate the Indians into the general population. This did not work very well either, and we then launched upon the policy of maintaining and protecting tribal life.

It is this policy that now needs thorough reexamination and reevaluation. I know of no widespread feeling that the effort to maintain the tribes should be abandoned. However, the preservation of tribal rights and customs has seemed in some areas to come into conflict with the constitutional rights of individual Indians as American citizens. This is one of the problems that we must now seek to clarify. We must also examine the gray areas, such as welfare and police protection, where neither the tribes nor the State governments seem to have accepted full responsibility.

The relation of the tribes to the Federal Government is a third important area for inquiry. I have always maintained that the Federal Government should strive if at all possible to honor the full letter of its treaty obligations to the tribes. We are at the present time insisting that our own treaty rights be respected in a critical corner of the world, even at the risk of armed conflict.

Yet in my own State of New York, the Seneca Indians are about to be deprived of rights guaranteed to them by a solemn treaty that their ancestors signed with the U.S. Government. I have pleaded, to no avail, that the rights of these Indians should not be sacrificed until all possible alternatives have been fully explored, I am hopeful that this committee, in the course of its deliberations, may travel to western New York and conduct an on-the-spot investigation of this problem.

I am sure that many other areas of inquiry will open up as these exploratory hearings proceed. The important thing is that we have recognized the existence of problems, and have set out to find means to solve them.

The chairman of the subcommittee deserves to be warmly commended for calling hearings on this subject at this time. He has shown that we are concerned with injustice, or possible injustice, wherever it may exist, in our own country as well as abroad. It is in light of the fine example that he has set that we will carry on this important investigation.

Senator ERVIN. I wish to thank the Senator from New York for his statement.

Another member of the subcommittee, who is very much interested in the problems raised by this hearing is Senator Roman L. Hruska, of Nebraska. It was necessary for him to attend a hearing of another judiciary subcommittee.

However, at his request, we will insert in the record at this point a statement which Senator Hruska has prepared relating to this hearing.

(The statement of Senator Hruska follows:)

STATEMENT BY SENATOR ROMAN L. HRUSKA

Mr. Chairman, your comments on Indian citizenship have pointed up the fact that in this area there exists a vast need for more information.

As chairman of this subcommittee, you are to be commended for your efforts in undertaking this hearing on the constitutional rights of the American Indian. The testimony will be of great value in our initial study of this complex problem.

Although many Indians had become citizens previously, in 1924 all were granted full citizenship of the United States and the State in which they live.

It appears, however, that the enjoyment of the rights of citizenship have not been shared equally by them.

The Attorney General of the United States has recently stated:

"It is not entirely clear to what extent the constitutional restrictions applicable to the Federal Government, or its branches, and to the State governments are

applicable to tribal governments, but the decided cases indicate that there are large areas in which such restrictions are not applicable."

The Secretary of the Interior has advised us that the administrative authority of his Department is insufficient to assure the individual Indian protection of his rights as a citizen in the face of tribal practices.

In the report of the Task Force on Indian Affairs, improvements have been recommended in such matters as the civil commitment procedures for Indians in need of mental treatment. Many witnesses have also reported that protection of life and property is inadequate on many reservations.

Tribal courts established on Indian reservations are presided over by judges who, in many instances, are not legally trained. Inasmuch as these courts are not created under Federal or State law, it has been held that constitutional restrictions on State and Federal authority do not apply to tribal actions.

Reports have been made to this subcommittee that in some Indian courts the right to counsel is being denied, judges are inadequately prepared, instances of favoritism exist and frequently no provision is made for appeals.

Following the enactment of Public Law 280 by the 83d Congress, jurisdiction of civil and criminal actions in the Indian country was conferred on certain States. It appears, however, that dissatisfaction of this jurisdiction exists in some areas both by Indians and the States affected.

We note the recommendation of the task force that Public Law 280 be amended to provide for the transfer of jurisdiction to the States only on the basis of a negotiated agreement between the Federal, State, and tribal governments affected.

In my own State, following a study of Indian problems made recently by the University of Nebraska, there has been established at Omaha a law-enforcement committee consisting of a tribal chairman and three non-Indians. A special committee consisting of representatives of the Omaha and Winnebago Tribes and non-Indian citizens has also been proposed to keep law enforcement on the reservations under continuous review.

I believe these hearings will be productive of much good. I am encouraged that our subcommittee has scheduled these hearings. It is evident as we begin this study that the original inhabitant of our country is no longer the forgotten American.

Senator ERVIN. Before we commence with the hearings, I should like to acknowledge the outstandingly fine contributions which have been made to the subcommittee's work by Dr. William H. Gilbert, Jr., and Stephen A. Langone, social science analysts, Indian affairs, the Legislative Reference Service of the Library of Congress.

The subcommittee also acknowledges the contribution made to its work by two young men who have recently been graduated with distinction from two outstanding law schools, Messrs. George Autry and George Ragsdale. These two gentlemen are graduates of Duke University and the University of North Carolina, respectively, and are recipients of the Richardson Foundation grant which provides their services as congressional interns for 1 year. We feel fortunate indeed to have had these young men working for the subcommittee staff, and it is my understanding that they have made a very fine contribution to the research that has gone into these hearings.

I should also like to express to the other Members of Congress the appreciation of the subcommittee members for the cooperation which they and the members of their offices and committee staffs have given to the subcommittee in its research in preparing these hearings.

The subcommittee also feels indebted particularly to Secretary of the Interior Udall for the cooperation which the Department of the Interior has given the subcommittee in this study. We are sorry that the Secretary himself was not able to be with us today, but we are delighted that Assistant Secretary John A. Carver, Jr., is here as his representative.

We feel that the cooperation which Secretary Udall and his staff have given the subcommittee is an indication of his great interest in this study.

The Chair has been informed that Senator Frank Church, of Idaho, is present and desires to make a statement at this time.

The subcommittee will be glad to hear from Senator Church.

Incidentally, Senator Church is the chairman of the Subcommittee on Indian Affairs of the Interior and Insular Affairs Committee.

STATEMENT OF HON. FRANK CHURCH, U.S. SENATOR FROM THE STATE OF IDAHO

Senator CHURCH. Thank you very much, Mr. Chairman.

Senator ERVIN. We are delighted to have you with us.

Senator CHURCH. Mr. Chairman and members of the committee, I would like to say at the outset of my remarks that you are to be commended for undertaking such an investigation into a very confused, difficult, and emotional subject area as that of the American Indian's relation to the constitutional guarantees accorded other citizens of our country. The entire area has been a nagging and persistent problem for some time and I am delighted to see action being taken. During the past week my own Subcommittee on Indian Affairs has had before it a very serious Indian land problem that also presented a constitutional question. During these hearings, Mr. Bob Burnette, chairman of the Rosebud Sioux Reservation in South Dakota, stated that his tribal members had encountered many constitutional problems and they could get nothing done about them. Mr. Burnette further stated they had been presented to your committee and this was their only hope. I thought in bringing this out it would indicate to your committee how much depends on your investigation.

I feel personally, that the American Indian is and has been the victim of a well intended but nevertheless unrealistic approach by the Federal Government. In the earliest days of our relations we were well aware of the fact that the Indian was not acculturated to our society and needed certain protections until such time as he became so. The laws that we passed and the measures we took to implement such safeguards were very necessary and worthwhile for that time and for those problems. We recognized that the Indian culture was different from ours and it would take quite a while for the acculturation process to work. We built, in effect, as a protective device, a cage into which we placed the Indian. The bars on that cage were composed of the thousands of laws and regulations drafted to protect him. Literally, every action by an Indian was placed under some form of regulation. Now, as I have said, this was necessary at the time. It was this system we chose in trying to prepare him for full participation in our way of life.

During World War I, the American Indian made an exemplary record both on the battlefield and at home in defense work. As a result of this wonderful contribution, there was a belated, but successful, drive to make all Indians citizens of the United States. I might say at this point that many had been made citizens prior to 1924 by various treaties and other acts of Congress.

But when we did this we again allowed our, shall we say romantic, view of the Indian to prevail over the dictates of commonsense. We gave the Indian citizenship, true, but for lack of anything else to call it, we gave him full citizenship, with a major geographic exception. By this I mean on the one hand we said "you are now a full American citizen." And on the other hand we took no action to change the existing situation, which was, and is now, that the Indian tribes are not subject to Federal constitutional limitations in the Bill of Rights.

What did this mean to the Indian citizen? It meant he had all the constitutional rights of other citizens, except at one place. The one place where he lived. In effect, we said, "move away from home and you can have the protections of the Constitution too." Such is the action or inaction on the part of our Government that has raised the problem your committee is now confronted with. The inconsistency of our actions has risen to haunt us, for we have left a minority of our population without assurances of the basic constitutional rights which the majority enjoy. Let me reemphasize this point. While I realize the importance of your study of alleged violations of existing constitutional rights, I believe it is even more important that you look into the fact that some Indians under the Constitution just do not have the basic rights of other citizens. This situation arises because the prohibitions in the Constitution against State and Federal action do not necessarily apply to Indian tribal action. In the Department of Interior Handbook of Indian Law this is put in rather cogent terms as follows:

> * * * if an Indian desires protection in this respect, the members of an Indian tribe must write the guarantees they desire into tribal constitutions. Such guarantees have been written into many tribal constitutions that are now in force. In absence of such provisions, an Indian reservation may be, in some respects, a civil-rights no man's land where there is no relief against tribal oppressions because of the failure of Congress to make Federal civil-rights provisions, such as section 1343(3) of the Judicial Code, applicable.

Senator KEATING. May I interrupt you, Senator Church——

Senator CHURCH. Yes, indeed.

Senator KEATING (continuing). So I am sure I understand your line of reasoning?

What you say is that an Indian, if he is on the reservation is not protected by the U.S. Constitution unless there is also in his tribal constitution or laws a complementary protection form?

Senator CHURCH. Yes. And in this case his protection would derive from the provision in the tribal constitution, and in the absence of such provision there would be no restriction upon the tribal action that could be taken against him.

So the normal, universal, application of constitutional restrictions that apply elsewhere do not necessarily apply on Indian reservations.

The Fund for the Republic in their recent study entitled "A Program for American Indians" referred to this problem area and stated in no uncertain terms that:

> No government of whatever kind should have the authority to infringe upon fundamental civil liberties; government itself must ever be subject to law. Freedom of religion, utterance, and assembly, the right to be protected in one's life, liberty, and property against the arbitrary government action and to be immune from double jeopardy and bills of attainder, and the guarantee of a fair trial are not privileges; they are minimum conditions which all Americans should enjoy. For any tribe to override any of them violates the very assumptions on

which our free society was established. The absence of these safeguards will, moreover, retard the economic development of reservations, for business concerns are not likely to risk their capital when confronted with the possibility of arbitrary taxation or similar oppressive measures.

The Department of Interior's own task force report, completed this year, states there were many cases where—

witnesses complained of insufficient law enforcement officers, inadequately prepared judges, the absence of attorneys, nonuse of the courts in civil actions, and inadequate appellate provisions. Under tribal courts, witnesses complained of all the above-mentioned inadequacies and recited numerous instances of favoritism, denial of civil rights. * * *

As chairman of the Indian Affairs Subcommittee I have encountered these and many other related problems. My feelings on the matter are that since the constitutional restrictions against State and Federal action do not necessarily limit the actions of an Indian tribe, this committee should carefully consider the extending of State jurisdiction to them, where such rights are protected by the 14th amendment. The Hoover Commission study of 1948 stated that:

By act of Congress the States should be given concurrent criminal jurisdiction on Indian reservations.

The Congress passed Public Law 280 during the 83d Congress providing that jurisdiction over Indian reservations would be transferred to certain States and that all other States can themselves assume such jurisdiction. There are problems inherent in this legislation since some States would face financial problems in assuming such jurisdiction because much of the Indian land is in a nontaxable status. However, if such a transfer could be worked out for the remaining States the Indians would have the constitutional guarantees in the Bill of Rights and also have access to the courts in order to enforce them.

To be more specific, and I hope more helpful to this committee, I would like to point out areas that I feel deserve detailed investigation. Under the Constitution, the Congress is charged with regulating commerce with the Indian tribes. Now at that time of course, the members of those tribes were not citizens of our country. At this time they are, and yet they are subject to Courts of Indian Offenses, tribal courts and traditional courts. These courts are not limited by the Constitution and as a result the Fund for the Republic states—

* * * the Federal judiciary has determined that the guarantees of freedom of worship, speech, and the press, the right to assemble and petition the Government, and due process do not restrict tribal action * * * similarly the amendments which forbid the United States and the States to deprive any person of life, liberty, or property without due process of law do not apply to a tribe's conduct of criminal trials.

In addition to allowing such courts to exist, we do not provide adequate controls over them. For example, if you attempt to obtain up-to-date copies of these tribal codes or regulations you will find them difficult to obtain. In fact you may well find that some tribes have no written laws or regulations governing their courts.

Under the Code of Federal Regulations, title 25, the Department of the Interior states that a Court of Indian Offenses has jurisdiction over fee patented lands within the reservation boundaries. I question whether the Interior Department itself has ever been given such authority over fee patented lands. Since these lands are taxed by the States it seems that they would be under State law for purposes

of law enforcement. Even if the Department does have such authority, I feel that all tribal laws enforced on fee patented lands within reservation boundaries would have to recognize the constitutional rights of the individual because the tribe's authority over such lands is given to them by a regulation or law of the Federal Government.

I might suggest that your committee look beyond these regulations and determine where the Department derived this authority over fee lands. There are many other questionable constitutional areas concerning the American Indian that I am sure this committee has become aware of through its research on the problem. I am doubly sure that you will do a creditable job in investigating these and come forth with valuable recommendations for both the Congress and the administration.

In closing I would like to emphasize again that this committee would do well to give top priority to the "no-man's land of civil rights" on the reservations where tribes have law and order jurisdiction and the application of constitutional guarantees are not clear.

I thank you very much, Mr. Chairman, for this opportunity to address the subcommittee.

Senator KEATING. May I just ask one question?

Senator CHURCH. Yes, indeed.

Senator KEATING. Senator Church, since you are chairman of this important subcommittee and you are familiar with this field, is it your impression that the Indians, themselves, who live on reservations might resent an extension of U.S. constitutional safeguards to themselves or would their chiefs resent that extension to the members of their tribes?

Senator CHURCH. My impression would be that more often the objection would come from the chiefs and the tribal councils than it would from individual Indians.

There will be objections raised. I have had enough experience in Indian affairs to know that nothing constructive can be done in any aspect of their affairs without engaging in a hornet's nest of controversy.

Yet, I believe that constructive work must be done and that the general problems surrounding the Indian and his life have been worsening all of the time.

Here is one field where this committee could clarify the application of constitutional rights and, if additional congressional legislation is needed, could recommend that legislation.

You will have controversy. You will have much objection, but basically, individual Indians are as much entitled to the guarantees we extend to other free citizens of this land as the rest of us.

They are not now getting these guarantees, and I think Congress should do something about it.

Senator KEATING. They are not getting them due to tribal customs and laws of the tribes.

Is that what you mean?

Senator CHURCH. Yes, because the present court decisions are to the effect that the normal constitutional guarantees are not binding upon the tribes themselves.

In all those cases where the tribes themselves have not written similar guarantees into their own tribal constitution, the individual Indians are without protection.

Senator KEATING. Thank you very much.

Senator CHURCH. Thank you, gentlemen.

Senator ERVIN. I want to thank you for your very lucid and significant observations and recommendations, and to solicit, on behalf of the committee, any aid and suggestions which you as an individual Senator and as chairman of the Subcommittee on Indian Affairs can give us.

Senator CHURCH. Thank you, Mr. Chairman.

Senator ERVIN. The Chair is glad to welcome to the committee another Member of Congress who is much concerned with the problems with which we deal in these investigations, and I refer to Congressman Arnold Olsen, of Montana.

We will be delighted to hear from him at this time.

Is Congressman Olsen here? I had been advised that he would be here and would like to be heard at this time.

(There was no response.)

Senator ERVIN. Before we call the next witness I would like to make a part of the record a map which appears on the left.

This map was prepared by an expert in this particular field in the Legislative Reference Library of the Library of Congress.

(The map referred to appears in the appendix.)

Mr. CREECH. The first witness is the Honorable John A. Carver, Jr., Assistant Secretary of the Interior.

STATEMENT OF HON. JOHN A. CARVER, JR., ASSISTANT SECRETARY OF THE INTERIOR

Mr. CREECH. Mr. Carver, will you proceed with your statement, please?

Mr. CARVER. Thank you.

Mr. Chairman, and members of the subcommittee, I am very much pleased that the inquiry of this committee is underway, and that I have this opportunity to present the views of the Interior Department and my own views early in the proceedings. I wish Secretary Udall could be here, as he very much wanted to be.

I've selected certain items from one of the committee's questionnaires for comment as a convenient vehicle for presenting the Department's position. In doing so I will try to tell you the reasons or reasoning behind the particular situation. But I want to assure you that we do not regard every answer as "frozen." I am not here to justify, rationalize, or defend—this subject is far too close to the hearts of all of us for that.

As the Assistant Secretary responsible for the proper functioning of the Bureau of Indian Affairs, I have had occasion many times in the months I have been in the Department to probe into the complex of relationships between the citizen of Indian extraction and government, whether tribal government, State government, or Federal Government. Secretary of the Interior Stewart Udall also has concerned himself closely with this matter. As you know, he brought with him into the Department a vast knowledge of and a deep insight into the subject matter, coupled with a sensitivity to human rights which is an example for all of us.

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As will appear in my comments, the "rule book" isn't always the same for the Indian and his non-Indian neighbor. The rule book I refer to, of course, is the body of laws, rules, regulations, and judicial decisions which are applicable to Indians because they reside on reservations, because they are members of tribal organizations authorized by law, because they have an interest in land held in a restricted or trust status, or, in some instances, simply because they are Indians.

At the very outset, I would like to express a personal thought. Any element of "separateness"—whether it may seem to favor or to prejudice the Indian—militates in some degree against the full legal equality without which constitutional or civil rights are naked words.

I am not referring only to the elements of separateness which are found in the law and order system, the regulations on devolution of property, or in court decisions upholding tribal infringement of freedoms of religion, speech, or assembly. Separateness equally erosive can be found in different rules for taxability of land or other property, different eligibility standards for State or municipal welfare services, and special provisions for Indians in other government programs at State and local, as well as Federal, levels.

I've learned—indeed I've been taught in the hard school of testifying before congressional committees on Indian legislation—that the field is complex, that there are no easy answers, and that most every idea has been tried before in the 125 years we've had an Indian service.

So I'll have to rely upon the staff with me, many of whom were invited to appear in their own right, and on their own well-earned reputations for special knowledge.

To demonstrate that we are trying to eliminate some of the "separateness," let me comment on an item in one of the questionnaires, which reads:

Under Federal law, a Yakima Indian can bequeath his interest in real property held in trust to his heirs provided that they are one-fourth Yakima. In instances where the heirs are not one-fourth Yakima, the property reverts to the tribe (60 Stat. 968).

This statement accurately reflects the provisions of the statute cited. The effect of the law may be to alter substantially the usual ranking of entitlement to inherit. Brothers and sisters, nieces and nephews, or even more distant collateral kindred may be entitled to inherit, to the exclusion of children of the decedent. A bill to change this provision of the law is presently before the Congress. Although the Yakima Tribe has been strongly opposed to the change, our departmental report on H.R. 2581 which supports the change says in part:

Such a pattern of inheritance and denial of the right of the spouse, children, and others to share in the estate of the decedent is the result solely of Federal legislation and is not to be found in the laws relating to other Indian tribes or to non-Indians. In our opinion, the record presented clearly establishes the injustice imposed by the existing provision of law and its strong justification for its repeal.

Senator KEATING. Mr. Carver, I suppose the Yakima Tribe takes the position that if this was changed there would be less property reverting to the tribe?

Mr. CARVER. That is correct.

Senator KEATING. They have a natural desire to have as much as possible revert——

Mr. CARVER. That is right, Senator.

Another in one of the questionnaires which deals with policy on which we've given a lot of thought is the one which reads:

Where there are tribal courts, an Indian can be refused legal counsel and does not have a right of appeal to any State or Federal court.

It is true that most tribal law and order codes do not permit professional lawyers to practice in their courts. However, the tribal codes generally provide that a defendant in the tribal courts has the right to have a member of the tribe represent him and in the event he has no such representation, the court may appoint a representative.

It has been felt, as a committee on the subject said in 1934, that professional attorneys—

would tend to formalize and complicate a procedure most effective when informal and simple and since their superior knowledge of the law might easily produce an unwarranted control over the court.

As to this matter of attorneys appearing in Courts of Indian Offenses (as distinguished from tribal courts under their own constitution), last February I had occasion to discuss this with the Subcommittee on Indian Affairs of the House of Representatives. Congressman Edmondson, of Oklahoma, called attention to a Bureau regulation which in effect prohibited an Indian having legal counsel in such courts.

I told the House committee that I could think of no justification for such a regulation, and thereafter the offending regulation was repealed.

There is no appeal from the judgment of an Indian court to a State or Federal court. Some of the Indian courts have appellate procedures of their own, but the system is a closed one, reminiscent, in a way, of the former military court system.

Senator ERVIN. If I may ask you a question: As a matter of fact, in most cases is not the original, or, rather, the appellate court, among those tribes, drawn from the trial judges and the consequence is that the communications of the appellate court and the trial court are identical?

Mr. CARVER. It is just a closed system. That is absolutely correct, Mr. Chairman.

A closed court system is an element of "separateness" which keeps the Indian and his non-Indian neighbor from dealing with each other as equals.

Only a few legislative proposals have ever been made to permit State or Federal court appeals from the tribal court systems. To permit appeals would, of course, tend to make permanent a court system which we regard as transitional.

In one of the questions, reference is made to a court decision in the tenth circuit (*Native American Church* v. *Navajo Tribal Council*, 1959) in which it was held that the first amendment to the Constitution does not restrict the actions of an Indian tribe unless that tribe's powers have been limited by an act of Congress.

The court added, in that case, that it was within the authority of the United States to restrict or limit the powers of an Indian tribe and

to confer on the courts jurisdiction over matters involving the exercise of tribal self-government.

Here also the Department is actively considering the policy aspects. We are considering whether we might, by regulation absent an authorizing statute, make the Bill of Rights applicable to the tribes.

I agree with a statement made by the Fund for the Republic in its study, "A Program for Indian Citizens," and frequently quoted.

This is the statement that Senator Church quoted at some length, and I will pass over it, in the interest of time. But I will state categorically that I believe and I am sure the Department agrees, that these rights which are spelled out belong to all citizens, including Indian citizens.

Tribal members should be accorded the protection of the U.S. Constitution in the same manner as non-Indian citizens and as the Fund for the Republic recommends, the Federal law should explicitly require that tribal actions must safeguard basic civil rights.

Senator KEATING. You agree with Senator Church that we will encounter some opposition if we try to force the tribes to recognize the rights guaranteed for citizens under the U.S. Constitution?

Mr. CARVER. Well, I tend to agree with Senator Church when he said there is not any basic real unanimity in this field, but I do feel that an educational process, dealing with the basic rights of the first 10 amendments can be carried on so that there will be no basic objection to tribes agreeing to be bound by these protections in their dealing with the tribal members.

Senator KEATING. You think that can be done without the use of a U.S. marshal to enforce them?

Mr. CARVER. Oh, yes. I believe so. Yes, sir.

I think that there are certain vested interests which have grown up in this separateness around property rights rather than around human rights, which would cause, what you might call, an economic objection to the change.

Senator KEATING. Well, with reference to the Yakima Tribe position on this that you mentioned a moment ago, are these vested rights going to be surrendered easily, even though they are asked to surrender them in an effort to give human rights to members of the tribe?

Mr. CARVER. Well, I think that, of course, the Yakima situation involves control of the devolution of property which is one of the rights guaranteed by the first 10 amendments.

And insofar as there is objection to it, it is sort of an economic objection as much as anything else.

As the Senator very cogently pointed out, a control on the tribal property within the tribal group, as it is established, is to keep it from being alienated but, in terms of freedom of speech, of freedom of religion, freedom of the press, and freedom against arbitrary action, I think that a good deal of progress has already been made in having these concepts accepted by the tribes as governing upon them in terms of their relationships with their tribal members.

Senator KEATING. You do not think it would be necessary to cram these freedoms down their throats?

Mr. CARVER. I do not think so. No, I do not.

Senator ERVIN. Of course, there is an old story that illustrates the reluctance which characterizes all of us in certain areas.

And this is the old story about the man who had been rather prominent in his community and who had attained his 95th birthday anniversary.

On that day the newspaper reporters came around to interview him. And one of them asked him how old he was. He said, "This is my 95th birthday anniversary."

And the reporters said, "Well, you have lived a long, long time and have seen many changes in your life."

And he said, "Yes, and I was against every one of them."

Mr. CARVER. There will be some objection to these changes but, as I tried to point out, you do not have any basic objection to the according of civil rights. It is just where this is tied in with some property right or some economic benefit, like keeping labor organizers off of the reservation or something like that, that you would have an objection from some of the tribes.

Senator KEATING. Would you advise the subcommittee, in conducting its hearings in the field, to try, without starting a revolution any place, to endeavor to have individual Indians state their problems as well as the chieftains and members of the tribal councils?

Mr. CARVER. Oh, I think that the committee will find, as it goes into the reservation situations, that it will have no trouble getting a representative opinion, both from the tribal council members and also from Indian and non-Indian leaders in the community about these matters and from some individual Indians.

I do not think we should ask that individual Indians be any more informed on what their constitutional rights may be than, let's say, the average citizen in the adjoining community.

It is, I think, an inquiry which could get quite far astray if you got to asking individual Indians whether they favored having their constitutional rights.

I think they, obviously, all do. I hope I am responsive to the Senator's question.

Senator KEATING. Yes, you are.

Mr. CARVER. Now to resume my statement, I should call your attention to the fact that insistence upon strict application in the Indian courts as they are now constituted and will continue to be constituted for some time, of the same procedural safeguards that apply to the non-Indian judicial system, would result in the destruction of the Indian court system and would leave the Indian people, in a great many instances, without any protection.

To rely upon a transfer to State courts to achieve the necessary protection is not the immediate answer either. Subsequent to the enactment of Public Law 280 in 1953, the Indian people have expressed almost unanimous preference to retain the present system of having Federal and Indian court jurisdiction on their reservations rather than agreeing to the extension of State jurisdiction. Indian groups have vigorously resisted the extension of State and civil and criminal law to their reservations under the permissive provisions of Public Law 280.

They express themselves as fearful of hostile local and State attitudes, discrimination, their own lack of education and understanding

of laws and systems to which they would be subjected, and say they believe that adoption of State law and jurisdiction would be a step toward unilateral termination of Federal protections and special services.

The Task Force on Indian Affairs, in its recent report to the Secretary, recognized that Indian courts are transitional courts between social systems of yesterday and of tomorrow. It also recognized that protection of life and property, preservation of civil rights, and development of clearly defined civil and criminal codes are essential to rapid economic growth in the Indian country and in turn to the rapid rise of the standard of living on the reservations.

The task force recommended that programs be developed with the tribes and State governments looking to a revision of the tribal codes and reorganizing of tribal courts to bring them as nearly as possible into accord with the State system in which they are located. The task force recommended that the Department insist upon constitutional guarantees of civil rights in the Indian courts existing under departmental regulations.

The Secretary's task force recommended that the Secretary examine the regulations which govern the courts of Indian offenses within his jurisdiction.

It also recommended that the Bureau of Indian Affairs work with the tribal governments to improve the protection of constitutional rights by the enactment of their own ordinances.

It also recommended step-by-step transfer of jurisdiction to the States after negotiation with State and tribal governments with respect to selected areas of civil and criminal action, beginning with juvenile offenses, commitments, and domestic relations.

These recommendations seem sound to me.

Since the Indian Citizenship Act of 1924, all Indians born in the territorial limits of the United States have been citizens of the United States. By virtue of the 14th amendment of the Constitution, they are also all citizens of the States in which they reside. All citizens are entitled to the same rights and privileges of citizenship.

In the earliest years of the Republic, Indian tribes were recognized and dealt with as, and this is Chief Justice Marshall's language, "distinct, independent, political communities" qualified to exercise the powers of self-government (*Worcester* v. *Georgia*, 6 Pet. 515, 559, 1832).

The courts found that powers of self-government of an Indian tribe do not derive from a delegation to the tribe by the Federal Government, but rather are powers which a tribe has inherently by reason of its original tribal sovereignty. Thus, treaties between the United States and Indian tribes and statutes enacted by the Congress were not delegations of authority, but rather limitations on existing tribal powers. (Federal Indian Law, p. 396.)

When Congress decreed in 1871 (16 Stat. 544) that Indian tribes would no longer be recognized as sovereign nations with whom the United States would make treaties and declared that thereafter the affairs of the Indians would be governed by statutes enacted by the Congress, the legal philosophy that a tribe constituted an autonomous dependent group for other purposes remained unchanged.

Since State laws were held not to apply to Indians on their reservations because they are entitled to exercise their own inherent powers and since there were no Federal criminal laws especially applicable to Indians, crimes committed by Indians on their reservations until 1884 were solely within the jurisdiction of the tribes themselves.

Beginning in 1885, the Congress took action to vest in the Federal courts jurisdiction over the so-called 10 major crimes. At the present time, there is a limited amount of Federal jurisdiction exercised by the Federal courts in relation to crimes on the reservations and, except as the Congress has acted to extend the jurisdiction of the State to the reservation, the tribal court remains vested with jurisdiction in a large field of crime.

Where the State does not assume jurisdiction over crimes and offenses by Indians on their reservations law and order is administered by two types of Indian courts. One is the tribal court, established by action of a tribe. The other is a Court of Indian Offenses established pursuant to departmental regulations.

The departmental regulations declare it is their purpose to provide adequate machinery for law enforcement for those tribes in which the traditional agencies for the enforcement of tribal law and custom have broken down and for which no adequate substitute has been provided by Federal or State law. A majority of the Indian courts that operate today are tribal courts established by appropriate tribal action.

The validity of Indian courts has been attacked from time to time on the ground that there was no legal basis for their existence. Judicial decisions uphold the validity of Indian courts. *Iron Crow et al. v. Oglala Sioux Tribe, et al.*, 231 F. 2d 89, include both courts of Indian offenses as well as tribal courts.

Many Indian courts are unable for a variety of reasons to do an effective job in the overall administration of justice on the reservation. Some of those who are elected or appointed as Indian judges lack educational qualifications. In some instances tribes employ outside or nonmember Indians as judges and in some cases, they have employed attorneys or judges who reside near the reservation to preside over the Indian courts. The inadequacies of the facilities, services, and resources available to the Indian courts have become increasingly apparent in recent years. In the area of juvenile dependency and delinquency, for example, most Indian courts do not have available to them the same services available to State and Federal courts in the treatment and rehabilitation of juveniles.

It has been suggested that Indian law and order should be abolished and the Indians made subject to the same State laws as non-Indian citizens. This is by no means a new or novel idea. The General Allotment Act of 1887 contained provisions that Indians who received allotments of land under the act would become subject to the civil and criminal jurisdiction of the States in which they resided. The 1887 statute was amended in 1906 to provide that allottees would become subject to State jurisdiction only after the trust period had expired on the allotments and the Indians had received the land in fee simple.

Subsequently several acts of Congress conferred upon the States civil or criminal jurisdiction or both over particular reservations. Public Law 280 has already been discussed, along with the difficulties arising from the attitude of Indians toward it.

Senator ERVIN. Let me interrupt you.

Do you concur in the views expressed by many students about this problem, that the General Allotment Act of 1887 was very unfortunate in that it did not work out as well as intended.

In other words, the objective of it was fine, but in the practical operation under that act, the Indians lost much of their land?

Mr. CARVER. I certainly concur.

Efforts have been made by the Bureau to encourage tribes to pattern their laws and court systems after those of the States in which they reside. Some improvement has been made, but not much. Two tribes have seen fit to amend their tribal codes to permit the appearance of professional lawyers in their courts, and as indicated above, other tribes have employed professional lawyers or judges of outside courts to preside over Indian courts. Some tribes have included a "bill of rights" in their constitutions.

This committee is to be commended for getting into this subject matter. Its staff has done an excellent job of opening up various aspects of the problem for analysis and review.

But the basic anomaly, really, is that we have never made real, nationwide progress in securing a climate of understanding and mutual respect between Indians and their tribal organizations on the one hand and State and local governments and the officials of these governmental entities, on the other hand.

If Indian tribal organizations are essentially municipal in their functions, and I think they are, to some degree there has been a short circuiting of the intermediate governmental levels, as the tribal political entities are supervised and protected by the Congress and the Federal Government directly.

The answer is not to remove the supervision and the protection—rather the answer is, as I have tried to point out, to bring the two systems into step with each other so a transition can be made without violent and disruptive change.

This is a separate problem from assuring the Indians their constitutional rights—with this goal there can be no compromise, and we intend to see that there is none.

Senator ERVIN. My study of this subject leads me to the conclusion that our first step, as a Nation, in our dealings with the Indians was in the act establishing the Northwest Territory, and then a few years later in 1798 there was one of the first acts enacted in Congress, which had a very fine spirit in law and was essentially the law under which Chief Justice Marshall based his decision in *Worcester* v. *Georgia*, approximating the Indian tribes to an independent nation.

Then we came to the act that you referred to of 1871. Congress recognized that the tribe had independent governmental powers, but it virtually ended the theory that the tribe was a subnation by the time the treaty power existed.

The unfortunate thing is, we have never been able to assimilate or, rather, have never been able to carry out a conversion of the tribe into what you suggested, something in the nature of a municipality with local powers, harmonizing with other laws.

And so we have gotten to a position now where we do not know exactly what our fundamental theory in this field is.

Is that not true?

Mr. CARVER. I think that is a very accurate analysis, Mr. Chairman.

The eloquent language of Chief Justice Marshall, which accorded to the Indians in 1832 this status of independent nations acting as foreign powers persisted. That part of his opinion has come down to the point to where we have this anomalous municipal type of corporation with no intermediate levels of government.

Senator ERVIN. And we have a lack of harmony within other institutions that govern other American citizens?

Mr. CARVER. That is correct.

Senator ERVIN. The essential problem that confronts the Congress in this field is whether or not it is possible to establish a relationship with our other levels of government for the reservation Indians in a way that will harmonize with our levels of government and yet at the same time preserve for them such necessary local self-government as would seem to best serve their interest——

Mr. CARVER. Yes, sir.

Senator ERVIN. And it is quite a problem.

Mr. CARVER. Yes, sir, it is.

Senator KEATING. Mr. Chairman, could I ask this gentleman a question?

Senator ERVIN. Yes.

Senator KEATING. Mr. Carver, am I correct in assuming that there are various tribal units with Indians living on reservations not contiguous to each other but under one head and one council?

Mr. CARVER. I think there are, Senator. I would like to ask some of my staff members from the Department to help me with the facts on this.

I believe Mr. Crow is here and also Mr. Hyden, from the Solicitor's Office.

Senator KEATING. Perhaps they are going to testify later, and I should address the question to them.

Mr. CARVER. Yes. As to the physical arrangement of the tribes, I am sure that we have some situations where the tribal organization administers physical areas which are not contiguous. Yes, sir.

I do not know how many. That is the problem.

Senator KEATING. Does the Indian Bureau come directly under your jurisdiction?

Mr. CARVER. Yes, sir.

Senator KEATING. Let me ask you a broad general question:

What is the ultimate objective of the Indian Bureau?

Is it to get Indians off the reservation and integrated into the life of this country, or to enlarge the reservations or continue them? Is there a policy setting forth the ultimate objective of the Indian Bureau?

Mr. CARVER. Well, to get at this was the main objective of the Secretary's creation of the Indian task force group, to make recommendations which would bring this policy into a kind of a unity.

I guess we would say that the first objective of the Bureau of Indian Affairs is to carry out the laws of the Congress which follow a very complex, really, multifarious pattern like that of the various Indian groups. For example, in your own State, we have not had anybody

from the Indian Bureau having any connection with the Senecas for 12 years and yet we will be back, working with the Senecas, as a part of this Kinzua Dam arrangements, in all likelihood.

On the other hand——

Senator KEATING. Let me understand that. The Seneca Tribe has had no contact whatever with the Indian Bureau up until this Kinzua Dam problem arose.

Is that it?

Mr. CARVER. Yes, sir, I believe, for many years.

Senator KEATING. For many years.

Mr. CARVER. On the other hand, there are other tribal circumstances and situations where we are deeply enmeshed in it.

Now, there is no policy to move the Indians off of the reservation. The Indians' land is their salvation. History shows us that as we have pushed the Indians off into smaller and smaller pieces of land, the very growth and value of the land has enabled some of them to come back and become wealthy, economically thriving units.

It is our objective, therefore, to give to the Indian people the opportunity to have benefits of American citizenship and to grow and to realize upon their assets, their land, and the other resources there.

Senator KEATING. Do they own land in fee simple?

Mr. CARVER. Some do, but most of the land that I am speaking of, the title is held by the United States, in trust for the Indians as a tribe or for individual Indians.

But, of course, the Indians also sometimes buy land which they own in fee.

Senator KEATING. When you read these stories about Indians discovering oil on their land and becoming wealthy, if oil is discovered there on a plot of land that one Indian is working, is he entitled to the proceeds of that himself or does he go through the tribe?

Mr. CARVER. Well, I suppose one of the examples which the committee will get into has to do with the Osage Indians in Oklahoma, where the royalties from the oil is distributed in accordance with his head rights.

Now, these Indians are not all wealthy. The Bureau performs a kind of a bookkeeping function. It sort of keeps the records that the Indians need and they pay for it out of their proceeds from the oil.

Senator ERVIN. If I can interrupt here I would like to ask this question: In many cases the title of the land is simply, in effect, in the tribe and the tribe allots use rights to particular portions of the land to individual families.

Is that not true?

Mr. CARVER. The control of the land is in the tribe. Generally the title is in the United States.

In other words, action is necessary by the United States to alienate it.

Senator ERVIN. But the individual Indian or the individual Indian family is accorded what they call use-rights, that is the right to use a certain portion of the land?

Mr. CARVER. That is true in some reservations, but the greatest danger in this whole field of Indian affairs is to generalize.

The variations are just beyond comprehension. That is one of the difficulties that we have always had.

Senator KEATING. Are there not more Indians living on reservations today than there were 20 years ago?

Mr. CARVER. Oh, yes.

Senator KEATING. And more than 50 years ago?

Mr. CARVER. I am sure that is the case.

Senator KEATING. In other words, the Indian population on reservations is increasing all of the time?

Mr. CARVER. Well, as we have improved health services and so on, the infant mortality has gone down and the population has gone up on the reservation.

Of course, there are more Indians living off of the reservations, too.

Senator KEATING. Are they encouraged to move off the reservation or to stay on, by the Indian Bureau?

Mr. CARVER. Well, the Indian Bureau encourages them to seek whatever opportunities are best suited to their skills and to improve the situation where the tribe has land.

In other words, we have a relocation program to give Indians who are in a very depressed situation, opportunities to learn skills and to get jobs elsewhere.

But, on the other hand, we also encourage the formation of economically viable units for the land so that they can get better production from their land, get factories on their land, and get industry attracted, and so on.

Let me say that the system itself sort of discourages them from leaving.

The "benefits" of being an Indian—and I put quotes around that—are most easily realized when there is a rather close, umbilical connection with the tribe or with land which is in the trust status.

Senator KEATING. Now, when an industrial plant locates within the geographical limits of a tribal area—and that sometimes happens, does it not?

Mr. CARVER. Oh, yes. Yes. And we hope it will happen some more.

Senator KEATING. It, of course, brings employment to many Indians, but who gets the title to that land where the factory is located?

Mr. CARVER. Well, the title will generally remain in the United States. There can be a lease which can be up to 25 years, under some laws, and up to a longer time on certain reservations.

It can be approved by the Secretary, at which time the company, which has made the investment, is protected in its possessory rights there.

Senator KEATING. Now let me ask you about schooling, and again maybe this is something that you cannot generalize on.

Are the schools generally maintained by the State in which the tribe is located or by the tribal council?

Mr. CARVER. Well, here, again, the pattern varies. In certain States, where we have large populations of Indians the entire school operation is under the State educational system, and Indians are not treated any differently than any other citizen.

In other States—and Alaska is one—we will have the school, in effect, turned over to the Indian village and operated as a kind of tribal operation or village operation.

On the other hand, there are Indian Bureau schools, schools built and operated by the Bureau of Indian Affairs for the Indian children. And then there is every variation in between.

Now, I hope, as you talk to the Assistant Commissioners more specifically about this that they will feel free to correct any misstatement that I have made as to the facts but, in general, this range is involved.

Senator ERVIN. The last edition of the Encyclopedia Britannica states that approximately half of the Indian school children in the United States are now educated in the public schools of the States in which the reservations are located under contracts between the Bureau of Indian Affairs and the States.

Mr. CARVER. Yes, but that is a Federal program under the Johnson-O'Malley Act, which provides for it. The real philosophy of it is that an Indian child may be a federally impacted child living on tax-exempt land. This, therefore, gives a basic——

Senator KEATING. He would not be so well off right at the moment——

Mr. CARVER. No; there is a problem.

Senator ERVIN. As I inferred from the Encyclopedia Britannica, approximately half of the Indian children attend schools which are, in essence, Bureau schools and the other half are in schools which operate in the States under contracts with the Bureau.

I do not believe that would be too far wrong.

Mr. CARVER. I think I would hesitate to argue the statistics, but I know, in general, that is correct.

Mr. CREECH. Mr. Carver, I must confess that some of my questions may seem a bit obtuse. I am a bit confused, having received your original statement which I had read, and now receiving the one you presented here this afternoon which varies. Some of the questions may not seem pertinent for this reason.

Mr. CARVER. Perhaps I could explain to the counsel how that happened.

It is a typical bureaucratic snarl-up that sometimes happens. I was unaware of the scope of the committee's questionnaires when I prepared my statement. I only had one before me and thought that was all there was. But I hasten to add that the committee is not responsible for that snarl up. It is right in my own Department.

Senator KEATING. That is not as bad as what happened to me. I was to address the Veterans of Foreign Wars and the Ladies Aid Society on Monday. And I got up to speak to the Veterans of Foreign Wars and found that I had my Ladies Aid Society speech with me.

Mr. CREECH. I would like to assure you that we found the statements compatible. The only thing is that some of my questions are not exactly in line with the statement that you delivered, and I just wanted you to understand why.

The chairman has authorized me to say that if any of the questions posed are too technical to be answered here, the record will be held open to receive that information from you once you have had an opportunity to review your files.

On the basis of the first page of your statement, the third paragraph, do you feel that your responsibility for the programs with the Bureau of Indian Affairs includes a responsibility to prevent a

violation of the Indians' constitutional rights and to provide them all of the constitutional rights of other citizens?

Mr. CARVER. To the full extent that the law allows me that latitude, I do; yes, sir.

Mr. CREECH. On page 4 of your statement you have said, and I am quoting:

> However, the tribal codes generally provide that a defendant in the tribal courts has the right to have a member of the tribe represent him, and in the event he has no such representation the court may appoint a representative.

Could the member of the tribe, representing the defendant, be a lawyer who is a duly enrolled member of the tribe?

Mr. CARVER. I think the answer is "Yes." I only know of one or two instances where we have tribal members still in the tribal situation who are lawyers.

I do know that some—one of them, at least, does so function.

Senator KEATING. May I inquire on this subject?

Does he cease to be a member of the tribe if he moves off the reservation?

Mr. CARVER. I hope you will not think that I am trying to duck all of these questions. Sometimes, yes; and sometimes, no.

Senator KEATING. In other words, its depends on the tribe?

Mr. CARVER. Yes.

Senator KEATING. I see. So that when you said you only knew of one or two who were lawyers, did you mean who were still living on the reservation?

Mr. CARVER. I personally only know one graduate of a law school, admitted to practice, who lives with his tribe and serves as an attorney. I think it is a thing that ought to be encouraged. There may be many others but there is no forfeiture of the membership in the tribe by being educated as a lawyer or otherwise. I would doubt that they would raise the question, but they might.

Mr. CREECH. So, invariably, it is not legal representation which the defendant receives?

Mr. CARVER. That is correct.

Mr. CREECH. Do you happen to know, sir, whether the court appoints representation in the case of any indigent defendant, anyone who is not able to find someone to come along with him?

Mr. CARVER. The sophistication of these courts is on a rather broad scale, and I imagine in some cases they are pretty particular about it, and in others they are just as unparticular as I have seen them be in some justice of the peace courts I have practiced in, and sometimes a little bit arbitrary there, too.

Mr. CREECH. I wonder, sir, if the Department has any record of the number of cases in which the defendants have been represented by someone within the tribe and whether there is any breakdown as to the number of instances in which such counsel might have been appointed by the court?

Mr. CARVER. If we have such records we will furnish them. If we do not, we will explain that we do not.

(This information is furnished in the appendix at pp. 247–250.)

Mr. CREECH. Thank you, sir.

You spoke of the review by a committee of the departmental law and order regulations back in 1934. I wonder if there has been any

review since that time to determine the extent, if any, of the constitutional protections afforded other citizens, such as the right to counsel, and how to make the rights available to Indian tribal members?

Mr. CARVER. Well, as to a review, at that narrow point, I do not know. That point, however, has been covered, I guess, in all of the studies which have dealt with the Indian Bureau policy, and we are now administratively engaged in such a review in the Department.

Mr. CREECH. Are you engaged in an administrative review similar to the one undertaken in 1934?

Mr. CARVER. It is not that formal. Specifically, the Secretary has suggested that we get the Indian committee of the bar associations together and see if we can get a committee of them working with our lawyers to sort of work together and review this whole matter, looking toward the granting of constitutional rights in each case.

Now, we have written letters to individual lawyers, members of the Indian bar, and we have called, into our Washington office, a lawyer who was in the field to work on this and related matters.

Mr. CREECH. So it would be your view then, sir, that there has been no careful scrutiny or revision of the law and order regulations since 1934. The scrutiny and revision which the regulations are receiving now would be comparable to that which was made back in 1934?

Mr. CARVER. Well, I do not know exactly how deeply that went into it.

I would hope that we would get into it with a sensitivity to constitutional rights, because we deeply feel that something must be done along this line.

Mr. CREECH. But, apparently, for the past 27 years there has been no revision.

Mr. CARVER. I just do not know.

Mr. CREECH. All right, sir.

Now you state that the 1934 committee felt:

That professional attorneys "would tend to formalize and complicate a procedure most effective when informal and simple and since their superior knowledge of the law might easily produce an unwarranted control over the court."

I wonder, sir, if this is still the view of the Department of the Interior?

Mr. CARVER. No, sir. I do not have that view of lawyers. There are some lawyers like that but I do not have that view of lawyers, generally.

Senator KEATING. You are a lawyer yourself, are you not?

Mr. CARVER. Yes, sir.

Senator KEATING. Well, so are we.

Mr. CREECH. Mr. Secretary, would you please inform the subcommittee as to how many tribal organizations, either formal or informal, there are under your jurisdiction, those with tribal councils or committees, indicating how many have tribal codes and how many have courts of Indian offenses, and how many have tribal courts?

Mr. CARVER. We will be glad to furnish that information.

Mr. CREECH. Thank you.

Also we would like to request information relative to how many of the tribal codes or the courts have a provision forbidding licensed attorneys to appear before the courts.

Senator KEATING. Forbidding, you say?

Mr. CREECH. Yes, sir.

Senator KEATING. Some of them do forbid it?

Mr. CARVER. Yes, some do. As a matter of fact, we had a regulation until we repealed it which forbade it.

Mr. CREECH. I believe you have indicated that that regulation was repealed this May.

Mr. CARVER. I have the repealing order here.

Mr. CREECH. I think it would be helpful, sir, to have that received for the record.

Mr. CARVER. I will be glad to submit it right now.

(The aforementioned order of repeal follows:)

[From Federal Register, vol. 26, No. 96, dated May 19, 1961]

(Page 4360 reads as follows:)

TITLE 25—INDIANS

CHAPTER 1—BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—LAW AND ORDER

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

PROFESSIONAL ATTORNEYS

The following amendment is made to Chapter I of Title 25 of the Code of Federal Regulations:

Sections 11.9 and 11.9CA are revoked.

STEWART L. UDALL,
Secretary of the Interior.

MAY 12, 1961.

(F.R. Doc. 61-4626; Filed, May 18, 1961; 8:50 a.m.)

Senator KEATING. You mean lawyers were not permitted there until May of this year?

Mr. CARVER. Well, this only covered a small fraction of the situation.

As a matter of fact, I sort of claim credit for this myself. Congressman Edmondson and I worked at the Washington level to get this regulation repealed. One of the districts of the U.S. court system, also told us we had to repeal this regulation.

Mr. CREECH. Sir, in your original statement you said that legislation to permit court review of the decisions in Indian courts is being considered. I noted that the section on review was omitted from your statement here today. Is such legislation still being considered?

Mr. CARVER. Well, if I may explain the word "considered" I will be glad to say, that is still our view.

Such a provision has been included in at least one bill that I was able to locate. I think it was Congressman Berry's "bootstrap" bill.

I have participated in discussions with the Secretary of the Interior in which we have, between ourselves, discussed the pros and cons of this as to making it a formal departmental project.

We have not told the Bureau to do it.

So I did change that statement in the subsequent version.

Mr. CREECH. Does the Department intend to recommend to the Congress legislation in this area?

Mr. CARVER. I would, at the moment, doubt it. As I said in the statement, to make an appeal system from these courts would tend to make permanent a court system, which we, in the Department, think of as transitional.

There are other approaches for getting a judicial review which, I think, might be better. For example, we might turn to our bankruptcy code and to our system of referees, and see if we could not bring some of these courts under the wing of the Federal court through that scheme.

Mr. CREECH. But, sir, is it not a fact that today some Indians, who are tried before tribal courts, have no recourse to any appeal?

Mr. CARVER. That is correct except Indian courts' own appellate procedures. And it is an offensive concept, I agree with you.

However, I would point out, as I am sure that the committee would realize, that where a man's liberty has been taken from him, under such proceedings, he may have extraordinary remedies.

Senator KEATING. Habeas corpus?

Mr. CARVER. Habeas corpus and the like. But as to a literal procedure, you are quite right.

Mr. CREECH. Well, sir, is a habeas corpus proceeding always available to a tribal system?

Mr. CARVER. I do not know. I just wanted to say that I do not think it is precluded.

I hope it is available. I do not know. I would think that the protections of the Constitution are such that if there was a deprivation of liberty, without due process, that the man could test that in the Federal court, just as he can test it against State court action.

Mr. CREECH. I wonder, sir, in view of doubt in this area, if you would care to ask the Solicitor to render an opinion on this question in order that we might make it a part of the record?

Mr. CARVER. I will be glad to ask him. I do not know whether he will look upon such an assignment with much relish.

But I will so ask him; yes, sir. I have asked him informally. I did not get any very satisfactory answer.

Mr. CREECH. It is our impression that this is very definitely the case, that in certain instances a habeas corpus proceeding would not be available. Therefore an Indian would have absolutely no recourse. He is not always entitled to counsel; there is no protection against self-incrimination, and there are many types of deprivation of constitutional rights.

You have discussed the holdings in two recent Federal cases regarding tribal authority over the religious liberty of its individual members.

I wonder, sir, again if the Solicitor has been asked to rule on the question of authority to solve this problem under present law?

Mr. CARVER. Well, we are giving attention, as I said in my statement, to this problem, and we will seek the advice of our Solicitor. As to whether he has already been requested for an opinion, I do not know.

I tend to look upon the responsibility of the Secretary, to figure out where he wants to go before he starts asking the Solicitor what the law is.

Mr. CREECH. As of this time, am I correct in thinking that no recommendations have been made to Congress which would provide specific legislation to give the Secretary this authority if he does not, in fact, already possess it?

Mr. CARVER. You are correct as to that.

Mr. CREECH. But it is being considered?

Mr. CARVER. Yes, sir.

Mr. CREECH. Can we assume, sir, by the fact that you are considering it that the Congress may receive recommendations in the near future from the Secretary or from the Department?

Mr. CARVER. I bridle a little by the word "near" because we may not have the same understanding about it. It is a very complex area.

I hope we will have something up sometime during the next session of the Congress.

But it is very difficult sometimes to get this kind of legislative proposal prepared and cleared within a period of one session of Congress. We will try.

Senator ERVIN. If I may interrupt at that point, I would like to say this.

Do you not think that on some of these questions you study or ponder a long time, without being able to reach a definite conclusion in your own mind as to what would be the appropriate thing to do?

Mr. CARVER. That is exactly our dilemma, Mr. Chairman, and I would not be so bold as to say that the ideas which come out of this will be mine or any other person's, and it is going to take a lot of hammering to come up with something, because we have to consider that this is a partnership operation, the Congress and the administration and, to a very great extent, the Indians and the State and local governments are all in this with us.

Senator ERVIN. And there are some 350 different groups or tribes with various methods and practices that adds to the complication?

Mr. CARVER. Yes, sir; that is correct.

Mr. CREECH. Mr. Secretary, is it true that originally all of the procedures and regulations of the tribal council, constitutions, and also the methods, the regulations, and the procedures of the courts, at some time come before the Secretary for review?

Is that not correct?

Mr. CARVER. Yes, sir. That is correct. There is an opening there. That is correct.

Mr. CREECH. So, presumably, at that point if there are not requirements for the constitutional guarantees the Secretary could refuse to approve these articles of incorporation or the charters of the tribal court procedures?

Mr. CARVER. Yes, and we have discussed that and dealt with some of the difficulties inherent in trying to tell the tribal group what should be in their constitution.

They say, "Well, why should you start with us?"

Mr. CREECH. So then, actually, the situation which we have today with some of the tribal courts not making provision for the constitutional guarantees is actually the result of these regulations having been promulgated with the consent of a Secretary of Interior at some time?

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Mr. CARVER. Yes.

Mr. CREECH. That is, previously?

Mr. CARVER. I think that would be fair to say that, yes.

Mr. CREECH. Would you comment on the effectiveness of the authority which the Department has over tribes such as approving tribal constitutions and tribal resolutions with regard to the Indian courts?

There has been an allegation that in some instances the courts are nothing more than an endorsement agency of the tribal government.

I wonder if you would comment on this. Do you feel that the courts are a separate agency from the tribal government?

Mr. CARVER. Well, as to the opportunities which the Department might have to influence and to work with the tribes, there are two important factors to be taken into account.

The first is the tribe itself and what its degree of sophistication is and to what extent they have become accustomed to the State, local, and the Federal court systems and the procedures which are applicable there.

And, on the other hand, there is the personnel which the Bureau has, through its area offices and its agency offices, and the extent to which they can, in sort of an educational process, bring these people to have a feeling for these rights and the necessity for avoiding arbitrary action of a kind which is offensive to Anglo-Saxon-trained lawyers.

There just cannot be any generalization.

We cannot say that because we look at all of the constitutions we have got a paper going across our desk and here we can put down that they have got to do so and so, because it just does not work that way. They hammer out these constitutions, sometimes over a period of 3 or 4 years laboriously in meeting after meeting after meeting with their tribal council or their general council, and then they finally get it through the superintendent and the area office, and they think the Great White Father has approved the whole thing, and then we come along and put in a new concept.

So we come along and say, "You have got to get this in it."

This is a difficult responsibility that we take on ourselves as to the constitution-making power that the tribes have. They did not have constitutions. They did not grow up with them.

They did not have them originally, and the idea of an organic act which they adopt, but which we dictate is basically anomalous anyway. So I just hope I give to the committee some idea of the complexity of it, and I hope I do not indicate to the committee unwillingness to grapple with it, but the answers are not easy.

Mr. CREECH. We appreciate the fact that the situation differs from tribe to tribe, but is it true that some of them have had constitutions for well over 150 years?

Mr. CARVER. Oh, yes. As Chief Justice Marshall pointed out, some of these Indian tribes were, by all odds, the most sophisticated and the most civilized, if you will, of the two parties when they were negotiating in the early days of the Republic.

It has not all been one sided.

Mr. CREECH. Well, sir, on page 6 in the second paragraph of your statement you refer to the Indian courts:

> I should call your attention to the fact that insistence upon strict application in the Indian courts as they are now constituted and will continue to be constituted for some time, of the same procedural safeguards that apply in the non-Indian judicial system, would result in the destruction of the Indian court system and would leave the Indian people, in a great many instances, without any protection.

I presume by "Indian courts" you are referring only to the tribal courts and not to the courts of Indian offenses.

Is that correct?

Mr. CARVER. Well, I think, generally, that is correct, although I think this statement would be applicable in its substance to the Courts of Indian Offenses as well.

In other words, I think our Courts of Indian Offenses do not always have the same procedural safeguards that are applicable in the non-Indian judicial system, even though we control them by regulation.

Mr. CREECH. And even though the courts of Indian offenses are limited by the Constitution?

Mr. CARVER. Yes.

Mr. CREECH. Sir, with regard to that statement, is it the position of the Department that it would be better to make provisions for a court that would deprive the Indian of his constitutional rights rather than to provide for no court at all?

Mr. CARVER. I suppose that if you accept the premise that the court system is a transitional sort of a training ground operation, then we would have to regard a court with its imperfections as being better than having no court at all——

Mr. CREECH. But, actually, he would not be in the position of having no court at all, would he, because if the tribal court were abolished, he would have recourse to the Federal courts, I believe—but we can pose this question later.

Mr. CARVER. I suppose, although I do not know.

Mr. CREECH. Sir, in your discussion of Public Law 280, you indicated that Indian groups are fearful of hostile local and State attitudes of discrimination, et cetera.

Has the Department made studies of Indian opinions to establish this position or is this just on the basis of representations from various members of your staff?

Mr. CARVER. Well, we have agency superintendents in 60-some locations, and we have area directors in 10 cities, and we have our staff which, I think, probably is as tuned in as any governmental agency could be to the attitudes and feelings of the Indian groups.

And I certainly would stand on that statement as supportable and not just subject to any criticism on the basis of not having enough opinion, not getting deeply enough into it.

Now of course there is a variation but the generalization we will stand on.

Mr. CREECH. Well, sir, has the Department reviewed the effectiveness of State law enforcement under Public Law 280?

Mr. CARVER. Yes, sir. I would rather leave to some of the technical people, however, any comment on what we found.

We have a branch in charge of that sort of thing and they keep track of it and can give you an up-to-date report of just how it works in every case.

Mr. CREECH. All right, sir. We do have several other questions pertaining to Public Law 280, and I presume that you would prefer that we ask them?

Mr. CARVER. I would prefer that.

Mr. CREECH. All right, sir. The Secretary of Interior's Task Force recommended that programs be developed with tribes and State governments looking to a revision of the tribal codes and reorganizing of tribal courts to bring them as nearly as possible into accord with the State system. They also asked the Department to insist upon constitutional guarantees of civil rights in the Indian courts existing under departmental regulations.

Does the Department intend to implement these recommendations of the task force?

Mr. CARVER. Yes, sir. The Department has not acted on every one of the recommendations, but the spirit of the recommendations have been accepted and the ones you speak of, I am sure, will be permitted.

But, of course, sometimes we have to—sometimes we are involved not so much with our feelings on it, but with the feelings of Congress.

In other words, some of these require legislative changes, and acceptance by the Congress of the United States of the change which is indicated.

Mr. CREECH. Would you care to indicate which methods would be required to make these recommendations effective?

Mr. CARVER. Well, we can start right now; and, of course, we are starting with the very ones I have mentioned, that is, of working with the tribes and getting our people to be more tuned in, if you will, with these concepts.

So that as the work of these regulations and tribal constitutions progresses, they will have these points in mind: that they will also try to do a better job of understanding what the applicable State law is, and what the applicable State procedure is so that insofar as possible, wherever we have the opportunity or a choice, we can make it patterned after the State law rather than after some of the tribal system or some other State system.

This would be in the case of the handling of juvenile offenders, for example, the methods of committing them, and also it would involve some of the proceedings for adoption, and various other forms of process could be matched up with that in the State even though it would be under a tribal constitution or a regulation, rather than to be worked in conflict with that.

Mr. CREECH. Would it be your view, sir, that the changes which are to be made should conform as closely as possible to the existing State laws or to the laws of the State in which the tribe is located?

Mr. CARVER. As I indicated in the statement, I think these should be brought into step, into pace, so to speak, so that when a change would take place it would not be a harsh or disruptive change.

Mr. CREECH. Sir, what action has the Department taken to reexamine the Code of Federal Regulations to determine what other regulations are unconstitutional?

I am referring to the case where the Indian defendants had been refused counsel and in this regard you said that this part of the code was unconstitutional.

Mr. CARVER. Well, I have mentioned the only departmental action which has been taken on this subject, and I will concede that that is not really off the ground yet, but it has been discussed and agreed upon by the Secretary that we will try to get a group of the experienced members of the Indian bar and members of our own solicitor's staff to take this whole subject matter and give it a careful scrutiny.

Mr. CREECH. You were talking a few moments ago about the area of juvenile delinquency.

You have noted the inadequacy of facilities, services, and resources available to the Indians.

Has the Department encouraged the tribes and the Department's employees to seek agreement with the States so that the tribal court authority is recognized by the court, and agreements made to utilize State facilities for which the State might receive compensation?

Mr. CARVER. I suppose we, in the abstract, have given that encouragement, but the system really is not very well set up to make it work very well.

And I would say that it takes an additional affirmative action, starting, I think, hopefully, with getting the States to appreciate more what their responsibilities are to treat Indian citizens as they do other citizens in their State.

Mr. CREECH. Doesn't the Secretary have authority to do this under the Johnson-O'Malley Act which you mentioned earlier in your testimony?

Mr. CARVER. As to juvenile delinquency?

Mr. CREECH. No, sir, with regard to contracting with the States to provide these facilities?

Mr. CARVER. Oh, we do that for schools, yes.

Mr. CREECH. So would not the Secretary have the full authority to contract with the States to provide facilities for juvenile delinquents and, perhaps, juvenile dependency, as well?

Mr. CARVER. I think the stumbling block there would be the money.

We have got to, you know—that is generally the stumbling block we get to when we get to contracting with the States.

We would prefer to deal with the States in that we have sort of been carrying a burden which rightfully belongs to them in this transitional period, and we would like them to take it over.

The States, on the other hand, choose to say, and understandably, "If you want us to do this, that, or the other, you will have to come up with the money which it will take for us to do it or which will be required to take on this additional burden for our people."

And, of course, they have got a good story. They do not have enough money either.

Mr. CREECH. Has the Department of Interior requested funds for this purpose in its budget?

Mr. CARVER. We would have to weasel a little on that as to whether we requested it to the Budget Bureau. I do not know that I could say.

As to whether it ever got beyond there, I do not know.

Mr. CREECH. But this has been considered by the Department?

Mr. CARVER. Yes.

Mr. CREECH. Do you have information on how many tribes have included provisions similar to the Bill of Rights in their constitutions?

Mr. CARVER. No, sir, but, as I said before, we will furnish that information.

(The information is furnished at pp. 166–167.)

Mr. CREECH. Thank you, sir.

At the time you provide us with that information would you comment as to whether the Department has ascertained that the inclusion of these rights in the constitutions of the tribes which have them provided, has produced any undue hardship on tribal authority?

Mr. CARVER. Yes, sir. We will comment on that.

Mr. CREECH. The Hoover Report in 1948 stated that the policy "is to turn both the political and the financial control of tribal courts over to tribal authorities," and it goes on to say that this places the Indian judge in a very vulnerable position where the parties concerned bring pressure to bear on him.

The report states further that after a tough trial, it is sometimes a question of who will act faster, the judge in resigning, or the tribal council, in dismissing him.

The judge has a "never again for me" feeling and friends and relatives of the convicted person are determined to get the umpire.

Under the circumstances, is it difficult for many tribes to get the men they want to serve as judges?

I would like to ask, sir: Does this situation, as described in the Hoover Commission Report, still exist and if it does not, what brought about the change?

Mr. CARVER. Well, I rather think it still exists in the Indian tribes and I can give you a few examples in some of our States which pay their justices of the peace on a fee basis where something comparable also exists there.

As to the specific case, I do know, but I am sure that pattern is in the nature of the thing.

Mr. CREECH. The task force recommends that the Secretary of the Interior insist that the constitutional guarantees of civil rights be observed in the courts of Indian offenses which is bound by his own regulations.

We further think that it is incumbent upon the tribal governments which create a tribal government under the Constitution to provide for protection of these rights by their own ordinances.

We have determined from the Manual of the Bureau of Indian Affairs that technical advice and assistance in such matters are available to the area officers. And necessary remedies are within reach of the Bureau and/or the tribal councils and should be put into effect without delay.

What has the Department done to implement this recommendation?

Mr. CARVER. Well, if you mean what has the Department by now accomplished, the answer is very simple.

We have not got it done yet. We are working on it, and the opportunity to insist upon this kind of standard being applied, in the

letters that go out in our review of the regulations which come in, and so on, is never let go by.

I always try to see that we do not sign any correspondence, that we do not approve any regulations which are in contravention to this principle, but as to actually getting the regulations changed and so on, we have not got it done yet.

Let me say that changing regulations in the Indian Bureau are or, indeed, in any Bureau of the Department of the Interior and, perhaps, in other departments is not a simple or easy task.

Mr. CREECH. The Fund for the Republic study states there have been accumulated something like 389 treaties, 5,000 statutes, 2,000 Federal court decisions, more than 500 attorneys general opinions and numerous Interior Department and Solicitor's rulings.

It goes on with considerable detail.

Does the Department review and up-date periodically the statutes, the Interior Solicitor rulings, and the tribal constitutions, characters, and this mass of regulations which govern a half a million of our people?

Mr. CARVER. We do not review many of the statutes, although we try to recommend changes as changes seem to be indicated.

As a matter of fact, the Interior Department has, I think, one of the largest volumes of bills pending before the Congress of any Department of the Government, and quite a substantial number of them concern Indians.

There are so very many things that require statutory approval or congressional approval. As to the codification and the maintenance of indexes, keeping these things under current review, of course, we do it.

I do not know how well we do it. I do not know for sure that we are always current, but that is a part of our mission.

We attempt to do it.

Mr. CREECH. Sir, you pointed out the paucity of Indian legal talent, that there are very few native Indians who are attorneys themselves, and that very few live on the reservations.

I think you mentioned one.

Mr. CARVER. That was one that I knew of.

Mr. CREECH. Yes, sir. I wonder if you feel that the Indians or even their representatives, or the Bureau employees themselves, can sufficiently know the proper authorities and procedures which are in existence in this area of the law.

Mr. CARVER. Well, here again, the competence of representation of a group, generally, is somewhat directly related to their economic resources.

Let me say that those tribes which have resources—and, minerals, leases or income-producing things—or those tribes who have claims against the United States are represented by several very competent, very devoted, very skillful firms of attorneys specializing in Indian work.

Other tribes have house counselors, so to speak, lawyers on their payroll who are as good as any in the country.

Obviously, other tribes, without these resources, get such legal representation as they get only from the field solicitor or the regional solicitor as he works with the superintendent or with the area director.

Now, in many cases, this is very fine representation, but it is not sometimes the day-to-day consultation which might be useful or helpful.

There are, out in the States, lawyers with very great experience, very great skills in representing Indians.

Mr. CREECH. Is the Bureau of Indian Affairs Manual available to the tribe on the reservation?

Do they have copies of it?

Mr. CARVER. Sometimes I am not sure that the Bureau itself has copies of it. It is a pretty extensive series of volumes.

As to whether or not each tribe would have a copy of the manual, I very much doubt it. I think each area or each agency superintendent probably has one, and I know that it is available to them.

As to whether they have one in their own archives, I do not know.

Mr. CREECH. Then there is no certainty that the individual Indian who may come up wanting to check some section of the manual to ascertain the procedure under which he is to operate, would have the manual available to him?

Mr. CARVER. No, I suppose not, but I think that it would be. I do not know whether he would be able to use it, or, indeed, whether anybody in the office could, you know, for the specific point that he may have in mind.

Sometimes the manual gets into very great explicit detail on things which might seem to you or me of very minor importance, and then, on the other hand, it may have a hiatus on something which we consider of very great importance.

Mr. CREECH. Is there any plan to revise this manual, to put it in more workable form so that, perhaps, a layman can understand it and use it?

Mr. CARVER. Well, that is a responsibility of the Commissioner of Indian Affairs. I hope he has such plans. I have not made any.

Mr. CREECH. Do you happen to know, sir, if the Department has made a study of all of the treaties to ascertain what sections are applicable or if, in fact, some of the treaties are no longer in effect?

Mr. CARVER. We have not, to my knowledge, made any study as such.

We recently sent a group of Department and field service representatives to work with the western Washington Indians, 35 or so bands, each with a different treaty, and they made a rather intensive study of the treaty rights and claims of these groups.

We have made such studies in different places and where an Indian tribe has a claim against the United States, which is based on a treaty, ordinarily their own counsel will come in with the contentions concerning it.

Mr. CREECH. Sir, do you know if the Department feels a codification of Indian law is necessary or whether it is desirable?

Mr. CARVER. Well, there have been frequent references made here to the text volume, the encyclopedia, so to speak, compiled by Mr. Cohen in 1941 and brought up to date later on, "Federal Indian Law."

As to whether we would take it on as a departmental project to codify the law, I do not know. We have got a lot of things to do, and some of these involve changes rather than codifying what we have got now.

Mr. CREECH. I wonder, sir, when you provide the subcommittee with information, if you could give us a chart, identifying all of the reservations and showing those under State laws, courts of Indian offenses, tribal, or traditional courts. Would the Department also provide a chart indicating the administrative organization from the Secretary of Interior to the tribal court and court of Indian offenses, including citations to its laws from which the authority is derived?

Mr. CARVER. Yes, sir; we will do that.

(The information is furnished in the appendix at pp. 237–240, 252–253.)

Mr. CREECH. The subcommittee would also be interested in knowing how many reservations there are, including pueblos, rancheros, et cetera; how many under the State law; how many have courts of Indian offenses; how many have tribal or traditional charts; how many are not under State jurisdiction or do not have courts of any kind. Would you provide this information?

Mr. CARVER. Yes, sir. We will try to do that.

(The information is furnished in the appendix at pp. 242–250, 252–253.)

Mr. CREECH. I believe Mr. Waters has some questions for you.

Mr. WATERS. Thank you.

Mr. Carver, you were here, were you not, when Senator Church question the authority of the Interior Department over fee patented lands; Would you care to answer that for us?

The question was, as I recall it: Where does the Interior Department derive its authority over fee patent lands?

Mr. CARVER. Well, I don't—I would not at this moment presume to try to say but in connection with my own review of legislative proposals, I have discussed this matter with the Solicitor and with his staff and with the legislative counsel. And I do not have any question in my mind but what we have the authority within the external boundaries of the reservation subject to certain limitations.

But I confess I will have to have the Solicitor bring a memorandum to you on the point specifically.

Mr. WATERS. If you would do so, and also point out the limitations which you believe exist on the external boundaries.

Mr. CARVER. It may take a little while but, as I understand it, this record is going to be open some time and we will try to go into all aspects of that.

(The information is furnished in the appendix at pp. 260–270.)

Mr. WATERS. In connection with your manual, I understand that is not published or distributed to the tribes; is that correct?

Mr. CARVER. That is my understanding, but I am not awfully positive of that.

Mr. WATERS. Is that, likewise, true of the Solicitor's opinions?

Mr. CARVER. Well, Solicitor's opinions are available through the Interior Department, the series of Solicitor's opinions which are published which are available to all lawyers of——

Mr. WATERS. What do you mean by "published"?

Mr. CARVER. Well, I think a private firm collects these, issues advance sheets, and later puts out a volume and maybe it is done by the U.S. Government Printing Office.

But, at any rate, they are assembled in printed and bound form.

Mr. WATERS. Will you check into that and supply the name of the printer?

Mr. CARVER. I may be speaking of our decisions rather than the opinions, but I will check into that.

Mr. WATERS. What we are interested in is the Solicitor's opinions as well as the decisions.

Mr. CARVER. Well, I may have to back away from that and say that I do not know.

Mr. WATERS. You will find out?

Mr. CARVER. I think we have a Solicitor here if you would like to get it in the record right now.

Do you want to answer that?

Is that all right, Mr. Chairman?

Senator ERVIN. Yes, sir.

Mr. HYDEN. If I understand your question correctly, Mr. Waters, you wanted to know whether the opinions of the Solicitor were published.

They are published. We have two classes of publication. The more formal and important, of general application, are collected periodically and included in the Interior Department's decisions and it becomes a bound volume developed for a period.

They prepare them and put them in a bound volume just like the court decisions and the like.

And then you have the less important ones, and of a more limited application, that are duplicated in the Department, and they have a headnote system on them, and the headnotes, themselves are periodically collected and published in a digest.

It is my understanding that any outside firm or agency or person can subscribe to the service and receive the ID, as they call it, or the Digest and can get copies of the mimeographed, duplicated opinions.

Mr. WATERS. Is a dissemination made to individual tribes, or agencies of the published and bound volumes?

Mr. HYDEN. I do not believe it is.

Mr. WATERS. Where would they be available?

Mr. HYDEN. Our field legal offices within the organization of the Solicitor's office, do receive these publications.

They are scattered around the country and in one instance it would be fairly close to an Indian tribe and in another case it would be some distance away.

Mr. WATERS. When you say that only important decisions are published, would you define what you mean by the "important decisions"?

Mr. HYDEN. Well, there is a section within the Solicitor's Office that handles that work and makes the decision, and just what criteria they use, I would not be prepared to say.

Mr. WATERS. Would you be prepared to say it when we get to you in turn?

Mr. HYDEN. I will try my best.

Mr. WATERS. Thank you very much, Mr. Hyden.

Senator ERVIN. Mr. Secretary, the Chair is very greatly indebted to you and the Department of Interior and the Bureau of Indian Affairs for the assistance that you have given to the committee and the staff thus far.

And I want to say that we will be calling on you, the Department, and the Bureau of Indian Affairs for assistance and advice in this area as we proceed.

I think we all agree that we are engaged in an effort to make an investigation in a field in which it is extremely difficult to find proper solutions for the problems which arise. We can all try to work, on a cooperative basis, to see if we can do something to solve many of these problems.

Thank you very much.

Mr. CARVER. I thank you, Mr. Chairman.

Senator ERVIN. I believe Congressman Olsen had to return to the House.

Is Mr. Nash present?

Can you return in the morning at 10 o'clock?

Mr. NASH. Yes, sir.

Senator ERVIN. We will stand in recess until 10 o'clock in the morning.

(Whereupon, at 4:20 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, August 30, 1961.)

CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN

WEDNESDAY, AUGUST 30, 1961

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:15 a.m., in room 357, Old Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee), presiding.

Present: Senators Ervin and Keating.

Also present: William A. Creech, chief counsel and staff director, and Bernard Waters, minority counsel.

Senator ERVIN. The subcommittee will come to order.

This morning, the subcommittee begins the second day of hearings on the constitutional rights of the American Indian. We are privileged to hear from the distinguished Congressman of Montana, Arnold Olsen, who has studied extensively the law and order situation existing in various Indian communities in the West and particularly in his native State of Montana.

Incidentally, Congressman Olsen served with distinction as the attorney general for the State of Montana before coming to Congress.

The subcommittee is also happy to receive testimony this morning from the distinguished Congressman E. Y. Berry of South Dakota. Mr. Berry is the author of legislation pending before the Congress which would provide a technical assistance program for our Indian communities. He has wide knowledge of and a long-standing interest in the problems of the American Indian. As chairman of the Subcommittee on Constitutional Rights, I look forward to receiving the benefit and knowledge of his testimony.

The subcommittee also feels fortunate in hearing this morning from two members of the Secretary of the Interior's task force, Messrs. Philleo Nash and William Zimmerman. The task force members served from February 6, 1961, to July 10, 1961. This group was established by Secretary of the Interior Udall to consult with Indian leaders and learn firsthand about conditions in Indian country.

The task force traveled 15,000 miles, interviewed spokesmen for 200 tribal groups and heard hundreds of other witnesses. It can certainly be said that they have the most recent knowledge of conditions existing among the Indian citizens on reservations. Each of these gentlemen is eminently qualified to advise the subcommittee on this important subject, as of course are the various specialists in Indian Affairs of the Department of Interior, who will be heard later, each of whom will provide the subcommittee with a short biographical sketch.

The Chair is delighted to learn that the Deputy Commissioner of Indian Affairs is also present and he will be asked to give us the benefit of his observations.

Congressman Berry, we will be delighted to hear from you at this time. I do not believe Congressman Olsen has come in yet.

STATEMENT OF HON. E. Y. BERRY, A REPRESENTATIVE IN CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF THE STATE OF SOUTH DAKOTA

Mr. BERRY. Mr. Chairman, I will be happy to yield to Congressman Olsen when he does arrive.

Senator ERVIN. Incidentally, I would like to say I had a very pleasant trip out to your State early in July. I was very much impressed with the beautiful agricultural land between Sioux Falls and Yankton and I enjoyed meeting very many fine members of your judiciary and South Dakota Bar Association.

Mr. BERRY. Thank you very much, and thank you for going out, Mr. Chairman. I heard very wonderful remarks about your talk. Just let me say that now that you have broken the ice, we would like to have you return as often as you can.

Senator ERVIN. I certainly will do it as often as I have an opportunity.

Mr. BERRY. Thank you, Mr. Chairman and members of the committee. I want to commend this committee for holding hearings on what, in my judgment, is one of the basic problems on the Indian reservations. It is not only basic to the rights of the individual Indian, but it is basic to the problem of law enforcement on these various Indian reservations.

As presently established, Indian reservations in the United States are not only the world's best example of complete socialism, but they are the world's best example of a lack of law and authority. Government on these reservations is strictly a government of men and not of law. There is no limitation upon the governing body. Most governing bodies serve both as the legislative, executive, and judicial functions of government. The tribal council makes the law, they execute the laws they make and with practically no limitation as to what laws they can make, and they appoint the judges of the tribal courts with tenure of office limited to the whim of the council. Worse than this, there is practically no limitation upon the handling of tribal business and tribal funds. No one can contest tribal council expenditure of funds because there is no limitation upon them.

With regard to government of men, as evidence of my statement that reservation government is a government not of laws, but of men, I want to quote quite extensively from a letter dated July 2, 1958, over the signature of W. Barton Greenwood, Assistant Commissioner, with reference to action taken by the Tribal Council of the Rosebud Indian Reservation where the tribal president, the secretary and treasurer were overthrown by a peaceful revolution and a council member installed himself as president, and then how they refused to permit the former president to subsequently take office on the council despite the fact that he was elected by the people of his district.

I shall go directly into the quotation from the letter. Mr. Chairman, I have brought along Thermo-Fax copies of all of these letters from which I quote.

Quoting from the letter of Mr. Greenwood:

The records show that on August 13, 1954, at a special meeting of the tribal council, a few of the younger members, led by Robert Burnette, Cato Valandra, James Quigley, and Vincent Cordy, not only removed the president, the treasurer and the secretary from office, but actually removed them from the council itself. This was done in the matter of an hour or so.

The charges made there were that these people had violated their oath and were disloyal to the council in that they had spoken critically of an ordinance enacted by the council. That is, they had shown themselves opposed to an action taken by the council. This, in the opinion of the group of younger members led by Mr. Burnette, was a violation of their oath and just cause for removal.

Among the persons removed were Alfred Left Hand Bull, president, and Louis Leader Charge, secretary. Ever since that time, these two individuals have complained that they were illegally removed, that they had no opportunity to answer the charges made against them, and that they should be reinstated by the Bureau of Indian Affairs or some other person or tribunal having jurisdiction.

May I interject here, Mr. Chairman, that I am glad that this philosophy is not used in the Congress. Some of us might not be here, only just for today.

Quoting again:

Shortly before the tribal election in January 1956, the council enacted an ordinance—

this is shortly after they were ejected—

the council enacted an ordinance providing that any person having been removed from the tribal council could not become a candidate for election to the council. This effectively prevented Alfred Left Hand Bull and Louis Leader Charge from becoming candidates for the council again.

The record indicates that after removal of these two individuals, their communities held meetings and returned them to the council, but they were refused admission by the council.

It just so happened at this election in 1956 that some of the opposition to the council in office had been convicted of felonies, so the council in power decreed by resolution that any person convicted of a felony could not seek election to the council.

All of these persons were very loud in their complaints, and the agency superintendent wrote a report concerning this matter on February 16, 1956, in which he pointed out that even though the council had passed the felony resolution, supposed opponents of the council were prohibited from running because of having been convicted of a felony, but that the supposed friends of the council were allowed to run even though they had been convicted. The superintendent called this to the attention of the council, and their answer was that the persons that they had allowed to run were not guilty, even though convicted, and the persons prohibited from running were guilty. The superintendent pointed out that this was an extremely bad way to conduct their business and as long as they did this, they would not have the respect of the people nor be an effective force in assisting the people.

A Federal court dismissed for lack of jurisdiction a complaint of a group opposing the council.

Shortly before the election in 1958, the council enacted an extremely complicated election law. It was difficult for the communities to hold legal nominating conventions and make proper reports of their selected candidates back to the tribal election committee; therefore, in many cases the nominating conventions held by the communities were determined to be illegal by the council election committee.

At the same time, most of the old councilmen sought reelection by circulating petitions under a procedure provided for in the new election law. The charge was made by many people that this new and complicated election law effec-

tively prevented opponents of the council from seeking office. In some cases there is a possibility that it did; however, the matter has now become so confused that it is extremely difficult to say.

In the 1958 election, in the Parmelee Community at the first election, there were four candidates; namely, Louis Leader Charge, who received 43 votes, Stephen Spotted Tail, who received 37 votes; George Roubideaux, with 18 votes, and Francis Shot With Two Arrows, 26 votes. After the election, Louis Leader Charge was called before the council and taken to task for having signed a political circular charging the council with alleged misconduct and mismanagement.

When Mr. Leader Charge was refused admission, another election was called at Parmelee, at which time Mr. Leader Charge did not seek election and Mr. Spotted Tail was elected.

Your attention is invited to article III, section 8 of the Rosebud Sioux Constitution which is quoted: "The Rosebud Sioux Tribal Council shall be the sole judge of the constitutional qualifications of its own members." The constitution was adopted by the Indians and approved by the Secretary under the act of June 18, 1934 (48 Stat. 984), as amended (the Indian Reorganization Act).

This is probably the most flagrant example of the lack of authority over tribal council action that has come to my attention, but it is duplicated almost daily in a greater or lesser degree. For instance, it has been charged that petition circulators against councils have been jailed, but there is a lack of evidence in my files as to official action on this score.

In a statement under date of November 11, 1958, then Superintendent Graham Holmes of the Rosebud Indian Reservation, a well-informed lawyer and onetime member of the Solicitor's staff, made this statement and I have taken this from his testimony:

I don't think there is any place you can find it spelled out as to what tribal council authority is. You have to recognize history to understand it. It is not consistent with what you learn in law school. There always has been a field in Indian jurisdiction where there is a vacuum * * * tribal council functions in this vacuum.

Subject to approval of the Secretary of the Interior they may pass any statute except where the Federal Government has preempted the field. They cannot pass a statute on the 10 major crimes, but they can pass any other.

A resolution can be passed in 5 minutes. It does not even need to be in writing. A member can introduce a basic law by speaking it orally. There is no requirement as to it being read so many times, no requirement that it be in writing. It is the fault of the constitution and bylaws.

In connection with individual rights——

Senator KEATING. In other words, if we went to great lengths in Japan to set up, help them set up a form of government after the war—and we have done the same with other countries, where we have been conquerors, whereas—I mean this sort of thing we never permitted to be set up by Japan, for instance, but we do permit the Indian tribes to have tribal rules and regulations that, when you get to studying them, are really quite shocking.

Mr. BERRY. I think they are worse than shocking, Mr. Keating. They are fearful, absolutely fearful.

Senator KEATING. Is it in the record what these 10 major crimes are?

Senator ERVIN. It is an act of Congress.

Mr. CREECH. I am sure they will be, sir, when we get through.

Senator KEATING. All right.

Mr. BERRY. In this connection, it should be pointed out that the lack of limitation of authority for the tribal council not only affects

the individual in his personal rights but likewise in his property rights.

Attached is a copy of a resolution passed by the Rosebud Tribal Council on November 17, 1960, in which they place a non-Indian living on the reservation on the "black list." The resolution states that this family will not be allowed to lease land or to do business on the Indian reservation at any time in the future, although the Secretary of the Interior is obligated by Congress to serve as a guardian over the property of the individual Indian. Such a resolution, which has been honored by the agency, virtually makes the tribal council the guardian of the property of the individual Indian allottee. This resolution is attached for your information.

And I might interject right there the fact that the Department of Interior is the guardian and is liable in damages if the property of the ward does not bring in the revenue that it should bring in, and yet a tribal council can pass a resolution putting a man, a prospective lessee, on the black list, and the Department will not even lease him land, even if he paid twice as much, for an individual allottee has some other prospective lessee.

Senator ERVIN. I noticed a resolution attached to your statement referring to the family of Albert Churchill. Was that the resolution which you stated first?

Mr. BERRY. That is right.

Senator ERVIN. If you desire, we can make that resolution a part of the record at this point.

Mr. BERRY. All right, please.

(The resolution referred to follows:)

RESOLUTION NO. —

Whereas the Churchill family that reside on the Rosebud Indian Reservation are causing considerable trouble by agitating Indian against Indian and whites against Indians; and

Whereas the head of this family, Albert Churchill, was forcibly ejected from this reservation in 1946 because of violations of law and operations outside of the regulations and policies of the Bureau of Indian Affairs; and

Whereas when Albert Churchill was ejected from this reservation in 1946, the superintendent of the reservation canceled all of his leases and permits; and

Whereas the Churchills have threatened to run a tribal councilman out of the country; namely, Justin White Hat, councilman from the Spring Creek Community; and

Whereas the Churchills, in attempting to lease land from Abraham Kills in Sight, and being refused, threatened, before witnesses, to tear down Abraham Kills in Sight's home; and

Whereas the Churchills have deliberately kept a sliding stacker belonging to John Good Shield since 1957 and refused to return the stacker to Mr. Good Shield and have wrecked the said stacker and, when Mr. Good Shield requested $400 for damages and the return of such stacker, the Churchills refused to do so and still have the stacker in their possession; and

Whereas the Churchills have threatened to break Indian operators economically by utilizing Indian against Indian; and

Whereas the Churchills are agitating Indians into breaking up the range unit system of this reservation by offering exorbitant prices for the land, which they do not intend to pay; and

Whereas the board of directors of the Tribal Land Enterprise went on record placing the Churchills on a black list that will not allow the Churchills to lease tribal lands: Therefore be it hereby

Resolved by the Rosebud Sioux Tribal Council in session this 17th day of November 1960, That we demand that the Churchill family be forcibly ejected from the Rosebud Indian Reservation by the officers of the Bureau of Indian

Affairs, or the U.S. marshal, in accordance with chapter 6, section 1, "Removal of Trespasser," and section 2, "Removal of Lawbreakers"; further

Resolved, That the tribal council hereby places the Churchill family or their representatives, from this day forward, on a black list that will not allow them to lease land or do business on the Rosebud Indian Reservation forever; further

Resolved, That this resolution shall be carried out immediately and shall remain in full force and effect.

Senator ERVIN. This is a very illuminating observation.

Mr. BERRY. Although most of the members of the tribal council are classified as incompetent to handle their own personal affairs, the Secretary of the Interior has, in most instances, no authority to supervise the management and the handling of the financial affairs of the tribe, which is the communal property of the individual Indian. I would call your attention to a quote from a letter dated May 24, 1961, signed by R. E. Miller, acting area director, Aberdeen area office, with regard to complaints made by tribal members on the Cheyenne River Reservation in South Dakota relative to the handling of the affairs of that tribe. I quote:

If deficiencies in collection and disbursement are noted, however, the constitution and bylaws do not provide authority for this office to require these functions to be performed in a businesslike manner.

We share with you the concern over the fact that tribal business practices should be conducted in an efficient and businesslike manner, especially when it involves funds in which all tribal members are interested. We do not have the authority, however, to promulgate and enforce rules and regulations which the tribe would be required to adhere to, unless permitted by the constitution and bylaws or by law, especially when it involves local tribal funds not under the control of the Federal Government.

The handling of tribal funds by tribes, especially when qualified tribal personnel may not be available, continues to be a problem over which the Department and the Bureau is concerned. Under existing authority, except where embezzlement or similar situations appear, our actions have been limited to attempts to convince tribal officials that adequate procedures and internal controls must be developed to avoid serious situations from developing.

That is the end of the quote from that letter.

Again, with regard to the financial activities of the Oglala Sioux Tribe at Pine Ridge, Assistant Secretary of the Interior George W. Abbott, on January 19, 1961, had this to say:

And inasmuch as the review indicated deficiencies in the tribe's accounting procedures, we suggested that the tribe designate qualified representatives to work in cooperation with departmental representatives to assist the tribe in the development of corrective measures.

Departmental representatives shortly will be designated and arrangements made with the tribe to commence formulation of suggestions on procedures such as will, in view of the tribal officials, best assure an early detailed review and the institution of remedial procedures.

This was written last July. Today, up until this time, nothing further has been done.

Under date of August 11, 1961, Mr. Martin P. Mangan, Acting Commissioner, writing with regard to the tribal finances on the Rosebud Reservation, said this, in part:

The tribal council prepares and approves a law and order and tribal council budget but since the funds involved are under the exclusive control of the tribe, such budgets do not require approval by any Government official. The tribal council does not send copies of their budgets to this office for information or files.

With respect to the third paragraph of your letter, the tribal funds involved in the annual Interior Department Appropriation Act under the heading "Tribal Funds" are those funds on deposit in the U.S. Treasury to the credit of the various tribes, some of which are authorized to be expended by acts of Congress for specific tribes subject to approval of the Secretary of the Interior or his authorized representative. The Rosebud Tribe does not have any funds on deposit in the U.S. Treasury nor is there a specific act of Congress governing the expenditure of their funds.

That is the end of that quotation.

In this connection it should be pointed out that the tribe levies a tax of 3 to 5 cents per acre against all non-Indians doing business on the reservation, which is collected by the Department of Interior along with the lease rental from the non-Indians and turned over to the tribe; the collection being made by the Department of Interior on the authority of a tribal resolution. Refusal to pay such tribal tax by a non-Indian lessee precludes him from leasing even individual allotted Indian lands.

And yet I would remind this committee again that the Federal Government is guardian of this property.

The Department also withholds 5 percent of the lease of each allottee, which is, likewise, turned over to the governing body to be expended without supervision, as indicated in the above letter.

Another letter from Fred H. Massey, Assistant Commissioner, under date of August 14, 1961, concerning the handling of tribal funds on the Cheyenne River Reservation, is as follows:

This is to acknowledge your letter of July 20, 1961, which was in response to ours of July 18, 1961, concerning the handling of tribal funds by the Cheyenne River Sioux Tribal Council.

We share your concern about tribal councils who are prone to ignore the requirements of the tribal constitution—

and I think this is probably an all-time record statement.

We share your concern about tribal councils who are prone to ignore the requirements of the tribal constitution, bylaws and charters, and agree that all entities entrusted with the management of group assets should be accountable to some accessible authority for their acts.

This, Mr. Chairman, is the reason that I am slightly interested in what this committee is doing.

This is another acknowledgment by the Department that they have no jurisdiction over the handling of tribal funds.

It should also be pointed out that the State is completely without jurisdiction. State laws relative to municipalities and municipal governments are not applicable.

Tribal officers are, in many instances, not bonded. Tribal councils, by passing a simple resolution to expend funds in any way, make that expenditure legal. These funds are the funds of the Indians living on this reservation and yet their handling is almost without limitation.

Property rights: Although the Department of Interior is obligated to protect the property of the individual ward, tribal council action places a doubt on the authority of the Federal Government to protect the property rights of the individual Indian. I quote from a letter under date of April 26, 1961, over the signature of Mr. W. A. Mehojah, Acting Superintendent of the Rosebud Indian Agency, in which he says:

This allotment—

he is talking about an allotment that an Indian wanted to sell.

This allotment is located in Todd County. The Rosebud Sioux Tribe has adopted a resolution requesting a moratorium on land sales in Todd and Mellette Counties. This moratorium will in effect stop the sale of lands in these two counties for 1 year or less in which time the tribe hopes to develop a land acquisition program.

In other words, by a simple resolution the tribal council has removed from the Department of Interior the authority to handle the affairs of the individual allottee, although we are their guardians and are responsible in damages, as you will recall in the *Menominee* case in Wisconsin.

Now, with regard to tribal courts, one of the serious problems presented by the "no man's land" of jurisdiction is the right and authority of the tribal courts.

It should be remembered that the Federal court has jurisdiction only in the 10 major crimes on the reservation area. It should also be remembered that the State court probably has no jurisdiction whatever, at least on tribal and allotted lands. This means that the only court protection and court jurisdiction is in the hands of the tribal courts who are appointed in most instances by the tribal council in power, and apparently serve pretty much at the will of the council in power.

There is no appeal from a tribal court decision except to the tribal council itself. There is no court review other than the review of judges, in most instances, unlearned in the law.

Lawyers are in most instances prohibited from practicing in tribal court. An aggrieved party cannot go into Federal or State court.

In most instances, creditors, whether Indian or non-Indian, are almost entirely without relief. Indian stockmen find that the banks and credit companies are unable to make loans to expand their business because in the event of nonpayment they may not be able to foreclose on their security.

On July 21, 1960, L. P. Towle, superintendent of the Pine Ridge Indian Reservation, wrote to B. B. Hodson of the Blackpipe State Bank in Martin, S. Dak., which in part is as follows, and I shall read only a part of this letter, but it does point up the fact that the bank cannot go out and foreclose on its securities, and therefore probably will never make another loan after the 21st of July 1960.

I wish it were possible to give you specific answers to the questions raised in your letter of July 19. The matter of levying on security offered for a loan where the borrower is an Indian resident upon the reservation is in that gray area of unresolved jurisdiction, totally subject to court determination and incapable of resolution by administrative decision.

In a recent case involving the enforcement of State laws upon the Pine Ridge Reservation, the Supreme Court of the State of South Dakota upheld a lower court's decision stating the State had no jurisdiction over members resident on the reservation as related to criminal matters. In a recent case of *Williams* v. *Lee* in Arizona, the courts held that a lender could not come onto a reservation and enforce payment of a debt because the State courts were without jurisdiction within the boundaries of the reservation.

It is these decisions indicating the attitude of the courts in interpreting the jurisdiction question that is now disturbing our banking friends throughout the area and causing some apprehension as to the actions to be taken in loaning

money to Indians resident on the reservation. This is applicable within the boundaries of the reservation, and I would be unable to say whether or not Bennett County would be included in the area of the reservation.

Bennett County is actually in the entire reservation area, but only in an open reservation.

The rest of his letter will be of interest, but I shall not read it now.

Senator ERVIN. Let the record show here that the remainder of this letter, the last two paragraphs of the letter will be incorporated in the record at pages 52–53.

Mr. BERRY. The helplessness of non-Indian property owners is pointed out in the case of C. E. Hagel, who formerly operated a store at the Pine Ridge Indian Agency.

The agency and the town adjoining the agency was apparently the property of the Federal Government and under the jurisdiction of the Department of the Interior. In the reserve townsite no one was permitted to build without obtaining a permit.

A permit was granted to Mr. Hagel to construct not only his store building, but two residential buildings—one in which the family lived for many years, the other was constructed for rental purposes.

Several years ago the Department of the Interior by Executive order declared the townsite to be surplus to the needs of the Department and transferred it to the tribe. Mr. Hagel has his two houses rented. The renter of one house is behind $550 in his rent; Mr. Hagel has been attempting to collect the rent or evict the tenants and is unable to do either. The tribal court apparently will not take jurisdiction of the case. The State court has no jurisdiction; the Federal court has no jurisdiction.

On May 24, 1961, Superintendent L. P. Towle wrote to Mr. Hagel in part as follows:

An action of ouster could probably be brought in tribal court, if this court will assume jurisdiction in the matter. That would be up to the court itself to decide. There is no administrative recourse to be had through the Federal Government since your building is located on tribal land, and your lawyer can probably tell you what your rights are in such a situation.

That is the end of that quote, but I want to intercede this suggestion, that this is tribal land now, made so by an Executive order. It was not tribal land when Mr. Hagel built his buildings on this land. It was the property of the Federal Government and he obtained a permit to build on it.

Letters from Mr. Hagel advise me that the tribal court will not take jurisdiction nor compel eviction of the tenant. He informs me that he has an interested buyer, but it is impossible to give possession; likewise, it is impossible for the proposed tenant to obtain any kind of a loan upon the property. He tells me that these two houses represent a considerable amount of his life's savings, and that the income from these houses is essential to his livelihood. Also, the fact that there is no law to protect him in his property makes the value of his property practically worthless.

Solution—and I probably should have placed a question mark after this word. It is essential that Congress establish basic law applicable to these reservation areas, or that the Congress provide that the tribal government operate under the municipal laws of the State in which such reservation is located.

This, Mr. Chairman, concludes my statement.

Senator ERVIN. The subcommittee is certainly indebted to you for a most illuminating explanation of the thesis that crowns the glory of our way of life; namely, a government of laws, a government which is controlled by laws.

Your exposition is so lucid, to me it does not suggest any questions to ask you. It was a most helpful contribution to us.

Do you have any questions?

Senator KEATING. No, I have no questions. I know from my experience in the House that Congressman Berry is one of the most informed Members in the House on these matters. I think the very detailed and carefully documented evidence which he has given us here today will be very helpful in the considerations of this committee. We are very grateful to you.

Mr. BERRY. I appreciate these comments very much, Mr. Chairman. Let me say that had I had the time to go back through 10 years of files—these are primarily recent ones. But my files are replete with hundreds of instances of this same thing. It is not the fault of the Department of the Interior, it is not the fault of the governing bodies themselves, it is the fault of Congress in not providing basic law of some kind, either Federal law, basic Federal law limiting, as we must do, the field or the circle in which tribal councils may operate, or else providing that they shall be under the same law as cities and all municipalities.

Senator ERVIN. I think one of the hardest lessons history teaches us deals with the fact that no man or no group of men can be safely trusted with unlimited Government power. Yet, apparently, Congress has been willing all these years to allow such conditions to exist in respect to the reservations.

Mr. BERRY. That is correct.

Thank you very much, Mr. Chairman.

(The complete statement follows:)

STATEMENT OF HON. E. Y. BERRY, MEMBER OF CONGRESS, SOUTH DAKOTA

Mr. Chairman, I want to commend this committee for holding hearings on what, in my judgment, is one of the basic problems on the Indian reservations. It is not only basic to the rights of the individual Indian, but it is basic to the problem of law enforcement on these various Indian reservations.

As presently established, Indian reservations in the United States are not only the world's best example of complete socialism, but they are the world's best example of a lack of law and authority. Government on these reservations is strictly a government of men and not of law. There is no limitation upon the governing body. Most governing bodies serve both the legislative, executive and judicial functions of government. The tribal council makes the law, they execute the laws they make and with practically no limitation as to what laws they can make and they appoint the judges of the tribal courts with tenure of office limited to the whim of the council. Worse than this, there is practically no limitation upon the handling of tribal business and tribal funds. No one can contest tribal council expenditure of funds because there is no limitation upon them.

WITH REGARD TO GOVERNMENT OF MEN

As evidence of my statement that reservation government is a government not of laws, but of men, I want to quote quite extensively from a letter dated July 2, 1958, over the signature of W. Barton Greenwood, Assistant Commissioner, with reference to action taken by the tribal council of the Rosebud Indian Reservation where the tribal president, the secretary and treasurer were over-

thrown by a peaceful revolution and a council member installed himself as president, and then how they refused to permit the former president to subsequently take office on the council despite the fact that he was elected by the people of his district.

As background for this Greenwood letter, I should point out that Louis Leader Charge, Sr. was the duly elected, qualified and acting president of the council and had served in that capacity for some time. The letter sets forth the facts that Robert Burnette, together with three other council members, removed Leader Charge from office on the ground that he had violated his oath and was disloyal to the council because he spoke critically of an ordinance enacted by the council and had shown himself in opposition to the action of the majority, which they declared to be a violation of Leader Charge's oath and just cause for removal. He was removed with no election and Burnette set himself up as president. The Commissioner's office failed to take any action—if they were able to take action. The following election Leader Charge was duly elected as a council member from his district, but the Burnette group passed a resolution providing that no member who had been removed from the council could be reelected and they refused to seat him. The Federal court refused to take jurisdiction of the case and the Commissioner of Indian Affairs refused to take cognizance of the situation. Two years later Leader Charge was again elected from his district, but the council refused to permit him to be seated and called another election in his district to elect a councilman that was not opposed by the then governing group. The major portion of the Greenwood letter is as follows:

"The records show that on August 13, 1954, at a special meeting of the tribal council, a few of the younger members, led by Robert Burnette, Cato Valandra, James Quigley, and Vincent Cordy, not only removed the president, the treasurer and the secretary from office, but actually removed them from the council itself. This was done in the matter of an hour or so. The charges made there were that these people had violated their oath and were disloyal to the council in that they had spoken critically of an ordinance enacted by the council. That is, they had shown themselves opposed to an action taken by the council. This, in the opinion of the group of younger members led by Mr. Burnette, was a violation of their oath and just cause for removal. Among the persons removed were Alfred Left Hand Bull, president, and Louis Leader Charge, secretary. Ever since that time, these two individuals have complained that they were illegally removed, that they had no opportunity to answer the charges made against them, and that they should be reinstated by the Bureau of Indian Affairs or some other person or tribunal having jurisdiction.

"Shortly before the tribal election in January 1956, the council enacted an ordinance providing that any person having been removed from the tribal council could not become a candidate for election to the council. This effectively prevented Alfred Left Hand Bull and Louis Leader Charge from becoming candidates for the council again. The record indicates that after removal of these two individuals, their communities held meetings and returned them to the council, but they were refused admission by the council.

"It just so happened at this election in 1956 that some of the opposition to the council in office had been convicted of felonies, so the council in power decreed by resolution that any person convicted of a felony could not seek election to the council. All of these persons were very loud in their complaints, and the agency superintendent wrote a report concerning this matter on February 16, 1956, in which he pointed out that even though the council had passed the felony resolution, supposed opponents of the council were prohibited from running because of having been convicted of a felony, but that the supposed friends of the council were allowed to run even though they had been convicted. The superintendent called this to the attention of the council, and their answer was that the persons that they had allowed to run were not guilty, even though convicted, and the persons prohibited from running were guilty. The superintendent pointed out that this was an extremely bad way to conduct their business and as long as they did this, they would not have the respect of the people nor be an effective force in assisting the people.

"A Federal court dismissed for lack of jurisdiction a complaint of a group opposing the council.

"Shortly before the election in 1958, the council enacted an extremely complicated election law. It was difficult for the communities to hold legal nominating conventions and make proper reports of their selected candidates back to the

tribal election committee; therefore, in many cases the nominating conventions held by the communities were determined to be illegal by the council election committee. At the same time, most of the old councilmen sought reelection by circulating petitions under a procedure provided for in the new election law. The charge was made by many people that this new and complicated election law effectively prevented opponents of the council from seeking office. In some cases there is a possibility that it did; however, the matter has now become so confused that it is extremely difficult to say.

"In the 1958 election, in the Parmelee community at the first election, there were four candidates; namely, Louis Leader Charge, who received 43 votes, Stephen Spotted Tail, who received 37 votes; George Roubideaux, with 18 votes, and Francis Shot With Two Arrows, 26 votes. After the election, Louis Leader Charge was called before the council and taken to task for having signed a political circular charging the council with alleged misconduct and mismanagement.

"When Mr. Leader Charge was refused admission, another election was called at Parmelee, at which time Mr. Leader Charge did not seek election and Mr. Spotted Tail was elected.

"Your attention is invited to article III, section 8 of the Rosebud Sioux Constitution which is quoted: 'The Rosebud Sioux Tribal Council shall be the sole judge of the constitutional qualifications of its own members.' The constitution was adopted by the Indians and approved by the Secretary under the act of June 18, 1934 (48 Stat. 984), as amended (the Indian Reorganization Act)."

This is probably the most flagrant example of the lack of authority over tribal council action that has come to my attention, but it is duplicated almost daily in a greater or lesser degree. For instance, it has been charged that petition circulators against councils have been jailed, but there is a lack of evidence in my files as to official action on this score.

In a statement under date of November 11, 1958, then Superintendent Graham Holmes of the Rosebud Indian Reservation, a well-informed lawyer and one-time member of the Solicitor's staff, stated:

"I don't think there is anyplace you can find it spelled out as to what tribal council authority is. You have to recognize history to understand it. It is not consistent with what you learn in law school. There always has been a field in Indian jurisdiction where there is a vacuum * * * Tribal council functions in this vacuum."

"Subject to approval of the Secretary of the Interior they may pass any statute except where the Federal Government has preempted the field. They cannot pass a statute on the 10 major crimes, but they can pass any other."

"A resolution can be passed in 5 minutes. It does not even need to be in writing. A member can introduce a basic law by speaking it orally. There is no requirement as to it being read so many times, no requirement that it be in writing. It is the fault of the constitution and bylaws."

INDIVIDUAL RIGHTS

In this connection, it should be pointed out that the lack of limitation of authority for the tribal council not only affects the individual in his personal rights, but likewise in his property rights. Attached is a copy of a resolution passed by the Rosebud Tribal Council on November 17, 1960, in which they place a non-Indian living on the reservation on the "black list." The resolution states that this family will not be allowed to lease land or to do business on the Indian reservation at any time in the future, although the Secretary of the Interior is obligated by Congress to serve as a guardian over the property of the individual Indian. Such a resolution, which has been honored by the agency, virtually makes the tribal council the guardian of the property of the individual Indian allottee. This resolution is attached for the information of the committee.

TRIBAL FUNDS

Although most of the members of the tribal council are classified as "incompetent" to handle their own personal affairs, the Secretary of the Interior has, in most instances, no authority to supervise the management and the handling of the financial affairs of the tribe, which is the communal property of the individual Indian. I would call to your attention a quote from a letter dated May 24, 1961, signed by R. E. Miller, Acting Area Director, Aberdeen Area

Office, with regard to complaints made by tribal members on the Cheyenne River Reservation in South Dakota relative to the handling of the affairs of that tribe.

"If deficiencies in collection and disbursement are noted, however, the constitution and bylaws do not provide authority for this office to require these functions to be performed in a businesslike manner."

"We share with you the concern over the fact that tribal business practices should be conducted in an efficient and businesslike manner, especially when it involves funds in which all tribal members are interested. We do not have the authority, however, to promulgate and enforce rules and regulations which the tribe would be required to adhere to, unless permitted by the constitution and bylaws or by law, especially when it involves local tribal funds not under the control of the Federal Government."

"The handling of tribal funds by tribes, especially when qualified tribal personnel may not be available, continues to be a problem over which the Department and the Bureau is concerned. Under existing authority, except where embezzlement or similar situations appear, our actions have been limited to attempts to convince tribal officials that adequate procedures and internal controls must be developed to avoid serious situations from developing."

Again, with regard to the financial activities of the Oglala Sioux Tribe at Pine Ridge, Assistant Secretary of the Interior George W. Abbott, on January 19, 1961, had this to say:

"And inasmuch as the review indicated deficiencies in the tribe's accounting procedures, we suggested that the tribe designate qualified representatives to work in cooperation with departmental representatives to assist the tribe in the development of corrective measures."

"Departmental representatives shortly will be designated and arrangements made with the tribe to commence formulation of suggestions on procedures such as will, in the view of the tribal officials, best assure an early detailed review and the institution of remedial procedures."

Under date of August 11, 1961, Mr. Martin P. Mangan, acting Commissioner, writing with regard to the tribal finances on the Rosebud Reservation, said this, in part:

"The tribal council prepares and approves a law and order and tribal council budget but since the funds involved are under the exclusive control of the tribe, such budgets do not require approval by any Government official. The tribal council does not send copies of their budgets to this office for information or files.

"With respect to the third paragraph of your letter, the tribal funds involved in the annual Interior Department appropriation act under the heading 'Tribal Funds' are those funds on deposit in the U.S. Treasury to the credit of the various tribes, some of which are authorized to be expended by acts of Congress for specific tribes subject to approval of the Secretary of the Interior or his authorized representative. The Rosebud Tribe does not have any funds on deposit in the U.S. Treasury nor is there a specific act of Congress governing the expenditure of their funds."

In this connection, it should be pointed out that the tribe levies a tax of 3 to 5 cents per acre against all non-Indians doing business on the reservation, which is collected by the Department of Interior along with the lease rental from the non-Indians and turned over to the tribe; the collection being made by the Department of Interior on the authority of a tribal resolution. Refusal to pay such tribal tax by a non-Indian lessee precludes him from leasing even individual allotted Indian lands. The Department also withholds 5 percent of the lease of each allottee, which likewise, is turned over to the governing body to be expended without supervision, as indicated in the above letter.

Another letter from Fred H. Massey, Assistant Commissioner, under date of August 14, 1961, concerning the handling of tribal funds on the Cheyenne River Reservation, is as follows:

"This is to acknowledge your letter of July 20, 1961, which was in response to ours of July 18, 1961, concerning the handling of tribal funds by the Cheyenne River Sioux Tribal Council.

"We share your concern about tribal councils who are prone to ignore the requirements of the tribal constitution, bylaws, and charters, and agree that all entities entrusted with the management of group assets should be accountable to some accessible authority for their acts."

This is another acknowledgement by the Department that they have no jurisdiction over the handling of tribal funds.

It should also be pointed out that the State is completely without jurisdiction. State laws relative to municipalities and municipal governments are not applicable.

Tribal officers are, in many instances, not bonded. Tribal councils, by passing a simple resolution to expend funds in any way, make that expenditure legal. These funds are the funds of the Indians living on this reservation and yet their handling is almost without limitation.

PROPERTY RIGHTS

Although the Department of Interior is obligated to protect the property of the individual ward, tribal council action places a doubt on the authority of the Federal Government to protect the property rights of the individual Indian. I quote from a letter under date of April 26, 1961, over the signature of Mr. W. A. Mehojah, acting superintendent of the Rosebud Indian Agency, in which he says:

"This allotment is located in Todd County. The Rosebud Sioux Tribe has adopted a resolution requesting a moratorium on land sales in Todd and Mellette Counties. This moratorium will in effect stop the sale of lands in these two counties for 1 year or less in which time the tribe hopes to develop a land acquisition program."

In other words, by a simple resolution the tribal council has removed from the Department of Interior the authority to handle the affairs of the individual allottee.

TRIBAL COURTS

One of the serious problems presented by the no man's land of jurisdiction is the right and authority of the tribal courts.

It should be remembered that the Federal court has jurisdiction only in the 10 major crimes on the reservation area. It should also be remembered that the State court probably has no jurisdiction whatever, at least on tribal and allotted lands. This means that the only court protection and court jurisdiction is in the hands of the tribal courts who are appointed in most instances by the tribal council in power and apparently serve pretty much at the will of the council in power.

There is no appeal from a tribal court decision except to the tribal council itself. There is no court review other than the review of judges—in most instances unlearned in the law. Lawyers are in most instances prohibited from practicing in tribal court. An aggrieved party cannot go into Federal or State court.

In most instances, creditors, whether Indian or non-Indian, are almost entirely without relief. Indian stockmen find that the banks and credit companies are unable to make loans to expand their businesses because in the event of nonpayment they may not be able to foreclose on their security. On July 21, 1960, L. P. Towle, superintendent of the Pine Ridge Indian Reservation, wrote to B. B. Hodson of the Blackpipe State Bank in Martin, S. Dak., which is in part as follows:

"I wish it were possible to give you specific answers to the questions raised in your letter of July 19. The matter of levying on security offered for a loan where the borrower is an Indian resident upon the reservation is in that gray area of unresolved jurisdiction, totally subject to court determination and incapable of resolution by administrative decision.

"In a recent case involving the enforcement of State laws upon the Pine Ridge Reservation, the Supreme Court of the State of South Dakota upheld a lower court's decision stating the State had no jurisdiction over members resident on the reservation as related to criminal matters. In a recent case of *Williams* v. *Lee* in Arizona, the courts held that a lender could not come onto a reservation and enforce payment of a debt because the State courts were without jurisdiction within the boundaries of the reservation.

"It is these decisions indicating the attitude of the courts in interpreting the jurisdiction question that is now disturbing our banking friends throughout the area and causing some apprehension as to the actions to be taken in loaning money to Indians resident on the reservation. This is applicable within the boundaries of the reservation, and I would be unable to say whether or not Bennett County would be included in the area of the reservation.

"In Bennett County there is a distinction in reference to jurisdiction, depending on whether an Indian lives on trust or nontrust land, it being generally

conceded that if he is a resident on trust land that all the privileges and immunities of a resident of the closed portion of the reservation are applicable to him.

"In a recent communication from our central office, they have reaffirmed what I am here telling you, and have further stated that the problem is being met in some of the reservations in the Southwest areas by positive action taken in tribal courts. These tribal organizations recognize how detrimental it is for their own people not to have access to commercial processes and the economic level of the community and are therefore willing to step in and enforce agreements which their members have voluntarily assumed. We have had no experience here with our present tribal court, but the attitude of the people is not such that we could confidently state at this time that the tribal court would be sympathetic with a lender as against a borrower in a legitimate transaction. I am sure the people here do not recognize how detrimental this attitude is in their relationships with the neighboring communities and in business transactions with the surrounding economic institutions. If the Indian people persist in trying to make of the reservation a haven for debtdodgers and dishonest people, it can react most unfavorably to the great majority of the people who wish to abide by the laws of the county governing the relationships between parties in commercial transactions."

The helplessness of non-Indian property owners is pointed out in the case of C. E. Hagel, who formerly operated a store at the Pine Ridge Indian Agency. The agency and the town adjoining the agency was apparently the property of the Federal Government and under the jurisdiction of the Department of the Interior. In the reserve townsite no one was permitted to build without obtaining a permit.

A permit was granted to Mr. Hagel to construct not only his store building, but two residential buildings—one in which the family lived for many years, the other was constructed for rental purposes. Several years ago the Department of the Interior by Executive order declared the townsite to be surplus to the needs of the Department and transferred it to the tribe. Mr. Hagel has his two houses rented. The renter of one house is behind $550 in his rent; Mr. Hagel has been attempting to collect the rent or evict the tenants and is unable to do either. The tribal court apparently will not take jurisdiction of the case. The State court has no jurisdiction; the Federal court has no jurisdiction.

On May 24, 1961, Superintendent L. P. Towle wrote to Mr. Hagel in part as follows:

"An action of ouster could probably be brought in tribal court, if this court will assume jurisdiction in the matter. That would be up to the court itself to decide. There is no administrative recourse to be had through the Federal Government since your building is located on tribal land, and your lawyer can probably tell you what your rights are in such a situation."

Letters from Mr. Hagel advise me that the tribal court will not take jurisdiction nor compel eviction of the tenant. He informs me that he has an interested buyer, but it is impossible to give possession; likewise, it is impossible for the proposed tenant to obtain any kind of a loan upon the property. He tells me that these two houses represent a considerable amount of his life's savings, and that the income from these houses is essential to his livelihood. Also, the fact that there is no law to protect him in his property makes the value of his property practically worthless.

SOLUTION

It is essential that Congress establish basic law applicable to these reservation areas, or that the Congress provide that the tribal government operate under the municipal laws of the State in which such reservation is located.

Senator ERVIN. Congressman Olsen.

Congressman Berry, we deeply appreciate your taking the time and trouble to appear before us and give us the benefit of your experience, observations, and views on this question.

Congressman, I am sorry we did not get to hear you yesterday.

Congressman Olsen is from Montana and he served with distinction as attorney general of his State before he came to Congress. We are delighted to hear from you.

STATEMENT OF HON. ARNOLD OLSEN, A REPRESENTATIVE IN CONGRESS FROM THE FIRST CONGRESSIONAL DISTRICT OF THE STATE OF MONTANA

Mr. OLSEN. Thank you, Mr. Chairman.

I want to apologize for being late. I want to say, on the other hand, I am glad I was, because it gave me an opportunity to hear Congressman Berry. I think he did an excellent job.

I was glad to have the opportunity to hear Secretary Carver yesterday. Both of these occasions were good for me. I thank you also for the opportunity of appearing here and testifying myself.

I find myself without having had sufficient time to prepare in detail a statement. I am going to make my remarks short, though, commencing almost with the note that you ended with, that it is true, and we have learned, certainly in the Western World, that power corrupts and absolute power corrupts absolutely. This is some of the complaint that is made about the administration of law and order and justice on the Indian reservations by tribal courts and tribal councils.

I suppose that any of us that come from Indian country or near Indian country could recite at great length the many injustices that we have observed in our lifetimes.

I was attorney general of the State of Montana at the time that the Federal Government first attempted to confer all jurisdiction over Indians in Indian country, with the exception of the 10 major crimes, upon the States, and of course, that first was attempted without the concurrence of the Indians themselves.

The Supreme Court in Montana took the view that this, the State of Montana could not do, they could not assume jurisdiction of Indians in Indian country or within the exterior boundaries of Indian reservations without the permission, without the concurrence of the Indians in granting that authority to the State of Montana.

The simple unilateral grant of authority from the Federal Government was not sufficient to give or to put the State of Montana in authority over those people in those areas. Then during my terms, and I was two terms attorney general, during those 8 years, I saw much turmoil regarding jurisdiction on the Indian tribal lands.

I do not think that I will burden the committee with any recitation of injustices as you have already heard from Mr. Carver and from Congressman Berry. What they have said is pretty much true of the condition in the Indian reservations in Montana. However, on the other hand, there is some very great leadership in the Indian reservations. They have developed some great politicians, and I mean in the best sense of the word, men who are elected to the tribal council, who are not only capable of leading the people, but they execute it very honorably.

I noted some criticism of the tribal courts and of their administering the law as police courts in all crimes except the 10 major crimes. One of the great objections made here at the Congress is that lawyers cannot be permitted to practice in front of those courts. I might say that this was born out of some sense of justice and democracy in those courts. Most Indians could not hire a lawyer. As a matter of fact, it was a rare one who could. So they felt that the Indians who could not hire a lawyer would be at a disadvantage. So, as a matter of fact,

they would provide that you could have anybody represent you in a tribal court except a lawyer. That more or less put all of them on the same democratic plane, nobody had an advantage over the next person. So it cannot be viewed as a pure injustice. Thus we could probably discuss many of the rules and many of the customs of the Indians that were born out of a great sense of justice.

While it is true that they maybe cause some individual cases of injustice in the views of some of us, the broad administration of these rules and tribal customs do and have, over years of experience, administered substantial justice.

Senator ERVIN. I imagine that an observation made by Justice Cardozo in his wonderful little book "The Nature of Judicial Process" would apply to some of the judges in some of the tribal courts. He was speaking of the duty of the judge to follow precedents, rather than to use his personal notions of justice, and he said this: that if the judges substitute their personal notions of justice for precedents, there would be benevolent decisions provided the judges were benevolent men, but that possibly such a course of action would mar the reign of law.

Now, undoubtedly, many of these tribal judges have been benevolent men in the sense that Justice Cardozo used that term, and perhaps many of their decisions have been benevolent decisions and just decisions, in cases where they were men who a fine personal sense of justice. But it is a situation in which the reign of law is not likely to exist.

Mr. OLSEN. That is true, and there are, as I say, great leaders. There have been virtual Solomons on these reservations. But it has led to law by who you know rather than by law for what the law is, or what the law really ought to be.

I note that these Indians are living, however, in fear of poverty and want. I think this is the real root of the problem. If they had less fear from day to day about how they are going to eat and how they are going to clothe themselves and have shelter for themselves, they would have less fear of the white man's courthouse.

I think that back in 1949, when we first attempted some degree of integration of the Indians into the whites and later in about 1953 and 1954, if the States had responded better to negotiating with the Indians and if they had inspired some confidence in them, perhaps we could have, by negotiation, organized some political subdivisions of the States for the Indians.

Now, then, that still has to be the goal or else they have to be political subdivisions under the Federal Government, where there is a delegation of authority to these tribal councils and tribal leaders, which, at the same time, limits their authority, and there has to be some method of appeal from the decisions of the tribal authorities, either through State processes or through the Federal processes.

We should know by now that there is not any dreamed-of tomorrow when the Indians will be immediately integrated into our society and into our courts. It will be a very gradual process. So I would hope that the Congress could very soon commence negotiations with the Indian tribes to the end that they have a system of Federal subdivisions or State subdivisions.

We have done a good job in the State of Montana about integrating the Indian in many ways. We already have common schools. Indeed, our petition is for the white people to go into the Indian schools. In most of the places the Indian schools are excellent. In those places where they are not excellent, they are about like the white man's country schools, and integration of the races is an accomplished fact and has been for many, many years. They already use the same restaurants, they use the same stores, they use all of the same facilities. All of them vote, and as a matter of fact, the Indian vote is quite a prize for politicians, both Indian and non-Indian.

Senator KEATING. Indians on reservations vote?

Mr. OLSEN. Yes, sir. And we go to great lengths, myself included, together with others, to have big barbecues and we bring the Indian and non-Indian from many miles and we have our hat in our hands, believe you me, and we are asking for votes. We discuss their problems that day.

Now, we ought to find time, organized time, I am talking about, officially representing the Congress or in the case of State governments, officially representing the State governments, to continue the conversation with these people on the Indian reservations about their specific problems.

Senator KEATING. Do they vote for local officials?

Mr. OLSEN. They do. And we have, for instance—I am not quite positive about the precise tribe, but we have had county attorneys in many counties, and when I was attorney general, we had an Indian county attorney in Hamilton, Mont., one in Cutbank, Mont., right on the boundary from the Blackfeet Indian Reservation. We had a county attorney of Indian descent in Wolf Point, which is in the Fort Peck Reservation.

Senator KEATING. Were these county attorneys living on reservations?

Mr. OLSEN. Well, they were within—no, in Wolf Point it would be within the exterior boundaries of the reservation, but not at Cut Bank. It would be just beyond the exterior boundary rise of the reservation, and the one in Hamilton, of course, he was some miles from an Indian reservation, but he is now district judge and his district, his judicial district includes the Flathead Indian Reservation. We have had many Indian sheriffs. We have had them as county treasurer. They always count the county funds all right. We have them in other public offices in all parts of our State.

I sometimes think that the tribal council and the politics of the tribal council so occupy the time of the leadership that this, to some extent, keeps them from running for more of the county offices. We have had them in our legislature. And I must say that I cannot, from my memory, think of an Indian who served in public office in Montana but that he did it most honorably.

I will get back to this major premise of mine, that the rank and file of the Indian people are very simple people who are scared about their poverty and their insecurity, and from this, they have a distrust of the white man and his courthouse, because they have an inferiority feeling as compared with the white man.

Senator ERVIN. If I may interrupt, I understand that Congressman Berry has introduced bills to provide for the extension and

assistance to Indians on reservations, and it seems to me that that is a proposal which should merit the approval of the Congress. It seems the law should do something to remove or at least alleviate what you point out as the underlying cause of most of the trouble on the reservation.

Mr. OLSEN. We have a separate kingdom of an Indian reservation administered by a tribal council. There the standard of living is very low, the question of where you get food and shelter is the previous question. I would like to see them better integrated with the county government. I do not know how, except of course, the Indians have to participate in the negotiation for now. But where we have had the answer for many years that nobody sent for the white man and he should not be on the reservation and that would be one of the answers given to Congressman Berry about the prohibition against the bank foreclosing on the Indian land—that is not a valid answer any more, that nobody sent for the white man. Today, Arnold Olsen was born, and happily so, out there in Montana, out of no choice of his own and many non-Indians out there today are there for the most part out of no choice of their own. They were born there just like the Indian was, and we are there to live together.

I would like to see us have more cooperation toward bringing the Indian into our local government so that he can participate in our economy. This, I think, is the shining goal that we have to reach for and we do not reach for it if we continue encouraging this separate little kingdom that encourages reliance on pure charity out of the tribal council.

Senator ERVIN. In this country we are fundamentally devoted to local government yet we have had this anomolous position where the Indian has not participated—that is Federal guardianship over the Indian has tended to keep the Indian from participating, as he should do, on the local level, as you point out. I think you have made wonderful strides in this direction in Montana.

Mr. OLSEN. Yes, we have.

Senator ERVIN. It occurs to me that if we could find some form by which we could allow the Indians to remain on the reservation and to retain a substantial measure of local self-government on the reservation, and at the same time integrate them in the local government so they can participate in local government, it would be a solution to the problem, and apparently the shining goal, at least, toward which we should all work.

Mr. OLSEN. There are no easy answers, but the big problem that will help us if we solve it is some kind of security and not the kind that will have them just sit at home, but the kind of security that encourages them to strive for an improvement of their lot in the world.

I must say this before closing: Far too much reliance is put upon the Indian and his ownership of his lands. Every Indian is not a farmer, any more than every one of us is a farmer or every one of us is any one thing. These Indians are as many different personalities as they are Indians. So we should not say that they have to farm or that they have to ranch. They are capable of doing many, many other jobs and we have to move some of those opportunities to the reservations, or else we have to move the Indian from the reservation. There are no job opportunities there.

Let me say that it is not just on the Indian reservation, but in the capital city of Helena, Mont., there are Indians long severed from their tribes, some of them landless Indians that never were part of any tribe that got any benefits from the Federal Government, who know only one way to make a living and that is to go to the county courthouse; some of them for five and six generations have been going to the courthouse for welfare from the welfare department and they have been receiving it. You see, the problem is not just on the reservation, the problem is in some of the cities.

Great Falls is another city where there are a great number of so-called landless Indians on what we call "Hill 57." Those Indians, to make a living, either go to the courthouse for welfare or they go out and try to hunt wild game. The have not been integrated into the economy of the white man's jobs. But I keep coming back to the problem, that we can work out these judicial processes if we could eliminate the distrust that the Indian has for the white man's courthouse and the white man's laws.

Thank you very much.

Senator ERVIN. We appreciate very much your observations, which have been extremely helpful to us.

Mr. OLSEN. Next time that I come to the committee, I will have a prepared statement and I shall not take quite so much of your time.

Senator ERVIN. The committee will welcome it anytime. If you have any suggestions which you think will be of help to this study, we will appreciate your communicating it to us.

Mr. OLSEN. Thank you.

Senator ERVIN. The committee will be glad at this time to hear any observations or recommendations Mr. John Crow may see fit to give to the committee. Mr. Crow has been interested in Indians for a long period of time. He has done some very fine service in the Bureau of Indian Affairs and has been attached to the Commissioner of Indian Affairs.

I understand, Mr. Crow, you are now Deputy Commissioner?

STATEMENT OF JOHN O. CROW, DEPUTY COMMISSIONER, BUREAU OF INDIAN AFFAIRS

Mr. CROW. Mr. Chairman, I do not have a prepared statement. I was not informed that I would be a witness here, and perhaps I will have another opportunity later on to give you something in a prepared manner.

Senator ERVIN. The committee will be glad to hear anything you wish to say at this time, and we will certainly welcome your statement on any observation or recommendation from you at a later time at your convenience.

Mr. CROW. Well, I would like to say this now, Mr. Chairman, that I think in evaluating the present situation, as we are doing, that we must take into account the changes that have occurred over the past 30 or 40 years and view the present situation in the light of what those former conditions were. I do not think that we in the Bureau or the Department feel defensive about the lack of progress in some phases, because we feel that in many other phases there has been

definite progress, primarily in the field of giving Indians an opportunity to gain experience in handling their own affairs.

Quite humanly, they have made mistakes. I think they have profited, at least, a great deal by some of the mistakes they have made. It is much like teaching a child to walk or to swim. They have to experience some of that to really become more adept.

I have known, for example, many tribal judges, known them rather well, rather personally, having lived on reservations most of my career, most of my life. I cannot count very many of those men who were not really conscientiously trying to do a good job as tribal judge. They have been handicapped by lack of knowledge, lack of experience. They have almost universally, however, tried to learn how to do these things. It is something that was new to them. I have known many more tribal council members, and while, like in any other people, you will find some who do not discharge their duties to the best of all concerned, you find many, many more who are sincere and really work at the job of trying to represent their people in a most trying situation.

I think that if we can keep some perspective in this by viewing what I think has been remarkable progress, I think that the results of the study your committee is making will certainly be of immense benefit to the Indian people and to those of us who are concerned with their problems.

Personally, I welcome this examination of the Indian situation that you are making. I think there are very likely some places where the Congress can be of real assistance to us.

I would like, Mr. Chairman, to reserve any further comments until sometime later on, or if there are specific questions that either I or members of the staff can answer, we would like to be available to you and be as helpful as we can, and you need only to say the word and we will do our best to do just that.

Senator ERVIN. We will certainly be calling on you for assistance, because you people have had more dealings with this problem than any other group of white men, and we are certain we will gain some very important information through the benefit of your experience.

Mr. CROW. We want to be as helpful as we can, Mr. Chairman.

Senator ERVIN. I think we have to recognize, it strikes me, that this is a problem we are going to have to study very thoroughly before Congress undertakes legislative action. Several times in the past, Congress has, in my opinion, made some very serious mistakes in this particular field. I have always thought they should not have passed the Allotment Act of 1887. If anybody ought to be called on for assistance and advice, it should be you.

I think we might observe here that we take great pride in the fact that we have a government of laws rather than a government of men, but those of our generation cannot claim that we created it. We inherited most of it from long generations of legal experience of those who went before us, experience which, of course, the Indians do not have.

We certainly appreciate your being here, Mr. Crow, and we will welcome your appearance at a later date.

Mr. CROW. Thank you, Mr. Chairman.

Mr. CREECH. The next witness is the Honorable Philleo Nash, Commissioner-designate of Indian Affairs. Mr. Nash has agreed to submit a statement and be available for questioning.

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STATEMENT OF PHILLEO NASH, COMMISSIONER-DESIGNATE OF INDIAN AFFAIRS

Mr. NASH. My name is Philleo Nash of 1310 Third Street South, Wisconsin Rapids, Wis., and 800 Fourth Street SW., Washington, D.C. I am an anthropologist by profession, a cranberry grower by occupation; and I have been connected with the Federal Government and the government of the State of Wisconsin from time to time since 1942.

I am currently Commissioner-designate of the Bureau of Indian Affairs and until recently I have been serving as a member of a special Task Force on Indian Affairs created by the Secretary of the Interior in February 1961.

Prior to this service I was Lieutenant Governor of Wisconsin. Still earlier, I served on the staff of President Truman, specializing on Interior Department affairs. I was a member of the board of directors of the Association of American Indian Affairs from 1942 until this year. Until recently, I was vice chairman of the Menominee Indian Voting Trust. I have resigned from both of these latter positions to avoid a conflict of interest.

The Task Force on Indian Affairs served from February 6, 1961, until July 10, 1961, when we submitted our report to the Secretary of the Interior and dissolved our group. Chairman of the task force was W. W. Keeler, principal chief of the Cherokee Nation and executive vice president of the Phillips Petroleum Co. Members of the task force were Mr. James E. Officer, anthropologist from the University of Arizona; Mr. William Zimmerman, Jr., formerly assistant and acting commissioner of Indian Affairs, and myself.

To prepare our report to the Secretary, the task force met with tribal delegations, with officials of all three branches of the Federal Government and of several State governments, and with representatives of religious, educational, scientific, and public service organizations interested in Indian affairs. The task force traveled 15,000 miles, interviewed spokesmen for 200 tribal groups and a hundred other witnesses and had face-to-face contact with almost 2,000 other Indians at seven field hearings. The task force visited seven reservations, and one nonreservation Indian community, from Florida to Montana and Nevada.

In the opinion of the task force, the Bureau of Indian Affairs should seek attainment of the following objectives:

1. Maximum Indian economic self-sufficiency.
2. Full participation of Indians in American life.
3. Equal citizenship privileges and responsibilities for Indians.

These objectives, Mr. Chairman, are intimately related to the enjoyment of constitutional rights by individual Indians. To meet these objectives will require the protection of constitutional rights by Government at all levels: Federal, tribal, and State. The task force urged the Secretary of the Interior to give support to the adoption of more vigorous programs of education and vocational training, of individual and tribal development, of increased responsibility and greater self-determination.

The task force found some degree of shortcoming in the enjoyment of constitutional rights by Indian citizens under all jurisdictions: Federal, tribal, and State. These are dealt with more specifically on pages 27 to 33 of the report wherein the task force offered recommendations which, in our judgment, would improve the protection of constitutional rights.

The enjoyment of constitutional rights is a privilege of every citizen, including Indian citizens; constant vigilance is required to protect and preserve them. We intended our report to offer some guidance in this direction. I am sure I speak for the whole task force when I express the hope that our report will be of benefit to this subcommittee's important work.

Mr. Chairman, in connection with the task force report, particularly those portions I referred to on pages 27 to 33, the Bureau has prepared excerpts from the notes made at the hearings so that the comments, recommendations, and complaints of some of the Indian witnesses will be on record. I am submitting copies of those excerpts for the purposes of the committee, which I have just handed to the reporter.

Senator ERVIN. Those reports will be received and made a part of the record at this point.

(The excerpts referred to follow:)

EXCERPTS CONCERNING LAW AND ORDER ON INDIAN RESERVATIONS FROM STATEMENTS MADE TO THE TASK FORCE ON INDIAN AFFAIRS

Anadarko and Muskogee areas. Task force meeting at Oklahoma City, Okla.

LAW AND ORDER

No comments on law and order were submitted by the 24 groups represented.

TASK FORCE MEETING, PHOENIX, ARIZ., MARCH 24–25, 1961

WHITE MOUNTAIN APACHE TRIBE, ARIZONA

Remarks of Lester Oliver, chairman (from transcript):

"12. Tribal judges should receive training in proper procedures and methods of handling criminal and civil suits. Furthermore, tribal courts should have concurrent jurisdiction with justice of peace courts on all matters arising on reservation.

"13. Bureau should do more to encourage Indians to exercise their right of franchise.

* * * * * * *

"Zimmerman: Mr. Oliver suggested that the tribal courts and the county courts should have concurrent jurisdiction. If that could be worked out, would you agree with appeals being taken to the State courts?

"Oliver: Mr. Zimmerman, it is possible. The judges should have the same authority as a justice of the peace so that we could be able to handle non-Indians on the reservations."

FOR THE MOJAVE TRIBE, ARIZONA

Written statement of Lester Oliver, chairman:

"The White Mountain Apaches support their own law and order program, general assistance program and also contribute to Bureau programs in resource development. The council feels that the BIA should participate to a greater extent in these programs so that the tribe can use the funds saved to further develop their natural resources and tribal enterprises.

"The council feels that the State or counties should not be permitted to assume either civil or criminal jurisdiction * * *. It is their feeling that the counties are not financially able * * * and further feel that because of certain officers having a prejudice against Indian people, the Indians would not receive just treatment. * * * At the present time, six members of the White Mountain Apache police force are bonded Navajo County deputy sheriffs. I might add here, however, that even though the tribe has often requested the State fish and game department to deputize the tribal game wardens, they have been unsuccessful. * * *

"* * * Our tribal attorney is now training our tribal judges in probate matters and this is producing excellent results."

GILA RIVER RESERVATION, ARIZ.

Summary of remarks of Nelson Jose, governor, Gila River Indian Community Council (from transcript):

" * * *(*a*) Tribe unable to supplement law and order funds. They need law and order program patterned after counties with probation officers and women juvenile officers. Indians do not like to have male officers talk to girls on crimes or matters involving sex.

"(*b*) Need additional police to adequately cover reservation.

"(*c*) Need more radio facilities to insure faster coverage of crimes on reservation.

"(*d*) Need financial help from Bureau in feeding prisoners. Tribe now bearing this cost. Hope to relieve situation by initiating prison garden program."

Written statement of Nelson Jose:

"2. Boys and girls with behavior problems too difficult for boarding schools, yet the community is without resources to care for them. * * * only violations that take place off the reservation can go to State institutions. * * * the State of Arizona has no correctional facilities for boys, and the Fort Grant facilities are so overcrowded that the average length of stay is 6 months.

"The big problem is that those cases on the reservation are without any services. * * *"

SALT RIVER PIMA-MARICOPA, ARIZ.

Summary of remarks by Burgess Burke, president, Salt River Pima-Maricopa Community Council (from transcript):

"5. They are doing what they can with limited funds to keep law and order on the reservation. They are now trying to get together with the State and county to work out some program whereby they can work in conjunction with them in maintaining law and order."

PAPAGO

Written statement of certain Papagos of Chukut Kuk District on right of vote:

"Whereas the District Council of Chukut Kuk District of the Papago Indian Reservation has usurped the democratic powers of the people to the point where now they cannot nominate their own candidates to the district council or to the tribal council; and

"Whereas the people have appealed to various sources for advice and aid (namely, the district council itself, the superintendent of the reservation, the tribal court, the tribal attorney, the tribal council, and the U.S. district attorney) without success; and

"Whereas the power of the present administration comes from this district council and the undesirable practices employed by these persons overshadows tribal council functions: Now, therefore, we the people of Chukut Kuk District, who in effect have been denied our right to vote be heard, and others who are dissatisfied with the practices employed by the present administration, do protest the district election of January 28, 1961, and the election for tribal officers of February 3, 1961."

"Our recommendations and suggestions are as follows:

"We would welcome an investigation of voting practices.

"We realize that the various ordinances and regulations need revision and may be in the process of such revision and we urge such revision with 'teeth.'

"We believe the tribal court should be given jurisdiction over such violations since the tribal council members do not seem to understand or are ignorant of their powers, duties, and responsibilities. * * * It seems that provision for

supervision should be made in at least two districts where the councils have not been entirely 'responsible' in the case of Chukut Kuk up to a count of at least 12 violations."

TASK FORCE MEETING, ALBUQUERQUE, N. MEX., MARCH 22 AND 23, 1961

MESCALERO APACHE TRIBE OF NEW MEXICO

Remarks of Fred Pellman, president of the Mescalero Tribal Business Committee (from transcript of hearings):

"* * * I would like to say that we developed our presentation in three areas: needs, changes, and mutual interests and responsibilities. No. 1 under needs, 'New Federal laws regarding Indian and Indian country to close those gaps where the State and Federal Governments have both disclaimed jurisdiction,' is a very difficult problem. But there is no clear-cut clarification in these areas of laws about Indians and Indian country. No. 2, a court center is needed. Now we are sharing a Bureau building, and this has its problems. A separate building would enhance respect for judicial practices and impress the people. * * * No. 4, we would like to request the construction of a receiving and detention home for juveniles, and other children without homes. * * *"

Written statement presented by Fred Pellman, president of the Mescalero Tribal Business Committee:

"1. New Federal laws regarding Indians and Indian country to close those gaps where the State and Federal Governments have both disclaimed jurisdiction.

"2. A court center to house the jail, court, and other tribal court offices.

"3. Technical and legal aid in revision of tribal law and order code, constitution and bylaws and preparation of other pertinent codes. A review of all codes now used by the tribe, revisions of those codes where necessary and recommendations of codes need by the tribe.

"4. Construction on the site of the existing jail, a receiving and detention home for juvenile offenders and other children without shelter. Aid in preparation of a program and personnel to operate such an establishment."

JICARILLA APACHE TRIBE OF NEW MEXICO

Remarks of J. D. Garcia, chairman, Jicarilla Apache Tribal Council (from transcript of hearings):

"Mr. KEELER. What is the jurisdiction problem?

"Mr. BALTASAR. Highway traffic.

"Mr. KEELER. Is the highway patrolled by the State police or your own police?

"J. D. GARCIA, chairman of the Jicarilla Apache Tribal Council. We have our police, but we have non-Indians who cross the reservation. When they have to be picked up for offenses, we have no way to take care of them in our own court.

"Mr. NASH. Could we hear more about the hiring of your judge from the outside? I believe this is the first we have heard about this.

"Mr. GARCIA. We hired an outside judge so there would be no problem of favoritism coming from family relationships. We wanted an independent arbitrator. Our judge comes down from Pagosa Springs twice a week.

"Mr. NASH. Is she acceptable to the people?

"Mr. GARCIA. Yes, she is."

Written statement presented by J. D. Garcia, chairman, Jicarilla Apache Tribe:

"Something needs to be done about law and order jurisdiction, maybe by the Congress, to take care of highway traffic problems."

TESUQUE PUEBLO, N. MEX.

Remarks by James Hena, Lieutenant Governor, spokesman (from transcript):

"* * * more law and order personnel; better knowledge of State laws for dealing with non-Indians; more clarity in jurisdiction; * * *"

Written statement presented by Governor of Tesuque, First Lieutenant and Second Lieutenant Governors:

"X. Law enforcement provided by the BIA is inadequate. This should be remedied.

"A. There is need for a larger force of Bureau policemen to aid the Pueblos in emergencies. There are times when we need the Bureau police but they are unable to help us because they may be 50 miles away. The New Mexico State

police have also helped us but they too are sometimes unable to help. In cases where non-Indians are involved, we are unable to do anything because of lack of knowledge of the laws of the non-Indians.

"B. Written information should be distributed to the Pueblos to allow us to know just how much the Bureau police can help us in cases where non-Indians are involved. It seems that the Bureau police are willing to help us but they are unable to cope with problems outside their jurisdiction; therefore are unable to do anything to bring an offender to justice."

NAMBE PUEBLO, N. MEX.

Remarks of Clemente Vigil, spokesman (from transcript):

"One thing I want to know, I want to find out the answer. The State law says we can only vote for Federal officers—true or false?

"Mr. ZIMMERMAN. False.

"Mr. VIGIL. Then why is there so much fuss? If it affects the Navajo then it will affect all of us.

"Mr. CROW. I think you are concerned about the recent Montoya court case. It hasn't been settled yet, but I can't imagine it going any other way than that you have the right to vote for both State and Federal offices. Secretary Udall has asked the Justice Department to uphold the Indian point of view.

"Mr. VIGIL. Someone has said that the Indian people have always answered the call when they were needed, and we never raise the yellow or the white flag, we raise the red flag. We have helped our Government, and we should, if we belong to the State, have the rights of any other citizens. Please don't forget us, we do need your help. * * *"

ZUNI PUEBLO, N. MEX.

Remarks of Gov. Warren Ondelacy, spokesman (from transcript):

"* * * Mr. ONDELACY. * * * We have two Indian policemen, and one special officer paid by the Government, and we do need one more if we can get the money. We would like him to be a Government employee. We don't have much money, but we pay our own bills, but we do need to have one more policeman, we have a population of 4,200.

"Mr. NASH. Do you have any problems with voting rights?

"Mr. ONDELACY. No."

SANTO DOMINGO PUEBLO, N. MEX.

Remarks of Mateo Aragon, secretary-treasurer, spokesman (from transcript):

"Mr. ARAGON. * * * We have problems in law and order, juvenile delinquency. We want funds for an extended police force so they can handle problems effectively and quickly in cooperation with the tribal government. * * *"

Written statement signed by governor of Santo Domingo and councilmen and Mateo Aragon as chairman, education committee:

"9. We have a problem in law and order, including juvenile delinquency, in our pueblo. We ask that increased budgets for an expanded Bureau police force be appropriated, so that problems in law and order for both adults and juveniles can be handled promptly and effectively, in cooperation with our pueblo government."

SAN FELIPE PUEBLO, N. MEX.

Remarks by Frank Tenorio, spokesman (from transcript):

"We have a law and order service but there are not enough personnel to carry out the functions. We would like technical advice on our constitution in reference to law and order. The BIA branch of law and order is very different from what we have in the pueblos. We have a certain authority as recognized by Lincoln and the Spanish Government. It has been in existence so long that its merits have been proved. We have a government organization that handles our needs in the pueblo, headed by the governor, and a force of 28 people. There are five head people with their own jurisdictions. Within the pueblo they are there to meet the needs of our people. But outside there are complexities that lend us troubles that we can't solve now. We need a law and order code, and we ask for any help that we can get with it."

Written statement signed by governor, council members (3), and Frank Tenorio, secretary:

"The law and order branch of the UPA is a necessary service to our pueblo in that codification and alinement of our governmental functions are in order. As-

sistance in the form of technical advice is needed. There again we have a service but not enough personnel to cover the area within the jurisdiction of the law and order branch. So appropriations are in order to enable this service to be rendered."

ISLETA PUEBLO, N. MEX.

Written statement of a special committee (not signed by governor of Isleta):

"Therefore, we recommend the following provisions be considered in revising and bringing the pueblo constitution up to date.

* * * * * * *

"2. To allow the women to vote.

"3. To allow the voters to elect council members by a ballot.

"4. To allow the voters to elect judges by a ballot. * * *"

LAGUNA PUEBLO, N. MEX.

Written statement signed by governor and committee members:

"Law and order. Recommended that the law and order program be expanded for the Laguna people with every possible means to be on solid basis, and to coincide with our law and order program, which is yet to be completed.

"We need this help by the Bureau * * * in order to consolidate our position. Because we do not want State jurisdiction over our Laguna people and its lands. Nor do we want the State to have jurisdiction over our waters. Furthermore, we do not want Public Law 280 applied to us in any shape or form. If this is ever allowed and applied to the Laguna people, it will be the beginning of the end for Laguna Indians."

SAN JUAN PUEBLO, N. MEX.

Written statement signed by governor of San Juan Pueblo:

"5. Because of additional responsibilities being shifted to the officers of the pueblo and the increasing number of problems that we are being confronted with, increased funds and more qualified personnel should be made available to the department of law and order. During many emergencies, we have been unable to get help and advice from this department because of a shortage of personnel. The recruiting and training of qualified young men from the various pueblos should help alleviate the law and order problems in their respective villages. Problems of delinquency continue to increase in all of the pueblos."

ALL PUEBLO COUNCIL

Written statement. A summary report: Suggestions and recommendations:

"The Pueblo Indians want to retain as much of their traditional tribal governments, and because most of our Pueblos have no tribal budgets and no paid employees, and because there is a tendency to adopt and incorporate the good features of other governments, we recommend:

"1. Expansion of the United Pueblos Agency law and order program.

"2. Expansion of the juvenile program.

"3. Increasing the appropriation accordingly.

"4. Joint planning with field solicitor's office of the law and order code to serve as a guideline for possible adoption and incorporation by the Pueblos."

TASK FORCE MEETING, PIERRE, S. DAK., MARCH 27 AND 28, 1961

SISSETON-WAHPETON SIOUX TRIBE, S. DAK.

Comment made by Hiram C. Owen, chairman of the Sisseton-Wahpeton Sioux Tribal Council:

"We on the reservation feel that law and order could better if we had own law and order police force and our own judges."

CROW CREEK SIOUX TRIBE, S. DAK.

A written statement presented by Robert Philbrick, member of the Crow Creek Tribal Council, contained the following remarks:

"Our law and order system on the Crow Creek Indian Reservation is far from perfect and we do think that a general overhauling of the present system and improvements made therein would be one of the greatest benefits to the tribe

and also to the non-Indians living on the reservation. There is a real concern over our law and order, due to the fact that so many white people are at the present time working on the reservation and will be from now on. Just how to improve the situation is not just up to me as I could not explain it all, but I do think that this should be looked into and something worked out with the Indian Department, Federal agency, State and local officials, including the tribal council."

Mr. Philbrick commented that:

"The law and order system on the reservation needs looking into. We have a new jail and some people sent to jail there said they would rather spend time in the State penitentiary."

TASK FORCE MEETING, DULUTH, MINN., MARCH 29–30, 1961

RED LAKE RESERVATION, MINN.

Written statement of the Red Lake Tribal Council signed by Roger Jourdain, chairman:

"The cost of providing law and order on the Red Lake Reservation should be borne by the Federal Government.

"The jurisdiction of the court of Indian offenses should be extended to cover all users of lands of the Red Lake Reservation and the waters thereon."

SAC AND FOX OF TAMA, IOWA

Written statement submitted by George Young Bear, chairman, Sac and Fox Tribal Council:

"(*a*) Extensive program to stem criminal and drinking conditions, moral standards, protecting property and community.

"(*b*) Government must encourage better police work for juvenile delinquents, school attendance, etc."

TASK FORCE MEETING, SPOKANE, WASH., APRIL 10–12, 1961

BLACKFEET, TRIBE, MONTANA

A written statement was presented by Meade M. Swingley, chairman of the Blackfeet Tribe, Montana:

"The Blackfeet Tribe operates its own law and order program. There is also one special officer stationed at the Blackfeet Indian Agency; and various county constables and deputy sheriffs are stationed on the reservation, but the various interpretations of civil and criminal jurisdiction prevent their effective participation in the maintenance of law and order. Only two jails are located on the reservation—one in Browning, which is used by both the Blackfeet Tribe and the town of Browning, and the other at Heart Butte. Both are at least 25 years old and badly in need of repair and renovation. Juvenile detention quarters should also be added as there are none at present.

"The incidence of serious crime on the reservation is relatively small when compared to the prevalence of adverse economic and social conditions. When such crimes do occur, they are usually within the area of the so-called 10 major crimes and processed by the Federal Government through the Federal courts. All other crimes committed by Indians are handled by the tribal court.

"The Blackfeet Tribe has its own law and order code; and pursuant to this code, three judges are appointed by the tribal council and approved by the Commissioner of Indian Affairs."

CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, WASH.

A written statement was presented by Harvey Moses, chairman of the Confederated Tribes of the Colville Reservation, Wash.:

"Under our present laws the possible solution of juvenile delinquency would be to contract with State institutions for the care of juveniles that may require commitment, with either the Federal Government or the State paying for the service. The less severe cases are handled by the tribal court."

TASK FORCE MEETING, RENO, NEV., APRIL 13 AND 14, 1961

SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION, NEV.

Excerpt from a resolution of the Shoshone-Paiute Tribes of the Duck Valley Reservation presented to the task force:

"Request for a new jail and officers quarters. Reason is the jail we now have is unfit for holding prisoners in it. At present there are no housing facilities for the law and order officials."

PYRAMID LAKE PAIUTE TRIBE, NEVADA

A written statement was presented by Albert Aleck, tribal council chairman of the Pyramid Lake Paiute Tribe.

"Washoe County refuses to assist us in maintaining order and boat safety on the lake."

RENO-SPARKS INDIAN COLONY, NEVADA

A written statement was presented by Vera Honson, secretary of the Reno-Sparks Indian Council.

"Funds should be available for Indians that cannot pay for legal advice. A person of legal ability should be appointed with final authority to promulgate decisions."

Harry Sampson of the minority Paiute Indian group of District No. 1 of the Reno-Sparks Indian Colony presented a statement of complaints which included that one of the troubles was "disposing of local Indians as police officers and appointing questionable and biased Indian officers."

INYO COUNTY CITIZENS COMMITTEE, LONE PINE, CALIF.

A written statement was presented by Sylvia R. Burkhardt, chairman of the Inyo County Citizens Committee.

"We the people of Inyo County feel there is a need for a U.S. deputy marshal here.

"The Indians are picked up and put in jail for no reason at all; then they get 3 to 6 months without the benefit of a trial.

* * * * * * *

"We the people of Inyo County would like Eugene J. Burkhardt for U.S. deputy marshal. Mr. Burkhardt is one-fourth Shoshone Indian, 54 years old, Government trained for law and order, and he has said he would be glad to be our marshal if he was appointed."

ALASKA QUESTIONNAIRE

NOORVIK NATIVE COUNCIL

Written statement of James K. Wells, member of Noorvik Native Council:

"Now concerning the law and order enforcement of native village councils in the northwestern area, I feel that some assistance must be given to inform the village councils what actions to make and not to make on certain violations pertaining to the civil and State offenses which are sometimes hard to decide by them in the right and just way.

"In some isolated villages like Noorvik, where we do not have a lawyer or some law-enforcement officer to tell us and show us what to do, ignorance is sometimes a deadlock, when we should have done justice on some cases that are brought to us.

"As citizens of the United States I hope that someday our law and order enforcement in many of the native villages can be given some assistance to in-from them what actions to make concerning the civil and State offenses.

"I have been in the village council at Noorvik since 1945, and I know from experience that in some cases the law and order enforcement is needed from higher authorities, which I hope can be simplified and explained more clearly to the native villages * * *."

Senator ERVIN. You make an observation on page 2 of your statement, which ought to be the objective of the Congress in this field, when you say—

we desire to furnish maximum Indian economic self-sufficiency, full participation of Indians in American life, and equal citizenship privileges and responsibilities for Indians.

Mr. NASH. I am glad, sir, you approve of those objectives, and I agree with you that it is a very difficult problem and the how of it is very important. One of the most important is this question of law and order which has been discussed so extensively here yesterday and today.

Senator ERVIN. I wish to state that I would like to have an opportunity later to request you to come back before the committee. However, I would like to familiarize myself more with the report of the task force. It seems to me it has been the fullest and finest effort to obtain an objective viewpoint of this entire problem.

Mr. NASH. Thank you, sir.

Senator ERVIN. Do you have any questions?

Senator KEATING. No; I have none.

Senator ERVIN. Do you, Mr. Creech?

Mr. CREECH. Yes, sir.

Mr. Nash, on page 2 of your statement, you indicated that the task force visited "one nonreservation Indian community from Florida to Montana and Nevada." I think in reference to the task force report, you indicated that this community was Hill No. 57, Great Falls, Mont. Sir, I wonder if the material which you have turned over for insertion into the record covers the cases which you uncovered there, or do you care to comment further on that particular investigation?

Mr. NASH. No, sir; the material which I submitted was excerpted from formal meetings and did not include the visit to Hill 57. The visit to Hill 57 took place on a Sunday morning. We were not accompanied by stenographers, tape recorders, and other paraphernalia of hearings. I would be glad to comment from my own recollections of the situation at Hill 57.

We visited it because it has become very famous as a symbol of the problems of the off-reservation communities. There are about 55 or 60 families on Hill 57. Many of them have tribal affiliations on nearby reservations. But there is also one group there which comes from a band that never has had Federal recognition.

They are very poor. Congressman Olsen described the situation, I think, very accurately. In the past, there has been seasonal labor for these people, but between the drought and the grasshopper infestation in the upper plains this year, there has been almost no seasonal farmwork and they have been driven to seek relief.

Now, those who have tribal affiliations could obtain welfare assistance from the Federal Government by going back and establishing their residence and their entitlement on their particular reservations. The small group, which has no Federal recognition, has no entitlement. The assistance is provided to some degree by the State of Montana under the existing local welfare arrangements.

Mr. CREECH. Is there any assistance with regard to welfare from the Federal Government under the Department of the Interior?

Mr. NASH. Nothing direct. Miss Gifford will speak about the welfare program as she is more familiar with it than I am.

There is about $8 million of Federal money which is provided for Johnson-O'Malley contracts to the States, and for the direct Federal program through the Bureau of Indian Affairs on the reservations where State aid is not provided.

Mr. CREECH. You mentioned that some of these Indians are not federally recognized——

Mr. NASH. Yes, sir.

Mr. CREECH. Presumably this could create problems for such groups in the receiving of various services.

Are there many such groups in this country?

Mr. NASH. There are a great many such groups in this country.

The Chairman, Senator Ervin, spoke yesterday afternoon of the Robeson County Indians, some 25,000, who are so-called State law Indians, who are not Indians in the Federal sense, in the sense that services are provided by the Federal Government for them.

There are some such Indians across the northern plains. Congressman Olsen referred to them as the "landless Indians."

And there are, of course, many, many Indians who have left the reservation communities, have established residence in urban industrial areas or in contiguous areas to the reservations, who may retain a tribal affiliation, but, in the course of time, that may become very thin.

That cord may be severed, and then they no longer are entitled to Federal services.

Mr. CREECH. In the case of the Robeson County Indians from North Carolina, they have been assimilated into the culture of the State and are under the State laws.

Now, in the case of Indians at Hill 57, what provision is there for law enforcement?

Mr. NASH. That would be entirely a matter for the State of Montana. State law and order would prevail there and State jurisdiction prevails there.

In other words, this is not an area of Federal jurisdiction. And the Federal Government's responsibility to these people, insofar as it exists, would be based on their residence on the reservations, and to become entitled to the Federal services they would have to go back and reestablish that residence.

Mr. CREECH. Mr. Nash, among the areas from which the subcommittee has received complaints are Las Vegas, Nev., Nebraska, and California. In view of your experience as a member of the task force, will you kindly give the subcommittee the background on these problems and illustrate the problems alleged to exist in these areas?

Mr. NASH. I am afraid I do not quite understand the question.

You are asking about Nevada?

Mr. CREECH. Yes. There have been areas from which the subcommittee has received complaints; Nevada, Nebraska, and California.

I recall that the Fund for the Republic study also cited Nebraska as being a problem area.

Mr. NASH. Specifically with reference to law and order?

Mr. CREECH. Yes, law and order would be a major problem, sir.

Mr. NASH. Nevada is one of the States which exercises the rights provided by Public Law 280 but adopted a county option system.

So that some counties in Nevada have accepted State law and order and others have not.

Now, for example, the Las Vegas Colony is a community of some 10 acres near the city of Las Vegas in a county which does not or which did not exercise this option. There is a very serious law and order problem there.

The nearest special officer of the Bureau of Indian Affairs is a good many miles away and makes visits there from time to time. But there is a large floating population in this area of 10 acres and it is bounded on three sides by a railroad track and on the fourth by the city dump.

It is not a suitable residence location, but the community has grown up around it since the homesites were provided many years ago.

There is Federal jurisdiction for the major Federal offenses but there is not satisfactory law and order. If the local community desired, it could, under Public Law 280 and the laws of Nevada, take up the option to provide the services, but the community has not done so.

Senator KEATING. May I inquire of counsel: Have these complaints come from non-Indians, from citizens in the community?

Mr. CREECH. No, Senator. These specific complaints have come from Indians.

With regard to the Las Vegas community—this 10 acres we are talking about—it has been alleged that there is no law enforcement available to these people and, at most, an officer comes down once every 2 weeks to enforce the law and order for the community.

So that if there is any crime, they just have to wait until he gets there.

Senator KEATING. Do they have a private council?

Mr. CREECH. Mr. Nash?

Mr. NASH. This is not an organized community, to my knowledge. It has, actually, a large floating population and the special officer comes down, and things get straightened out for a while, but I do not think—there was an effort made some years ago to attempt to determine who the steady occupants were so as to know how you would divide the assets in case this land, which is rather valuable for an industrial site, could be exchanged for a more suitable residence.

It is not a simple problem to find out who the true beneficiaries are.

Senator KEATING. How many people live there?

Mr. NASH. I cannot tell you exactly, but it is in—my guess would me, in the neighborhood of a hundred.

Mr. CREECH. Mr. Nash, are these people under the jurisdiction of the Federal Government inasmuch as the local option has not been exercised?

Mr. NASH. Yes, sir.

Mr. CREECH. And so they are entitled to the law enforcement provisions of the Department of Interior's Indian code.

Mr. NASH. That is correct.

Mr. CREECH. And the only facility which is afforded them is this nonresident officer?

Mr. NASH. Mr. Benge will give you the picture in greater detail when he testifies.

The Bureau has about $1¾ million to spend for its law enforcement activities nationwide. So that this is one of the reasons why it is impossible to provide a better service to this community.

Mr. CREECH. Yesterday and today we have heard a great deal of discussion about the tribal courts and the courts of Indian offenses.

I wondered, sir, if you would draw an analogy for the committee, distinguishing for the record what procedural opportunities are available to the reservation Indian as compared to the nonreservation and the off-reservation Indians to pursue when his constitutional rights have been violated. What is the procedure in a typical case, for instance, such as illegal search and seizure, illegal arrest, or illegal police detention?

Mr. NASH. If I understand you rightly, you are asking me to compare the procedures that would be open to a nonreservation, an off-reservation, and a reservation Indian citizen for the protection of his constitutional rights.

Mr. CREECH. Yes, sir.

Mr. NASH. In case he feels that his constitutional rights have been invaded, what could he do?

Mr. CREECH. Yes, sir.

Mr. NASH. The nonreservation—let us say, a typical nonreservation Indian would be, perhaps, one of those residing in the San Francisco Bay area community.

He has exactly the same courses of action open to him as any other citizen.

The Federal Government or the Bureau of Indian Affairs would not be concerned in any way whatsoever. This is a matter for State and local government and not for the Department of Interior.

Mr. CREECH. This would be the same situation where the States have accepted jurisdiction under Public Law 280?

Mr. NASH. Yes. We are not operating a bureau of ethnic affairs. We do not have responsibility for Indians because they are Indians, but because there has been a tribal recognition and a tribal affiliation.

Once that affiliation and the residence have been severed the individual Indian citizen is not a responsibility of the Department any more.

Now, if I understand your definition of "off-reservation" accurately, a good example, perhaps, would be the public domain allotments at the eastern end of the Navajo Reservation, where the individual is residing on trust land, but he is not within the exterior boundaries of a reservation.

Now, this individual is an Indian in the Federal sense because there is a trustee relationship.

So far as law and order goes, the Navajo Tribe itself has taken over a good deal of responsibility for providing the police protection. Those roads in the checker-bordered area, east of the Navajo Reser-

vation, are patroled by squad cars with two-way radios, and the police officers are cross-deputized.

They provide highway services.

Now, if an individual there found that his constitutional rights were adversely affected he would probably seek the assistance of his tribal government which maintains a full legal staff, including legal assistance for its members at tribal expense.

Now, for the Indian in the reservation community, I suppose a typical example would be one of those that was described by Congressman Berry this morning, the Rosebud Sioux Reservation or the Pine Ridge Sioux Reservation.

An individual there, who felt his constitutional rights were being interfered with, might seek his own lawyer. He might go to his superintendent. He might appeal to the Department.

And in that case it would probably eventually come to the attention of one of the field solicitors.

Mr. CREECH. Of course, the Navajos have a very highly developed system of law enforcement as compared to some tribes.

Is that not true?

Mr. NASH. Yes, sir; but I must say this is very recent.

Since the Navajo tribal income has increased very rapidly in the last 5 or 6 years they were so desirous of improved law and order and improved law enforcement that they are spending almost as much money of their own for law and order as the Bureau is able to spend nationally.

Mr. CREECH. How about going into the various Indian courts as compared with going into courts under the jurisdiction of the State, either under Public Law 280 or in the case of relocated Indians?

Mr. NASH. I do not get the question.

Mr. CREECH. I am trying to get you to draw some analogy between the procedural advantages, if any, that exist for an Indian living on the reservation under a tribal court's jurisdiction, as opposed to an Indian living off the reservation or in an Indian community which has never been under Federal jurisdiction.

The different procedures that are available in protecting his constitutional guarantees——

Mr. NASH. Well, the situations seem to me to be not at all comparable.

It is difficult for me to draw the analogy because it is just not the same thing.

Mr. CREECH. Well, that is precisely the point. I wonder if you would comment on that, sir.

Mr. NASH. Well, my comment is that they are not the same.

Mr. CREECH. Would you say this is——

Mr. NASH. I am not trying to be unresponsive. I just do not get what you want.

Mr. CREECH. Well, that is the point, sir. And I just wondered if you would care to go into any detail as to how procedures might differ with various tribes?

Mr. NASH. Well, there is a very wide range of variation between the natures of the courts on the reservations.

They go all the way from the traditional courts of the Pueblos, where there is no separation, no code, no written ordinances, where we are dealing entirely with a customary government.

I do not think anybody knows very much about it other than the people of the Pueblos, themselves.

And at the other end of the scale, perhaps, today would be the Navajo court system with seven judges, a very highly developed court system and one that seems to be very satisfactory.

The task force had one interesting visit—well, let me correct the record. Following the submission of the task force's report I used the opportunity to visit a number of reservations that I had not been on up to that time.

In the course of it I had an opportunity to see the courtrooms. I did not see any of the Indian courts in action, but I was very favorably impressed by what I saw of the improvement in signs of the operation of the tribal courts.

For example, at Southern Ute I saw a courtroom with a dais, with a jury box, with a place—flags behind the judge, and evidences of a courtroom atmosphere.

Senator KEATING. Do they usually have juries?

Mr. NASH. Juries are possible on request, and they are increasingly in use, but I cannot tell you, Senator, statistically how often and how many.

But the facility was in evidence in two of the improved tribal courts that I saw.

I spoke to one of the judges. This particular judge is a lawyer from a neighboring town, who is employed by the tribe to be their tribal judge.

He is a non-Indian and comes in a certain number of days or half-days a week and holds court in a courtroom which is a good deal better than most of the J. P. courts that we are familiar with.

It would correspond with a county court.

There was a jury box there. I asked him what his colleagues of the bar felt about their inability to appear in his court.

I said, "Do they take you to task when you are visiting with them?"

And he said, "Yes, they do, but I do not think it would be a good idea to have them in the court, and I do not permit them."

I said, "Why?"

"Well," he said, "it would mean that only one side would be represented. Unless the tribal attorney is going to be present to represent the tribal interests, so that both parties at interest are represented by counsel, I do not see any reason to have them here."

Mr. CREECH. Speaking about the courts, sir, would you comment on this statement.

Is it not a fact that the tribal courts are not courts as lawyers understand the common law sense of the word, independent of executive and legislative influence, but are, instead, set up as the enforcement arm of the tribal councils?

Mr. NASH. Well, I think there is a good deal in it.

It is true that they are not courts in the common law sense, but I think they are a good deal more than enforcement arms of the tribal councils.

In the task force report I call your attention to the comment that these are transitional courts between the social system of yesterday and tomorrow. That is true of almost everything about the tribal governments.

The tribal councils are transitional. The tribal governments, themselves, are transitional.

The task force had to ask themselves what are they transitional from and to. They are transitional from, of course, a tribal government, based on tradition, based on kinship, not representative, quite authoritarian in character, and the task force—I am sure I speak for all the members when I say that, in our view, they should be thought of as evolving toward courts that would be more like the State and county courts of our present system.

But this is a good long ways away.

Now, the Fund for the Republic examined this question and came to the conclusion that there ought to be some immediate legislation, requiring the tribal governments to accept the protections of the Bill of Rights.

Without disagreeing with the premise, that these rights are very fundamental rights of citizenship that ought to be protected, the task force was not prepared to go that far.

Our recommendations were for working with the tribal councils, the tribal governments, to try to bring their courtroom procedures, the ordinances under which they operate, more in line with the codes of the States in which they operate so that when the time comes, and they are ready to be integrated in the court system of those States, it will be an easy transition.

Mr. CREECH. Sir, speaking of the task force report, on page 28, you say:

> Thus, under the courts of Indian offenses some witnesses complained of insufficient law enforcement officers, inadequately prepared judges, the absence of attorneys, nonuse of the courts in civil actions, and inadequate appellate provisions.
>
> Under tribal courts witnesses complained of all of the above-mentioned inadequacies and recited numerous instances of favoritism and denial of civil rights.

Sir, are you submitting to the committee individual cases to give us some idea about the specific complaints?

Mr. NASH. Yes, sir. That is the purpose of having these excerpts prepared and having them submitted for the record.

Our hearings were rather informal, so that the completeness of the records varies from one location to another.

But these are representative instances of observations and complaints of witnesses at the various hearings.

Mr. CREECH. With regard to the assumption of jurisdiction by the States under Public Law 280, the Fund for the Republic study indicated that the administration is not adequate in certain States.

I believe they specifically mentioned Nebraska and South Dakota.

Now, I wonder if you would comment on the administration of law and order in those areas in which the States have assumed jurisdiction over the Indian communities under the provisions of Public Law 280?

Mr. NASH. I will gladly comment on it to the extent of my knowledge from the task force hearings.

In the case of Nebraska you have an illustration of the fact that there are no easy solutions in this field of Indian affairs. The Nebraska situation principally refers to one county, Thurston County, in which the Omaha reservation is located.

For historical reasons, that I will not go into, the Omaha Reservation has been paying taxes on its real property on the reservation for a great many years, going back into the last century.

Nevertheless, the State of Nebraska was not providing local police protection and, in its absence, the Department of the Interior did provide such protection. When Nebraska was included within the scope of Public Law 280 the Department no longer had authorization to expend money in this county where there was State jurisdiction.

The State of Nebraska was unable, or was unwilling, to make these arrangements. Miss Gifford told me just this morning that there had been some negotiations, and for 1 year some additional support was provided in this county so that there would be law and order protection, but that this lasted only 1 year.

Now, just this year the Nebraska Legislature, through a special enactment, provided enough money for this county to provide the necessary assistance, but there was a long period in which there was very inferior law-and-order protection.

Mr. CREECH. So it is your feeling that as a result of the action of the legislature this situation no longer exists?

Mr. NASH. The means has now been provided by which the situation would no longer exist, but one has to wait and see.

Mr. CREECH. In addition to the five States that have accepted jurisdiction of the Indian under Public Law 280 (Minnesota, Nebraska, Oregon, California, and Wisconsin), the Fund for the Republic study makes the point that few States have taken any action under this measure to assume jurisdiction because of the expense involved.

It is in that respect that they mention South Dakota insofar as South Dakota made as a condition for accepting jurisdiction that the Government defray the cost.

Did the task force consider this aspect of the problem of law enforcement?

Mr. NASH. The task force was aware of it.

Since this bill was pending and the departmental report was being prepared on it, we did not attempt to intervene in the administration of the Bureau.

We were very careful to keep out of the day-to-day operations of the Bureau, to concern ourselves with long-range problems.

However, we were, of course, aware of the controversy and are familiar with the departmental report on the bill. This is one of the many problems connected with the provision of law and order in the Indian country.

It is a very expensive proposition and the States which wish to assume jurisdiction usually want some form of assistance to foot the bill.

The reference was made yesterday to the possible use of Johnson-O'Malley funds to contract for State services of law and order. There

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is, in the Department, an opinion from the lawyers which holds that the Johnson-O'Malley Act does not permit this.

In addition, I assume, sir, that you are familiar with the departmental report on the South Dakota bill. And there, the Department adopted the view that to surrender jurisdiction, and at the same time provide the money, would not be a good public policy.

Mr. CREECH. Yes, and I notice, sir, that both the Fund for the Republic study and the task force recommend that Public Law 280 be amended to provide jurisdictional transfer only after negotiations with and consent of the tribes.

Now, the Fund for the Republic study seems to go a little bit further in that it recommended that the States take over jurisdiction on a piecemeal basis.

I wonder what your feeling is in that regard, sir?

Mr. NASH. The Fund for the Republic's position and that of the task force are reasonably close.

Here, again, we took a somewhat more moderate position than the Fund for the Republic study. I believe, if my present recollection is correct, that we used the words, and we chose them carefully, "Negotiated agreements between the Federal, the tribal, and the State governments."

There is great fear among the Indian people of the transfer of law and order to the States. There is great fear of Public Law 280.

It has been interpreted quite generally as meaning termination. And it is for that reason that we felt that it was important, in securing the cooperation of the tribal governments and establishing a consensus among the Indian people, that the surrender of the jurisdiction be on a negotiated basis.

We believe that it is possible to obtain consent by such negotiations for some of the areas which are the most critical as far as services to people are concerned.

One of the most distressing things which the task force learned about was the effect of jurisdictional disputes as between the State and the Federal Governments on such things as domestic relations, on the commitment of the mentally ill, or the mentally retarded, and on services to juveniles.

The Bureau has had to step in, against its better judgment, and against its wishes, and to use boarding schools as detention homes where States were unwilling to accept jurisdiction or courts, State courts, were unwilling to make commitments.

Miss Gifford, I hope, will tell you of a very distressing case in which it was necessary, for the safety of an individual, to confine a violently mentally ill person in a jail because a State would not accept the commitment. That was eventually worked out but through great difficulty.

Now, it is not enough just to say, "Well, we are going to pass this jurisdiction over to the States." You cannot buy jurisdiction with money.

You can provide services with money, but in this area of difference of opinion between the States and the Federal Government as to where the responsibility lies, there is a true no man's land in which the Indians are the sufferers.

Now, the task force attempted to move toward a solution of the various ingredients in this problem, bearing in mind that you have got to have consent to have cooperation.

There are opinions in the courts, upholding the validity and integrity of the tribal governments. The Federal Government does have the responsibility for seeing to it that the services are provided by somebody, and the individual Indians are citizens and, therefore, are entitled to the services that are provided other citizens in their States.

Now, somehow or other, all these factors have got to be put together, and we think it can be done, for example, by negotiating piecemeal transfers of jurisdiction in the relatively noncontroversial areas, such as juvenile offenses, domestic relations, commitments, and possibly trespass.

I am not suggesting that trespass is noncontroversial, but it is an area where it might be possible to get some agreement.

Mr. CREECH. Now, sir, you said that the Federal Government has a responsibility of seeing that services are provided to the Indians by someone.

Yet, is it not true today that there is no provision anywhere to take care of the Indian who is mentally ill, who is under the Federal jurisdiction?

Mr. NASH. This is a very—yes, that is true, so far as the Federal Government's own direct activities are concerned.

I hope you will defer detailed questioning on that for Miss Gifford.

Generally speaking, the task force's view on it, and I have no right to speak for the Department, but the task force's view on it is that these are services which ought to be provided by the States, and we are aware of the fact that some of the State courts, attorneys general, and others, have held that they have no responsibility.

We think they do, and we think that the obligation of the Department is not to provide these itself but to use whatever means it has at its disposal to work with the States to try to get them to fulfill this obligation to their citizens, Indians as well as non-Indians.

Mr. CREECH. But, sir, in those areas in which the Indian is living under the jurisdiction of the Federal Government, do you not feel that the Government has a responsibility to see that the mentally ill are provided for?

Mr. NASH. It is my feeling that in this area of service it is a State responsibility and not a Federal responsibility.

Mr. CREECH. In spite of the fact that these people are under the Federal jurisdiction?

Mr. NASH. I do not think it is a jurisdictional matter.

Mr. CREECH. Isn't it true, sir, that there was a regulation of the Department of Interior which was only revoked in May of this year, which provided that the superintendent was given the authority, on a petition by a relative, to investigate the case of a mentally ill Indian and arrange for his commitment to an institution?

Mr. NASH. I am not familiar with that. You will have to ask someone from the Bureau.

Mr. CREECH. The Fund for the Republic's study recommended that the tribal governments be continued until they are voluntarily abandoned by the tribes.

Now, I do not believe that the task force made such a recommendation. I wondered if you would care to comment on this, sir?

Mr. NASH. The task force's view is that—and I repeat the words—these are transitional governments between earlier and future social systems.

We accept the proposition that these were originally sovereignties which have had their sovereignty limited and which can have their inherent powers still further limited by congressional action at any time that the Congress so chooses.

But to the extent that Congress has not so chosen, these powers remain.

Now, we do not anticipate that they will last forever, and we think that the responsibility of the Federal Government is to work with them, to aid them toward the evolution of a form of local government which is compatible with and is a part of our governmental system.

At the present time they are partly in and partly out.

It is in this sense that they are transitional governments. We do not think that you can successfully impose a whole way of life on a people who are not used to it and expect that it is going to work automatically the minute you enact a law. That was not the case with the land pattern. It is not the case with the tribal government pattern.

It is not the case with many other patterns.

Mr. CREECH. Well, sir, do I infer from what you are saying that, inasmuch as you feel that you cannot successfully impose these things on people unless they are ready to accept them or willing to accept them, that it would be advisable to wait until such time as the tribes, themselves, want to abandon them or should this be done——

Mr. NASH. To wait for what, sir?

Mr. CREECH. The Fund for the Republic recommends the continuation of tribal governments until they are voluntarily abandoned by the tribes.

Now, would this be your feeling?

Mr. NASH. I most certainly do not think it is a decision to be made unilaterally by the Federal Government or any other.

These are—I mean, the tribes are real. They exist. They are human beings with rights of a choice of their own. The tribal governments were, of course, superimposed following the act of Congress in 1934.

This essential relationship between the tribe which exists and the Government, which we have induced them to accept, requires us to continue working with them but to obtain their consent on the things that we do.

Mr. CREECH. Thank you, sir.

Senator ERVIN. Mr. Nash, there are controversies on most questions in this area. And there is a great divergence of opinion among the tribes, themselves, just as with other groups in America.

Mr. NASH. Very much so.

Senator ERVIN. I know that in my State we have as much political controversy with reference to matters within the present jurisdiction of the tribal council as some of the rest of us have about governmental and political questions.

Mr. NASH. Very much so.

There is no shortage of political activity on the reservations.

Mr. CREECH. Mr. Nash, yesterday, Assistant Secretary Carver said that if the same rules and laws of the non-Indian courts were applied to the Indian courts it might have the effect of destroying the Indian court system.

I wonder, sir, is it your opinion that the Bill of Rights could not be extended to these courts without destroying their structures?

Mr. NASH. The task force, I think, makes it clear in its report that the constitutional guarantees ought to be extended, and the means that are available through the Secretary's regulations and by working with the tribal governments ought to be used to extend them.

I think what Secretary Carver meant was that if you just tell them that they have got to behave in a certain way and, in effect, ram these things down their throats that you are going to meet with resistance, and you are going to superimpose ways on them that they are not ready for and do not fully understand.

Now, I am not suggesting that we should have any delay whatsoever in moving these guarantees into the system of the tribal courts, but it takes working with them to improve understanding.

The task force was very favorably impressed by the work which has been done within the past few years in improving the courtroom atmosphere in these formerly traditional courts.

Now, we think this is the way to—if we have more of that kind of working with the groups you would get some very rapid improvement. To think that we are going to get the improvement merely by the enactment of a statute, I think, is to deceive ourselves.

Senator ERVIN. I certainly agree with you on that, because we do not know fully ourselves the extent of some of these constitutional rights and guarantees.

In this session of the Supreme Court of the United States which recently adjourned, a decision was handed down which placed an interpretation upon a clause that was put into the Constitution 170 years ago, utterly inconsistent with the interpretation that had been placed on it for 170 years. As a result, a rule of law which has been recognized as valid for 170 years, and a rule of evidence which was still in force in 24 States, was stricken down.

Since we have such a degree of uncertainty in this field ourselves, it seems to me that we are expecting a miraculous thing to say that we can suddenly, by passing an act, compel the observance of all of the constitutional guarantees on the reservation. We are thinking about something that does not even exist in our own lives.

Mr. NASH. If I may say so, Mr. Chairman, we tend to exact higher standards of other people than we do of ourselves.

Senator ERVIN. Yes.

Mr. NASH. And I have seen a good many justice of the peace courts where rather primitive standards of justice were exercised, too.

Senator ERVIN. In other words, you have to educate people in basic fundamental principles, and get acceptance among the members before the principles will be enforced.

Mr. NASH. The Tribal Relations Branch of the Bureau and the Law and Order Branch of the Bureau, I think, have done an extremely effective job with a very small staff.

It is a very small part of the Bureau's operations but it is a very fundamental one.

Senator ERVIN. In other words, these things are done by evolution rather than revolution.

Mr. NASH. Yes, sir. What the task force hoped to do was to draw a little bit clearer picture of what we hope we would be evolving toward.

Mr. CREECH. Mr. Nash, on the basis of the complaints which were received by the task force and the various information which you received, do you feel that some type of organization should be established to document these complaints, and advise Indians what their rights are and what procedures they should follow to safeguard these rights?

Mr. NASH. That seems to me to be a very sound proposal. Yes, sir. And there are existing units of the Bureau which are doing a portion of this work.

I think they need more staff. They need money to be transferred, perhaps, from other activities of the Bureau.

The task force attempted to conceive of a method of operating in the Bureau that would be within the present total framework of money.

I almost hesitate to suggest that the unit needs to be a great deal bigger, but the Law and Order Branch and the tribal relations part of the Bureau's activities have a tremendous ground to cover for the number of people that are available at the present time.

Mr. CREECH. I wonder, sir, in the extensive research which went into your report and the extensive traveling that you did, did you encounter any feeling by the Indians of difficulty in communicating with the Department?

Mr. NASH. Generally speaking, the problem of communication between individual Indians and the Department and Bureau representatives is one of the most difficult areas in the whole field of Indian affairs.

This is not a simple problem. The reservations are far apart. Modern communications, in some of them, are lacking.

It is never easy to communicate the values and techniques of one culture to another. I have the utmost sympathy with the people in the Bureau who are working on this problem from day to day, but it is a fact that there is a great feeling throughout the Indian country that they do not have easy communication.

I think this is what lay behind the desire of many of the witnesses at our hearings to go back to the old days when they could go and call on a representative of the Bureau, their agent, who would be close at hand and bring him all of their troubles, and seek his advice.

It was the task force's feeling that in modern life this desire is merely nostalgic; that you cannot administer a modern department in those terms.

But the problem still exists.

Mr. CREECH. With regard to administering, sir, we commented yesterday on the maze of regulations, treaties, and the Manual which, I believe, is some 20 volumes long.

I wonder, sir, if the task force encountered any difficulty in dealing with this great bulk of material, and if there are any plans, or if there are any recommendations concerning the revision of these numerous documents and up-dating, providing a workable document, a workable publication, to be available to anyone who wanted to find out exactly what his status is?

Mr. NASH. I wonder if I might divide that question in two.

First, let me speak about the Manual.

When Mr. Zimmerman testifies he can speak for himself as to how he came to feel during the work of the task force about the Manual. My own attitude toward it changed quite a bit during the course of hearings and as we began to work with it.

The Manual is intended to be a guide to those in the Bureau who must administer Indian affairs, so that they will know procedurally what they are supposed to do.

It is in many volumes because it is broken down according to the branch structure of the Bureau. Not every volume is big. It is mimeographed on one side of the page only.

It is set up in loose-leaf so that as procedures change and are improved there will be a ready reference to it.

In a far-flung bureau, with extremely varied responsibilities, 12,000 employees, it is necessary to have some standardized procedure so that each person will know how he is supposed to do what it is that his job entails.

The manual is not intended to be a policy declaration, but a guide to procedure. And it is open to the public for examination and it is open to the tribal leaders and elected officials.

They are not provided with copies of it at all times, and I can tell you one reason for that which would be this: That if you did not have a very careful up-dating of each page, as one replaces another, the manual very quickly becomes useless.

Now, inside an organization, such as the Bureau of Indian Affairs, it is possible to arrange to have that done. The tribal governments, I think, would find it rather difficult.

This is not to say that they ought not to have it but merely that unless they devote themselves to it very assiduously it would not be of a great deal or much help to them.

Now, so far as the 5,000 treaties or whatever it is, laws, regulations, statutes, et cetera, are concerned, that apply to Indians that do not apply to other people, yes, it is very complex.

Yes, there is much overlapping. Yes, there is much contradiction.

It requires a real expert to thread his way among them and I do not pretend to be that expert. One very quickly gets a humble attitude about Indian affairs if he tries to work with it or work with them from day to day. It is highly complex and highly technical.

The problem of codifying them really staggers the imagination. It would certainly be very desirable if it could be done.

I have no idea how long it would take to do it or how costly a job it would be.

Mr. CREECH. Now we are very appreciative of your candid expression.

The subcommittee staff found the Department staff extremely cooperative and very helpful but, much to our amazement, the manuals

were not readily available. Apparently, in some instances, staff members did not have complete sets of the manuals. Let's assume an Indian citizen, who, not knowing where else to go, might end up in the Department of Interior asking for advice or hoping to search these things out himself—how would he proceed?

And, as you say, sir, you are not a real expert. You do not pretend to be, in dealing with the numerous treaties; but you are, of course, an expert by comparison with virtually everyone in the country.

We wondered just how much protection the Indian can expect to receive even with the advice of adequate counsel when there is such a diversity of information.

It just seemed to be an insuperable job to get any concise information or direction with regard to these areas.

Mr. NASH. Mr. Creech, in defense of the Department let me say this: That the manual is set up in volumes according to the branch structure, so that it is not necessarily intended that every single person who has duties will have to have the complete set but, rather, to have what he needs for reference to his particular job.

Now, so far as the individual Indian, seeking aid or clarification by looking things up himself or even hiring counsel for the purpose, is this really different from the situation of any citizen, let us say, in my native State of Wisconsin——

Mr. CREECH. Well, you have your laws codified, I presume, or if you do not——

Mr. NASH. No, they are codified on a continuing basis. That is, every 2 years they are brought up to date.

Mr. CREECH. Yes, and we were told yesterday that there is no assurance that the Indians on reservations have the manual readily available to them. Presumably, there is a copy in the State somewhere, depending upon where the reservation is located.

But I just wondered, sir, as to what your thinking is; if you feel it would be desirable to have this manual material revised and made compatible with contemporary life and to have it made available to the public.

I realize you say it is available now but, for all intents and purposes, it is not available because trained attorneys have gone down there and spent days and not found what they were looking for and, supposedly, it was there all the time.

Mr. NASH. One of the task force's recommendations, of course, was that the new Commissioner, when the policies had been laid down and the programs had been defined and so on, would examine the manual, not from this exact standpoint but from a related one, and I would be glad to take it up with the next Commissioner when he is confirmed.

Senator ERVIN. If I may make an observation, I would say that I would have to agree, that some of the rest of us are in the same fix.

We had an investigation on a private bill, introduced for the relief of an actress, who was going to Europe to assist in entertaining Ameri-

can troops in the Second World War. She sustained terrible injuries in an airplane accident and then, lo and behold, when her attorneys filed suit it turned out that there had been a treaty signed over in Warsaw some years ago which fixed the maximum amount of recovery on a very limited sum of money, a matter in which the lawyers in the case really had no good access to determine.

So, perhaps, one of the great afflictions of this modern age is not only the Indians but all the rest of us are bowed down beneath the weight of statutes and court decisions and treaties which are largely inaccessible to us.

Mr. NASH. I was wondering, Mr. Chairman——

Senator ERVIN. I say that notwithstanding the desirability of having a very clear statement of all the laws applying and readily accessible to Indians. It would be highly desirable.

Mr. NASH. I was wondering, Mr. Chairman, whether Mr. Creech would not regard the "Handbook of Federal Indian Law," which the latest revision, I think, was done about 1958 or thereabouts—if he would not regard that as something like a codification or approaching a codification in which an individual Indian or his counsel could find out about where he stands with respect to any matter.

Mr. CREECH. Why, I think that is, perhaps, true, but I realize also that the handbook which, I believe, was compiled by Mr. Cohen some 15 or 20 years ago has only been revised once since then, and I believe that was in 1958.

From our point of view, 3 years, of course, is not a great length of time, but when you realize the great disparity of time between when it was written and the time it was revised, I just wondered if it does not imply some laxity on the part of the Department to keep the regulations up to date.

Mr. NASH. This may be.

Senator ERVIN. Mr. Waters, do you have any questions?

Mr. WATERS. Thank you very much, Mr. Chairman.

Mr. Nash, you touched briefly on the Nebraska problem, and in that connection I just want to ask you if you have been familiar with the "We Shake Hands" program up in Nebraska.

Did that come to your attention?

Mr. NASH. It has come to my attention, or it did when I was on the board of the Association of American Indian Affairs.

This is basically an association program which was initiated by the association's executive secretary, Mrs. Madigan.

Mr. WATERS. You are familiar with the study done by the University of Nebraska in connection with Indian law and order affairs?

Mr. NASH. No, sir; I am not.

Mr. WATERS. You are aware that there is now up there a committee consisting of representatives of the Omaha Tribe?

Mr. NASH. That, I know about; yes, sir.

Mr. WATERS. And there have been proposals to keep law enforcement under continuous review?

Mr. NASH. I have heard of it; yes, sir.

Mr. WATERS. Mr. Nash, can you tell us again, when an unjust action is perpetrated by a tribe upon a member, what redress is available to the aggrieved Indian?

Mr. NASH. The legal remedies, the extraordinary ones that Secretary Carver referred to yesterday, plus appeal to the Bureau.

Mr. WATERS. Well, one of the extraordinary remedies referred to by Mr. Carver was the right of habeas corpus.

It is the impression of the committee that the Federal courts would decline to entertain a suit on behalf of an Indian where the activities were performed under the auspices of tribal law.

Is that likewise your understanding?

Mr. NASH. I am not a lawyer, but it is very hard for me to accept the proposition that a Federal court would refuse to entertain a request for a writ which was based on a right of individual citizenship, no matter whether there was tribal jurisdiction or not.

In other words, they would not regard that as a jurisdictional matter.

Mr. WATERS. You are familiar with the holding of the court in the *Pueblo de Jemez* case in which the right of freedom of religion was involved, and the court declined to entertain it on the ground that the action done was done by tribal court and the Bill of Rights did not apply under those circumstances?

Mr. NASH. I think this is one that you would want to discuss with Mr. Hyden when he testifies.

My understanding is that the court declined that on grounds of its own jurisdiction as a statutory matter, not on constitutional grounds.

Mr. WATERS. There was no redress granted though.

You have touched briefly also on the fact that Public Law 280 agreements could be negotiated between the tribes and the appropriate States.

Is it possible that that would result in inconsistent law enforcement where the tribes would vary as to the agreement that they would care to enter into with the States?

Mr. NASH. If it were inconsistent it would still be a considerable improvement over the present situation.

Mr. WATERS. It would not, however, be consistent throughout the State or throughout the country?

Mr. NASH. It probably would not be, especially in the beginning.

Mr. WATERS. Thank you very much, Mr. Nash.

I have no further questions, Mr. Chairman. Thank you very much.

Senator ERVIN. Mr. Nash, we certainly appreciate the very valuable assistance that you have given to the subcommittee. The subcommittee looks forward to calling on you and your staff for assistance as we proceed with this work which, I think, is exceedingly important in a difficult field.

Mr. NASH. As I say, sir, I have no right to speak for the Bureau but I know that the individual members——

Senator ERVIN. I trust in a few days you will have that right.

Mr. NASH. Yes, sir. Thank you. And if that should come to pass you can be assured of very complete and willing cooperation because we also regard this as a vital area to the performance of our own duties.

Senator ERVIN. Thank you.

I regret very much that we will not be able to take the testimony of the witnesses who were to testify today.

I address this question to the other witnesses, to Mr. Zimmerman and Mr. Hyden and Miss Gifford, and ask if it would be convenient for you to come back tomorrow at 10 o'clock. If so, the committee will stand adjourned until 10 o'clock in the morning.

(Whereupon, at 12:35 p.m., the committee was recessed, to reconvene at 10 a.m., Thursday, August 31, 1961.)

CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN

THURSDAY, AUGUST 31, 1961

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess and subsequent postponement, at 2:25 p.m., in room 357, Old Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee) presiding.

Present: Senator Ervin.

Also present: William A. Creech, chief counsel and staff director, and Bernard Waters, minority counsel.

Mr. CREECH. Senator Ervin, chairman of the subcommittee, has authorized the subcommittee to proceed with the hearings and he will join us very shortly.

The first witness this afternoon is the Honorable Quentin N. Burdick, Senator from North Dakota.

STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Mr. CREECH. Senator Burdick.

Senator BURDICK. Mr. Chairman and members of the committee, I appreciate this opportunity to appear before you during your initial hearings on the constitutional rights of the American Indians.

First I want to say that to my knowledge this is the first time that our Government is studying the constitutional rights of our American Indian citizens and I should like to take this opportunity to commend the subcommittee for its action. We are certain that the results of your inquiry will be the guarantee of full constitutional rights to Indians living on reservations.

In the interest of time, I will confine my comments to three areas which have been brought to my attention. In my statements I am not being critical or referring to the present Secretary of the Interior, since the policies referred to have been those of all past Secretaries in their administration of Indian affairs. However, these are his responsibilities and I feel that these matters have not been given the proper attention.

The problem of commitment and treatment of insane and mentally ill Indians residing on Indian reservations requires action. First is the commitment. It is a fact that the court of Indian offenses and the tribal courts have jurisdiction on these reservation.

Therefore, it is the responsibility of the court of Indian offenses to handle the commitment. The only court available to the Indians

living on the reservation is the court of Indian offenses or the tribal court. This is the court which will handle the commitment since the State is not responsible for commitment and care of mentally ill Indians living on the reservation.

It should be the responsibility of the Department of Interior to work out the matter of payment with the State mental hospital to care for the reservation Indians.

And at this point, Mr. Chairman, I want to say that the problem seems to be this. It is that determining the competency of a patient, perhaps, requires a more skilled tribunal. The various insanity boards and the State courts have trained people to determine competency.

Our problem is that the men in the State courts do not want to act to take jurisdiction because of the resulting cost to the State. So there is an impasse.

So we are hopeful that the Department of the Interior will work out this matter, first, in determining competency and commitment, and the matter of payment.

The other problem concerns the Indian juvenile delinquent living on the reservation. Is the proper place for the Indian juvenile delinquent to fail? I do not believe so. The Indian juvenile delinquent is entitled to the services of the special schools which are available to the non-Indians in the State.

Both of the foregoing problems can be handled by the Secretary of the Interior. It is only a matter for the Department of the Interior to arrange for payment to the State facility which will provide the care of mentally ill persons or the juvenile delinquent. Mr. Chairman, in seeking the budget requests of the Department of the Interior, I have found that funds have not been requested for these purposes.

This, like the problem of competency, requires special attention and different attention than is granted generally.

The other matter about which I have received considerable correspondence concerns law and order on the reservations. Mr. Chairman, in many cases the tribal courts are "kangaroo courts." One of the basic reasons for my statement is that the method of selecting tribal judges insures that an Indian appearing before the tribal court, in too many cases, will not get fair treatment.

According to the law and order regulations applicable on the Standing Rock Reservation, which is in my State, the judge of the Court of Indian Offenses is appointed by the Commissioner of Indian Affairs, subject to confirmation by a two-thirds vote of the tribal council.

Mr. Chairman, right in this process is a built-in guarantee that the judge will have a difficult time rendering impartial decisions. There are two reasons for this. No. 1—The chief of the branch of law and order or the chief of police, a Federal employee, back on the reservation is the "judge picker." It has been reported to me that the chief of police appears before the tribal council to present the name of the appointee and waits for the vote of the tribal council. The tribal councils usually vote by raising their hands and not by secret ballot. The judge is under the supervision of the chief of the branch of law and order back on the reservation. This law officer gives the judge his efficiency or performance rating.

No. 2—The appointment of the judge is confirmed by a vote of the tribal council. This presents the problem of the judge maintaining good relations with the tribal council members. It is reasonable to assume that he will be very careful when dealing with relatives and friends of the tribal council.

Getting back to the control that the chief of police may have over the tribal judge, it has been reported to me that this Federal officer on occasion actually advises the judge the sentence to be given to the offender.

To further illustrate this point, I would like to read a portion of a recent letter I received from one of my constituents at Fort Yates, N. Dak., dated August 11, 1961.

The Standing Rock Indians are clamoring and hollering for a definite change here on the reservation. It's about time that the new Secretary of the Interior, Mr. Stewart Udall, clean house here on the Standing Rock Indian Reservation and bring a New Frontier into being for our Indian people.

Their primary objective is to bring about an investigation and do away with the "rubber stamp" tactics of the "chiefs" under the commander in chief, the superintendent. The conditions that prevail at the jail are terrible and this can be supported by contacting "blank" associate judge, who has his own mind and will not be a "rubber stamp" to "blank," who is the chief of the branch of law and order and a Federal employee.

Mr. Chairman, there are many other facets to the matter of law and order and the courts on the Indian reservations. I will not attempt to suggest a solution at this time because I feel that other areas of law and order should be studied.

In closing, I should like to invite your committee to the State of North Dakota for further hearings.

And at the proper time I would like to appear, as I may have some solutions to offer on this problem of law and order.

Mr. CREECH. Senator Burdick, the chairman, Senator Ervin, has authorized me to say that the subcommittee is very appreciative of your coming to give us the benefit of your experience in this field. The subcommittee appreciates very much your invitation to conduct field hearings in your State.

The subcommittee will look forward to hearing from you again at that time.

We are also appreciative of the very fine cooperation that your office has given us in preparing for these hearings.

Senator BURDICK. Thank you.

Mr. CREECH. Thank you, Senator.

The next witness will be the Honorable William Zimmerman, Jr., a member of the Secretary of Interior's Task Force on Indian Affairs.

STATEMENT OF WILLIAM ZIMMERMAN, JR., MEMBER OF THE SECRETARY OF THE INTERIOR'S TASK FORCE ON INDIAN AFFAIRS

Mr. CREECH. Mr. Zimmerman?

Mr. ZIMMERMAN. Mr. Chairman, and gentlemen of the committee, my name is William Zimmerman. I reside at 4713 North Rock Spring Road, Arlington, Va. I have an office at 2144 P Street NW.

My interest in Indians dates back to 1933, when I was appointed Assistant Commissioner in the Bureau of Indian Affairs. My service

in the Bureau continued for 17 years, until 1950. Then I served for 4 years in the Bureau of Land Management, from which I retired in 1954. Thereafter I was for several years Washington representative of the Association on American Indian Affairs. I have served from time to time as consultant to the National Congress of American Indians, and I am a member of the Indian Committee of the American Civil Liberties Union.

May I disgress for a moment from the mimeographed statement to refer to the case of *Oliver* v. *Udall*?

That is a case which the Civil Liberties Union helped to carry forward. It involves the right of the Navajo tribe to enforce an ordinance forbidding the use or possession of peyote on that Indian reservation.

The Native American Church has been trying to get this case tried on the merits because it does, according to the church, involve an issue of civil rights. That is, the church contends that the tribe's ordinance is interference with the religious rites of the church.

I am informed that the Department of Justice, representing the Secretary of the Interior, moved for a summary judgment in the case. That was granted. The church, I believe, intends to seek certiorari in the hope that the case may be heard by the Supreme Court.

It looks, at the moment, as if it will go off on a legal tangent rather than on the religious issue.

Any study, however brief, of civil rights in the field of Indian affairs must start with an understanding of the peculiar legal status of an Indian tribe. In the words of Chief Justice Marshall, a tribe is a "sovereign, dependent nation," retaining sovereignty except as Congress has curtailed its powers.

Thus Congress has given to the Federal courts jurisdiction over 10 major crimes. Congress recently (1956) also made it a Federal offense to embezzle from an Indian tribe. Congress has given to the Secretary of the Interior authority to probate Indian estates including allotted land, but personal property may descend in accordance with tribal custom or ordinance.

In effect the tribe is like a municipality, with the power to tax both members and nonmember residents, to regulate domestic relations, and generally to deal with matters not expressly withdrawn by the Congress.

Prior to 1934 many of the tribes had written constitutions, but these were usually very simple in style and subject matter. They were subject to the approval of the Secretary, acting under his general supervisory powers. The constitutions adopted after 1934, pursuant to the Indian Reorganization Act, are different. In almost every instance they were drafted by lawyers in the Department, working closely with tribal councils, constitutional committees, or other tribal leaders. The attempt was made to spell out in detail the operation of tribal government.

In retrospect, I believe that two major mistakes were made, perhaps unavoidably. First, in drafting so many constitutions it was necessary to follow a pattern, to be sure that the essential powers or authorities were included.

The result was a great similarity, with only minor variations due to special circumstances in each tribal group. Once voted on by the

tribe and approved by the Secretary these IRA constitutions may be amended as provided in the constitution itself, but no constitution may be abrogated or rescinded except by act of Congress.

This restriction on the power of the bureaucrats and of the tribe itself I regard as wholesome. I object only to the monotonous similarity in the constitutions.

May I supplement what I have said, Mr. Chairman, by pointing out there is some doubt as to my statement that the constitutions may be canceled or terminated, or rescinded, only by act of Congress.

The Indian Reorganization Act is express in its reference to the termination of charters issued to the tribes. There is no express language referring to the constitutions.

My view is simply that in creating a Federal instrumentality, which the organized tribe is, I doubt that the Congress intended to leave either to the tribe itself or to the Secretary of the Interior any discretion as to a termination of that Federal instrument.

I recognize that I am expressing a view which is not shared by many of the lawyers who are experts in this field.

But if I were the administrative officer I would hesitate to terminate a constitution without saying something to Congress about it.

The second major mistake which, I think, was made was this: The IRA constitutions introduced a new element into many tribal governments. Traditionally, tribes acted by unanimous consent. If the minority saw that it would be outvoted, it usually kept silent. More than once I have sat in council meetings which began in the morning with a recital, usually by the younger men, of their grievances against the United States.

By lunch time most of the younger men had said their pieces. After lunch the older and wiser men had their say, and by supper time, or perhaps not until after supper, the council got down to the discussion of the issues.

For this tradition of unanimity and unlimited debate, which has some resemblance to a certain tradition in the U.S. Senate, the Indian Reorganization Act substituted the principle of majority rule. This was hard for some of the older Indians to understand. Why should a young whippersnapper, fresh out of Haskell, have equal voice in tribal affairs with old men like Ben American Horse and Moses Two Bulls at Pine Ridge, or Alex Saluskin, Eagle Selatsee, and Tom Yallup at Yakima?

The imposition of this democratic principle, even now, after nearly a whole generation, has caused, in many tribes, a rift between the old and the young. Some of the tribes tried with some success to build a bridge between the old and the young. At Flathead, in Montana, for example, the constitution provided that the hereditary chiefs should have life tenure on the new council.

Generally, however, the new constitutions, and the charters which were designed to provide for business management rather than government, resulted in giving the younger leaders the control of the tribal machinery.

Perhaps members of the committee are asking how does this history relate to our present problem. I believe that it must be admitted that the framers of the Indian Reorganization Act were more concerned with tribal self-government, and with the establishment of a proce-

dure for the gradual withdrawal of tight Federal controls, than they were with the application of the Bill of Rights to the Indian tribes. I must confess that I have no recollection of any discussion of the Bill of Rights in the many arguments in which I participated during the framing of the original Wheeler-Howard bill, so called, which was transformed into the Indian Reorganization Act.

Yet I call the committee's attention to the special section in the Wheeler-Howard bill which provided for a Court of Indian Affairs. Title IV of the bill would have set up this court of a chief judge and six associate judges, whose decisions would have been subject to review in the circuit court of appeals and finally by the Supreme Court as provided in title 28 of the United State Code. I call attention especially to title IV, section 10:

> In both civil and criminal causes, the right to trial by jury and all other procedural rights guaranteed by the Constitution of the United States shall be recognized and observed.

This title was violently opposed, if I remember rightly, by the Department of Justice and by the chairman of the Senate Committee on Indian Affairs, Senator Burton K. Wheeler of Montana. Looking back, it seems clear that if this title had been approved, the current study by your committee might have been needless. The title would have provided machinery by which most cases involving Indians could have been appealed to higher Federal courts.

I would like to supplement what I have written also by calling attention to another sentence in the original bill which had to do with the organization of the tribes.

I do this because I think at that time we assumed that some language of this kind would remain in the bill. In the process of congressional action the several places, in which reference was made to these constitutional guarantees, were stricken.

For example, in section 3 of the original bill, which refers to the issuance of a charter to an Indian community, this language appears:

> The charter shall prescribe a form of government adapted to the needs, traditions, and experience, of such a community and shall guarantee the civil liberties of minorities and individuals within the community, including the liberty of conscience, worship, speech, press, assembly, and association and the right of any member to abandon the community and to receive some compensation for any interest in the community assets thereby relinquished.

I think that language, if it had been preserved in the act, would have been adequate.

Now, I would like to read a little bit about the proposed Indian courts. The task force has given considerable thought to this problem of appellate jurisdiction. Various proposals have been made informally.

No action, so far as I know, has been taken by the Department. I call attention to the fact again that if this section, relating to a U.S. Court of Indian Affairs, had been adopted, many of the current problems would have been resolved.

This court had both original and appellate jurisdictions. It had substantially all of the jurisdiction that still remains in the various tribal courts, plus some others.

If your committee wishes, I will be glad to have this language transcribed and placed in the record. It is not very long.

The Court of Indian Affairs—

says the bill—

shall have jurisdiction to hear and determine appeals from a judgment of any court of any character in the community in all cases in which said Court of Indian Affairs might have exercised original jurisdiction. The decisions of this court——

Senator ERVIN. Excuse me. Did I understand you to say that you would have that transcribed to be inserted in the record?

Mr. ZIMMERMAN. I should like to, so it will be available for you.

Senator ERVIN. Well, we certainly do appreciate that, and the reporter will show that it will be inserted in the printed record at this point.

(The aforementioned material follows:)

H.R. 7902, 73D CONGRESS, 2D SESSION

SEC. 3. The Court of Indian Affairs shall have original jurisdiction as follows:

(1) Of all prosecutions for crimes against the United States committed within the territory of any Indian reservation or chartered Indian community, whether or not committed by an Indian;

(2) Of all cases to which any Indian tribe or chartered Indian community is a party;

(3) Of all cases at law or in equity arising out of commerce with any Indian tribe or community or members thereof, wherein a real party in interest is not a member of such community;

(4) Of all cases, civil or criminal, arising under the laws or ordinances of a chartered Indian community, wherein a real party in interest is not a member of such community;

(5) Of all actions at law or suits in equity wherein the pleadings raise a substantial question concerning the validity or application of any Federal law, or any regulation or charter authorized by such law, relating to the affairs or jurisdiction of any Indian tribe or chartered community;

(6) Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty;

(7) Of all cases involving the determination of heirs of deceased Indians and the settlement of the estates of such Indians; of all cases and proceedings involving the partition of Indian lands, or the guardianship of minor and incompetent Indians; and of all cases and proceedings to determine the competency of individual Indians where the issuance or cancellation of a fee patent or the removal of restrictions from inherited or allotted lands, funds or other property held by the United States in trusts for such Indians, may be involved: *Provided*, That the Court of Indian Affairs shall exercise no jurisdiction in cases over which exclusive jurisdiction has been granted by the Congress to the Court of Claims, or to any other Federal court other than the United States district courts, or in cases over which exclusive jurisdiction may be granted by charter provision to the local courts of any Indian community.

SEC. 4. All jurisdiction heretofore exercised by the United States district courts by reason of the fact that a case involved facts constituting any of the grounds of jurisdiction enumerated in the preceding section, is hereby terminated, reserving however, to such district courts complete jurisdiction over all pending suits and over all proceedings ancillary or supplementary thereto.

SEC. 5. The Court of Indian Affairs may order the removal of any cause falling within its jurisdiction as above set forth, from any court of any State or any Indian community in which such cause may have been instituted.

SEC. 6. The Court of Indian Affairs shall have jurisdiction to hear and determine appeals from the judgment of any court of any chartered Indian community in all cases in which said Court of Indian Affairs might have exercised original jurisdiction. * * *

* * * * * * *

SEC. 10. In both civil and criminal causes, the right to trial by jury and all other procedural rights guaranteed by the Constitution of the United States shall be recognized and observed.

SEC. 11. In criminal cases the rules of evidence shall be those prevailing in criminal cases in the United States district courts * * *.

SEC. 12. The statutes and decisions of the several States, except where the Constitution, treaties, or statutes of the United States, or the charters or ordinances of Indian communities or orders of executive departments thereunder promulgated, otherwise require or provide, shall be regarded as rules of decision in all civil cases in the Court of Indian Affairs.

Mr. ZIMMERMAN. Well, this court of seven judges would have had jurisdiction over Indian cases all over the United States, and the decisions rendered by those judges would have been subject to review by the circuit court and ultimately by the Supreme Court.

I am not prepared to recommend, Mr. Chairman, that this kind of a court be established, but I think it would be well if your committee took a look at this proposal. It was firmly rejected 27 years ago by the Congress, but I think it did have some merit.

Senator ERVIN. Yes, sir. Well, we are certainly glad to have our attention called to that, because I think any proposal that is calculated to alleviate the present situation certainly should be scrutinized by the subcommittee and by the Congress.

Mr. ZIMMERMAN. Now instead of enlarging on what might have been, let me comment on the present situation. What are the weaknesses of the Indian judicial system as it is? Let me speak first of the courts of Indian offenses established pursuant to secretarial order, of which there are some 15. The code which governs them may be changed at will by the Secretary.

I believe that he has the power to write into the code language which will insure the protection of the Bill of Rights to every Indian who is subject to a court operating under that code.

The situation is not as simple in the tribal courts. These courts operate under codes adopted by each tribe and approved by the Secretary. He has no authority to change them, on his own initiative. It has been suggested, however, that he has the power to suspend such codes, if he determines that the tribal court system is not operating properly.

Even if the Secretary should decide that he has the power, I suggest that the present administration, which has pledged that it will work with Indians, will negotiate with them, and will breach treaties and other contractual agreements only with tribal understanding and consent, would be most reluctant to suspend a tribal code.

In my opinion, the Secretary should make every effort to persuade each tribe to amend its constitution, so that the tribe will approach two objectives:

(1) That it will provide to individual Indians the protections provided by the Bill of Rights to non-Indians; and

(2) That it will adopt, gradually but in increasing degree, the statutes of the respective States as part of the tribal codes.

Concurrently, if the Congress should act on one recommendation of the task force, the tribes and the Federal Government would negotiate with the States for the piecemeal transfer of jurisdiction to the States. In time the gaps between State, Federal, and Indian law would disappear. This is a process which should not be rushed. Years of patient negotiation, of sympathetic understanding of the other man's problems, will be required.

Mr. Chairman, and gentlemen of the committee, I shall be happy to answer any questions you have as best I can.

Senator ERVIN. I regret the necessity of staying on the Senate floor prevented me from being here when you made a part of your statement. I have read it, however, and I am very much impressed by your experience in this field and by the observations which your statement contains.

Does counsel have any questions?

Mr. CREECH. Thank you, Mr. Chairman.

Mr. Zimmerman, concerning the third paragraph of your statement, on page 1, you say that such tribal constitutions must be approved by the Federal Government.

Then does not the Federal Constitution apply since this is an action of the Federal Government?

Mr. ZIMMERMAN. May I first say that I am not a lawyer, and some of these questions probably should be addressed to a lawyer.

I think it is debatable. Take this situation involving the Navajo ordinance. The church that is bringing the action sought to make it a Federal issue on the theory that the Secretary of the Interior had approved the ordinance.

The argument of the Government, in reply, is that whatever may have been the case originally, the Secretary is no longer involved because this is a tribal code now and a tribal ordinance, and it is not properly a Federal responsibility.

Mr. CREECH. But at the time, of course, that these constitutions were written, they did have to be approved by the Secretary of the Interior?

Mr. ZIMMERMAN. That is correct. And in most cases, too, the Secretary must approve tribal ordinances that have been enacted pursuant to the code of charters.

Mr. CREECH. Sir, you say in the last paragraph of page 1 of your statement that you object only to the monotonous similarity in the constitutions.

Would you expand that statement? I am curious to know if you are referring to the fact that they do not reflect the tribal individuality or just what you mean by "the monotonous similarity."

Mr. ZIMMERMAN. Well, I think if more time had been allowed—more time to work with each of the tribes, constitutions and charters could have been worked out that would have better fitted the local circumstances.

I think, on the whole, the work that was done was good. The people who helped to draft those documents were conscientious, devoted people, and were acting, as they thought, in the best interest of the Indian community and with the cooperation of the Indians.

But I think that it is time now to review most of these constitutions in the light of a quarter of a century's experience and perhaps modify them or readjust them to meet changed conditions.

Mr. CREECH. Thank you, sir.

On page 2 of your statement, you comment that you have no recollection of any discussion regarding the Bill of Rights at the time the Indian Reorganization Act was under discussion by the Congress.

I wonder if the people who were drafting the Indian Reorganization Act were aware of the fact that all Indians at that time had been citizens for 9 years and as such were entitled to full constitutional guarantees of other citizens?

Mr. ZIMMERMAN. Well, I must confess that my recollection is not too clear.

The people who were concerned with it were certainly—of course, John Collier and Felix Cohen and various other people, who were actively drafting the language, were conspicuous for their devotion to civil rights.

I really think, as I look back, that it was just assumed that some language of this kind would be inserted. It was inserted in the original bill, but it was lost in the passage through Congress.

Mr. CREECH. So it was actually in Congress that these sections were deleted from the original bill?

Mr. ZIMMERMAN. That is correct. Yes, sir.

Mr. CREECH. Now, is it your feeling that if Congress were to amend the Indian Reorganization Act to include this section 10 that you quoted on page 2 of your statement, that the constitutional problem would be solved for those tribes who are operating under the provisions of the Indian Reorganization Act?

Mr. ZIMMERMAN. Well, speaking as a layman, I think Congress has the power to enact such provisions.

Mr. CREECH. Do you feel that it would solve the problems then for the tribes, operating under the provisions of that act?

Mr. ZIMMERMAN. I think there is no question that Congress could, by such an act, in effect supersede the provisions of the constitutions.

I would hope, however, that in the light of experience with the Indian tribes that provision would be allowed to give the tribes themselves the right to make these changes.

I firmly believe that we are at a point where the Federal Government should not impose, unilaterally, new restrictions and new conditions upon the tribes. I think the tribes, in the main, have reached a point where they want to initiate changes and they want to be consulted, they want to make the decisions.

I think that in most cases, if this matter were properly presented, I think there would be no difficulty in persuading the tribe to move.

Mr. CREECH. Sir, you indicate on page 3, the first paragraph, the opposition of the Department of Justice and the chairman of the Senate Committee on Indian Affairs to the provisions that you have quoted, section 10 of the original draft of the Indian Reorganization Act.

I wonder if you would care to supply for the record these objections or if you can tell the committee at this time the reasons given for objecting to this section of the drafted act?

Mr. ZIMMERMAN. My recollection is that the principal—there were two objections: (1) That it was perhaps a needless embellishment on the Indian system; (2) it was objected to, particularly by the chairman on the ground that the tribal courts were sufficient and there was no need for any further Federal interference.

Most of these objections were oral, I might add, from the chairman of the committee.

Mr. CREECH. Now, you have——

Mr. ZIMMERMAN. May I say——

Mr. CREECH. Surely.

Mr. ZIMMERMAN (continuing). Another word in that connection? It may shed some light on the whole difficulty.

Twenty-five years ago, and perhaps it even goes farther back than that, the tribal courts were generally not places of great dignity. The judge and the chief of police had many other duties. Usually, one of them was a janitor.

They did other work besides being judge and chief of police. The pay was almost immaterial. I think as late as 1933 or 1934 the pay was less than $100 a month.

Also, at the same time, as a result of what was actually going on on the reservations, many Members of Congress looked upon the Indian court system as a joke, particularly the members of the Appropriations Committee, who realized how the money was being spent for the maintenance of law and order.

I know, from my own experience, they treated this with considerable levity. And it was not until 1933 or 1934, when these two sets of codes were initiated, that a really formal system was begun.

Mr. CREECH. Now, I believe Senator Burdick, in his statement earlier this afternoon, indicated that the condition which you have just described with regard to the tribal courts some 25 or 30 years ago, is alleged to exist today in some of the courts of Indian offenses with regard to the appointment of judges and the type of justice which one can expect dispensed there.

Mr. ZIMMERMAN. I will not take issue with Senator Burdick about Standing Rock, because he knows much better than I do about conditions there; but I am convinced that in many cases the tribal courts do operate effectively, that the judges are conscientious. It is true that they are not learned in the law, but I think they try to render justice. And I certainly would not wish to condemn wholesale all of the Indian judges. I do not think they deserve that. And some of them that I have known myself have done excellent work, have been respected by the tribes and respected in the community.

And sometimes—in one or two cases they were women. This is not limited to men.

Mr. CREECH. Yesterday, with regard to the tribal courts and the traditional courts of the Pueblos, it was said that there was no written code, and perhaps no written procedure.

The subcommittee had received information from the Department of Interior concerning the types of Indian courts, and, based upon the information which the subcommittee received, the chart to my left was prepared.

There is no indication on this chart that any such traditional courts still exist, though it appears that the tribal court figures would include what we had previously thought of as traditional courts within the Pueblos.

I wonder what your experience has been, and whether you have encountered the traditional courts, or whether you have reason to believe they are still in operation?

Mr. ZIMMERMAN. My own experience with those areas is very limited. There has always been considerable secrecy and, perhaps, mystery, if you wish, about the operation of law and order in the Pueblo area.

There is a mixture there of religion and government which is not generally made public. And there is no question in my mind that the tribal authorities occasionally discipline members for violations that were not violations of record and do not violate any written code.

Mr. CREECH. Well, are these traditional courts to be equated in any way with religious courts?

Mr. ZIMMERMAN. I think in one or two cases they still are.

Mr. CREECH. And these courts exist and operate beyond the jurisdiction of any Federal or State Government?

Mr. ZIMMERMAN. I suspect that the word "court" perhaps should not be applied to the system at all in one or two pueblos.

The operation, or whatever it is, is in the hands of the religious head or perhaps the political head.

I have in mind a situation which arose some years ago where a number of Indians in one of the pueblos joined the Native American Church, the "peyote" church. The rest of the community did not like that and the Governor, in effect, said to these people that they had, by joining the peyote church, lost their right to use the community land.

Now, that was a wholly arbitrary, unwarranted, action in my opinion. I think actions of that kind may still go on but I, personally, do not know of any.

Mr. CREECH. Such actions presumably would be taken under the aegis of a traditional court.

Is that correct, sir?

Mr. ZIMMERMAN. Yes.

Mr. CREECH. And in which the individual could be deprived of property and other rights without any recourse?

Mr. ZIMMERMAN. In this particular case the Department interfered. Nevertheless, the kind of action could be taken under the tribal forms.

Mr. CREECH. Sir, you indicated the Secretary of Interior should be most reluctant to suspend the tribal code.

If, however, a tribe refuses to include a bill of rights in its constitution, should, in your opinion, the Secretary act in any way to provide these constitutional safeguards or should the Secretary allow the Indians to continue without them?

Mr. ZIMMERMAN. I should think he would be justified in suspending such a code if the tribe failed to act after a reasonable period of time.

Mr. CREECH. You would place the tribe on notice and give them a certain period of time?

Mr. ZIMMERMAN. I think that would be the fair procedure; yes, sir.

Mr. CREECH. Would you care to indicate what you consider a reasonable period of time?

Mr. ZIMMERMAN. Oh, perhaps, a year or two.

Senator ERVIN. Mr. Zimmerman, that period naturally would vary from one tribe to another?

Mr. ZIMMERMAN. It might vary greatly; yes, sir.

I should think that in some cases a tribe might act very promptly. I see difficulties, too, Mr. Chairman, in dealing with some of the tribes which do not have written constitutions or written codes.

Mr. CREECH. Mr. Zimmerman, would you comment, please, on the following statement:

Is it not a fact that the tribal courts are not courts as lawyers understand the common law sense of the word, independent of executive and legislative influence, but are instead set up as the enforcement arm of the tribal councils?

Mr. ZIMMERMAN. I would hate to answer that one either yes or no. I think you ought to address that to a lawyer.

But as to the courts—some of the judges are elected by the popular vote, I believe. When you have a tribal council, which is the source of authority, I suppose it is true that any officer who is selected or approved by the council becomes, in one sense, an arm for enforcing the tribal judgments.

Mr. CREECH. Now, yesterday Mr. Nash provided the subcommittee with a number of cases which he said were brought to the attention of the task force.

I wonder, sir, if you are familiar with the cases which he presented to us, and if there are any other cases you would care to bring to the committee's attention at this time?

Mr. ZIMMERMAN. No, I have no cases in mind at the moment. I am familiar with the material which you have that consists, really, of summaries of the testimony given at these various hearings.

And I think you will get some clues there as to how to proceed.

Mr. CREECH. Mr. Carver indicated, in his statement, that if the same rules and law of the non-Indian courts were applied to the Indian courts it might have the effect of destroying the Indian courts.

Now, I wonder, sir, what your opinion is concerning the application of the standards of the Bill of Rights to these courts.

Do you feel that it would destroy them or do you feel that this is worse than having no courts at all, in which instance the Indians would, of course, have access to the Federal courts?

Mr. ZIMMERMAN. I do not see that the Indian courts would be destroyed. I think the court would still go on.

Mr. CREECH. You feel that this is not necessarily incompatible with the courts continuing existence?

Mr. ZIMMERMAN. That would be my view.

Mr. CREECH. Sir, would you comment on how adequate law enforcement has been for the Indians who have come under the provisions of Public Law 280 in the States which have assumed jurisdiction over the Indian community under its provisions.

Mr. ZIMMERMAN. I have not been—in recent years I have not been in all of those States that are affected.

We have had indications in some areas that the assumption of jurisdiction by the States and the local governmental units has not been entirely satisfactory.

We have heard testimony from Indians in California, in Nevada, Washington, Minnesota, indicating that there is still a gap between effective enforcement by the State and the county and the prior administration by Federal officers.

One of the difficulties, of course, is that the States, in some instances, cannot force the county to take over jurisdiction.

In the State of Nebraska, as was pointed out yesterday, I believe, Thurston County for years refused to exercise the authority which had been given to the State on the plea that it could not afford to police the Indian reservation.

And it is only this year that the State has given in and is willing to pay to the county or make some arrangement for payment to the county that it seems likely that effective jurisdiction will ensue.

You find also in other States, in Minnesota, for example, the Indian Bureau has largely curtailed its activities. There are many Indian communities in which there is no representative of the Bureau. Things go wrong in one way or another, and the Bureau is not aware. And the Indians are, perhaps, afraid to protest.

In one Indian community that I know about most of the Indians have rather choice lots on the edge of a lake.

Mr. CREECH. Where, sir?

Mr. ZIMMERMAN. On the edge of a lake. White men are moving in, are building houses on the Indian land.

In one instance, a white man even built a house on the edge of an Indian cemetery, digging up all the bones and putting them all into one box and moving them off to one side.

Now, these white neighbors, who are moving in, are the Indians' only source of income. These Indians are hired by the summer people for all kinds of chores and the information that comes to me is that they are afraid to protest.

And yet here clearly is an instance of failure of the local police authorities to do anything about it.

Mr. CREECH. Well now, these are Indians who are living under State law, or living in one of those areas in which jurisdiction has been accepted by the State?

Mr. ZIMMERMAN. That is true. One of the points that I would like to make is, and I think this applies to the Bureau's activities generally: It seems to me that the Bureau still has a responsibility to see that other agencies, even though the Bureau is not legally responsible, to see that those agencies function properly. I take the same position with reference to the Public Health Service and any other agency that is working in the field of Indian affairs.

I agree that the Bureau does not have a legal power perhaps, to enforce its views, but I should hope that it would feel a moral responsibility to see that other agencies, dealing with Indians, act properly.

And the same line of reasoning, I think, applies to dealing with the States in making sure that the Indians receive what treatment they are entitled to have as citizens of the State.

Mr. CREECH. Sir, the Fund for the Republic study, "A Program For Indian Citizens," recommended that the State take over piecemeal jurisdiction.

Now, I realize that this is not the same recommendation which the task force made, though they both did recommend that Public Law 280 be amended to provide jurisdictional transfer only with the consent of the tribal governments and after negotiating with them.

I wonder if you favor the extension of the Fund for the Republic study provision?

Mr. ZIMMERMAN. I think Mr. Nash answered yesterday, and I agree, as I understand it, that the task force favored some step-by-step method by which the tribes and the States and the Federal Government could arrange for the partial transfer of jurisdiction.

In some fields it seems to me the tribes would welcome such a transfer. I would be in favor of having that done.

I am opposed to having it done if it means a continuing Federal subsidy.

Mr. CREECH. Now, the Fund for the Republic study also recommended the continuation of tribal governments until they are voluntarily abandoned by the tribes.

There was no such recommendation by the task force.

I wonder what your feeling is about that recommendation of the Fund for the Republic study?

Mr. ZIMMERMAN. There may have been no specific recommendation by the task force, but I think it is implicit in the entire report. There is a recognition of the fact that the tribes do exist and that they should be allowed to continue.

I can see in the future that a tribe may cease to function as a tribe, as far as any governmental function goes, and I should not want to predict what might come.

But so long as the tribe wants to maintain some kind of organization or entity whether it is for political or social or economic purposes, I see no reason why they should not be allowed to continue.

Senator ERVIN. It is quite conceivable that in some instances if there is a gradual transfer of jurisdiction to the States that a State legislature might see fit to allow a considerable amount of self-government to remain in the tribal council as a municipality of the State.

Do you not think that is conceivable in some instances?

Mr. ZIMMERMAN. Yes, sir. It is not only conceivable, it has actually been done, at least in the case of the Menominees in Wisconsin where the tribe reservation has now become a county.

The reservation is a county under the State and the business affairs of the tribe are carried out by a corporation under State law.

Senator ERVIN. It would seem to me that that, in many cases, would turn out to be the desirable solution to the problems.

Mr. ZIMMERMAN. It may well be.

Mr. CREECH. Mr. Zimmerman, yesterday Mr. Nash said that juries are available on request. He did not indicate that they are available in all tribal and traditional courts.

As a matter of fact, he did not indicate exactly what he had in mind.

I wonder, sir, what has been your experience with regard to trials by jury in tribal and traditional courts?

Mr. ZIMMERMAN. I really cannot answer that. I do not have the information, frankly, Mr. Creech.

I think some of the constitutions do provide for juries. I think some others do not, but it has been a long time since I have looked at them.

Mr. CREECH. All right, sir. Thank you.

I have just a couple of other short questions.

In view of the complaints heard by the task force and the various recommendations made, do you feel that some type of organization should be established in the Department of Interior to document the complaints which you received and, perhaps, advise Indian citizens of what their rights are and where to get recourse when there are violations of them?

Mr. ZIMMERMAN. My answer to that is "Yes." I do not mean necessarily that there should be a separate unit, but I think somewhere in the Bureau there should be detailed attention to the complaints that were made.

If nothing comes out of the task force effort, except its very short report, I fear that there will be a bad reaction among Indians generally.

The Indians who testified found it difficult to make a distinction between the task force and the Bureau. Repeatedly, the task force members tried to impress upon the Indians the fact that we were not a part of the Bureau; that we had no administrative responsibility and no authority.

We had been told not to interfere with the day-to-day activities of the Bureau. Yet, I fear that if these complaints are not heeded, if they are simply stacked away in cabinets in the Bureau and replies are not received really adequate to the complaints, that there will be a bad general reaction, and the "New Frontier" or the "new trail" or whatever it is called will be just one more committee report.

Mr. CREECH. Sir, in that regard, do you feel that the average Indian today or, indeed, the average citizen today finds it easy to ascertain what the various regulations are governing the Indian and what his rights are and what his possessions are?

Is this something that is readily ascertainable by the average practitioner, the average attorney?

Do you need to be a specialist in this field in order to represent Indian interests? I would appreciate your comment on this. We had some little colloquy yesterday about this.

Mr. ZIMMERMAN. Obviously, Indian administration and Indian law are special fields.

The administration is a large organization with many facets, many units, some of which, in my experience over a long period of years, do not know what the other units are doing. I have found, for instance, recently, that the unit which has to do with the sale and rental of land was completely ignorant of the policy with reference to loans to Indians.

The gap can be closed. I think, at the top, and can be closed, perhaps, by better staff work. But I am sure there are difficulties both in the Washington office and in the field in getting adequate information.

There has been also a trend in Indian administration which I suspect is inevitable, because administration costs are increasing rapidly.

There is always a desire to keep the cost down, and that means that fewer employees are available at various spots. The trend with Indian administration has been away from the reservation. This is due to various factors.

Twenty-five or fifty years ago, when communication was not as excellent as it is today, Indian agencies were scattered. Take western Okla-

homa, for example: There were Indian agencies 30 or 40 or 50 miles apart. Most of those agencies have been abandoned.

The center of administration gradually moves farther away from the Indian home area. That tends to make it more difficult for the Indians to find out what is going on and what to do.

If they now need certain kinds of information, certain kinds of decisions, they have to leave home, and, go perhaps, a hundred miles and in some cases further, to the superintendents or to the area office.

I have often wondered about it, pondered about it. Even with the efforts to reduce expenses the total budget keeps growing all the time.

Mr. CREECH. Sir, do you feel that the Indians on the reservation should be extended all of the constitutional rights of other citizens?

Mr. ZIMMERMAN. Certainly. Certainly. Even off the reservations.

Mr. CREECH. Thank you, sir.

I believe Mr. Waters has some questions, Mr. Zimmerman.

Mr. WATERS. Mr. Zimmerman, have you reached a conclusion that if Indians were given the rights of the proposed bill with respect to trial by jury in all civil and criminal cases that most of these hearings we have now would be unnecessary?

Mr. ZIMMERMAN. I am not going to say, Mr. Waters, that merely by passing the bill that you are going to cure the situation; I do not believe it would be as simple as that.

I think there is an educational job that needs to be done.

Mr. WATERS. In what respect do you feel that Indian education is inadequate?

Mr. ZIMMERMAN. That is now being done?

Mr. WATERS. Yes.

Mr. ZIMMERMAN. I mean education. I do not mean in the technical sense of putting kids into schools; I do not mean that. I mean in dealing with the tribes and building up a sentiment that would support the tribal officials in their efforts to make sure that these constitutional guarantees were effective.

Mr. WATERS. It has been reported to the committee, Mr. Zimmerman, that in some cases, judges either are hired on a daily basis or appointed by the tribal council. Have you found that to be the case in connection with your study?

Mr. ZIMMERMAN. I think that is true. I think another bad feature was that in some cases, judges were paid out of fees and fines.

Mr. WATERS. Then he had an interest, of course, in making——

Mr. ZIMMERMAN. We have had that system in many police courts and other local institutions. I think the tribes were forced to use that system because they did not have tribal money, and the only way the expenses of the courts could be met was by taking the fines.

Mr. WATERS. We also would appreciate your reaction to the fact that no records are kept of court proceedings, and that laws on which the court based its action were not reduced to writing. Is that a fact?

Mr. ZIMMERMAN. I suspect that would be the practice.

Mr. WATERS. Would you say that judges are under the domination of the council?

Mr. ZIMMERMAN. I doubt that the situation is as bad as some of the witnesses have painted it. I have more confidence in the integrity of most of the judges than some of the witnesses who testified.

Mr. WATERS. Well, do you feel that the council which passes an ordinance concerning a particular matter and hires a judge to enforce that ordinance is going to be happy with him if he finds that ordinance to be improper and discharges the defendant, the judge being dependent upon the council for his livelihood?

Mr. ZIMMERMAN. I do not know that the position is worse than any other judge who has to enforce a law which he does not believe in.

Let me go back a moment, if I may, to this matter of education. I think I can make my point.

In 1934, or after 1934, after the Reorganization Act was passed, the Bureau had a small staff of people who worked in the field, working with the tribe, in an effort to teach them how to make the tribal constitutions and the charters work. It is that kind of thing that I think would have to be done in this instance. Unfortunately, after the tribes were all organized, or most of them were organized, the Congress took a dim view of this whole operation and said, "Well, now, you have organized these people and they have their documents, let us abandon this educational work." So the appropriation for that unit was stopped.

I think some kind of educational group would have to go on with the tribes, with the tribal groups, councils, governments, whatever they are, over a period of time. I do not think we can just pass an act of Congress and lay it before the tribes and say, here, take it, act in accordance with this law.

Mr. WATERS. Do you think the Secretary presently has the authority to start that kind of procedure now?

Mr. ZIMMERMAN. I think he has; yes, indeed.

Mr. WATERS. In your statement on the first page, you indicate that he also had the authority to probate Indian estates and to decree that personal property will descend in accordance with tribal customs. In other words, as I understand it then, the Secretary will enforce whatever rules the tribe has, is that correct?

Mr. ZIMMERMAN. In most instances, the tribal resolution is not effective unless it is approved by the Secretary.

Mr. WATERS. What I had in mind particularly was the Yakima resolution which provides that the individuals to inherit had to be at least a quarter Yakima.

Mr. ZIMMERMAN. That is more than a resolution, that is an act of Congress.

Mr. WATERS. He likewise follows that, does he not?

Mr. ZIMMERMAN. Oh, yes.

Mr. WATERS. Is Secretarial approval required for every resolution and ordinance? Does he approve each one?

Mr. ZIMMERMAN. No, I think not. I think that depends on the nature of the resolution or the language of the tribal constitution.

Mr. WATERS. I wonder if you could tell us whether the Secretary recommended the enactment of the Yakima blood requirement?

Mr. ZIMMERMAN. I suppose he did. I do not really know.

I would like to point out one thing in connection with the Yakima situation, because I think it has some significance. I am not wholly in sympathy with the Yakima position, but I certainly do not oppose it as violently as some other people do. Bear in mind that the Indian attitude toward land is very different from that of most white men. The tribal land is their home.

Now, most of the tribes resented the fact that the Federal Government came in and broke up their reservations. Most of the tribes did not want private ownership in land. So they approach this problem from a very different point of view. If they conceive of this unit of land as their home, I think then you can understand why they do not want it to go into the hands of outsiders, who are white men. It is not merely a little piece of land that belongs to you or me, it is a part of the tribal ancestral estate. That is the concern that they have.

Mr. WATERS. In connection with your study on real estate, particularly, have you given any consideration to the fractional interest in land which now exists?

Mr. ZIMMERMAN. The fractional interest?

Mr. WATERS. Yes.

Mr. ZIMMERMAN. Yes, we have given it a great deal of study.

Mr. WATERS. Have you found any solution that you recommended to the department in connection with these instances, where it sometimes costs more to send out the check than the check is worth?

Mr. ZIMMERMAN. Yes, the task force spent considerable time. We prepared a draft of a bill which we submitted to the Department. The Department revised that draft materially, and submitted the bill to Congress. There have been hearings on the Senate side on that bill.

Mr. WATERS. Well, will you tell us what other action was taken in connection with recommendations made by the task force of which you were a member?

Mr. ZIMMERMAN. What other actions have been taken by the Secretary?

Mr. WATERS. Yes, sir.

Mr. ZIMMERMAN. I am not in a position to answer that.

Mr. WATERS. Do you know of any?

Mr. ZIMMERMAN. He sent up to Congress a bill to create an Advisory Comittee on Indian Affairs. I believe hearings have been held on that bill on the House side. There were a number of administrative changes that have taken place. I ought to say first that in addition to the formal report which was printed, the task force made various individual recommendations to the Secretary, and some of those have been carried out. This matter of attorneys in the courts, for instance, was one of the matters which we talked about prior to the publication of the report.

Mr. WATERS. Are you referring to the provision for attorneys to represent defendants in the courts of Indian offenses?

Mr. ZIMMERMAN. Yes, sir.

Mr. WATERS. Was that recommendation made prior to the Court finding that the Secretary's rule was unconstitutional?

Mr. ZIMMERMAN. I do not know. I do not know the date of that ruling.

Mr. WATERS. Thank you very much, Mr. Zimmerman. I have no further questions.

Mr. CREECH. Mr. Zimmerman, the chairman has authorized me to say that the committee is very appreciative of your coming today to give us the benefit of your experience and knowledge in this field. The committee is sorry that circumstances have been such that we have not been able to hear you according to our original schedule. We are very appreciative of the information you have given us.

Mr. ZIMMERMAN. I thank the chairman for his kind words, and I assure you that if I can be of any service to your committee in the future, I shall be happy to do so.

Mr. CREECH. Thank you, sir.

The next witness is the Honorable Henry E. Hyden, Associate Solicitor in the Division of Indian Affairs, Office of the Solicitor, Department of the Interior.

Mr. Hyden?

STATEMENT OF HENRY E. HYDEN, ASSOCIATE SOLICITOR, DIVISION OF INDIAN AFFAIRS, OFFICE OF THE SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. HYDEN. Mr. Chairman, my name is H. E. Hyden. Since June 1957 I have served in the position of Associate Solicitor for Indian Affairs in the Department of the Interior. I have been employed in the Department and the Bureau of Indian Affairs in several positions, legal and administrative, over a period of 25 years.

The responsibility of the Indian Division of the Solicitor's Office is to handle the legal work of the Department involving Indian affairs and to furnish legal advice and assistance to officials of the Department and the Bureau of Indian Affairs in all matters relating to the Indians. By definition, therefore, my responsibility as Associate Solicitor does not include the formulation of departmental policy in this field. The Department's statement which has been submitted to this committee gives insight into the many administrative or policy considerations that are involved in a study of the constitutional rights of the American Indian. My statement to the committee does not embrace matters of policy. A skeletal outline of the general subject is suggested in the hope that it may be of aid to the committee.

American Indians are citizens of the United States and of the States in which they reside. However, they are in an anomalous position because of their relationships with their tribes which are endowed with certain powers of government. The Indian's constitutional rights, if reviewed in depth, involve a consideration of his relationships with the Federal Government, the State governments, and the Indian tribe.

As a citizen of the United States, the Indian is entitled to all of the rights, privileges, and immunities of that status in his relations with the United States. His property rights are protected against unconstitutional impairment (*Choate* v. *Trapp*, 224 U.S. 665). Indeed, it seems to be beyond debate that the American Indian, in his relations with the United States, enjoys all of the rights embodied in the Bill of Rights.

As a citizen of the State in which he resides, the Indian, by definition, can claim all of the protection afforded by the 14th amendment. The courts have said that he is entitled to treatment equal to that received by others at the hands of the States (*Acosta* v. *County of San Diego, et al.*, 272 P. 2d 92; *State of Arizona* v. *Hobby*, 221 F. 2d 498). However, due to the confusion that exists with respect to the jurisdiction of the States in the Indian country, the Indian at times is unable to receive the benefits of State law and State institutions. Examples of the confusion are noticeable in the field of public assistance, do-

mestic relations, public health, and juvenile dependency. Further judicial clarification appears to be needed.

In the constitutional sense, the Indian's relationship with his tribe is very complex and far from clear. The judiciary has indicated that under existing law the Indian is vulnerable to tribal action which, if taken by a State or the United States, would be in violation of the U.S. Constitution (*Toledo* v. *Pueblo De Jemez*, 119 F. Supp. 429; *Native American Church* v. *Navajo Tribal Council*, 272 F. 2d 131). This situation seems to pose a real dilemma. Remedial legislation which failed to take into account local conditions on the Indian reservations, the degree of assimilation into the neighboring culture, and the degree of readiness for change of both the Indian people and the States could precipitate a situation that would destroy the tribal governments as they exist today and yet provide no adequate substitute. Whatever legislative solution may be devised will apparently have to be accompanied by a vigorous educational program.

Mr. Chairman, that is the end of my prepared statement and if I may now I would like to mention the fact that in the course of these hearings the other day it was requested that the Solicitor's Office of our Department consider the question of the jurisdiction of these Indian reservation courts, both tribal courts and courts of Indian offenses, over the patented lands inside the exterior boundaries of the reservation. Following that request, a search was made in the records of the Department, and I have with me a copy of an opinion, a memorandum opinion of April 27, 1939, by the Acting Solicitor—the then Acting Solicitor for the Department—and approved by the then Assistant Secretary of the Interior.

In that opinion, the question was specifically posed whether the Indian courts on the reservations, both tribal courts and courts of Indian offenses, could exercise jurisdiction over acts committed by Indians on unrestricted lands within the Indian reservation, and the Solicitor's conclusions were that they could. If it will be of aid to the committee, I am happy to offer for the record a copy of that opinion.

Mr. CREECH. Thank you, Mr. Hyden. Let it be received for the record at this point.

(The memorandum opinion is furnished in the appendix, pp. 260–270.)

Mr. WATERS. May I ask if that was ever published?

Mr. HYDEN. No, sir; that was not published.

Mr. WATERS. Was that considered unimportant?

Mr. HYDEN. Well, Mr. Waters, the simple fact is that it was not published. That touches on a point that you raised with me the other day about how Solicitors' opinions are disseminated. If you want me to do so, I shall state now for the record a clarification and verification of what I told you the other day.

Mr. WATERS. Please do.

Mr. HYDEN. The Solicitors' opinions are of two types, the published opinions and the unpublished opinions. Now the published opinions are those selected for publication in the Interior Department decisions. The Interior Department decisions are published periodically by the Government Printing Office, and they appear in bound volumes. The unpublished opinions are duplicated, mimeographed in the Department, and they carry headnotes or syllabuses on them, and those

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headnotes are prepared in accordance with a topical index system that had been devised by the Solicitor.

The unpublished opinions bearing these headnotes are collected, and a topical index of those is published from time to time. Those for the period from January to December—excuse me, January 1955 to December 1959—were re-collected into what they called the Quinquennial Digest. That was published by the Government Printing Office. Then those following that, for the period January 1960 to December 1960, have been similarly collected in an annual Index Digest.

In addition to those, there is a large amount of material that takes the form of less formal memorandums from the Solicitor to the Secretary or to the Commissioner of Indian Affairs, and I shall have to confess that our Solicitor's Office method of maintaining a record of those is far from perfect. However, in my own experience, I have found that through the use of the Indian Bureau's subject matter files, these materials can be found, especially if someone has learned his way around through those files.

Mr. WATERS. Would you have to have the benefit of the AAABA DAABA system?

Mr. HYDEN. The AAABA DAABA system has passed away and been replaced by this Index Digest.

Mr. WATERS. Thank you.

Mr. CREECH. Mr. Hyden, is there other material which you would like to have incorporated with your statement?

Mr. HYDEN. I have one more Solicitor's opinion which touches briefly on a point which was raised in these hearings the other day, Mr. Chairman. That was an opinion of the Solicitor of February 15, 1954. The point I have in mind is a point that was raised the other day, in which the question was, What has been the history of State assertion of jurisdiction, criminal and civil, on fee patented lands within the boundaries of a reservation? This Solicitor's opinion to which I refer states that when an Indian to whom a trust patent has been issued under the General Allotment Act receives a patent in fee for the whole of his allotment, he becomes subject to the laws, both civil and criminal, of the State of his residence, notwithstanding the fact that he may subsequently come into the possession of other trust lands by inheritance or devise or certain allotments of other lands, subject to the qualification, however, that he does not become amenable to State jurisdiction with respect to those matters which are reserved to Federal jurisdiction by Federal statutes.

Down in the text of the opinion, it is mentioned that due to the extreme difficulty the States encountered in knowing the status of lands, whether they were fee simple or trust or restricted fee, the enforcement officers would apparently have to be armed with tract books and census records and family histories and the like, and this matter of State jurisdiction became practically meaningless in the States, since the States have not really asserted the jurisdiction that they have in those cases of specific tracts of land.

Mr. CREECH. Now, sir, any additional information with regard to this second Solicitor's opinion which you have given us, the one of February 15, 1954? Was this one published, or was this one not published?

Mr. HYDEN. This one was published in the Index Digest.

Mr. CREECH. I see. I should like to go back to your statement, Mr. Hyden. On page 2, the last paragraph, you state:

Further judicial clarification appears to be needed.

I wonder if you would elaborate on that statement and indicate whether you feel any legislative clarification is necessary?

Mr. HYDEN. Well, my reference there to judicial clarification was meant to refer to the matter of State jurisdiction in the Indian country, and the situation that evolves from a State concluding that it has no jurisdiction, following that with a withholding of State benefits and services and institutions in law.

Now, to me, it has seemed that if a State is correct in its conclusion that it has no jurisdiction to extend certain services to an Indian and make available its system of law by which those services are extended, then it seems to follow, to me, that the deprivation of those services or withholding of those services is not a denial of the rights of the Indians by that State.

On the other hand, if the conclusion that the State lacks the jurisdiction is incorrect, then it has seemed to me that the withholding of the services through the withholding of jurisdiction operates to deprive the Indian of parity of treatment with his fellow citizens in the State. That is why, Mr. Chairman, I have mentioned my view that further judicial clarification in this field seemed to be in order.

Mr. CREECH. Do you feel, sir, that there is need for legislative clarification?

Mr. HYDEN. I believe that legislative clarification would be helpful there; yes, sir.

Mr. CREECH. Would you care to expand upon that, sir, upon that statement? It would be helpful.

Mr. HYDEN. Well, I could only say that it is my belief that if the Congress, by specific enactment, made it clear that the citizenship rights of the Indians were to be regarded as including the right to these various State institutions, I should think that would be helpful.

Mr. CREECH. Now on page 3 of your statement, speaking of the deprivation of constitutional rights by tribal action, and speaking of such action by the tribe which would be a deprivation if taken by the State or Federal Government, you opine that it seems to pose a real dilemma. I wonder if this was the connotation you cared to produce here?

Mr. HYDEN. No, sir; I would hope that that cryptic statement would be read with what follows. That dilemma, to me, is that whatever is done to rectify the situation should take into account the aspirations of the Indian people, their degree of assimilation into the neighboring culture, and quite importantly, in my opinion, not only their readiness to participate in some change, but the States themselves. That is what I meant, Mr. Chairman.

Mr. CREECH. Then finally, sir, you indicate that you feel a vigorous education program is necessary. I wonder if you are thinking there in terms of a program under the auspices of the Community Services Division of the Department of the Interior, or just what type of program you had in mind?

Mr. HYDEN. Well, I would say, Mr. Chairman, that I think I am seeing in recent months the emergence in the Department of the Interior of a stepped-up interest in this matter, a desire to hunt for solutions, and the educational program I would envision there would be one where the Department of the Interior would play a very important role in dealing with the Indian people, trying to teach the tribes as tribes, their governing officials, what we think about civil rights and constitutional rights, and try to develop a desire on the part of the Indian people to participate in the reaching of some solution of this thing, and I would do the same with the representatives of the States.

Mr. CREECH. Now in discussing the various courts, you have heard earlier today the question which was posed to Mr. Zimmerman concerning the traditional courts. The information which the subcommittee has received from the Department concerning the types of Indian courts makes no reference to any traditional courts and yet, according to the information which we have received from others, there are in fact traditional courts in existence.

It would appear from such information that the subcommittee has, that the tribal court figures for this chart include the traditional courts. I wonder, sir, if that is the case, and if you would, in fact, comment generally upon the existence of traditional courts?

Mr. HYDEN. Well, I have never seen any of them in action, Mr. Chairman, but it is my understanding that in the Pueblo country, there are some of these courts that are referred to as traditional courts.

I know practically nothing about them myself. As Mr. Zimmerman indicated earlier, the information that we can glean from reading the works of certain anthropologists and others, seems to indicate that the Pueblos, some of them, still have something of a theocracy, where their religion is tied in with the rest of their life. In fact, one important respected leader, one of the Pueblos, one time told me, "I love my religion, and, furthermore, no white man will ever understand it. I will never talk with him about my religion."

That indicated to me the attitudes of some of the Pueblo people.

Mr. CREECH. Now, sir, of the three Pueblo tribes which have accepted reorganization under the IRA, do they have both traditional and tribal courts?

Mr. HYDEN. I am sorry, Mr. Chairman, I do not know about the three who have accepted the IRA, whether they have these traditional courts or not. I would have to defer to somebody else.

Mr. CREECH. To your knowledge, sir, do the tribal courts operate on the basis of written law in every case?

Mr. HYDEN. Well, if we are leaving aside now these traditional courts we are talking about——

Mr. CREECH. Yes, leave aside the traditional courts.

Mr. HYDEN. The tribal courts I am talking about now are functioning under a law-and-order code that has been adopted by the tribe and approved by the Secretary of the Interior.

Mr. CREECH. So presumably, all of them would be written?

Mr. HYDEN. Yes, these law-and-order codes are patterned after the Secretary's own law-and-order regulations. They contain sections relating to substantive law and some sections relating to procedural law.

Mr. CREECH. We appreciate this, but we wonder if it had been called to your attention or if you had any information to the contrary, indicating that there were in fact some tribal courts which would be operating under written laws which are contrary to the traditional courts. Apparently you have nothing?

Mr. HYDEN. I am not informed on that.

Mr. CREECH. It has come to the committee's attention that in one case in the Court of Indian Offenses, the council was in the process of passing a resolution preventing the attorneys from practicing in court by charging a fee varying from $50 to $100.

Now, this apparently was after individual members of the tribe had sought legal representation against the wishes of the council.

We are aware of the position the Department has taken this year with regard to the availability of counsel and desirability for it. Are there any similar actions which are contemplated at this time to see that defendants before Indian courts have adequate representation? Is there any provision, for instance, or is any anticipated, for the assignment of counsel?

Mr. HYDEN. Not that I am aware of, Mr. Chairman.

Mr. CREECH. What is meant by the term "competency" as applied to the American Indian in its fullest context?

Mr HYDEN. Well, the term "competent" or "competency," as applied to the American Indian, generally does not deal with competency or incompetency by reason of mental disability or nonage. The term "competent" and "incompetent," mean nearly a synonym for restricted and unrestricted, with respect to his landholdings.

Mr. CREECH. The Code of Federal Regulations states that the records of the court of Indian offenses ar epublic information. How often does the Department examine the records to ascertain how effectively law and order enforcement is being carried out, or whether the authority is being misused?

Mr. HYDEN. Mr. Chairman, I cannot respond to that. I think Mr. Benge, the head of Law and Order, can give you the information there.

Mr. CREECH. Thank you, sir.

Now, the task force recommended that programs be developed with tribes and State governments looking toward the revision of tribal codes, and went on to say that the Department should insist upon constitutional guarantees of civil rights and Indian rights existing under the Department's regulations.

Do you know, sir, if there is any concerted action at this time to implement this recommendation of the task force?

Mr. HYDEN. No, I do not. In that connection, I would like to observe that these regulations did contain the one affirmative withholding of the right to counsel, and that, as you mentioned, has been repealed.

Now, from an examination of those regulations, you will not find any additional affirmative withholding of any rights. I would think that any program to strengthen the Indians' constitutional rights with

respect to the courts of Indian offenses would have to include an examination of the actual handling of cases at the court level.

Mr. CREECH. But at this time, you do not know of any program by the Department of the Interior to implement this recommendation of the task force that there be a revision of the tribal codes?

Mr. HYDEN. No, sir; I do not.

Mr. CREECH. Has the Department of Interior undertaken a reexamination of the Code of Federal Regulations to determine if other sections might be unconstitutional?

Mr. HYDEN. Not that I am aware of, Mr. Chairman. Of course, the regulations are constantly being amended and revised.

Mr. CREECH. Of course, I am referring to the situation that you mentioned earlier, the *Utah* case, where the Indian defendants had been refused legal counsel by a court of Indian offenses, and the District Court of Utah held that this was unconstitutional and, of course, a subsequent regulation by the Secretary——

Mr. HYDEN. I am not aware of any program underway to review the Code of Federal Regulations from that approach.

Mr. CREECH. Now, the Code of Federal Regulations, section 11.2(c), states here that reservations, by tribal jurisdiction, include fee patent land. You have discussed this today and given us your opinion.

I would like to know, what is meant by fee patent lands, by what process do Indians get lands in fee patent status?

Do lands held in trust become subject to State property taxes when they are converted into lands held by patent in fee, and does the State then have jurisdiction over these lands? Does the Indian owner of fee patent have the benefit of all the constitutional guarantees which the ordinary citizen has? Must not the court of Indian offenses or tribal court afford any Indian citizen owner who is a defendant in a criminal case all the protections afforded him under the Constitution?

I believe you have answered some of these questions in the Solicitor's opinions which you have given us. I wonder if you would comment generally on that?

Mr. HYDEN. Well, first, with respect to the lands, these individual holdings of lands came to the Indians through the allotment process. They were originally part of the communal holdings of the tribe, inside the exterior boundaries of the Indian reservation, and they were allotted to the Indian. A trust patent was issued therefor. By its terms, it provided that the United States promised to hold title for a term of 25 years, after which the title would be delivered up to the Indian—the land would be delivered up to the Indian in fee simple, without any encumbrance whatsoever.

Another section of the Allotment Act authorized the Executive to extend the trust and several extension orders, Executive orders extending the trust, have been issued from time to time.

Now the early law did not contemplate that the Indian could sell the land; it was restricted against alienation during the trust period, and it soon became evident that that was a hiatus in the law, and the Allotment Act was amended and there has been a number of statutes since then dealing with the sales of Indian lands.

Some of the sales statutes contemplated that the Indian could sell by deed approved by the Secretary, and the effect of that approved

deed would be the same as if a patent in fee had been issued to the purchaser.

Now as regards—I am not sure I can recall all your questions, Mr. Creech.

Mr. CREECH. I asked the question about the State property taxes when they are converted into lands held by the fee patent, does the State have jurisdiction over these lands?

Mr. HYDEN. The courts have held that during the trust period, the allotted trust lands are immune from State taxation, and that immunity terminates when the fee patent issues.

As mentioned earlier in my testimony, under the general Allotment Act and amendment thereof, when the trust is terminated, that allottee, according to the statute, becomes subject to the laws of the State, both civil and criminal.

However, if he is resident on the reservation, that jurisdiction of the State with respect to him has not been deemed to be exclusive. There is nothing in the statute that says exclusive.

So the Indian could be—an allottee who had received a patent in fee—could be amendable to the law of the State, and also, if he were within the jurisdiction of the court, the territorial jurisdiction of the court, he could be amenable to the tribal court.

And—excuse me—he is also, of course, amenable to the Federal law with respect to those matters over which the Congress has legislated.

Mr. CREECH. In view of the fact that he might be amenable to each of these three courts, does the Indian owner of a fee patent have the benefit of all the constitutional guarantees which the ordinary citizen has?

Mr. HYDEN. I would say he has the benefit of all of them at the hands of the Federal Government and the State, and as a great amount of the testimony has brought out here, it appears that he can be deprived by tribal action of certain of the guarantees and freedoms of the Constitution.

Mr. CREECH. What authority does the Department of the Interior have over these fee patent lands? Can they be transferred to the court of Indian offenses under the Federal regulations?

Mr. HYDEN. I do not regard it as a transfer of jurisdiction. There is no interference with the State jurisdiction at all. The Department regulations providing for courts of Indian offenses and the tribal codes providing for tribal courts assert this jurisdiction over the entire area within—over the entire mass of land within a certain described area. They assert it.

Mr. CREECH. In the Department's "Handbook of Indian Law," the 1958 edition, on page 445, it states:

> But in accordance with the well-settled principle that one sovereign will not enforce the criminal laws of another sovereign, State courts and Federal courts alike must decline to enforce penal provisions of tribal law.

In the Hoover Commission report of October 1948 on Indian law and order, it states:

> For example, a man (Indian) may decide that his marital difficulties are insufferable and walk out on his family which is residing on a Wisconsin reservation. If he goes to a Wisconsin city and is apprehended, reciprocity prevails and he will be returned to face charges of desertion.

Now, my question, sir, is who negotiates such an agreement with the State of Wisconsin?

Mr. HYDEN. Well, I guess I have to treat this as a hypothetical case. I do not know which—I assume there is a reservation involved where the tribe has a governing body, which exercises the executive and the legislative authority of the tribe.

I would think that it would be a thing negotiated between the State and the tribe, or the county and the tribe.

Mr. CREECH. Well, now, who would negotiate in behalf of the tribe? Would this be the tribal council negotiating with the State?

Mr. HYDEN. I would think so. It would depend on the nature of the process we are talking about.

Mr. CREECH. Well, I am going back to the Department's Handbook on Federal Indian Law, and I read again what it says:

But in accordance with the well-settled principle that one sovereign will not enforce the laws of another sovereign, State courts and Federal courts alike must decline to enforce penal provisions of tribal laws.

I would like to ask this, sir. Do you happen to know if the Solicitor has indicated whether he considers such arrangements as this legal?

Mr. HYDEN. I do not know.

Mr. CREECH. You do not know whether there has been an opinion?

Senator ERVIN. That would not be enforcing tribal law. That would appear to be returning a man to the reservation so that the tribal court, the tribal judge, could enforce tribal law. In other words, it is something in the general nature of extradition from one jurisdiction to the other.

Mr. HYDEN. It sounds like it; yes, sir.

Mr. CREECH. That is what it sounds like. In an extradition proceeding, I believe under the Uniform Extradition Act, all you have to do is allege that there is a statute and allege that this man has violated the statute, and that he was present in the jurisdiction at the time.

But I am just curious as to whether the Solicitor has indicated any opinion on this type of regulation?

Mr. HYDEN. I do not know.

Mr. CREECH. Is it your opinion, sir, that the State would be justified in returning an Indian to a tribal court to face a charge based on a statute which, if passed by the State, would be unconstitutional? In other words, if in this extradition proceeding asking that the State return this Indian, the tribe indicates the crime which he has violated, would it be your feeling that the State would be justified in returning him to face this charge?

Mr. HYDEN. I do not believe I could answer that, Mr. Creech. I think the attorney general for the State would be the proper one to interpret the law of that State.

Senator ERVIN. These passages that counsel read from did not state whether this was done pursuant to any law or agreement or anything, or whether it was just a sort of practical operation.

Mr. CREECH. That is correct, sir.

Senator ERVIN. It is a general principle of law that if any sovereign gets control of a person and then gets him back into the jurisdiction of

that sovereign, they can try him regardless of the process used to get him there.

We had something like that, which I shall have to say in some respects I cannot comprehend, in the Eichmann trial in Israel.

Mr. CREECH. The reason we pose this question is because we have not found any clarification of the situation, and we would appreciate it, if there are Solicitor's opinions on this, if we might have it for the record.

Mr. HYDEN. I shall certainly look for it.

Senator ERVIN. I would say it is a good question to pose, because the States ought not to be offering citizens refuge for those who have committed crimes on the reservation, who then flee into the State's territory. I think it is a very proper question.

Mr. HYDEN. That is reminiscent to me of the issue that was involved before the Arizona Supreme Court in the case of *Miller* v. *Begay*, in which the court concluded that a divorce granted on the reservation would be recognized by the State. They very carefully and studiously made it clear that they were not applying the full faith and credit clause which applies to States, but they were applying the common law doctrine that the divorce, valid where granted, would be recognized universally. Whether that court would rule that way today, after *Williams* v. *Lee*, is speculation, I guess.

Mr. CREECH. Sir, there have been some complaints particularly by the Rosebud Sioux, that local enforcement authorities have entered the reservation and made an arrest for violation of Federal laws.

We have been given to understand that this situation has been called to the attention of the Department of the Interior. My question is, did the Department of the Interior in turn call this matter to the attention of the Justice Department, and if so, what was the outcome? What was the outcome of your having called it to the attention of the Justice Department?

Mr. HYDEN. I do not recall the case, Mr. Creech, and from that, I think if it had gone to the Department of Justice or come to us to be considered for referral to Justice, I believe I would have read it.

Mr. CREECH. Perhaps we are not correctly informed.

Mr. HYDEN. Well, it may be that there is some misinformation, and it may be that Mr. Benge can clarify it for you.

Mr. CREECH. Sir, the committee's staff examined the correspondence files of the Secretary of the Interior, the Solicitor, and the Bureau of Indian Affairs. In the files which they examined, they found no records of appeals by Indians concerning judgments of Indian courts.

Does the Department receive such appeals or complaints, and if so, what is done with them? And if they are not received, would this indicate that the Indians are satisfied with their courts and do not appeal to the Department?

Mr. HYDEN. Well, the Solicitor's office does not receive any appeals. There again, dealing with the administration of the law and order regulations, I would have to defer to Bureau people who handle that.

Mr. CREECH. We had some discussion yesterday about the actions which are available to a defendant in an Indian tribal court or court of Indian offenses. The question was raised whether the defendant has available to him habeas corpus proceedings? What is your opinion, sir?

Mr. HYDEN. Since these hearings started, without having researched it and read whatever statutory law there is relating to habeas corpus, it has been my feeling, is my feeling, that under the doctrine of the *Peyote* case and the *Pueblo de Jemez* case, habeas corpus would not lie.

Mr. CREECH. And that he would have no recourse at all? He would just have to remain in the local jail?

Mr. HYDEN. That is right.

Mr. CREECH. Sir, we spoke to Mr. Carver about the review by the Department of its law and order regulations since 1934 to determine the extent, if any, of constitutional protection afforded other citizens, such as the right to counsel, would be available to Indian tribal members.

He indicated he felt this was more appropriately the type of question that should be directed to you, and perhaps Mr. Benge. I wonder if you could enlighten the committee as to the extent of review of your regulations?

Mr. HYDEN. Well, they are not reviewed by the Solicitor's office. These regulations are administered by the Indian Bureau, and I do know that the Law and Order Branch of the Indian Bureau is constantly working with them and recommending whenever they determine a certain revision is needed; they develop proposed amendments and start them forward to the Secretary for, if accepted, eventual publication.

So I do not know of any project of picking them up periodically and rereading them with a view to seeing what we can do to change them. But in the day-to-day work, of course, they try to improve them all the time.

Mr. CREECH. Now, the Fund for the Republic study which has been mentioned several times during the course of these hearings stated that:

> Federal law should require that tribal action safeguard certain basic civil rights and provide for appeal of civil rights cases to Federal and State courts.

I wonder, sir, if any action has been taken by the Department to bring about such safeguards as the Fund for the Republic study indicates are desirable?

Mr. HYDEN. No, sir; not that I am aware of.

Mr. CREECH. Now, are the tribal courts completely divorced from the Department's supervision, and if so, what action has the Department recommended to Congress that would give the Secretary authority to safeguard the individual's constitutional rights before such a court?

Mr. HYDEN. I am not aware of any recommendations to the Congress on this.

Mr. CREECH. Is it your feeling, sir, that it would require congressional action to provide for these safeguards, or that this is authority which the Secretary presently has?

Mr. HYDEN. With respect to these tribal courts?

Mr. CREECH. With respect to the tribal courts; yes, sir.

Mr. HYDEN. It is my feeling, Mr. Creech, that it is highly questionable whether the Secretary has the power to restrict the powers of an Indian tribe. From the case law, I reach the conclusion that

Indian tribes enjoy those powers sanctioned by the United States, and that a restriction of those powers is within the province of the Congress.

Therefore, I have grave mental reservations about the power of the Secretary, acting unilaterally, to restrict the powers of an Indian tribe.

Mr. CREECH. Thank you, sir.

Well, sir, yesterday, Congressman Berry testified before the subcommittee, and in the course of his testimony he referred to a letter which he had received stating that some tribal councils ignore the tribal constitutions.

If this allegation is true, do you feel that there would be any advantage in having even a Bill of Rights drafted into the tribal constitutions? What has been your experience in this regard, sir, concerning the tribal councils abiding by their constitutions?

Mr. HYDEN. Well, I saw some figures recently, collected information about the number of written constitutions that are in existence and the number that have a Bill of Rights in them. A large number of them do have a Bill of Rights in them.

Now, if the constitution of the tribe does contain a Bill of Rights and the tribal officials ignore it, then it seems that we were back where we were talking a while ago, about what is the individual's remedy, and the case law teaches me that he apparently has no remedy at this time under existing Federal law, regarding the Federal courts as creatures of statute.

Mr. CREECH. Sir, you just mentioned various tribal constitutions and your having given them some attention recently to ascertain which provide for the provisions of the Bill of Rights.

The Subcommittee on Indian Affairs of the House Committee published a document entitled, "Compilation of Material Relating to Indians, Serial No. 30, June 1950." This contained information relating to the constitutions, charters, and summary provisions of tribal constitutions. Some of the pages cited breakdowns by tribes of the various authorities given to them pursuant to the Indian Reorganization Act of 1934. This compilation has been useful to the subcommittee, and we would appreciate receiving any more recent compilation of this sort which the Department may have made of such materials, laws and regulations of the various tribes.

I wonder if you care to submit such information for the record?

Mr. HYDEN. I would be happy to submit anything that I can find that comes within that description. However, I am aware of no compilations by the Department other than the code of regulations, and, of course, it is under constant change. But that is not the class of information you are referring to here, I can see.

Mr. CREECH. No, sir. We had in mind the actual constitutions or charters. Perhaps you would care to review this report to which I have referred.

Mr. HYDEN. I would be happy to.

Mr. CREECH. Sir, I wonder if you would comment on this statement: Is it not a fact that the tribal courts are not courts, as lawyers commonly understand the sense of the word, that is as being separated from the executive and legislative influence, but are instead set up as an enforcement arm of the tribal councils?

Mr. HYDEN. I have heard that question asked several times here, Mr. Creech, and I have been trying to determine what my answer would be.

I would say the mere fact of the tribe, through its governing officials, creating a court, setting up a law and order system, to me is evidence of the separation of the judiciary from the executive and legislative functions of the tribe. So considered, I would think that these are courts, however imperfect they may be.

Mr. CREECH. Then I gather from your statement, sir, that your experience has not necessarily been that of the author of the letter which Senator Burdick quoted this afternoon, or an experience which Mr. Zimmerman cited of some 25 years gone by, of that sort?

Mr. HYDEN. No, I have had no personal experience with these reservation courts.

Mr. CREECH. I wonder if you would distinguish for the record what procedural opportunities are available to the reservation Indian, the nonreservation Indian and the offreservation Indian for having his constitutional rights enforced? In other words, what avenues of enforcement are open to each of these classes of Indians? What will they do when they believe their constitutional rights have been deprived?

Mr. HYDEN. Well, when the Indian is physically off the reservation, he is a citizen of the United States and the State and he is amenable to the law of the State. He would have the same remedies available to him as any other citizen for an infringement, impairment, or deprivation of his constitutional rights.

Senator ERVIN. And when he is on the reservation, the only remedies he would have would be those he could obtain at the instance of the tribal courts or tribal council?

Mr. HYDEN. Well, there it would depend on who was depriving him. Moving to the matter of the Indian on the reservation, he, like the nonreservation or offreservation Indian, would have all the rights and all the remedies available to others with respect to infringements of his rights by the Federal Government and the State.

As regards infringement of his rights by the tribe, he appears to have no remedies under present law.

Mr. CREECH. In furtherance of that statement, the subcommittee asked the Department for statutes, rules, or regulations concerning the matter of constitutional rights in a letter of July 28. The Department's reply, August 22, stated that the regulations in part 2 of title 25, Code of Federal Regulations, prove that Federal regulations will provide information concerning courts of Indian offenses.

Is this the only area of Indian affairs your Department considers to come under the purview of constitutional rights? If not, would you elaborate, please, on that, inasmuch as this section of the title concerns only the courts of Indian offenses. Your statement seems to imply that there are no constitutional problems concerned with tribal courts. That is what I am alluding to.

Mr. HYDEN. Well, of course, the activities of the tribal courts are not regulated by that set of regulations, as you know, Mr. Creech. So I am sure the Department did not mean to imply anything there.

Mr. CREECH. But originally, the tribal courts codes were approved by the Secretary, is that not correct, sir?

Mr. HYDEN. These tribal law and order codes?

Mr. CREECH. Yes, sir.

Mr. HYDEN. Yes, sir, and they are collected in the Indian Bureau. The Indian Bureau has a complete set of them.

Senator ERVIN. Would this not be a fair statement of the situation in that respect?

First, as you stated, the Indian, whether on or off the reservation, has all the rights of any other citizen in his relations to the Federal Government.

Second, that he has all the rights of a State citizen, plus such rights secured to him as a State citizen by the Federal Constitution, in his relation to the State.

And third, that he must look to the tribal law for such rights as—for any rights in his relation to the tribe?

Mr. HYDEN. Yes, sir.

Senator ERVIN. And so consciously, whether he receives any protection for basic rights, like due process of law, in matters involving his relation with the tribe, would depend upon the tribal law and the way in which the tribal courts act in respect to them?

Mr. HYDEN. That is right; yes, sir.

Senator ERVIN. And also, this third is true because the courts have held that the Indian tribe not being a part of the Federal Government, not being a Federal Government and not being a State, is not subject to the provisions of either the 14th amendment or the 5th amendment?

Mr. HYDEN. That is right.

Senator ERVIN. That is, the due process of law and so on.

Mr. HYDEN. That is right.

Mr. CREECH. Sir, do you feel that the responsibility for the programs of Indian affairs in this area, which you operate, includes the responsibility to prevent violation of the Indian's constitutional rights and to provide the Indian with all the constitutional rights of other citizens?

Mr. HYDEN. Well, Mr. Creech, I would think that in the performance of my duties, reviewing correspondence and writing opinions and the like, I certainly should do what I can to prevent an impairment of an Indian's constitutional rights.

Mr. CREECH. Thank you, sir.

I believe Mr. Waters has some questions.

Mr. WATERS. Thank you, sir.

Mr. Chairman, I do have a question.

Mr. Hyden has been so courteous and gracious and helpful to us, I wonder if he would not care to come back tomorrow, if that is agreeable with everybody, rather than start this later?

Senator ERVIN. I think we had better pile it on, because we have two witnesses for tomorrow and we are more than two witnesses behind on today's schedule.

Mr. WATERS. Will you tell us, referring to title 25, section 200, of the Code of Federal Regulations which provides that whenever an Indian shall be incarcerated in an agency jail or any other place of confinement on an Indian reservation or at an Indian school, the reported record of the offense of the case shall be submitted to the superintendent of the reservation or such officials as he may designate and such report shall be made a part of the agency office?

Will you tell us if such reports are currently kept in the office in Washington?

Mr. HYDEN. No, I cannot.

Mr. WATERS. Do you know if they are kept any place?

Mr. HYDEN. I do not know.

Mr. WATERS. Could you tell us who would know?

Mr. HYDEN. Is this a section in part 11 of——

Mr. WATERS. Title XXV.

Mr. HYDEN. I think Mr. Benge can tell you.

Mr. WATERS. Very well.

In connection with certain correspondence in the Secretary's Office the staff saw a letter from an assistant solicitor to an attorney in connection with his request to be heard preliminary to the issuance of decision concerning the purchase of tribal land. The response was made that matters giving tribal attorneys an opportunity to be heard prior to the issuance of decisions was being checked.

Can you tell me if the general rule is not to allow the tribal attorneys to be heard?

Mr. HYDEN. The general rule is to allow tribal attorneys to be heard. We have considered the matter of whether tribal attorneys are to be heard on merely formal matters, appeals, opinion, and the like, or whether tribal attorneys should be consulted by the Department of the Interior before the Department of the Interior wrote a letter or expressed its opinion on something that might have to do with that tribe. But very definitely, the Department strains hard to afford tribes and their counsel an opportunity to express their views on any matter of concern to that tribe.

Mr. WATERS. Also in connection with the correspondence to Senator Mansfield from an Assistant Secretary, I quote in part:

We do not know why the Blackfeet Tribal Business Council was not notified officially of the pending oil and gas lease sale advertisement. This is a matter handled by the Blackfeet Indian Agency and we are requesting a report.

Is it normally the practice to inform the business council of leases?

Mr. HYDEN. Well, no tribal land can be leased except by the tribe with the approval of the Secretary. This, undoubtedly, from what you read, had to do with the mere advertisement and invitation to submit bids subject to the acceptance of bids by the tribe and the execution of leases subject further to approval of the Department.

Mr. WATERS. In connection with your answer as to the fact that the Indians do not have too much of a recourse in connection with habeas corpus or any other court system, I would appreciate your reaction to a response from an assistant solicitor to the Commissioner of Indian Affairs, which touched on the power of the Ouray Band of the Ute Tribe. A letter dated January 17, 1959, provides that the provisions in section 4 whereby persons ordered severed or excluded from the reservation may appeal to the Commissioner of Indian Affairs, places on the Commissioner duties and responsibilities which appear administratively burdensome.

I wonder if you could tell us what other recourse might be available to an aggrieved individual?

Mr. HYDEN. Aggrieved by having been excluded from the reservation by the tribe?

Mr. WATERS. Yes, sir.

Mr. HYDEN. I am aware of no remedy to pursue.

Mr. WATERS. In other words, he would be without one?

Mr. HYDEN. I think so.

Mr. WATERS. Also, we are advised by a law firm representing the Spokane Tribe that its efforts to have incorporated into the tribal code a section providing for advice of counsel was overruled by the Indian Bureau. Can you tell us if it is the policy of the Bureau to continually preclude that when the tribe has requested it?

Mr. HYDEN. No, sir; I do not think that is the Department's policy.

Mr. WATERS. In connection with Mr. Carver's statement, he told us on page 12 that efforts had been made by the Bureau to encourage tribes to pattern their court systems after those of the States in which they reside. I wonder if you would tell us what particular efforts he was referring to?

Mr. HYDEN. I do not know, Mr. Waters. Maybe some Bureau representative could tell you.

Mr. WATERS. You do not know of any such efforts?

Mr. HYDEN. No, sir.

Mr. WATERS. He indicates on the last page that some tribes have included a Bill of Rights in their constitution and you were good enough to show me a compilation of the list of tribes which had that. Could you take a look at it and tell us how many have and how many have not?

Mr. HYDEN. This was furnished me just today by Mr. Jenkins of the Indian Bureau. This list shows that of 247 formally organized tribes, 117 of them have Bill of Rights provisions.

Mr. WATERS. And the number which have not?

Mr. HYDEN. Well, that would be, apparently, 130 of those that do not.

Mr. WATERS. In connection with the amendment of the quoted Federal regulations providing for the advice of the counsel in the courts of Indian offenses, we received word from some of the judges of that court that as late as last week they were still relying on the old code and not permitting counsel. Could you tell us what dissemination has been made to those judges of the amendment of the code?

Mr. HYDEN. No, sir; I cannot. I am quite sure the Bureau representatives can tell you, though.

Mr. WATERS. I am referring now to section 11.32 of the Code of Federal Regulations which provides that rules shall be approved in accordance with approved tribal customs.

Are you familiar enough with that that I should ask you about it?

Mr. HYDEN. I will certainly try to answer. I am familiar with that section, yes.

Mr. WATERS. Will you tell us how the tribal custom is determined?

Mr. HYDEN. Of course, in earlier days, most all of the Indian law apparently was custom law and unwritten. And I am quite sure that some of the tribes still have unwritten custom law, just as in the chairman's State, the Eastern Band of Cherokee have some customs that are not written. They are assignment laws, assignment of the use and occupancy rights and the like.

Now, just what the record would show with respect to tribes across the Nation as to how many of them have any written ordinance relat-

ing to testamentary disposition of personal property, I do not know that. That would require some research.

Mr. WATERS. Many of them, as you understand it, have no written code at all, is that correct?

Mr. HYDEN. That is right, a number of Indian tribes have no written code of laws.

Mr. WATERS. Are there any standards applied by the Department other than the tribal custom?

Mr. HYDEN. Under this regulation?

Mr. WATERS. Yes, sir.

Mr. HYDEN. I would say this regulation is designed to recognize the power of the tribe over the devolution of a decedent's personal estate. Now, the restricted properties of an Indian, both real and personal, are subject to probate jurisdiction of the Department. The Supreme Court, in the case of *Jones* v. *Meehan* held that an Indian tribe enjoyed, had jurisdiction over the devolution of the property of the members. That was an early case long before this restricted property came into being and the secretarial probate jurisdiction came into being.

So this regulation to which you refer is limited to unrestricted personal property.

Mr. WATERS. Have there been any complaints of unjust or arbitrary or discriminatory action with respect to the devolution of property which goes under it?

Mr. HYDEN. Not that I am aware of, no, sir.

Mr. WATERS. Mr. Carver's statement on page 3 indicated that the Yakima Tribe was strongly opposed to changing Federal law restricting bequests of persons not one-quarter Yakima. Are you able to tell us by what means the opinion of the tribe was determined?

Mr. HYDEN. It has been my understanding that the Tribal Council of the Yakima has been opposed to an amendment of that law or a repeal of it. I would be amazed to find that there was unanimity of opinion among the entire Yakima membership about that.

Mr. WATERS. You are aware of the strong dissenting group within the tribe itself?

Mr. HYDEN. I have heard that there was one, yes, sir, but the official representatives of the tribe, I have understood, have been opposed to tampering with that statute, repeal or revision.

Mr. WATERS. Thank you very much, Mr. Hyden.

Thank you, Mr. Chairman.

Senator ERVIN. Mr. Hyden, I want to express my appreciation for the very lucid manner in which you explained the distinction in the various areas of inquiry made of you. I want to thank you for the assistance you have given the subcommittee.

I also wish to thank Mr. Zimmerman for giving us the benefit of his experience in this field.

Also, I will say this. The Department and the Bureau of Indian Affairs has been very courteous in receiving delegations to appear before the Commissioner from time to time with respect to the problems of Indians. I know that on several occasions, I have been to the Commissioner with a delegation of the Eastern Band of Cherokees. On different occasions, I have had members of the Eastern Band come

to my office and tell me they have been over to discuss their problems with the Bureau of Indian Affairs. They feel like they have had every access to the department's representatives if they have any problems they want to discuss.

Mr. HYDEN. Thank you, sir.

Senator ERVIN. I think the committee will call one more witness, Miss Gifford. I should like to ask if it would be inconvenient for some of the other witnesses to come back tomorrow? I address this question to Mr. Jenkins, Mr. Bruce, and Mr. Benge, Mrs. Peterson, and Mr. Lazarus and ask them if it will be inconvenient for any of them to come back tomorrow?

Mr. JENKINS. No, sir.

Senator ERVIN. Then we will hear Miss Gifford and call it a day. We are sorry to have kept you unnecessarily long. I had four committee meetings today, plus a session of the Senate starting at 9 o'clock, plus several long-distance telephone calls I had to answer, plus two delegations that came to see me. We are sorry about the delay, and you have been very patient.

STATEMENT OF MISS SELENE GIFFORD, ASSISTANT COMMISSIONER, DIVISION OF COMMUNITY SERVICES, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Miss GIFFORD. I am Miss Selene Gifford, Assistant Commissioner for Community Services, Bureau of Indian Affairs. The Division of Community Services includes the activities of education, welfare, relocation, adult vocational training, and law and order.

I, therefore, advise the Commissioner on policy concerning these programs, direct the branches responsible for them, assist the area and agency offices in carrying out these activities, and maintain relationships with other Federal agencies and State governments concerning these responsibilities.

I have been with the Bureau of Indian Affairs since late 1949. Before joining the Bureau, I was Director of Planning for the International Refugee Organization with headquarters in Geneva, Switzerland. This responsibility was one of coordination of care and maintenance of refugees in camps and resettlement activities in the various countries accepting refugees.

Prior to that I was the Director of Displaced Persons for the United Nations Relief and Rehabilitation Administration with headquarters in London, England.

Prior to that I was Deputy Chief of Mission in Cairo, Egypt, for the same organization where we cared for the Yugoslav, Polish, and Greek refugees who were in camps in various countries in the Middle East.

Before my oversea assignments I had worked with Federal and private agencies in the United States.

Early this year I served on an expert committee at the United Nations.

I am in agreement with the statement by Secretary Carver on the matter of constitutional rights of Indians. Of course, since I am not a lawyer, my concept of constitutional rights may go beyond what the lawyers might properly regard as the bounds of such rights.

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But, in brief, it is my belief that Indian citizens are entitled to the same rights, privileges, benefits, and services as non-Indian citizens and that when the Indian people are denied these things, it is contrary to the U.S. Constitution if they are available to non-Indians and not to Indians.

I cannot believe that our system of justice ever contemplated allowing a vacuum to exist so that any person or group of persons could be denied the right of excess to appropriate courts.

I have in mind, in particular, the legal action necessary to provide such things as care and treatment of neglected, abandoned, dependent, and delinquent children, various types of welfare services and the commitment of insane and mentally ill persons.

We have encountered in the recent past a great many instances where State courts claim they do not have jurisdiction and are not furnishing these services to Indian people. Recently, the supreme court of one of our States, wherein services to dependent and delinquent children had been furnished by the State for many years, decided that for lack of legal jurisdiction over the Indian people on their reservations, these services could no longer be furnished.

This lack of jurisdiction is the basis for failure to furnish most services in the field I refer to rather than the fact that the recipients are Indians and as such are not constitutionally entitled to them. However, to me this closely approaches denial of equal protection of the law in contravention of the Constitution.

The services which need to be provided and which require legal action first are not services which tribes can provide, nor do I believe the Federal Government should establish them for one group of citizens, when States have such legal machinery and institutions already provided for citizens in their States.

The solution to the question of jurisdiction as presented in the types of cases I am referring to is not, therefore, I believe, an extension of Federal legislation to provide such services but rather to proceed as outlined in the recommendations of the task force report on pages 31 and 32. The pertinent recommendation to the subject I am discussing is No. 3 on page 32. It reads:

> That immediate steps be taken by the Bureau of Indian Affairs in cooperation with appropriate State governments, tribal governments, and congressional committees to prepare step-by-step transfers of jurisdiction to the States in selected causes of civil and criminal action. Among causes where transfer would be immediately beneficial and where testimony of tribal leaders leads the task force to feel that early agreement could be reached are the following: Juvenile affairs, commitments, and domestic relations. Important, but more difficult, are such problems as trespass, police protection, and the protection of constitutional rights.

If this can be carried out it will solve the jurisdictional problem over a period of time and it will assure the protection of persons in need of services, and the process of providing such protection will be by due process of the law.

Senator ERVIN. If I may say, I think that when the States deny services to Indians on reservations, we say if they are citizens within the State's territory, the States are merely carrying out the Constitution, which says, in other words, the 14th amendment only obligates the States—forbids the States to deny equal protection of the laws and due process of the law to persons within their jurisdiction So I expect the States are on pretty solid legal grounds in that position.

Take the State of North Carolina, for example. It would have no more duty to give service to Indians on reservations, than it would to give them to citizens in South Carolina, to go across another line.

But I agree with you on the thought that it would be in many cases, especially with reference to the smaller tribes, a very foolish thing for the Federal Government to undertake to assume the responsibility for providing all of the things for the reservation Indians that the States normally provide for the citizens, and make provision for these things.

Insofar, for example, as care and treatment of the mentally ill should be worked out by negotiation between the Federal Government and the States, because where you have a relatively small tribe, it would be an expense out of all proportion to the situation.

Miss GIFFORD. Mr. Chairman, I would like to make two comments on that, if I may. It seems to me that perhaps there is a legal basis here, and yet there is certainly an inconsistency. The Social Security Act, which helps States financially to provide assistance to the aged, the blind, dependent children, and so on, applies on all Indians on reservations, just as it applies off the reservations. So insofar as those categories of assistance are concerned, the States raise no questions. Yet the members of these Indian families that we may also have a concern with, and they are exactly the same families that the State already is giving assistance to, are not eligible for other kinds of services which the State gives to its other citizens. That is my first comment.

My second comment is that my remarks here really are dealing with only a few States who deny this responsibility, because there are whole States where this problem does not exist. There are several where the services which ought to be, we will say, made available to all citizens, are made available through the State process. It may be that the Bureau of Indian Affairs would give some financial assistance to carry that out, because the State could not afford to do it, but the State does not raise the question of whether or not they have the legal jurisdiction to take whatever steps are necessary. But there are a few States in which this is such a problem and reaching such a serious degree that we are confronted with great concern for individual welfare in situations where the Indian is in no position to protect himself, and where we seem not to be able to get across this hurdle.

Senator ERVIN. Yes.

Mr. CREECH. Miss Gifford, as the official in charge of the Division of Community Services, will you please tell the subcommittee of any areas within your jurisdiction where constitutional questions have arisen, and I have in mind such things as illegal police detention, excessive bail, failure or refusal of States to provide law enforcement, and/or public assistance programs in instances where the States have assumed jurisdiction under Public Law 280 over the Indian?

Miss GIFFORD. I have heard some of the witnesses and members of the task force indicate that they have heard complaints in these States that have gone under State jurisdiction. So far as I am aware, we have had no formal complaints around individual cases come in to us on these specific matters of constitutional rights. We do know about the Nebraska situation, where, in effect, there was very little law en-

forcement. I think some people think there was none, but at one point, I, myself, went out there and met with the sheriff, who was one of the nicest people I have ever known, but who was simply confronted with being one person and having more problems than one person can solve. But we have not had, to my knowledge, specific complaints come to our attention.

Mr. CREECH. Well, thank you.

Now you have mentioned in your statement, of course, the juvenile delinquent and the mentally ill. What happens at the present time to the juvenile delinquent or the mentally ill person on the Indian reservation?

Miss GIFFORD. In those States where we have a problem, and I would like to repeat, there are some States where we do not, but in those States where we have the problem, several things may happen.

We will take the juvenile offender first. If he has committed an offense which falls under the Federal crimes, then the case will be heard in a Federal court, the Department of Justice will have jurisdiction, and they will have, in effect, the custody of the child. But for the other kinds of actions which do not fall within the Federal category, we do whatever we can do. This may be that within the tribal setup, we try to work out something for this child, it may be that we will have to let the child go to one of our boarding schools. It may be that we can work out a purely voluntary agreement for a foster home placement somewhere, which we will pay for. We do whatever we can do. But we do this, as I am trying to indicate, without the usual recourse to the kinds of services, institutions, or whatever, unless we can get it voluntarily agreed to.

Because a tribal court that may take action around the activities of this particular boy has no resources that it can turn to; and a State court will not accept the decision of the tribal court as to what ought to be done with the boy.

Now in the States where the State is willing to accept the jurisdiction, the Indian child gets the same treatment as a non-Indian child would get.

Mr. CREECH. Well, now, is each of these juvenile cases brought to your attention, to your Department's attention? Because I notice you say you do whatever you can do?

Miss GIFFORD. Well, when I say we do whatever we can do, of course, not every individual case comes into the Washington office. Whatever can be done is done at the reservation level and with the assistance of the chief special officers or, in certain instances, advice and counsel from the welfare people at the area level. This is the point at which the actual solution is worked out. It is only the unusual case that, as an individual case, comes into Washington for assistance, advice, and counsel.

Mr. CREECH. So that there is no conformity to any particular standard or condition? It depends upon the reservation and the type of facilities which the local superintendent can arrange?

Miss GIFFORD. There is no conformity in actual solution. I think we could try to apply uniform standards, but our resources do not allow uniform performance.

Mr. CREECH. So I presume one area might receive much better treatment than another?

Miss GIFFORD. Quite.

Mr. CREECH. And this is because there is no provision made by the Federal Government for caring for the juvenile offenders?

Miss GIFFORD. Well, you see—yes, in a sense. Certainly the Bureau, and the Department of Justice, does not have all of the kinds of resources available for the treatment. For example, mental health or guidance clinics, to help in determining what is the best treatment for the child, these the Federal Government does not have. If they cannot be made available to us through the State resources, then, unless we can secure it through some private source, the child does not have the benefit of that additional guidance and help.

Mr. CREECH. Does the Department contemplate a program whereby it will have facilitate to care for the Indian juvenile delinquents in those situations in which the States refuse to cooperate?

Miss GIFFORD. As a matter of policy, we have not recommended this, simply because, as I tried to indicate in my statement, this would be a very large amount of money to be appropriated to one bureau to create facilities for one class of citizens, and to have those facilities in States that already have such facilities. And I might add that part of the overall policy, of course, of the Government as a whole, certainly in its budget process, is to attempt not to duplicate funds—that is, Federal funds—to be used for the same services. So we are charged, as it were, to cooperate with States, to work with States, to assist them financially if necessary, but not to duplicate the same services. So we have no such policy at the present time, Mr. Creech.

Mr. CREECH. What happens to the mentally ill Indian? As you know, the subcommittee held hearings earlier this year on the constitutional rights of the mentally ill.

Miss GIFFORD. Yes.

Mr. CREECH. During the course of those hearings, it was brought to the subcommittee's attention that there is a vacuum in this area of law insofar as the American Indian is concerned, and that some very deplorable conditions exist in some really very tragic cases.

Miss GIFFORD. Right.

Mr. CREECH. I wonder if you would tell us what the situation is with regard to the mentally ill Indian and perhaps illustrate it.

Miss GIFFORD. Yes, I will. Now again I repeat this is not true in all States. We have a very bad situation in one State, where the State has said that the county courts may not have their mental hygiene boards convened to make the decisions about Indians on reservations. Without the convening of such a board, there is no legal process by which you can get the determination of insanity and then follow under State law by the commitment procedure to the State institution. You cannot even get it if there is an attempt for a voluntary commitment. In other words, the relative of the insane person is denied the right of making the application for hearing and for commitment.

Now Senator Burdick referred to one of our cases this morning, and in his statement, implied that the problem was one of money, and if we would agree to pay, there would be no problem. I would simply like to say that in this particular situation, and we will talk with the Senator about this, it is not a question of money. We are prepared to pay the full cost for the care of the mentally ill person in the State

institution, even though, in this instance, this comes under Indian health, which used to be under us, and is now with Public Health Service. I know this is the policy.

This is true in the other places where we need commitments to institutions, because this is the type of service needed. We are prepared to pay the cost. The missing link is the due process by which we can get the person to the institution.

Mr. CREECH. Is this a rather recent problem?

Miss GIFFORD. No, I am sorry, in this particular State, it is not a recent problem. It has been going on for several years.

Mr. CREECH. Well, now, did not the Department of the Interior several years ago have an arrangement whereby it cared for the mentally ill? Were they not at one time admitted to St. Elizabeths Hospital here in the District of Columbia?

Miss GIFFORD. There were some cases admitted to St. Elizabeths Hospital. This was for several reasons, but the number of cases was not so large as I remember it. However, the real problem, and one which Health wanted to solve and which we wanted to solve, is that it was not good treatment for the insane person to be incarcerated so far away from their own people, and with the lack and loss of contact with their own families, perhaps, and so on. And then later, and I think this ought to be confirmed by Indian Health, St. Elizabeths became very overcrowded and was needed for persons in the District and from overseas, and this became a completely impractical solution for the insane person.

Mr. CREECH. The committee has received a letter recently from the Secretary of Health, Education, and Welfare. I am quoting from the letter.

> Due to gaps in jurisdictional responsibility, it is not always possible to make the necessary arrangements for psychiatric care if a disturbed Indian patient rejects voluntary commitment procedures. In several States, mental health boards and State and county judges have refused to hold sanity hearings for reservation Indians for the purpose of involuntary commitment. There is no Federal authority available for the involuntary commitment of mentally ill Indians. A similar jurisdictional gap adversely affects the provision of needed health services to neglected children who require foster home care.

Now with regard to the section of this letter which pertains to the mentally ill, it seems to be in accord with your statement.

Miss GIFFORD. Completely.

Mr. CREECH. I wonder, do you feel that the Department of the Interior, the Bureau of Indian Affairs, has the responsibility to recommend legislation to the Congress, if that is what is necessary, or do you feel that the Secretary himself possesses the authority to take action to fill these gaps in the law to provide for these individuals?

Miss GIFFORD. Well, I think Mr. Hyden really stated this with the precise legal language better than I can. I feel that we certainly have a responsibility to try to assure care for these people who need care. Now the method by which this gets done, how we work out the problem with the States, how we solve the jurisdictional problem is one that really, I think, the lawyers are better able to cope with than I, because it is very involved, and we hope that the insane and the dependent and neglected children get cared for, but there are other elements in this, too. And with the history of jurisdiction what it has been, I feel that they, perhaps better than I, know the perfect solution, but that

we have a responsibility to work toward that solution, there is no doubt in my mind.

Mr. CREECH. Just in passing, I would like to ask about the contractual arrangements which are made for these facilities. Is this done under the Johnson-O'Malley Act?

Miss GIFFORD. Yes. We have two authorities that we can use. We can use the General Services Administration over all contracting authority for special services, or we can use the Johnson-O'Malley contract procedure. We do both, depending upon what the situation is. So we do have, in some States, Johnson-O'Malley contracts that cover the care of persons in institutions, in other instances we have individual contracts for persons in foster care or what not. But there are two routes open to us and we use whichever is the most advantageous for the person being helped.

Mr. CREECH. Miss Gifford, I believe that you are charged also with the educational programs?

Miss GIFFORD. Yes.

Mr. CREECH. You have so many responsibilities, and I wonder, does the Department conduct any courses under their adult education program, which would provide the Indian with knowledge of his constitutional rights?

Miss GIFFORD. We have not set up anything so specifically labeled as this, and our adult education program is not operative on every single reservation. However, in several of them, of the reservations where we have the programs, if this is a matter of concern, then we will conduct this kind of a course.

I ought to explain that we have found that in conducting adult education courses, you cannot superimpose a course and say, "This is good for you." You have to find out what they are interested in and develop the course accordingly. So our adult education program at the moment is operated on that basis.

I would like to say, though, that we are, on the basis of the task force report, going to do something about how this total aspect can be presented, what form it can take, how we might go about it, and so on. I do not know what the plan will consist of, but we have this on our minds.

Mr. CREECH. And you are taking definite action in this direction to implement the task force recommendation?

Miss GIFFORD. Yes. I might add, it is going to, I think, have to include other divisions beside the Community Services Division, which I head. But we will work on this.

Mr. CREECH. I believe Mr. Waters has some questions.

Mr. WATERS. Miss Gifford, can you tell us whether or not you have made requests for funds in connection with your program?

Miss GIFFORD. I beg your pardon.

Mr. WATERS. Have you made requests that funds be appropriated by Congress for your program?

Miss GIFFORD. Oh, yes; the budget process does go through me, at least for these activities that I am responsible for.

Mr. WATERS. Do those requests always get out in the Department?

Miss GIFFORD. I would say the Department is pretty good to the Bureau. Certainly, I would not criticize the Department. It becomes a problem of what the total ceiling for the total budget may be

for the Government as a whole. So I would say that on the whole we come out very well on our requests.

Mr. WATERS. Would you say that your requests have been carried out?

Miss GIFFORD. Well, I would reply that the budget which we have presented for the specific things that I am interested in have certainly received very thoughtful consideration at the departmental level, and that the only limitations have been limitations which were not those of the Department but which were those of the total amount of money which the President could request. You see, I am sure you understand what the budget process is.

Mr. WATERS. Are you able to tell us, Miss Gifford, the number of people under your charge concerned with the management of property as opposed to those people charged with administration of personal rights?

Miss GIFFORD. I would have to look at the breakdown of personnel as we set it up in our budget process. I am not exactly familiar with how many are in the Administrative Division and how many are in Resources. I believe it is true to say that there are more personnel in the Division of Community Services than in any other of the major divisions in the Bureau. Whether that is the question you were really asking or not, I am sorry if I did not understand you.

Mr. WATERS. Are there any individuals in the Community Services Division who have charge of the management of property?

Miss GIFFORD. No.

Mr. WATERS. None at all?

Miss GIFFORD. No. I am sorry, I misunderstood.

Mr. WATERS. Thank you very much.

Senator ERVIN. The committee is deeply grateful to you for your assistance and your suggestions. We appreciate it very much. Any time in the future, if you have any recommendations you would like to make or suggestions or observations regarding our study, we shall be glad to receive them.

Miss GIFFORD. I assure you, Mr. Chairman, we want to help you, too, because we are hoping for much good to come out of this.

Senator ERVIN. We have a very difficult problem, from two aspects, as I see it. First is the legal situation which exists, and also the human problem; they are not easy to solve.

Miss GIFFORD. I appreciate that.

Senator ERVIN. Thank you very much.

The committee will stand in recess until 10 o'clock tomorrow.

(Whereupon, at 5:40 p.m., the hearing was recessed until 10 a.m., Friday, September 1, 1961.)

CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN

FRIDAY, SEPTEMBER 1, 1961

U.S. SENATE,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:15 a.m., in room 357, Old Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee), presiding.

Present: Senator Ervin.

Also present: William A. Creech, chief counsel and staff director, and Bernard Waters, minority counsel.

Senator ERVIN. The subcommittee will come to order.

The committee is delighted to have Senator Francis Case of South Dakota with us today. Senator Case has been interested all of his life in the problems of Indians.

Senator, we will be delighted to hear from you at this time.

STATEMENT OF HON. FRANCIS CASE, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator CASE. Thank you, Mr. Chairman.

Mr. Chairman, I greatly appreciate the invitation to appear before this subcommittee of the Senate Committee on the Judiciary, the Subcommittee on Constitutional Rights.

The specific area of the constitutional right of the American Indian, on which current hearings are being held, are to be followed later by hearings in various parts of the country during the recess to afford Indians and others an opportunity to testify.

I fully endorse this idea, and I hope that when the committee's schedule for the field hearings is finalized, that we in South Dakota will have the pleasure of your company in the Sioux country. It would give many of our Indian and non-Indian citizens a chance to be heard. I am sure they would contribute much that would be later helpful to the Congress.

And may I suggest at this point that you time your visit to South Dakota to allow a couple of days of relaxation. We have a pheasant season out there which opens on the 21st of October, and this year, in addition to a liberal bag limit on pheasants, nonresident hunters may shoot grouse and quail and partridge.

A tramp in some good South Dakota field, along with the proper equipment, a keen eye, and proper muscle coordination could result in the bag limit of the ring-necked pheasant, for which we are known worldwide. The possession limit for nonresidents this year is 20 for

the first 11 days of the season and 25 during the remaining 7 days. We have an 18-day season.

Many of the complaints coming to my attention over the years directed at Government by tribal council are that its decisions are final and that there is no appeal if the rights of an individual are denied in the concept of constitutional government as we treasure it.

Speaking with particular reference to tribal council government as on the South Dakota reservations, the council embodies the three branches of government in one relatively small group. The council enacts the ordinances, rules, and regulations, as the legislative branch. It employs the tribal judges to administer justice, and as the executive enforces its own actions that govern the daily life of the reservation Indian.

While it is true that the Secretary of the Interior can disapprove council action, it invariably seems to develop that the Secretary takes the position that since the tribe has the authority to act under a tribal constitution, there is no basis for disapproval of the actions it may take. The present system of tribal council government has resulted in a breakdown of law and order in the counties of reservation areas.

Following enactment of Public Law 280 in the 83d Congress, the State of South Dakota, through its legislature, agreed to accept jurisdiction of law and order in areas where there is tribal trust allotment land, but with the condition that the Federal Government assume part of the financial burden in proportion to the nontaxable Indian lands to patented land on which taxes are paid.

Under the so-called Johnson-O'Malley Act, contracts have been authorized by Congress with States for services rendered the Indians in the field of health, education, agriculture, and welfare. It has seemed to me that the act should be extended to cover contracts for the providing of judicial services.

In the present Congress and in previous Congresses I have introduced legislation which would amend the Johnson-O'Malley Act to include contract authorization for law and order enforcement.

At present it requires approval of the Bureau of Indian Affairs of the Department of the Interior, and consequently it has been difficult to get action.

Ever since becoming a Member of Congress, first as a Member of the House of Representatives, and since 1951 of the Senate, instances of injustice and the breakdown of law and order or denial of constitutional rights have been brought to my attention. My files are replete with many individual complaints. I shall not burden the committee with many individual cases, but I would like to state a few excerpts from a few letters. I shall not mention the names of individuals concerned, as so many have expressed a fear of reprisal, for which there is no appeal, that is, an individual Indian hesitates to voice his complaints against the tribal council because he is dependent upon the tribal council for approval of various transactions, leases, or business licenses, and so forth.

Some years ago an elected president of a council who was refused a seat as president, wrote about a delegation on its way to Washington as follows:

Mr. X (a member of the delegation) is being investigated for his bootlegging activities and is now out on bond awaiting trial in the tribal court. There is

also a complaint on file in court charging him with illicit cohabitation but the court is afraid to issue a warrant of arrest for fear of being fired—

that is, if the judge were to issue a warrant of arrest against a member of the tribal council, the judge might lose his job.

Mr. Y is now being recognized as tribal president by a coerced and intimidated council. He is, too, being investigated for his bootlegging activities. He is out on bond awaiting trial in March. There is a charge against him for embezzlement of tribal property.

On another occasion when a law and order complaint was brought to the attention of the then Commissioner of Indian Affairs, Dillon S. Myer, Mr. Myer wrote me:

Information of the kind contained in your letter and in Mr. Center's letter come to my desk constantly, demonstrating over and over again how greatly we need additional law enforcement facilities on Indian reservations or the transfer of responsibility to law enforcement agencies capable of dealing with the problem.

I had some discussion personally and also some correspondence with the U.S. district attorney in South Dakota. In one of his letters he wrote me as follows:

Much of the dissatisfaction in the present arrangement grows out of the fact that the Federal jurisdiction, where it now exists, is exclusive; i.e., if the Federal Government has jurisdiction, the State does not, and vice verse. Since the exact limits of Federal jurisdiction are not very exactly defined on a territorial basis, and since it is frequently difficult to fix the exact location at which a crime is committed, uncertainty often arises as to which government has jurisdiction. Sometimes even after a defendant has been tried and convicted, it is discovered that the boundary line was not where it had been assumed to be, and that the court which pronounced sentence had no jurisdiction, and the defendant has to be released. Sometimes the investigation of a crime is delayed while officers try to determine who has jurisdiction and responsibility for investigating the circumstances.

I want to read quite a bit more from that letter, but I want to interpolate this observation.

A few years ago we had a crime of murder occur, it was either on the Lower Brule or Crow Creek Reservation. The question of jurisdiction arose over the uncertainty as to whether the man firing the pistol was on one side of a barbed wire fence or standing on one side and firing his pistol across to the other side. On one side of the fence it was restricted Indian land, and on the other side of the fence it was patented land. I have forgotten now how the disposition was finally made, but I remember that the question as to the site of the crime or the side where the murderer stood was uncertain, and there was some uncertainty as to where the jurisdiction rested.

The most common occurrence of this question of jurisdiction is on a highway. The highway may rest partly on Indian or restricted Indian land, land that was acquired from an Indian or the tribe. The other side of the road may be on land obtained from someone who had a fee patent. In the case of an automobile accident where criminal negligence is involved or suspected it becomes difficult for the law enforcement officers to know where jurisdiction resides.

We have had instances where a county sent a sheriff or a deputy sheriff out to investigate a crime, and the sheriff or deputy sheriff was told by the Indian tribal courts that the county had no jurisdiction, because they felt that the crime—or if there were a crime—had oc-

curred where the land had been obtained from restricted Indian land or from an allotment or from trust land.

The last South Dakota legislature took action to accept jurisdiction on State highways. But there has not been adequate opportunity to determine what legal defenses will be raised there and whether or not this action extends to the so-called county roads or the Indian interior roads.

Now I resume the quotation from the letter by the district attorney. He wrote me:

> Of course this uncertainty could be eliminated if the State assumed full criminal jurisdiction, but apparently the State, and more particularly the counties involved, do not want to do so because of the added burden of expense; and the Indian tribes voted against it because apparently they feel they are better protected under the Federal administration, but if the State was to assume "concurrent" jurisdiction, the Federal Government could continue to administer criminal law, as it now does, and on the borderline cases either the State or Federal Government could prosecute, since both would have jurisdiction. This would eliminate the uncertainty as to who has jurisdiction and who is responsible because either or both would be. This would also allow the State to prosecute for the less serious crimes, such as public intoxication, issuing bad checks, minor assaults, driving while intoxicated, and similar offenses, which now are not investigated by Federal officers nor prosecuted in Federal court but, when Indians are involved, have to be referred to the tribal courts for attention.
>
> The existing situation with respect to jurisdiction over Indian matters, as we all know, is not satisfactory. I know that you have long realized this and are very much interested in making an improvement.

I understand that Representative E. Y. Berry has placed in the record numerous complaints along this line illustrating this jurisdictional problem. I shall not extend my appearance before this committee by duplicating what has already been submitted. However, if any member of the committee or anyone of the staff would like to examine my files for anything pertinent, the invitation is herewith extended.

The members of the committee or the members of the staff, Mr. Chairman, would be welcome to look at the correspondence in my office.

Senator ERVIN. The staff would be glad to accept that invitation.

Senator CASE. Thank you. And I might state that Mr. Arthur Juhnke, who I think is present in the room, who has been associated with me for many years, is quite familiar with this. I know that members of your staff are acquainted with him and would like to work with him on this matter.

Now, Mr. Chairman, in order that I may not be in the position of describing a bad situation without proposing a remedy, I want to make three definite recommendations to this Subcommittee on Constitutional Rights. They are intended to improve the status of law and order on Indian reservations. And in making them I am taking note of the difficulties of past approaches, those cited in the letter of the district attorney with respect to the attitude of the tribe, to their fear of going into the State courts, to the reluctance on the part of the State and the county to accept the financial burden. So my recommendations today are these:

1. That the judges for Indian tribal courts be appointed by, and subject to removal by, the judge of the U.S. district court within which the Indian reservation lies, and that the tribal judge be given the status of a U.S. commissioner; and that there be a right of appeal from the tribal court to the district court.

2. That there be concurrent jurisdiction between State and Federal law enforcement officers for crimes occurring on restricted Indian lands but that Indians on tribal rolls have the right to ask venue in the tribal or Federal courts.

3. That the tribal courts become courts of record and that a report of all actions and their disposition be filed with the clerk of the U.S. district court in which appellate jurisdiction rests.

I want at this point to observe that this would preserve the Federal jurisdiction which the Indians seem to feel they are entitled to. And it would provide a right of appeal. At the present time there is no appeal from the tribal court. Theoretically there might be if the person could get to the Secretary of the Interior, but the instances coming to our attention show how difficult it is to get to the Secretary of the Interior or to get action by him in case the person did get there. And, moreover, since the tribal court is appointed by and beholden to the tribal council, cases that affect the jurisdiction of the tribal council or its revenues or its authority carry a great handicap for the aggrieved party.

Senator ERVIN. The margin would give an added advantage to a substantial degree of an independent judiciary, that is, the tribal judge's independence of the tribal council?

Senator CASE. That is the intent. And of course we do have U.S. district commissioners in that area, but their jurisdiction is quite limited. My suggestion would be: Let the tribal court have whatever authority it may have, make a tribal judge independent of the council but responsible to the Federal judge of the district which would have jurisdicton over the larger claims, and establish appeal rights from this tribal court to the district court.

Senator ERVIN. I would like to observe that I think that is a most constructive suggestion. I have been much perplexed by the evidence that indicated that in all too many cases tribal courts were entirely subservient to the tribal council.

Senator CASE. Certainly the chairman knows far better than I that if a crime is to be investigated it should be investigated while the trail is hot, or at least warm. If the law enforcement officers must first determine whether the crime occurred on Indian land or on patented land, the trail goes cold. And if there is some uncertainty as to on which part of a divided highway a crime occurred, as far as land origin is concerned, then the determination of that may obstruct justice. And there is fear on the part of some of the Indians that if they go into a State court they go under some sort of a handicap. That is why I suggested that, although there be concurrent jurisdictions to assure that the case might be tried in court, so that the law enforcement officers will have court authority to investigate and arrest, yet—you notice the second clause of my suggestion is, "but that Indians on tribal rolls have the right to ask venue in the tribal or Federal courts." That, I think should remove any legitimate fear that they would be under any handicap in the trial of the ensuing case.

At the present time it is my understanding that tribal courts are in many cases not courts of record, that what is done or the facts that may be determined by the judge in court are not available for review. If you are going to have an appellate jurisdiction, of course, they would have to have some record of the action filed and disposition.

These recommendations, Mr. Chairman, are the result of my witnessing too many unsolved crimes occurring without adequate protection to the people who live in Indian country, both Indian and non-Indian, and of a conviction that the no man's land of conflicting jurisdictional questions and of the connection between judges and police and prosecutors should be ended if constitutional rights of the people are to be respected and made secure.

In conclusion I want to compliment your committee for going into a field where so much good can be done to guarantee to our citizens—Indian or non-Indian—their constitutional rights. I know it is your goal to retain that which is good, to amend that which can be improved, and to initiate that action which is necessary to assure that constitutional rights and justice be for all.

Senator ERVIN. I would assume as a general rule that the reservations on which Indians live are usually contiguous to rural or sparsely settled areas, is that right?

Senator CASE. That assumption would be correct in my State, at least.

Senator ERVIN. I think that is true generally. And the lands on the reservation are exempt from taxation, as I understand it.

Senator CASE. The restricted land is exempt from taxation. The Indians pay the sales tax in the stores, the regular stores. There is a question about that in some stores which are operated by tribes; there is a pending question on that. But the Indians, if they go into an ordinary store, will pay the State sales tax on whatever they buy the same as anyone else. But the lands which are in a restricted status, either by allotment to the Indian and held in trust for him or to a tribe and held in trust by the United States, are not taxed; nor is the income of the Indian from his allotment taxed. That is, if he raises cattle on the land allotted to him, those cattle are not subject to the personal property tax.

Senator ERVIN. Is that true even if a State under the recent act of Congress assumed first jurisdiction over a reservation?

Senator CASE. I think that would be true. The assumption of jurisdiction wouldn't repeal or change the tax laws.

Senator ERVIN. The result is that such an assumption of full jurisdiction by a State would impose upon the counties in which the reservation is located additional burdens, not only from the standpoint of the enforcement of the law, but from the standpoint of finances?

Senator CASE. That is true. That is the reason that counties have hesitated to accept the jurisdiction which was offered them in the law which Congress passed a few years ago, to which I referred. And you can understand that in many counties the heaviest burden so far as law enforcement is concerned comes from the Indian population. I say that regretfully and not unsympathetically, but it is true also that the largest—let me say it the other way around—the percentage of Indian children who become wards of the State or who go to the State school is out of proportion to the ratio of the Indian population to the non-Indian population. So that the counties and the States now do have a financial burden which is not liquidated by the revenue which comes from the Indian population, neither in the way of taxes

nor from the Federal Government. Our State of South Dakota has a constitutional provision that every child between 6 and 16 is entitled to go to school. Now, it is true that the Federal Government under the Johnson-O'Malley Act does provide some assistance. Also under the aid for impacted areas. And that has improved this situation. There was a time when that burden was bigger than it is now. Through this aid for impacted areas the State and the local school districts do now get some assistance. However, there is always some lag in that, and there is some extra burden because generally those payments are based on actual school attendance. The school districts have to maintain the schools and have the teachers whether there is truancy or not.

Senator ERVIN. I maintain that is as true in South Dakota as it is in North Carolina, that the local government or subdivisions such as the counties are dependent to a very high degree upon the property tax to support them; isn't that right?

Senator CASE. That is true. The principal source of revenue for the county and the school district, the property tax.

Senator ERVIN. And the assumption of jurisdiction with adequate law enforcement would entail considerable other expenses on properties that is already in most cases rather heavily taxed?

Senator CASE. Heavily taxed, and in many instances up to a legal limit of levy and assessment. The State has a sales tax, and most of the State revenue is derived from the State sales tax. But the counties, the school districts, the townships—their revenue is principally from the property tax.

Senator ERVIN. That is what it is in my State. We have a State income tax also, and a State sales tax. But most of the burdens of local government do rest essentially on property tax. When the State assumes full jurisdiction over the reservation under the recent act of Congress, it gets no compensation for taxes, but it acquires additional burdens from which it has to use other tax sources which are already burdened, is that true?

Senator CASE. That is true.

Senator ERVIN. Mr. Waters, do you have any questions?

Mr. WATERS. No questions.

Senator ERVIN. The subcommittee is certainly indebted to you for your appearance. Your suggestions are most constructive.

Senator CASE. Thank you very much.

Senator ERVIN. I am sure these suggestions you make with respect to the tribal courts and the question of current jurisdiction are something which could be implemented more readily than the other suggestions, which are rather long-range in purpose.

Senator CASE. Thank you very much, Mr. Chairman. And I do hope that you keep in mind South Dakota when you develop your itinerary.

Senator ERVIN. I would certainly love to go there.

Thank you very much.

Mr. CREECH. The next witness is the Honorable William B. Benge, Chief, Branch of Law and Order, Bureau of Indian Affairs, Department of the Interior.

STATEMENT OF WILLIAM B. BENGE, CHIEF, BRANCH OF LAW AND ORDER, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. BENGE. Mr. Chairman and gentlemen of the committee, I feel kind of inadequate after the imposing list of distinguished departmental witnesses that have been on here before me, and I am afraid they didn't leave much for me to say.

But I will read my statement anyway for the record.

My name is William B. Benge. I am originally from the State of Oklahoma. I am of Cherokee Indian extraction. I have been with the Bureau for 26 years. I graduated from public high school in Oklahoma, then attended Haskell Institute where I graduated from the commercial department. I started to work for the Bureau on a reservation in North Dakota. Following some 3 years of service in the field I came to the Washington office where I attended law school and earned a degree in law in 1941. I also was admitted to practice in the District of Columbia. Beginning in 1946 I was superintendent of the New York Indian Agency for 3 years. When the Bureau closed that installation I came back to the central office and began my present assignment in the Branch of Law and Order.

In connection with my work during the past 10 years I have perment on Indian reservations as any other person. I have seen what I think is some remarkable progress in the field of Indian law enforcement during the past 10 years. When I first became associated with the work, the policemen and judges who were responsible for administering justice and affording protection to the lives and property of the Indian people were receiving the lowest rates of pay of any employee in the Bureau. They were receiving on an average somewhere between $50 and $100 per month. As the result in many instances the persons who became policemen and judges were those who could not perform or hold any other kind of job. But in the past few years standards have been raised along with rates of pay so that at the present time, Indian police officers compare quite favorably with the city, county, and State police officers in salary rates and qualifications.

Not only are the qualification standards such as to require that the police officers employed on reservations have either experience or education, or both, in law enforcement work, but much has been done to establish and maintain a training program for the purpose of raising the performance standards of the officers. In each area and on each reservation, there are continuing police training schools of various levels. We receive a very considerable amount of assistance in these training programs from such Federal organizations as FBI, and from qualified State, county, and local police organizations. There is very little resemblance between the Indian police department on any particular reservation today to the police department that existed on the same reservation 10 years ago.

Although our Indian courts are much more advanced and thereby much more efficient today than they were years ago, the rate of progress in raising the standards for Indian judges has been much slower than with the police officers. Today we have many Indian

judges who are very capable persons and who dispense justice that has been said to be on a par with non-Indian courts.

Some of these Indian judges have college training, some have studied law, and some have held other judgeships at the same time they are performing as Indian judges. For example, one of our Indian judges is a judge of a tribal court, judge of a city court, and is a U.S. commissioner. At the same time, however, we have many with very little or no education and are barely able to read or write who, although doing their best, have been unable to do a real effective job of administering justice.

Some of the tribes have employed professional attorneys or retired or former State court judges to preside over their courts. It cannot, therefore, be fairly said that all Indian courts are good or that all Indian courts are bad.

Although we do not provide as much training for lack of proper resources, as might be desirable, there is a considerable amount of training offered and available to the Indian judges in all areas. In May of this year, for example, the Bureau in conjunction with the University of South Dakota held a 3-day seminar for the Indian judges in North and South Dakota. This same type of training in conjunction with the university has been held annually for the past several years. Similar training institutes with the assistance and cooperation of universities, lawyers, and judges have been held in the Northwest and in the Southwest for the past several years. Many of the judges profit from this experience and training, but others for lack of education do not profit greatly.

There is very little I can add to Secretary Carver's statement, with which I fully agree, on the constitutional rights of Indians. I know it is often said that Indian tribes are not subject to the U.S. Constitution. I do not believe this is entirely true. The Constitution, for example, prohibits slavery and it has been held that slaveholding within an Indian tribe is illegal under the 13th amendment. It does appear to be well established, however, that the restraints which the Constitution levies upon Federal courts and the Congress as well as upon the State may not be applicable to Indian tribes. For example, action by a tribal council that deprives tribal members of freedom of religion has been held not to be subject to the first amendment of the Constitution.

Even in view of this situation, some tribes have seen fit when adopting their own tribal constitutions to declare their intention to support and uphold the laws and Constitution of the United States. In these cases, although it has not been tested in the courts to my knowledge, it is my opinion that tribal members have the benefit of the same constitutional guarantees in relation to their tribal governments that non-Indians have in relation to the Federal and State governments. However, only a few tribes have included a reference to the U.S. Constitution in their tribal constitutions.

I am completely in accord with those who believe that Indian citizens should have the same constitutional rights, privileges, and immunities as non-Indian citizens. But I also believe that as Secretary Carver pointed out in his statement that insistence upon strict application in the Indian courts of the same rules and laws that apply in the non-Indian judicial system might have the practical effect of

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destroying the Indian court system and perhaps leave the Indian people in many instances without any protection whatever.

That completes my statement, Mr. Chairman.

Senator ERVIN. I am glad you pointed out that some provisions of the Constitution, such as the 13th amendment prohibiting slavery, do apply to reservations. This may not be correct as a general proposition, but it does seem that that would sustain the thesis that the provisions of the Constitution apply to the reservations, while those provisions of the Constitution that have to be implemented or protected by the Federal Government or by a State government do not apply. Do you think that would be true as a general characterization?

Mr. BENGE. Yes, I believe it would be.

Senator ERVIN. I am glad to note your observation to the effect that Indian courts are not all good or bad, and that the improvement which you have noted has occurred in them during the past 10 years.

In my younger days I practiced before justices of the peace in North Carolina, I found some justices of the peace absolutely unqualified for the office. But on the other hand, I found some that had served a good while and accumulated a fair amount of law and who had a very fine personal sense of justice and who discharged the real function of their office.

And I assume the same thing applies to the Indian courts.

Mr. BENGE. Yes.

Senator ERVIN. You were here a moment ago when Senator Case made certain recommendations about making the tribal judges appointed by the Federal district judge and allowing appeals to be taken from their rulings to the district judges.

Have you given any thought to proposals of that nature?

Mr. BENGE. No, Mr. Chairman, I have not given any thought to the recommendations made by Senator Case. I have given some thought to some other recommendations along similar lines.

Senator ERVIN. We would be pleased to have other recommendations for the solution of these problems.

Mr. BENGE. Without having discussed this with the proper people in the Department or the Bureau, these were my own thoughts in the matter: I think an intensive program by the Bureau and the Department to point out to the Indian tribes who have their own constitutions that they ought to accord their own members the same constitutional guarantees that non-Indian citizens have, and persuade them to change their laws and constitutions accordingly, which, followed by, or maybe preceded by, legislation that would make the Federal courts available for appeals from tribal court decisions where the appeal would be based on an allegation of a denial of constitutional rights.

I would think that it might unduly burden the Federal courts to have all appeals where the appeal would be on the merits of a case rather than on the allegation of deprivation of constitutional guarantees. I think this would then result in assurance to the Indian citizen that his constitutional guarantees were observed.

Senator ERVIN. I think that is a very fine suggestion. Of course, giving the Federal courts jurisdiction generally would also require the judge to learn a lot of tribal law, because the only fair system in

that event would be to provide that the appeals be determined on the basis of tribal law rather than on the basis of some other law. I think that is a very valuable suggestion.

Mr. CREECH. Mr. Benge, with regard to Senator Case's statement, on page 2 he says:

> The present system of tribal council government has resulted in a breakdown of law and order in the counties or reservation areas.

I wonder, sir, if you would comment on that statement.

Mr. BENGE. I certainly am not in a position to, and have no wish to, take issue with Senator Case. And I am sure that in speaking of a breakdown he had in mind a particular context.

I am not aware that there are any reservation areas where Indian courts are operating that could be said truthfully to be a complete breakdown of law and order; without knowing the context in which the Senator spoke I couldn't very well comment on that.

Mr. CREECH. Thank you, Mr. Benge.

Is the Bureau of Indian Affairs Manual available to the tribes on the reservations?

Mr. BENGE. I suppose it is, Mr. Creech, from the standpoint that there is at least a complete set of the manual in each agency office. I do not know that there has been any effort made to make the manual particularly available like, for example, putting a copy of it in the tribal business office, if there is one.

Mr. CREECH. Yesterday Mr. Hyden stated in his testimony that the tribal courts all operated under certain codes of law and order. And in House Report 2680 of the 83d Congress, the information supplied by the Bureau of Indian Affairs to the Committee on Interior and Insular Affairs indicated that over 60 Indian tribes, bands or groups did not have written codes of law and order.

And my question is: How many tribes enforce their own law-and order programs, and how many of this group have written codes, and how many do not have written codes?

Mr. BENGE. I would answer that by saying that perhaps there are more than 60 tribes that do not have written codes. But that does not mean that those tribes are enforcing or operating a system of law enforcement. To the best of my knowledge, the only groups that are operating law-enforcement systems without written codes are the Pueblos in New Mexico. I have forgotten how many there are. But they are the so-called traditional courts. And I might comment on that a bit, if I may.

I have always understood the term "traditional court" to mean that these are the same types of organizations or the same types of systems that the tribe traditionally has used ever since its existence. And we have understood it as being a traditional tribal court in that sense, whereas other tribal courts are those where the tribe has by affirmative tribal enactment established a court.

I think one of the pueblos, the Isleta Pueblo, does have a written code. It refers to the tribal court, it has a judge, and it has a code of laws that is reduced to writing. That was adopted by 1947, I believe. I would be glad to supply that for the record, if you wish.

Mr. CREECH. That would be very helpful.

With regard at least to the other two Pueblo which are under the I.R.A., you mentioned that only one to your knowledge has a written

code. How about the traditional codes in the other two tribes, could they just operate on the basis of precedence as remembered?

Mr. BENGE. I believe one other pueblo may have a court that is not actually a traditional court. This is the Zuni Pueblo. They have a judge.

Now, except with respect to Isleta and Zuni, in all the other pueblo courts, from the information we have gotten recently, the governor is designated as the judge of the court. And that is in line with the traditional system.

Senator ERVIN. The governor of the tribe?

Mr. BENGE. The governor acts as the judge of the court.

Mr. CREECH. Is the Department informed as to the provisions of these tribal codes and the procedures of these tribal courts?

Mr. BENGE. No, sir; it is not.

Mr. CREECH. So the Department does not know whether there is any deprivation of constitutional rights in these courts or not?

Mr. BENGE. From the standpoint of examining what their rules and their laws are, that is correct, sir.

Mr. CREECH. Have you received complaints as to the judgments of these courts?

Mr. BENGE. No.

Mr. CREECH. In a list of Indian courts supplied to the subcommittee by the Department, the Sisseton Reservation is listed as having no courts or judges of either type.

What action has been taken to provide these people with courts?

Mr. BENGE. The Sisseton Reservation is something separate and apart from the usual reservation system in this regard. The reservation was ceded back to the United States by agreement with the Indians, in return for which each member of the tribe got an allotment of land. This perhaps had the effect of destroying the reservation as an area of land to be designated as such.

The State of South Dakota assumes jurisdiction over all offenses committed by Indians in the former exterior boundaries of the reservation, except with respect to the major Federal offenses, which were taken into the Federal district courts. So that there is no need for an Indian court at Sisseton.

Mr. CREECH. When did the State decide to assume this jurisdiction?

Mr. BENGE. They have been assuming jurisdiction, Mr. Creech, to the extent of my knowledge, since I have been connected with this work. And that is over the past 10 years.

Mr. CREECH. And this is not to be confused with any assumption of jurisdiction under the provisions of Public Law 280 of the 83d Congress?

Mr. BENGE. That is right, sir.

Mr. CREECH. Have you had any complaints from the Sisseton Reservation area in South Dakota, that there are no courts available to them where this law enforcement can take place?

Mr. BENGE. Yes. I think it is fair to say we have received complaints, to the extent or to the effect that they would prefer to have an Indian system rather than the system that they are under. I don't think we have had any complaints that the treatment that they have

received has been unfair. They seem to feel that they will have a more effective system if they have an Indian system.

Mr. CREECH. Mr. Benge, would you inform the subcommittee, please, as to the number of tribal organizations, either formal or informal, that are under your jurisdiction? I have in mind even those on an informal basis such as tribal councils or business committees. We would be interested in knowing how many of these various groups under your jurisdiction have tribal codes, and how many have courts of Indian offenses, and tribal courts, and how many have tribal codes or tribal courts having a provision prohibiting licensed attorneys appearing before the tribal courts.

I think this is an involved question, and we posed it yesterday to Mr. Hyden as well. So if that information is not readily available today, the subcommittee would appreciate your supplying it.

Mr. BENGE. I can supply that for the record, Mr. Creech.

(The information is furnished in the appendix at pp. 242–250.)

Mr. CREECH. Thank you, sir.

Now, Mr. Benge, House Report 2680 of the 83d Congress has a section entitled, "Law and Order on Reservations," pages 136 through 152, in which the law-and-order situation on each reservation is summarized with respect to the existence of a code and court and other background relative to this area. This is the type of information which the subcommittee has in mind that would be very helpful to us if up-dated.

Mr. BENGE. I would be glad to supply that information.

(The information is furnished in the appendix at pp. 254–259.)

Mr. CREECH. Thank you, sir.

The day before yesterday, Assistant Secretary Carver said that under Public Law 280, Indian groups are fearful of hostile local and State attitudes and discrimination.

Has the Department, to your knowledge, made any studies of Indian opinions relative to this statement?

Mr. BENGE. I think it is fair to say that no formal study of this particular subject has been made. The viewpoints that we have received have come to us either from our contacts with the Indian people on the reservations in the field, or on the basis of a great number of communications which they have directed into the Department seeking to have the Department support an amendment to Public Law 280 to require Indian consent. This is the basis on which we expressed the view that the Indians have these fears.

Mr. CREECH. Now, in seeking requests that Indian consent be obtained before State governments assume jurisdiction under Public Law 280, has the Department reviewed the adequacy of State law enforcement in those jurisdictions where it has been assumed by the States?

Mr. BENGE. I don't believe it can be fairly said that we have actively reviewed the adequacy of law enforcement.

For example, in the Minneapolis area, where Minnesota and Wisconsin were among the States that were given jurisdiction by Public Law 280, the Bureau retained a staffman to act in liaison capacity between the tribes and the counties in the States to assure a smooth transition from the old system to the State system. And the information we got was that the transition was smooth in that, although there were a few rough spots, perhaps, where Indians may not have been

treated fairly, not because of the system itself but because of the feeling perhaps against Indian people in some quarters, complaints were made that maybe they didn't receive proper treatment. But on the whole, except with respect to the State of Nebraska, it has been our impression that the system, the services furnished by the States and counties, have been adequate and above and beyond what they had prior to Public Law 280.

Mr. CREECH. Why do you make that statement?

Mr. BENGE. We have had complaints that the counties in Nebraska were not financially able to provide the services that were needed.

Mr. CREECH. That falls very much in line with information which has just come to the subcommittee's attention that there are some areas in which the States have assumed jurisdiction under Public Law 280 have allowed county option. And some of the counties have refused to accept this jurisdiction. And I wonder if you would care to comment further on this vis-a-vis the Department's position in administering law enforcement where it has been officially assumed by the States, where there are allegations, and apparently the Department concurs in some of these statements, that enforcement is not adequate. Does the Department feel that it is still incumbent upon it to provide some assistance to the Indians in those States?

Mr. BENGE. That is a question which has partly a "yes" answer, I think, Mr. Creech, and partly a "no" answer.

I say that because, as I indicated, in Minnesota and Wisconsin we did keep somebody on the job for a period of time to insure smooth transition. In other areas we did not. The jobs that were available before were abolished, and we did not keep anybody on the job.

Personally I think in all such cases it should be incumbent upon the Bureau to see that a smooth transition does occur after a change like this takes place.

Senator ERVIN. Now, in that regard, isn't it true that the Bureau does have the responsibility to provide adequate law enforcement on Indian reservations until such time as the State provides adequate law enforcement?

Mr. BENGE. At least morally; yes, sir. Now, there may be a question as to the Bureau's legal capacity to provide some law enforcement in some instances where the State has taken over, as the effect of the statute (Public Law 280) is to terminate the application of the Federal statutes.

Mr. CREECH. Has the Secretary made recommendations to the officials in those counties where your investigation reveals that they have no accurate law enforcement for the Indian areas?

Mr. BENGE. Such recommendations as have been made, have been made by our local superintendents, the agency superintendents, rather than by the Secretary.

Mr. CREECH. What has been the result of these recommendations?

Mr. BENGE. Well, I would say that, except again with respect to Nebraska, where apparently a particular problem does exist with respect to finances, that the results have been good. I am speaking now particularly with respect to Washington, where complaints coming to the superintendent about inadequate law enforcement services on those reservations where the State has assumed jurisdiction, I think,

have resulted in the sheriffs making every effort to provide the service that is needed.

Mr. CREECH. And in the case of Nebraska, I presume the Department participates in making recommendations there?

Mr. BENGE. Yes, sir.

Mr. CREECH. Is there some immediate action contemplated?

Mr. BENGE. We understand that the State has now passed a statute that would provide financial aid to those distressed counties where the help is needed.

Mr. CREECH. How are offenders in those Indian areas and reservations in which they have the tribal and traditional courts, detected, arrested, summoned, and brought before the jurisdiction of these courts?

Mr. BENGE. I didn't understand the question.

Mr. CREECH. In those Indian areas and reservations in which they have the tribal and traditional courts, how are the offenders brought before them, detected, arrested, summoned, and brought actually before the jurisdiction of these courts?

Mr. BENGE. The system differs very little from any average law and order system. If the police officer observes a violation of a regulation or law that applies, an arrest may be made without a warrant. If an allegation is made that somebody has violated a law, the complainant is required to sign a complaint, and the court issues a warrant of arrest which is delivered to the police officer to execute. The person is arrested on the basis of a warrant, brought before the court, arraigned as in an ordinary case, given a chance to make bond if he pleads not guilty, and is released on bond to come back for trial at a later date.

Mr. CREECH. Senator Anderson in a letter to the chairman of the subcommittee indicated that it had been brought to his attention that in some instance Indians who were not living on the reservation have actually been arrested by the tribal police, and found themselves tried before tribal courts. Of course inasmuch as they were not reservation Indians, the tribal police had no jurisdiction over them, and the courts in turn had no jurisdiction over them. Because they had physical control over them they were arrested. These cases have not been reviewed by the district court, because it had no jurisdiction in these cases. Is this a problem that you have encountered in your investigation?

Mr. BENGE. No, sir. I assume you refer to arrests being made on the reservation of somebody who is visiting there from off the reservation.

Mr. CREECH. I gathered from the information which I have, which is not complete, that perhaps these Indians were living on the land adjacent to reservations, but they are not reservation Indians.

Mr. BENGE. I would say this, Mr. Creech, that if it is an arrest that occurs on the reservation, there isn't any question as to the jurisdiction of the Indian court or the police officer to arrest under appropriate circumstances, either in the commission of an act or in the execution of process. The courts' jurisdiction is a mixture of both territorial and personal jurisdiction. And most codes, as well as the departmental regulations, provide that any Indian who is a member of that tribe or a member of another tribe who commits any of these offenses within the reservation is subject to the jurisdiction of the courts.

Now, if it is a matter of an arrest being made outside of the reservation, usually no jurisdiction arises, and such an arrest, I would say, would be illegal. The Navajo Tribe extended the jurisdiction of its court and laws to a large number of people who live in the area adjacent to the reservation on the east side of the reservation. These people live on tribal land or allotted land or other type of land that has been acquired for Indian use. They live in tribal relations. The tribe took action to extend its jurisdiction to those people so that they would be given some police protection. The tribe does provide police officers to patrol in that area. But in the normal circumstances an Indian court's jurisdiction or the authority of an Indian policeman does not extend outside of the reservation boundaries.

Mr. CREECH. The situation you described was done with the concern of those persons living in the adjacent area?

Mr. BENGE. Yes.

Mr. CREECH. And of course with the consent of the Department?

Mr. BENGE. Yes, sir.

Mr. CREECH. Does an Indian tried by either a tribe or a traditional court have a right of appeal, and if so, to whom?

Mr. BENGE. I cannot tell you, Mr. Creech, about the traditional courts among the Pueblos, because I don't know. But in all other Indian courts with which I have any experience there is an appeal to the Indian appellate court. Under the regulations of the Department, for example, a provision is made that any person aggrieved by the decision of the court, may appeal to the appellate court consisting of all the judges sitting together as an appellate court. And usually this type of provision applies with respect to tribal courts.

Mr. CREECH. The allegation has been made that in some of these instances the judges have not been appointed, and that that vitiates the effectiveness of this regulation. Thus, there is no one to hear these appeals. Is that true, or are there areas in which appellate judges have not been appointed?

Mr. BENGE. There are no areas in which this is true, to the best of my knowledge. It may be true that there is only one judge who is actively on duty. He may be a chief judge. But where occasion arises for an appellate court, provision is usually made for the appointment of associate judges who can act as an appellate court.

Mr. CREECH. I may not have gotten everything that you said. I think I did. If there is only the one judge in residence, then if you took an appeal you would be going before the same judge who had just tried you; wouldn't you?

Mr. BENGE. No, sir; other judges must be appointed. There is provision made for associate judges to be appointed. And when the occasion demands, these associate judges are appointed so that they may act as an appellate court.

Mr. CREECH. And you have received no complaints?

Mr. BENGE. No, sir.

Mr. CREECH. Well, this is very interesting, because it's one of the situations which was described to this subcommittee by Senator Anderson and the information had been brought to his attention.

Mr. BENGE. I am not ready to submit this for the record at this time, Mr. Creech, because our information isn't complete. But we have asked for information from all of the areas and all of the Indian courts

about appeals. We have found that from the incomplete information we have from 13 reservations, there have been only 23 appeals made from the decisions of Indian courts in the last 2 years. Six of these appeals were still pending. Two of the appeals resulted in reversal of the lower courts by the appellate court. In two others the sentences imposed by the lower court were reduced by the appellate court. Two of the persons who appealed failed to appear to go through with their appeal. And in 11 cases the appellate court affirmed the decision of the lower court.

But I would submit the documented form for the record as soon as we get everything we have from the field on this.

Mr. CREECH. Thank you, Mr. Benge.

Now, Mr. Benge, are there any cases in which the tribal policemen also serve as judges?

Mr. BENGE. No, sir.

I should amend that, Mr. Creech, to say none to my knowledge.

Mr. CREECH. None to your knowledge?

Mr. BENGE. No, sir. And certainly there would be no case where a policeman employed by the Bureau would be permitted to serve as a judge. But I have no knowledge of any policeman who serves also as a judge.

Mr. CREECH. Now, I believe that you stated that you are in agreement with the position of Undersecretary Carver that the application of the same rules and laws to Indian courts as apply to non-Indian courts has the effect of destroying the Indian court system. Would extending the Bill of Rights to cover those courts have that effect even if all the trial procedure niceties are not required?

Mr. BENGE. I would not think so, Mr. Creech. I think if the usual protections that are accorded in the Bill of Rights were made available to the Indian citizens in relation to their own tribal governments and their tribal courts, I do not believe it would have the effect of destroying them. What I meant to convey was that if all the technical rules of evidence and all the things that are observed in the district courts, for example, were required to be observed in our Indian courts, I don't think our Indian judges would be able to cope with them.

Mr. CREECH. Now, to what extent are the tribal policemen under the direction and supervision of Government officials?

Mr. BENGE. Well, this of course varies from one reservation to the other. In some cases all of the policemen are Bureau employees, and are subject to the direction and supervision of the Bureau. In other cases all of the policemen are tribal employees and might not be subject to the supervision of the Bureau. And then there are some other places where there is a mixture, where some of the police are employed by the Bureau and some by the tribes. In most of these instances all the police departments by agreement with the tribes are subject to the Bureau's supervision and direction.

Senator ERVIN. I am going to have to go to the Senate floor and vote. I just want to ask you one question.

Have you ever had an opportunity to see the drama that is given at the reservation of the Cherokees in North Carolina, "Unto These Hills"?

Mr. BENGE. I certainly have.

Senator ERVIN. It is certainly well presented, and sort of makes all of us rather ashamed of the way the Cherokees were treated. And I think it is a rather graphic tale.

Mr. BENGE. I certainly agree, sir.

Mr. Creech, if I may at this point, let me say this: Yesterday I believe you referred, in talking with Mr. Hyden, to a Hoover Commission statement about the return of Indians to reservations from which they have gone after having committed a crime.

Mr. CREECH. Yes.

Mr. BENGE. And you asked if there had been any departmental or solicitor's review of this matter.

Mr. CREECH. Yes.

Mr. BENGE. I did not this morning, in the short time before the hearing, find the Hoover Commission report. But we did some searching last night after we left, and we did find that this precise question had been considered by the Solicitor, and is the subject of a formal opinion. In 1941 this question was presented precisely to the Solicitor, whether or not there is authority between a tribe and a State to effect an extradition. And the Solicitor held that there was no such authority, because extradition is a matter of constitutional law, and a State may not enter into extradition with a tribe because a tribe is not a State. A tribe of course has the power to provide for extradition from the reservation back to the State, but it does not flow the other way. I would be glad to submit for the record a copy of that opinion now.

Senator ERVIN. Thank you very much, Mr. Benge.

(The opinion referred to is as follows:)

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, August 14, 1941.

57 I.D. 344.
M. 31194.
The Honorable the SECRETARY OF THE INTERIOR.

MY DEAR MR. SECRETARY: My opinion has been requested by the Indian Office on the general subject of the authority and procedure for the extradition of Indians to Indian reservations from which they have fled, for the purpose of trial for the commission of offenses or for execution of sentence. The Indian Office has phrased the problem as follows:

"The question arises whether or not an Indian may, under authority of an Indian Court, be taken against his will from one reservation to another or from any other place outside the reservation to a reservation, or from one State to an Indian reservation in another State in order to try him before the Court of Indian Offenses or to carry out a sentence previously imposed. * * *"

The presentation of the question follows a letter of February 3, 1941, from the Chief Special Officer to the Indian Office reporting that extradition of Indians is important to the efficient operation of Indian courts, particularly in dealing with cases of desertion, and that, due to the doubt as to the authority for such extradition, the position has been taken that extradition should not be attempted except within the boundaries of one State.

To consider this question I have divided the problem into two parts: First, extradition of an Indian within the jurisdiction of a State, and second, extradition of an Indian from another Indian reservation.

(1) *Extradition from within State jurisdiction.*—If an Indian has fled from the reservation where he has committed an offense and is within the jurisdiction of the State, the question of extradition is the same whether or not the State is the one in which the reservation is located. In either case there can be no extradition unless State officers are authorized to extradite fugitives from Indian reservations. It has long been decided that extradition by a State is not a matter

of discretion or comity but is governed exclusively by the Constitution and laws of the United States. *Ex parte Morgan*, 20 Fed. 298 (D.C. W.D. Ark. 1883); *United States* v. *Meyering*, 75 F. (2d) 716 (C.C.A. 7th, 1935). The Constitution in Article IV, section 2, provides for extradition between States, and the statutes of the United States in 18 United States Code, section 662, provide for extradition either from a State or Territory. The *Morgan* case expressly held that there can be no extradition to an Indian reservation on the request of the tribal authorities as a reservation is neither a State nor a Territory. My conclusion, therefore, is that until legislation is obtained authorizing action by the States in this situation there can be no extradition of Indians from the jurisdiction of a State.

(2) *Extradition from another Indian Reservation.*—Two questions are basic to this discussion: (a) The power of reservation officials to authorize extradition from the reservation of refuge, and (b) the authority to hold the prisoner in custody during transit outside the reservation.

(a) Neither the Indian Service nor the Interior Department has authority to cause the extradition of an Indian from one reservation to another. Such authority would have to be based upon statute. Not only is there no statute, but the statutes which would have authorized at least removal of an Indian from a reservation not his own by Interior Department officials in their discretion were repealed. The repealed statutes, sections 220 through 226 of title 25 of the United States Code, authorized the Commissioner and the Indian Agent to remove from reservations persons found there contrary to law, or thought to be undesirable, or absconding Indians, and to obtain the necessary force to effect such removal, including use of the military forces. These statutes were held to authorize the removal from an Indian reservation of Indians not belonging there, but not to authorize the forced return of such Indians to another reservation. *United States* v. *Crook*, Fed. Cas. No. 14891. Thus at no time, even when most authority was lodged in the Indian Service, was there authority to return fugitive Indians to reservations against their will.

However, an Indian tribe has authority to remove from its reservation persons who are not members of the tribe (55 I.D. 48–50). Moreover, the law and order regulations expressly authorize the Courts of Indian Offenses to order the delivery of offenders to the proper authorities of a tribe or reservation, as well as to the proper authorities of the State or Federal Government, where such authorities consent to exercise jurisdiction (25 CFR 161.2). I have no doubt that part of the unabridged sovereignty and authority of Indian tribes is to request of other tribes the return of fugitive members and to act upon such requests to the extent of removing the fugitive from the reservation or of turning over the fugitive to the proper authorities of the tribe requesting extradition.

(b) It is apparent from the foregoing that, if reservations were contiguous, extradition could be effectuated by the Indian police removing the fugitive upon court order to the border of the reservation where he could be received by the Indian police, acting upon the authority of the court of that reservation. Where, however, the reservations are not contiguous, a problem arises from the fact that the Indian police established under the appropriations for maintaining law and order on Indian reservations have no authority outside the Indian reservation for which they were appointed (18 Op. Atty. Gen. 440; Memo Sol., Int. Dep't, May 5, 1939, pt. IV). Even where there are tribal police appointed and paid by the tribe, it is doubtful whether the authority of such police to hold another Indian in custody would be recognized outside an Indian reservation, since Indians outside the reservation are subject to State law, and since as a general rule peace officers of one sovereignty have no more authority outside that sovereignty to hold a person in custody than a private citizen. You will note that State officers are given authority to hold fugitives in custody during extradition across other States by the Federal statute adopted under Constitutional authority (18 U.S.C., sec. 664).

The fact that extradition may exist and function between separated tribes when implemented by Federal authorization is revealed by the treaties made by the United States with each of the Five Civilized Tribes in 1866 (14 Stat. 755, 769, 785, 799). These treaties provided for a general council composed of delegates from all the Indian tribes in the Indian territory with "power to legislate upon all subjects and matters pertaining to the intercourse and relations of the Indian tribes and nations resident in the said territory, the arrest and extradition of criminals escaping from one tribe to another, the administration of justice between members of the several tribes of the said territory * * *."

This power existed until the acts of Congress, beginning with the act of June 7, 1897 (30 Stat. 83), placed jurisdiction of Indian offenses in the Indian Territory in the United States courts in the Territory and abolished the tribal courts and tribal governments in that Territory. Extradition power in the Indian Territory was implicitly recognized by the Attorney General in an opinion in 1883 (17 Op. Atty. Gen. 566), advising this Department on the disposition of an Indian held prisoner at Fort Reno, Oklahoma. The prisoner was a Creek Indian who had murdered an Arapaho Indian on the Potawatomi Reservation in the Indian Territory. The Attorney General said:

"If no demand for Foster's surrender shall be made by one or other of the tribes, founded fairly upon a violation of some law of one or other of them having jurisdiction of the offense in question according to general principles, and by forms substantially conformable to natural justice, it seems that nothing remains except to discharge him."

While Indian tribes have complete legal authority to seek and grant extradition, the custody problem needs solution where the two reservations are not contiguous and the prisoner refuses to remain in the custody of the Indian police officer while outside either reservation. In this situation it would appear necessary to obtain authority for holding a prisoner in involuntary custody between the reservations, in order for extradition between separated tribes to be accomplished, when the prisoner is not otherwise subject to custody by the agents of the tribe or the Department, as in the case of minors and mental incompetents (*Peck* v. *A.T. & S.F. Ry. Co.* 91 S.W. 323). Legislation would be appropriate to authorize Federal law enforcement officers or the tribal police to hold prisoners in involuntary custody outside of Indian reservations as agents of the tribe seeking extradition. Consideration might be given in this connection to the legislation proposed by the Indian Office to enlarge and define the duties of Federal law enforcement officers on Indian reservations.

Respectfully,

(Sgd.) FELIX S. COHEN, *Acting Solicitor.*

Approved: August 14, 1941.

(Sgd.) OSCAR L. CHAPMAN, *Assistant Secretary.*

Mr. CREECH. Now, Mr. Benge, going back to the Code of Federal Regulations, I believe 11–2–D, in effect states that Indian employees in the Indian services are subject to the jurisdiction of courts of Indian offenses. Are these employees subject to the jurisdiction of the tribal courts on reservations where there are no courts of Indian offenses?

Mr. BENGE. Generally, yes, they are. Generally, even the tribal code has a provision very similar to that in the departmental regulation. In some cases it provides, as do the regulations, that a sentence imposed by the Indian court may not be executed until the Secretary has approved it. In some of the tribal codes, however, the provision varies slightly. It provides that a sentence imposed by a tribal court on a Bureau employee who is subject to that court shall not be executed if the Bureau employee decides to appeal the decision of the court to the Secretary for his approval.

Senator ERVIN. But the employee always has available to him the appeal to the Secretary. Now, does that court, the tribal court, have exclusive jurisdiction over those employed in the Indian service in those areas in which there are no courts of Indian offenses?

Mr. BENGE. No, sir. I think the provisions of both the regulations and the tribal codes contemplate that their jurisdiction, whatever it may be, and to whomever it may attach, is not exclusive, but is concurrent.

Mr. CREECH. Now, section 11.10 requires the superintendent to appoint a clerk of the court for each court of Indian offenses. I would like to ask if it is a fact those clerks have been appointed?

Mr. BENGE. The practices vary, Mr. Creech. In some bureaus, the clerks are hired with bureau funds to be clerks of the court. In some instances, where there is not any money available the superintendent designates some other employee to act part time as the clerk of the court when the court meets.

Mr. CREECH. But it is your understanding, then, that there is a clerk for each of these courts?

Mr. BENGE. Yes, sir.

Mr. CREECH. Now, you mentioned the availability of the money. Is there no prescribed salary range for these clerks?

Mr. BENGE. Oh, yes, sir. Their salary range, of course, is based on civil service classification standards and whatever the personnel people classify the job as to grade and salary, that is what the job pays.

Mr. CREECH. Now do you happen to know what the salary range is for the clerks of these courts?

Mr. BENGE. Well, I cannot tell you the amount of money involved, but generally whatever salary attaches to grade GS–4 is usually the salary paid to the clerk.

Mr. CREECH. Now, do these clerks keep a written record of all the proceedings of the court, as required by this section?

Mr. BENGE. I think it is only fair to say they do not keep a stenographic record verbatim of the proceedings. A summary of the case and what happened is kept.

Mr. CREECH. Well, now, am I incorrect in thinking that they are required by this section to keep a written record of all proceedings?

Mr. BENGE. Well, the section does require a written record, but in many cases, it is not a stenographic record. In most cases——

Mr. CREECH. Are you saying that the section does not contemplate a stenographic record?

Mr. BENGE. Well, I do not know if it contemplates a stenographic record or not. I think, maybe it does not.

Mr. CREECH. That is your position, the position of your section, that it would not, and therefore does not require it?

Mr. BENGE. Yes, sir.

Mr. CREECH. That is, that has traditionally been the position your section has taken?

Mr. BENGE. That has been traditionally the position. When the regulation was first promulgated, there was not any money for a full-time clerk, so the position has been that this does not require a stenographic record of the proceedings of the case.

Mr. CREECH. I gather from that remark, then, that it has only been in recent years that you have had clerks for the courts?

Mr. BENGE. Full-time clerks, yes, sir.

Mr. CREECH. Now, where are these records kept, these court records?

Mr. BENGE. They are usually kept in the files of the court. Each court has a filing system and a jacket or file with all the records pertaining to a particular case.

Mr. CREECH. Are copies forwarded to your department?

Mr. BENGE. No, sir, we do not require that.

Mr. CREECH. The department has no record of these numerous cases?

Mr. BENGE. No, sir.

Mr. CREECH. So if the records are destroyed in the field, there is no record available?

Mr. BENGE. That is correct.

Mr. CREECH. Well, now, when you say they are kept in the field, is that at the agency office or just in the court itself?

Mr. BENGE. It is generally in the court itself.

Mr. CREECH. Well, now, does section 11.11 in 25 U.S. C. 200 not require that a record of all proceedings be kept at the agency office?

Mr. BENGE. Yes, sir, 25 U.S.C. 200, did you say?

Mr. CREECH. Yes, sir.

Mr. BENGE. That requires a record to be kept at the agency office of all persons incarcerated in agency jails. It has been felt that the maintenance of a record of this type at the agency would include the court system and the jail and the police department, which are part of the agency office.

Mr. CREECH. Well, now, does each court of Indian offenses keep a record of all titles of cases, names of parties and witnesses, substance of the complaints, dates of the trials as required by section 11.11?

Mr. BENGE. Yes, sir.

Mr. CREECH. Now, are these records inspected periodically by your department?

Mr. BENGE. They are inspected periodically by our field offices. We do not do it from the central office. But we have a special officer at each area who visits all of these reservations on a scheduled basis and they are inspected, of course, by the local officer in charge of the police department.

Mr. CREECH. How often are these inspections made?

Mr. BENGE. Well, this is a continuing thing and it is done on a regular basis.

Mr. CREECH. How often would that be, once a year?

Mr. BENGE. More often than that. I would say once every 2 or 3 months, and more often in many cases.

Mr. CREECH. Is each court of Indian offenses supplied copies of all Federal and State laws and regulations of the Bureau of Indian Affairs as is required by section 11.12?

Mr. BENGE. I do not think it can be said fairly that there is a substantial compliance with that requirement. Most courts do have available to them a United States Code, but they do not generally have available to them all of the codes of the State in which they operate.

Mr. CREECH. Why is there this laxity when you do have this requirement?

Mr. BENGE. I think mainly it is a matter of money, Mr. Creech. There has never, to my knowledge, been any real effort to supply a complete library of all the State laws to each Indian court. I think the answer is that it would have proven too expensive in the past.

Mr. CREECH. Has the Department or has your Division requested funds for this?

Mr. BENGE. No, sir; we have not.

Mr. CREECH. You have never requested funds which would make this possible?

Mr. BENGE. No, sir.

Mr. CREECH. Did your division point out at the time these revisions were being drafted that this was unrealistic, or do you feel that it is unrealistic?

Mr. BENGE. I cannot say that it was pointed out at the time that it was unrealistic, and I do not really believe it is unrealistic. I believe it is possible for the Indian courts to have access in one manner or another to the laws of the State. It may be unrealistic to expect each Indian court to be furnished with a complete library. But I think that certainly, in most instances, the Indian courts are so located that they could have access to the laws of the State, either in a local law library or perhaps some of the county offices.

Mr. CREECH. Well, now, Mr. Benge, is this the exception or some indication of laxity which may exist throughout the entire system of compliance with the regulations?

Mr. BENGE. I am not quite sure I understand the question.

Mr. CREECH. I mean is this laxity in not complying with this particular regulation an indication that there are other sections which are also not complied with?

Mr. BENGE. I would think not.

Mr. CREECH. Well, now, section 11.12(b) gives the court when in doubt as to the meaning of any law, treaty or regulation, the right to request the superintendent to furnish an opinion on the point in question. Now, are the superintendents usually trained in law?

Mr. BENGE. No, sir.

Mr. CREECH. Are they really competent to decide questions of law?

Mr. BENGE. Well, if they are not trained in the law, Mr. Creech, I would not say they are competent to decide and give advice on questions of law.

Mr. CREECH. Well, I just wonder how often this type of assistance is requested and how beneficial it is.

Mr. BENGE. Well, to my knowledge, this is not exercised very often. At least I cannot say truthfully that I know of many instances where the judges have sought the advice of the superintendent.

Mr. CREECH. Would it be your feeling that, inasmuch as the superintendents are usually not trained in the law that this section should be revised to provide for more adequate counsel?

Mr. BENGE. Yes, sir.

Mr. CREECH. Has your section made such a recommendation?

Mr. BENGE. No, sir; it has not.

Mr. CREECH. Do you intend to do so?

Mr. BENGE. Well, I hope we will be able to do so.

Mr. CREECH. I see. And do you periodically review these regulations and make recommendations for revisions to the section?

Mr. BENGE. I would not say we do it on a regular, scheduled periodic basis. It is done on a sort of continuing basis. Occasionally we look at one section or we look at another section, but I would not say there has been any scheduled periodic inspection or review of the regulations.

Mr. CREECH. Well, now, section 11.22–11.26 covers the subject of civil actions in courts of Indian offenses. Now, are civil actions allowed on all the reservations?

Mr. BENGE. Yes, sir.

Mr. CREECH. Is there an appellate court available in case of civil action?

Mr. BENGE. Yes, sir; the same appellate court that is available for criminal actions.

Mr. CREECH. Is this true also in situations where you do not have the courts of Indian offenses but you have tribal courts?

Mr. BENGE. Generally so.

Mr. CREECH. You say "generally so." I wonder if you would elaborate on that?

Mr. BENGE. I say generally so because the appellate provisions vary a little bit from one tribe to another and I would hesitate to say that this is completely true of all of them. The appellate provisions are more elaborate with respect to some tribes than to others. I know, for example, that one tribe has an appellate court with judges appointed solely for the purpose of being an appellate court and they have nothing to do at all with decisions made in the courts of first instance.

I would say this, though, that there are appellate provisions for both civil and criminal actions in all tribal courts.

Mr. CREECH. Now, is there a jail on every reservation?

Mr. BENGE. No, sir.

Mr. CREECH. Is there not a provision in the code for a jail on every reservation?

Mr. BENGE. No, sir; I would not say there is a provision in the code for a jail on every reservation.

Mr. CREECH. So the Federal regulations do not require it?

Mr. BENGE. I would not regard that as requiring a jail on each reservation.

Mr. CREECH. If there is not a jail on each reservation, is there any method of confinement on these reservations?

Mr. BENGE. Not on the reservations, in instances where there is no jail. In some of those instances, or perhaps all of them, arrangements are made between the tribe and the county sheriff's office to put the prisoners in the county jail on a contractual basis.

Mr. CREECH. A contractual basis?

Mr. BENGE. Yes, sir.

Mr. CREECH. Is this done under Johnson-O'Malley?

Mr. BENGE. No, sir.

Mr. CREECH. What is the basis for this?

Mr. BENGE. I will have to look at the record and supply that information, Mr. Creech. Offhand, I cannot tell you the authority under which these contracts are made. I am sure it is not the Johnson-O'Malley Act, though.

Mr. CREECH. You will provide that information for the record?

(The information is furnished in the appendix at p. 247–250.)

Mr. BENGE. Yes, sir.

Mr. CREECH. Now, the subcommittee has had brought to its attention that in some instances—I do not know that this is necessarily in the case of a reservation Indian who is being housed in a jail off the reservation, but we have received a number of complaints concerning the facilities afforded Indians in jails. We have heard allegations that in some places, for instance, Indians might be served only one meal a day where other prisoners may be served two or three.

Now, do you have such complaints as a result of your having contracted to place Indians in jails off the reservation?

Mr. BENGE. I have not known of these complaints having been made to the Bureau, Mr. Creech. I can say certainly if any such complaints were made, they would have been immediately investigated and some remedial action taken.

I will say this, however, that in practice throughout the country, it is the practice of the Bureau to follow whatever the general practice is in that area. If the practice is to feed the prisoners who are not working only twice a day, that is the practice the Bureau follows. If it is the practice to feed them three times a day when they perform work, then they are fed three times a day. I do not know of any instance where any prisoner is fed only one meal a day. I feel positive that the Bureau would never make a contract nor would any tribe make a contract with a county where the prisoner would receive that sort of treatment.

Mr. CREECH. Going back to the appellate proceedings and to the judges for just a moment, if I may, section 11.6 states:

All the judges on the reservation shall sit together at such time and at such places as they may find proper and necessary to the dispatch of business to hear appeals from decisions made by any judge at the tribal sessions.

I realize you have discoursed at some length on the situation with regard to the deportment of the judges in the appellate courts. But I wondered, does this language mean that the tribal judges may meet when and where they like to hear appeals, or is there some other prescribed procedure for time and place?

Mr. BENGE. This is being construed to mean, I think, Mr. Creech, that they can meet wherever they see fit. This is not true. As a matter of practice, they meet wherever the court is located. I have never known a court to hold a session in any place other than the regularly fixed courtroom. This is true also of the appellate court.

Mr. CREECH. This section further provided that:

There shall be established by rule of the court the limitations, if any, to be placed upon the right of appeal, both as to the types of cases which may be appealed and as to the manner in which appeals may be granted.

Does this give the judge or the judges the right to refuse to hear any appeal at all?

Mr. BENGE. I think it gives them the right to set standards by which the appeals will be heard. I do not think it entitles them on an individual basis to refuse to hear an appeal.

Mr. CREECH. You have indicated to us that you are going to provide information on how many cases are actually appealed in the courts of Indian offenses?

Mr. BENGE. Yes, sir.

Mr. CREECH. And, of course, what the results of these appeals are?

Mr. BENGE. Yes, sir.

Mr. CREECH. Now, section 11.6 does not mention the court of Indian offenses. Is it limited in application to these courts or does it come to the tribal courts? It does not mention the tribal courts. My question is, does it cover the tribal courts, and if it does not, then what methods of appeal are available in the tribal courts?

Mr. BENGE. This does not apply to tribal courts. These regulations apply only to the courts of Indian offenses. The appellate provisions for the tribal courts are those that are put into the tribal codes by the tribes when they enact them.

Is that responsive to your question?

Mr. CREECH. I am sorry, I just did not hear the last three words you said.

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Mr. BENGE. I say the appellate provisions for tribal courts appear in the tribal codes that are enacted by the tribes.

Mr. CREECH. Oh, enacted?

Mr. BENGE. Yes, sir, they are not a matter of Federal regulation.

Mr. CREECH. Well, now, so the methods of appeal in the tribal courts depend entirely upon the traditions made by the tribe itself, which in turn are approved by the Secretary?

Mr. BENGE. Yes, sir.

Mr. CREECH. Do you have statistical information on the number of cases in the tribal courts which have been appealed?

Mr. BENGE. Well, that is the information we are collecting, sir, and it will include all courts.

Mr. CREECH. Include tribal as well as——

Mr. BENGE. Yes, sir, and the information I will supply for the record will so designate, whether they are tribal courts or courts of Indian offenses.

Mr. CREECH. We have had testimony from time to time in the last couple of days on jury trials, the availability of juries in these trials. Section 11.7(a) gives the defendant the right to demand a jury trial if the judges find a substantial question of fact is raised.

Approximately what percent of trials go to the jury under this section, and are appeals generally allowed and taken where a question of fact does not exist?

Mr. BENGE. Are appeals generally allowed?

Mr. CREECH. Allowed and taken upon the finding by the judge that a question of fact exists?

Mr. BENGE. I am sorry, Mr. Creech, I cannot give you any statistical information, because that is not available in the central office. I will have to get that from the field and I will be glad to if the committee wants it. My own experience, however, is that there are only relatively few cases where jury trials are sought by defendants in these courts. I do not know of an instance where an appeal has been made because the court did not allow a jury trial because of a substantial question of fact. But I will get the records for you.

(The information is furnished in the appendix at pp. 247–250.)

Mr. CREECH. Subsection (b) states that the tribal council is to prepare a list of eligible jurors each year. Are there any standards to guide the selection of jurors?

Mr. BENGE. Only those that might be fixed by the tribal council, and I know of no such standards, except that he be a member of the tribe to be eligible to be a juror, be a member of the tribe residing on the reservation.

Mr. CREECH. Subsection (c) provides that the jury shall consist of six members and that no party may challenge more than three members of a jury panel.

Does this include challenges for cause as well as for peremptory challenges?

Mr. BENGE. I believe the intent, as I recall looking at the report of the committee that revised these regulations in 1934, was to limit the challenges to three, either peremptory or for cause, so the challenges would be limited to three for any reason.

Mr. CREECH. No matter what the defendant's objections may be to any juror, no matter how valid an objection may be, he will not be excused if he has already exhausted his three challenges?

Mr. BENGE. Yes, sir, that is my impression.

Mr. CREECH. Has your section received complaints concerning this procedure?

Mr. BENGE. No, sir.

Mr. CREECH. According to 11.7(b) the jury verdict may be by a majority vote if the jurors cannot reach a unanimous decision. Does the jury indicate whether its decision is unanimous or by majority vote?

Mr. BENGE. I cannot truly answer that, Mr. Creech. I do not know.

Mr. CREECH. I see.

Now, the compensation—I just wonder, going back to that question, if you do have any information on it as concerning how many verdicts are reached by majority vote as opposed to unanimous decision.

Mr. BENGE. No, I do not.

Mr. CREECH. Would you have any information on that?

Mr. BENGE. It may be available in the field, but as I say, it is not available to us because we do not require that kind of information to be submitted. We can find out if there is information on that particular point.

Mr. CREECH. All right, sir, you can submit that for the record.

(The information is furnished in the appendix at pp. 247–250.)

Mr. BENGE. Now, section 11.7(e) I believe sets the compensation for the jurors at 50 cents a day.

Mr. BENGE. Yes, sir.

Mr. CREECH. Is that correct?

Is it the view of your section there that this sum is sufficient to keep prospective jurors from avoiding jury duty?

Mr. BENGE. No, sir, Mr. Creech. In my view, that is completely unrealistic.

Mr. CREECH. Well, are you making any recommendations with regard to that?

Mr. BENGE. We have every intention of amending this to provide a realistic figure.

I might say that most of the tribes—I believe I am correct in this, but I would have to check our records to see—I think most of the tribes who operate under a Court of Indian Offenses have amended this particular section by an ordinance of their own to raise the fee. But I will check that to find out.

Mr. CREECH. You will provide information, also.

Mr. BENGE. Yes, sir.

Mr. CREECH. And it is the opinion of your section that this amount should be changed if not raised, is that right?

Mr. BENGE. Yes, sir.

Mr. CREECH. And you intend to make such recommendation?

Mr. BENGE. Yes, sir.

Mr. CREECH. Now, section 11.7 does not mention the Court of Indian Offenses.

What I want to ask about here, are these various sections which we have just discussed, limited, I believe, only to the courts of Indian offenses?

Mr. BENGE. Yes, sir.

Mr. CREECH. And do not apply to the tribal courts?

Mr. BENGE. That is correct, sir.

Mr. CREECH. Now, are jury trials required by the tribal courts at all?

Mr. BENGE. Except with respect to these traditional courts, Mr. Creech, I am not aware of any tribal code that has been before the Department that does not permit a jury trial.

Mr. CREECH. I see.

As you know, I have had a great deal of discussion about the provisions which precluded counsel, attorneys, in these various courts. I wonder what has been done, though, with regard to the tribal courts, to see that they do not keep out qualified counsel?

Mr. BENGE. We have not undertaken any intensive program. We have not directed from here that any intensive program be undertaken in the field with the tribes to encourage them to amend their codes to permit professional counsel to appear. But this is a matter that is being encouraged on an irregular basis when our people from the area offices sit down to counsel with tribes on the modification or modernization of their codes. This is one of the things they always talk about.

Mr. CREECH. You, of course, did cancel your own regulation in compliance with the decision of the court?

Mr. BENGE. Yes, sir.

Mr. CREECH. But yet you have not encouraged the tribes to make any change in the tribal courts?

Mr. BENGE. No communication with respect to that has gone out from Washington, sir.

Mr. CREECH. Do you know whether this is contemplated?

Mr. BENGE. I cannot say that it is.

Mr. CREECH. Is your section going to recommend such action?

Mr. BENGE. Yes, it is.

Mr. CREECH. It is.

You mentioned a while ago in talking about the Indian employees that those who were sentenced by the courts of Indian offenses had their sentences reviewed by the Secretary. Does this mean the employees can escape punishment for the crimes unless the sentences are approved by the Secretary, or are there other courts of jurisdiction?

Mr. BENGE. First of all, the jurisdiction of the Indian court is concurrent and it is the duty of the Indian court to defer to another Federal or a State court if they have jurisdiction and will agree to assume it and exercise it.

But if an Indian employee comes before an Indian court under that court's jurisdiction and is given a sentence by that court, and he does elect to seek its review by the Secretary, or if, under the regulations, it is automatic that it must be reviewed, the sentence is not imposed until it is so reviewed. But this does not mean that an Indian employee may escape a sentence imposed by the Indian court.

In fact, within my 10 years of experience, I have known of only one instance where this type of thing was submitted for approval. This was in a case where two persons, one from the reservation where the court was located and one from another Indian reservation in the same State were brought before the Indian court on the same charge. I do not recall the particular details, but one's sentence was about double that of the other. The one who got a sentence about double that of the other was the one from the other reservation. He happened to be a Bureau employee.

When that was submitted to the Department, the Department thought this was discrimination against the employee and recommended that the court reopen the case and make the sentences uniform. I do not recall if the court ever did this, because the employee in question resigned from the Bureau and did not continue his employment.

Mr. CREECH. I gather from what you are saying each case as it comes up before the Secretary is considered on its merits?

Mr. BENGE. Yes, sir.

Mr. CREECH. Talking about the judges again, section 11.3(b) provides that on each reservation where a court of Indian offenses is established, one or more chief judges and two or more judges are to be appointed. The opinion is, I believe, that at least three judges have been appointed for each court of Indian offenses pursuant to this section, is that correct?

Mr. BENGE. Some of them may be on a standby or "while actually employed" basis. The associate judges may not be regularly on duty except in appeals cases.

Mr. CREECH. Is the only qualification for selection of the judge that he be a member of the tribe and not be a convicted felon, as provided under section 11.3(d)?

Mr. BENGE. Yes, sir.

Mr. CREECH. And there are no other requirements such as minimum general education or legal training?

Mr. BENGE. No, sir; there are no other qualifications.

Senator ERVIN. In other words, he does not have to have any higher qualifications than those of the Chief Justices or Associate Justices of the Supreme Court.

Mr. BENGE. No, sir.

Mr. CREECH. Although perhaps he should have them because they are covered by the Bill of Rights.

Are you covered by the qualifications——

Mr. BENGE. I think some of them are highly qualified as judges. I have in mind at least one retired military officer who had to do with the legal end of the military branch when he was in service. He is retired and living on the reservation. He has been appointed chief judge of the tribal court.

I also have in mind at least one other Indian judge who I think cannot read or write English very well and can barely understand the English language. So they vary from one extreme to the other.

Mr. CREECH. That is a very interesting point. You mentioned judges not being able to understand the English language. Are many of the tribal courts conducted in the native tongue?

Mr. BENGE. Outside of these traditional Pueblo courts, and I do not know about their operation, because I have never witnessed it, on the Navaho Reservation, many of the trials are conducted in the Navaho language. But in the other courts, I have never seen trials conducted in the native language; it has all been in English.

Mr. CREECH. What agency or organization pays these judges?

Mr. BENGE. They may be paid either by the Bureau or by the tribe, one or the other.

Mr. CREECH. How is their compensation determined?

Mr. BENGE. Of course, the tribes fix their own rates of pay. The Bureau's rates of pay are determined by the Department and they are on a basis, I think, of $20 a day while they are actually on the job.

This may be one or more days a week, depending on the needs of the local jurisdiction.

Mr. CREECH. Section 11 makes no provision whatsoever for the judges of the tribal courts. How are they selected?

Mr. BENGE. This varies from tribe to tribe. In some cases, they are appointive jobs; in other cases, they are elective jobs. Offhand, I would not venture a guess as to the percentage that might be elective as compared to those who might be appointive. But by far more are appointive than are elective.

Mr. CREECH. They are appointed by the tribal council?

Mr. BENGE. Yes, sir.

Mr. CREECH. Does the court exercise any judicial provision at all over these judges?

Mr. BENGE. No, sir.

Mr. CREECH. They in turn are paid by the council?

Mr. BENGE. I might make one change in my statement. In some cases, even with respect to tribal judges, the codes provide that they must be selected by the tribe, but appointed by the Commissioner or the Secretary.

Mr. CREECH. Well, now, are the tribal law and order codes printed, or do Indian members of the tribe have them available in any form?

Mr. BENGE. Some of them are printed and some of them are not.

In every case, there is at least a copy of the code, to my knowledge, available at the court, the police department, and, in most instances, in the tribal office. But in many cases, they are printed and distributed among tribal members.

Mr. CREECH. And the Department, of course, has copies of all of them?

Mr. BENGE. Yes, sir.

Mr. CREECH. Could you supply the committee with copies of them?

Mr. BENGE. Yes, sir; I would be glad to.

Mr. CREECH. I believe that Mr. Waters has some questions for you, Mr. Benge.

Mr. WATERS. Thank you, Mr. Creech, Mr. Chairman.

Mr. Benge, is it true that the tribal judges are appointed with the consent of the Bureau officer, selected by him or nominated by him?

Mr. BENGE. I would say that is not true with the tribal judges.

Mr. WATERS. Is it true of the judges of the courts of Indian offenses?

Mr. BENGE. In some instances, the special officer in charge of the police department, at the request of the council, makes the nominations, or presents names of possible nominees to the tribal council.

Mr. WATERS. Does he remain present while those nominees are voted on?

Mr. BENGE. Not to my knowledge.

Mr. WATERS. Do you know that it has ever been done?

Mr. BENGE. Not to my knowledge.

Mr. WATERS. Would you say that his nomination by that officer places him under the domination of the officer who proposes his name?

Mr. BENGE. No, sir; we make every effort to make certain there is no domination of any Indian judge, tribal or court of Indian offenses, by the officer or tribal police.

Mr. WATERS. Does the judge have occasion to go to the same official for advice in connection with the operation of the court?

Mr. BENGE. He could. He would have the right to go to the special officer, the policeman, superintendent, or anyone in the Bureau for advice as to his operation if he wants to.

Mr. WATERS. Is it common for him to consult with them in connection with the operation of the court?

Mr. BENGE. I think it is not too common to consult with him. I think they do on occasion; but it is not the usual thing, in my judgment.

Mr. WATERS. We have received a letter recently from a judge of the Blackfeet Tribe, in which he bases the refusal of his allowing counsel to participate on the Code of Federal Regulations, which has been amended.

Could you tell me what dissemination has been made to the tribes so they can allow the counsel to practice——

Mr. BENGE. Did you say Blackfeet?

Mr. WATERS. Yes, sir.

Mr. BENGE. That is a tribal court there. That is not a court of Indian offenses.

Mr. WATERS. I understand, but he relied on the Code of Federal Regulations.

Mr. BENGE. To answer your question, the Bureau did send out, immediately after the *Ute* decision, information about the decision and instructed our people in the field to bring this to the attention of each and every court of Indian offenses with instructions to that court that they were not thereafter to deny anybody the right to counsel. An amendment to the regulations or perhaps an appeal to the court's decision was under consideration, and they would be informed as to what was done, whether the regulation would be repealed or whether there would be an appeal of the court's decision to see if it were, in fact, able to stand up.

After it was decided that no appeal would be taken and after the regulations were amended to repeal this particular provision, a press release was issued which goes to all of our field offices. This information should have been disseminated by agency superintendent to all concerned, particularly the courts. We did not send out any particular communication addressed to the Indian courts after the appeal, however.

Mr. WATERS. We are advised by the counsel for the Spokane Tribe that this tribe had attempted to write into their constitution a provision for legal counsel but it was stricken by the Indian Bureau to bring the code in line with the Code of Federal Regulations.

Mr. BENGE. I was mindful of that question, I think to Mr. Hyden yesterday. This morning I took a look through our files and I cannot substantiate that as a matter of fact. The code that was submitted to the Commissioner by the Spokane Tribe contains the very same identical language as that appearing in the Code of Federal Regulations. If there was any Bureau influence exerted to change that particular section from one that would have permitted lawyers to one that did not, I do not know about it. It was not reflected in our records. It would have been done at the local level if it were done and I rather think it was not.

Mr. WATERS. Just to clarify one point, is it your opinion from examination of that file that they have a right to counsel or not?

Mr. BENGE. I beg your pardon.

Mr. WATERS. Do they have the right to counsel there or not?

Mr. BENGE. No, sir; until the council changes its code, the code prohibits counsel, unless rules are adopted permitting professional counsel to appear.

Mr. WATERS. Mr. Creech asked you about that provision of title 25 which provides that a report be made and records kept of imprisonments on agencies or reservations?

Mr. BENGE. Yes, sir.

Mr. WATERS. Did I understand you to say these are audited periodically?

Mr. BENGE. Yes.

Mr. WATERS. To whom is the report of the audit made?

Mr. BENGE. There is no report of an audit made, as such, Mr. Waters. Simply an inspection is made of all the records of the court. But we do not require that a report of such audit be made to the central office.

Mr. WATERS. The agency audits its own records?

Mr. BENGE. Or the area office audits the agency records.

Mr. WATERS. So these reports do not go beyond the agency?

Mr. BENGE. No, sir.

Mr. WATERS. You gave certain statistics in answer to Mr. Creech's question on the Indian courts, if I understand correctly. Did I understand that answer to be courts of Indian offenses?

Mr. BENGE. Was that on appeals?

Mr. WATERS. Yes, sir.

With respect to the statistics on action of appeals.

Mr. BENGE. This was with relation to both types of courts, both courts of Indian offenses and tribal courts.

Mr. WATERS. Are the minutes of the tribal courts audited by the Bureau?

Mr. BENGE. Yes.

Mr. WATERS. We have had some report of tribal courts in connection with the fact that their law business runs about 1,496 criminal cases to 1 civil case in the course of a year. Would you care to comment on that?

Mr. BENGE. Well, I cannot make any intelligent comment on that in the absence of looking at some of the records available in the field. But that seems awfully high to me. I doubt it is that high.

Mr. WATERS. Now, you touched briefly in the Nebraska situation in response to a question, and I think you later on indicated that there has been a statute passed recently. I just want to clarify that you are familiar with the fact that the last session of the Nebraska Legislature had provided funds for law enforcement?

Mr. BENGE. That is what I had in mind, sir.

Mr. WATERS. And that the law enforcement committee existing is composed of members of the Omaha and Winnebago Tribes?

Mr. BENGE. I am aware that it exists, but I am not very familiar with it.

Mr. WATERS. If I were to say it is designed to keep law enforcement on the reservation, would you say that is an accurate statement?

Mr. BENGE. Yes, sir.

Mr. WATERS. You also touched on the similarities between some justice of the peace courts in connection with the tribal courts, the appeal in the justice of the peace courts as we lawyers commonly understand it, is a trial de novo, is it not?

Mr. BENGE. Yes, sir.

Mr. WATERS. Is it not true that that does not exist in some tribal courts?

Mr. BENGE. Most appeals I am familiar with from a tribal court or the court of Indian offenses to an appellate court do consist of a trial de novo.

Mr. WATERS. Are you aware of the fact that no right of appeal does exist in some tribal courts?

Mr. BENGE. No, I am not.

Mr. WATERS. Would you say that is not an accurate statement?

Mr. BENGE. Except for some traditional courts among the Pueblos, I would say it is not an accurate statement.

I might further say, Mr. Waters, that even though there may be instances where the convicted defendants in Indian courts are not exercising the right of appeal, I am positive that there is provision for an appeal in every tribal code that has been before the Department. The only ones that have not been before the Department are the Pueblos that I know about.

Mr. WATERS. Would you also say the appellate section of the court of Indian offenses is staffed 100 percent?

Mr. BENGE. No, sir; it is not. As I indicated to Mr. Creech, there may be instances where judges are appointed who are not on duty until an appellate case becomes necessary, at which time they are called to duty. They are not on duty all the time, though.

Mr. WATERS. The Code of Federal Regulations indicates that the records of the court of Indian offenses are public information. Can you tell us how often your Department examines those records to determine how effective law enforcement is being carried out and whether or not the authority is being misused?

Mr. BENGE. I would say such an examination is made on a nonscheduled but at least continuing basis and at least every 3 months, some inspection is made by our personnel from area office levels.

Mr. WATERS. The Fund for the Republic stated that Federal law should require that tribal action safeguard certain basic civil rights and provide for appeal of civil rights cases to Federal and State courts. Would you tell us, please, what action the Department has taken to bring about those safeguards?

Mr. BENGE. They have taken no action that I am aware of, Mr. Waters.

Mr. WATERS. The task force recommended that the Secretary of the Interior insist that constitutional guarantees of civil rights be made clear that courts of Indian offenses would be found by his regulations. Could you tell us whether or not any of these have been put into effect?

Mr. BENGE. No, sir; there has been no positive action taken to effectuate any of these recommendations with respect to law enforcement in the task force report as yet. Certainly we will try to implement all of them, but we have not done any of them yet.

Mr. WATERS. Thank you very much, Mr. Benge.

Mr. CREECH. Mr. Benge, the chairman has authorized me to state that the committee is very appreciative of your experience and knowledge in this field of law and order and of the Department's operation. We are sorry that there have been so many interruptions that we have not been able to hear you and the other gentlemen at the scheduled times. We appreciate your indulgence.

Thank you very much.

Mr. BENGE. Thank you, Mr. Chairman. If I may offer any time, any assistance, any members of the staff, or if you want information, or if I can help in any other way from our office, we stand ready to do everything we can.

Mr. CREECH. We certainly appreciate that, and we will be availing ourselves of that kind offer.

Mr. BENGE. You are welcome.

Mr. CREECH. The next witness will be the Honorable Homer B. Jenkins, Chief, Branch of the Tribal Programs, Bureau of Indian Affairs, Department of the Interior.

Mr. Jenkins.

STATEMENT OF HOMER B. JENKINS, CHIEF, BRANCH OF TRIBAL PROGRAMS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. JENKINS. Mr. Chairman, my name is Homer B. Jenkins. My responsibility in the Bureau of Indian Affairs is to serve as Chief of the Branch of Tribal Programs and provide administrative direction in providing technical guidance and advice to Indian tribes on governmental and corporate functions.

Our Branch recommends to the Commissioner actions on tribal constitutions, charters, resolutions, and ordinances; it reviews and makes recommendations on proposed tribal services, budgets, and the use of tribal funds. It helps prepare tribal membership rolls; advises on the acceptability of contracts between Indian tribes and attorneys; and assists in the development and operations of programs aimed at improving the social and economic condition of Indian groups.

I was a practicing attorney in the city of Salina, Kans., from 1929 to May 1942. The ensuing 10 years were spent as an attorney advisor in the Corps of Engineers, Real Estate Division, Missouri River Division. From January 1952 to date, I have served as program officer and Chief of the Branch of Tribal Programs, Bureau of Indian Affairs.

Prior to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), the Oklahoma Welfare Act of June 26, 1936 (49 Stat. 1967), and the Alaska Native Service Act of May 1, 1936 (49 Stat. 1250), Indian political organizations were seldom in written form and usually found expression through the media of small group meetings

or larger general council meetings. At that time, the Indians were not as intimately involved as they are now in the conduct of their day-to-day tribal business; most of this work was formerly conducted for them by their superintendent and his agency staff.

Shortly after the Indian Reorganization Act and accompanying acts, it became common to adopt written constitutions. These constitutions, which are complex legal documents, were not an Indian invention. Rather, they were the product of exhaustive study by the legal officers of the Department and were superimposed with Indian consent on the Indian communities as a new framework of social organization to govern the conduct of tribal political life.

This accounts for the great similarity in the documents. A great many constitutions adopted by tribes under the aforementioned acts contain a bill of rights covering suffrage, economic rights, civil liberties, and rights of the accused. These may be found, for example, in the constitutions of the Santa Clara Pueblo of New Mexico, the Shoshone-Bannocks of Idaho, the Makah of Washington, or the Western Shoshone of Nevada.

However, few of the Indian tribal leaders understood the new legal device they had acquired. The Bureau of Indian Affairs, through its field staff, wrote most of the early major tribal enactments such as law and order codes, tribal enterprise plans, enrollment ordinances, et cetera. With the advent of the war all the organizational field agent positions were abolished and except for agency staff, most of the tribes' assistance came indirectly in the form of correspondence, solicitor's opinion, and other communications. As a general rule, this type of communication was less influential and less satisfying than the traditional person-to-person communications the Indians themselves practice and prefer to this day.

The tools of government were new and strange and the teacher had been called away on other matters. In this situation the Indian concept of popular tribal government took on some novel interpretations.

In some instances there is actually little separation of power. Usually power is completely vested in a tribal council. The notion of executive authority or judicial responsibility apart from legislative authority has not yet fully emerged.

In the early days of the IRA, the tribes ordinarily elected a representative governing body with officers; but the officers were delegated so little authority that their functions involved no real administrative responsibility. Usually there was no long-term consideration of public affairs; matters of the moment occupied their attention almost exclusively.

With rapid turnover in public office and failure to set up a functional administration, most tribal political problems remained largely unattended unless they had achieved emergency status. For instance, a roll of members was not prepared until a per capita payment was anticipated; tribal expenditures were sometimes not balanced with income until the reserves were depleted. Allotted lands were sometimes not purchased until there was a danger of their being sold. Enterprises were often strengthened until they became jeopardized.

But we now have direct liaison to tribal governing bodies, and top

Indian leaders are more enterprising and more knowledgeable. So tribal government is becoming more efficient and more aware of the needs of the membership than a generation ago.

In this setting, tribal leaders are accepting specialized and technical advice, and in the new role of leadership, such advice is more meaningful in reaching tribal decisions.

In this setting, tribes are becoming more concerned with the constitutional responsibilities of the leaders and with the constitutional rights of the members. There is increasingly less resistance to amending organic documents so as to provide the tribal memberships constitutional rights and civil liberties. In the past, constitutions were often silent in this respect.

In this connection, you suggested, sir, to Secretary Carver that we make an examination of the various organizational documents that are on file in the office as to which groups do have some type of bill of rights provision therein. We have prepared that and we will submit it for the record.

Total tribal groups, 435, of which 33 are in Oklahoma, 150 are in Alaska, and 252 in the remaining portions of the continental United States. There are 247 who have some type of a written basic, organic document. Of those 247, 117 have some form of provisions of civil rights provided therein. We have them listed by names by the various States.

Mr. CREECH. Thank you, Mr. Jenkins. We will be happy to receive that for the record.

(The document referred to follows:)

Tribal organization summary

	Tribal groups	Formally organized	Unorganized	Bill of Rights provisions
Oklahoma	33	28	5	16
Alaska	150	72	78	71
Other United States	252	147	105	30
Total	435	247	188	117

OKLAHOMA TRIBES WITH BILL OF RIGHTS PROVISIONS IN THEIR CONSTITUTIONS

Anadarko:
- Absentee-Shawnee
- Alabama-Quassarte
- Caddo
- Cheyenne and Arapaho
- Citizen Potawatomi
- Iowa of Oklahoma
- Kickapoo of Oklahoma
- Pawnee
- Ponca of Oklahoma
- Sac and Fox of Oklahoma
- Tonkawa
- Wichita

Muskogee:
- Eastern Shawnee
- Kialagee
- Thlopthlocco
- Keetoowah

ALASKA NATIVE COMMUNITIES WITH BILL OF RIGHTS PROVISIONS IN THEIR CONSTITUTIONS

Akiakchak
Akiak
Angoon
Atka
Barrow
Buckland
Chanega
Chilkat
Chilkoot
Craig
Deering
Diomede
Douglas
Elim
Elephant Point
Fort Yukon
Gambell
Haines
Holikachuk
Hoonah
Hydaburg
Kanatak
Kake
Karluk
Kasaan
Ketchikan
King Island
Kivalina
Klawock
Klukwan
Kotzebue
Koyuk
Kwethlook
Kwinhagak
Kwigillingok
Mekoryuk
Minto
Napakiak
Nikolski
Noatak
Nome
Noorvik
Nunapitchuk
Perryville
Petersburg
Point Hope
Point Lay
Savoonga
Saxman
Shageluk
Shaktoolik
Shishmaref
Shungnak
Sitka
Stebbins
Stevens Village
St. Michael
St. Paul
Tanana
Tanacross
Tatitlek
Tetlin
Tulukeok
Tununak
Tyonek
Unalakleet
Venetie
Wales
White Mountain
Wrangell
Selawik

OTHER U.S. TRIBES WITH BILL OF RIGHTS PROVISIONS IN THEIR CONSTITUTIONS

Aberdeen:
- Crow Creek
- Lower Brule

Billings:
- Blackfeet
- Northern Cheyenne
- Salish and Kootenai (Flathead)

Gallup:
- Laguna
- Santa Clara

Phoenix:
- Duck Valley
- Fort Mohave
- Gila River
- Goshute
- Hualapai
- Kaibab
- Moapa

Phoenix—Continued
- Papago
- Quechan
- San Carlos
- Uintah and Ouray
- White Mountain

Portland:
- Fort Hall
- Makah
- Muckleshoot
- Nisqually
- Port Gamble
- Puyallup
- Quileute
- Skokomish
- Swinomish
- Tulalip
- Warm Springs

Mr. JENKINS. I also have brought in to present to you in case it will be of any use to you, possibly a dozen or more constitutions and charters from various groups that typify the various types of constitutions that have been approved by the Secretary's Office since 1937.

(These documents are in the subcommittee files.)

Mr. CREECH. Thank you.

We asked this morning—we asked for it yesterday also—for copies of the charters and the various codes and we will be very happy to receive these. It may very well be that the committee will decide to use certain selected ones.

Mr. JENKINS. I would suggest, sir, because some of these may have been amended and reamended so many times, that it would be a terrific chore for the committee to analyze a great number of them when a few would be representative of the whole.

Mr. CREECH. Thank you very much. We appreciate your bringing these this morning.

Was there other information, Mr. Jenkins, which you would care to present for the record at this time?

Mr. JENKINS. Only one other item, sir. You have inquired of other witnesses here on occasion as to whether or not there has been any distribution of pertinent portions of the manual to Indian tribes.

In 1957 the Bureau prepared a rather extensive manual portion affecting tribal constitutions, bylaws, methods of conducting business, a portion relating to attorney contracts, and a portion relating to tribal funding operations. These three portions were sent not only to all area field people but to each tribal council for their information and use.

Mr. CREECH. All right, sir. We certainly appreciate all of the information which you are making available to us.

I just wonder, sir, if you are familiar with House Report 2680, of the 83d Congress, and on pages 180 through 186 of that report, there is a report titled "Tribal Council Resolutions and Ordinances Submitted by Area Agencies to the Area Officer," by which area resolutions and ordinances are tabulated by each reservation during that period. Could the committee be supplied with a similar listing such as that to update this information?

Mr. JENKINS. That is possible, but it will take some time. We will be happy to supply it.

Mr. CREECH. Thank you very much. This has been helpful to us and we feel that a revised up-to-date version will be helpful.

Mr. JENKINS. We will be glad to.

(The information is furnished in the appendix at pp. 271–282.)

Mr. CREECH. Mr. Jenkins, on page 2 of your statement, second paragraph, you state that the constitutions today are complex and legal documents. How do members of the tribe in general and the Indians in charge in particular, how well are they able to understand these documents?

Mr. JENKINS. That will vary from place to place, sir. When we started with the Seminoles of Florida, who set up a constitutional document about 4 years ago, we had one of our most skilled Indian members of our staff spend almost 2 months down there working first with a select group of the tribe, which was appointed, incidentally, by the then governing body, to act as a constitutional committee, four of whom were bilingual, to go over line by line and section by section not only the phraseology there involved but the connotations of it. That group then went out and held innumerable community meetings all over the whole Seminole area—that is, the three major reservations down there, in Seminole, to pass on to them the content and the intent of this proposed document. I would be willing to venture that that is one group that is thoroughly aware of the entirety of the constitution.

There are other places where I would hazard a guess that the rank and file of the membership are probably very inadequate in their knowledge of the constitutional provisions of the document.

Mr. CREECH. Would you care to venture any percentages, based on your experience, as to how many of the Indians whom you have come into contact with actually have any appreciation of these documents, of these constitutions?

Mr. JENKINS. There again, sir, I would say it would vary from group to group. In the main, I think—I have noticed it particularly in the 9½ years I have been with the Bureau, there has been a tremendous development in the leadership of the tribal groups. They are becoming more and more sophisticated in their understanding and in their political acumen. How far down that goes in the tribal membership, I would hesitate to say. It would vary, as I say, from reservation to reservation and from tribe to tribe.

Mr. CREECH. Sir, you have indicated to the committee this morning in the documents you have submitted for the record, that there are over 130 of the tribes which do provide in their constitution for certain constitutional guarantees.

Mr. JENKINS. 117 specifically.

Mr. CREECH. Now in those constitutions which contain guarantees, are all of the guarantees of the Federal Constitution enumerated, or just certain ones?

Mr. JENKINS. No, for instance on the Crow, it is by reference. In others, they have four general provisions, one relating to suffrage, one relating to rights of free speech, freedom of religion and what have you, one relating to the right to participate in tribal resources and enterprise, and one relating to the rights of the accused.

Mr. CREECH. Well, now, in cases where they either incorporate the Federal guarantees by reference or where they are specified, has it come to your attention that there are any of these tribes which in effect do not abide by their own constitutional guarantees?

Mr. JENKINS. Only in an indirect manner. For example, we have had on occasion complaints by individual members of the tribe's failure to—I should say the governing body of the tribe—failure to follow the specifics of the constitutional directives as they relate to their official actions.

Mr. CREECH. Well, it has been alleged here that even in some tribes in which there is a constitution which provides for the Federal guarantees, there is no adherence to them—I should not say, "No adherence," but there are occasions where they are not adhered to. In such a situation as that, if it were to exist, what recourse does the member of the tribe have?

Mr. JENKINS. Practically none so far as the Department is concerned.

Mr. CREECH. Do you know if any such cases have been brought to the Department's attention?

Mr. JENKINS. In what specific context, may I ask, sir?

Mr. CREECH. Well, I would presume, sir—I do not have these cases before me, but it might be such things as guarantees against illegal search and seizure, and guarantees against illegal detention. There would be cases in which individuals would allege that the tribal authorities had not, in fact, subscribed to the guarantees of the tribal constitution. I just wondered if you had had cases of this sort brought to your attention.

Mr. JENKINS. Not to my personal attention, sir.

Mr. CREECH. Do you know if such cases have been brought to the attention of the Secretary?

Mr. JENKINS. Not to my knowledge.

Mr. CREECH. Has the Department made or are you making at this time any concerted effort to bring the tribal constitutions more in line with the Federal Constitution, insofar as an individual's rights are concerned?

Mr. JENKINS. We started the first of this year a complete review of every organic document that had been approved by the Department in the context of the adequacy of that document to the present situation of the group. It is a review that is couched in terms of the resources of the tribe, the financial situation of the tribe, the number of members living on and off the reservation, and to some degree, their knowledgeability of government.

It is a tremendous job, I can assure you, and it is going to take a rather considerable length of time to get around and make that complete review and then start the necessarily time-consuming negotiations with the groups in an effort to assist them in remodeling those constitutions.

Mr. CREECH. Well, now, this work which you have just alluded to, are you going to have a published report on this, or is this just for the Department's information?

Mr. JENKINS. No, this is not particularly for the Department's information, it is, hopefully, for the benefit of the tribes involved.

Mr. CREECH. And you are going to issue some report, then, which will be available to everyone?

Mr. JENKINS. I presume we will in time, sir, but it will be some time off.

Mr. CREECH. There is no anticipated date?

Mr. JENKINS. No, sir.

Mr. CREECH. I see.

Is the principle of separation of powers observed on the reservation? I gather from your statement here that it is your feeling that perhaps it is not.

On page 3, you say that little separation exists of the tribal power in some instances, that usually power is completely vested in the tribal council. The notion of executive authority of judicial responsibility apart from legislative authority has not yet fully merged. I wondered if you would care to expand on that statement.

Mr. JENKINS. Mr. Creech, there is one thing I think the committee must take into consideration and that is the present degree of sophistication of groups of Indians in the United States today. When you stop to think that it was only in 1914 that the final group of Apaches were released from Fort Sill, when you stop to think that there are Indians living today who were in being at the time of the Wounded Knee Massacre in 1890, you then begin to get some idea of the complexities of not only the Bureau but also of others who are endeavoring to assist these people to reach that level where they are comparable to the surrounding communities in which they live.

Mr. CREECH. Well, in regard to this sophistication of various Indian tribes and the means of communication, I note that you stated on page 3 that with the advent of the war, all the organization field positions

were abolished. Then you go on to say that correspondence, solicitors, other things become the rule. Evidently this was not as satisfying as the person-to-person operation they had known.

Mr. JENKINS. That is correct.

Mr. CREECH. I wonder, sir, if there had been any disposition on the part of the Department to reverting to more of a person-to-person way of dealing with the Indians, rather than dealing through media which are not so direct.

Mr. JENKINS. We are endeavoring to serve that purpose now with two methods. One is the manual release to which I referred a few moments ago.

Second, we have established positions in, I believe it is six of the areas now to provide that tribal relations contact direct. In other words, we have tribal relations officers at the area level who have the responsibility of contacting the officers and members of the tribe as it relates to general tribal affairs.

Mr. CREECH. It is your feeling, then, that this program, coupled with the manual, is sufficient to offset any of the reluctance of the Indians to deal through correspondence and less direct means?

Mr. JENKINS. Let us put it this way, it is a start that is being made.

Mr. CREECH. Mr. Waters has some questions for you, Mr. Jenkins.

Mr. WATERS. Mr. Jenkins, that sounds like a massive undertaking to review all these documents. Will you tell us who you are going to have do it?

Mr. JENKINS. Yes, it will be members of our staff.

Mr. WATERS. About how many members do you have on your staff, sir?

Mr. JENKINS. At the moment, we have six program officers.

Mr. WATERS. Do you feel that will be adequate?

Mr. JENKINS. It will not.

Mr. WATERS. Do you have a request in the works now for more personnel?

Mr. JENKINS. We have.

Mr. WATERS. Do you have any expectation that it will be acted upon favorably?

Mr. JENKINS. It is under consideration at the moment.

Mr. WATERS. About how long a period into the foreseeable future do you feel will be required to complete this review?

Mr. JENKINS. Well, the review itself should be completed sometime within the next 6 to 8 months. The negotiations with the tribes will be a very considerable length of time. This will have to be done on an individual group basis, and if you had any experience, sir, with working with Indian groups, you will find that they do not necessarily accept the recommendations the first time around.

Mr. WATERS. We are informed, Mr. Jenkins, that there appear to be inconsistencies in connection with the manner in which agreements can be reached with the various tribes. Perhaps it might prove fruitful in your discussions with them to indicate that certainly there has been no breakdown, has there, in those tribes which have the bill of rights incorporated into their constitution?

Mr. JENKINS. Let me answer that, if I may, Mr. Waters this way. Tribal politics is a rough and fearsome thing. Oftentimes, the political atmosphere is such that they are particularly interested in getting

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the rascals that are in out and a new set of officers in. It is when they reach a period of stability that it is the most healthful atmosphere for us to come in and start negotiations.

Mr. WATERS. I take it your answer would be, then, that in connection with those tribes which you have found had a bill of rights, no breakdown and no inconvenience and no hardship exists?

Mr. JENKINS. I know of none particularly, sir.

Mr. WALTERS. No reason why they could not all have one in time, is there?

Mr. JENKINS. I know of no reason why they should not.

Mr. WATERS. Thank you very much, Mr. Jenkins.

Senator ERVIN. The committee is much indebted to you, Mr. Jenkins, also to Mr. Benge for the fine assistance you all have given us in this matter.

Mr. JENKINS. We were happy to, sir.

Senator ERVIN. The committee will stand in recess until 2:15.

(Whereupon, at 12:30 p.m., the subcommittee recessed to reconvene at 2:15 p.m., the same day.)

AFTERNOON SESSION

Mr. CREECH. The first witness this afternoon will be the Honorable Delbert H. Bruce, Chief, Branch of Realty, Bureau of Indian Affairs, Department of the Interior.

Mr. Bruce.

STATEMENT OF DELBERT H. BRUCE, CHIEF, BRANCH OF REALTY, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. BRUCE. Mr. Chairman, it is a pleasure to respond to your invitation to appear before your subcommittee. I am presently Chief of the Branch of Realty, in the Washington office of the Bureau of Indian Affairs. I have held this position since March 19 of this year. My service with the Bureau of Indian Affairs dates from December 23, 1930, beginning with 4 years of general experience in the office of the Superintendent of the Cheyenne River Indian Agency in South Dakota, and followed by approximately 8 years in the central office of the Bureau in the Legal and Land Divisions. I have a bachelor of laws degree from the George Washington University, and am a member of the bar of the District of Columbia. From 1943 until 1953, I served as examiner of inheritance; that is, Indian probate hearing examiner for the Bureau and the Department in the West and Pacific Northwest. I was appointed realty officer for the Bureau, in the Portland, Oreg., area office, in 1953, a position which I held until September 1956, when I was appointed as Assistant Chief of the Bureau's Realty Branch in Washington. This service continued until my present appointment early this year.

The Realty Branch of the Bureau renders staff assistance to the Commissioner in a technical sense in fulfilling the Federal Government's trust responsibilities for the Indian lands held subject to trusteeship or other Federal restrictions. We furnish technical real estate services essential to that fiduciary responsibility. The details of this job extend across the total range of possible actions affecting titles to

land—acquisition, management, and disposal. Superimposed upon the normal commercial real estate function, are the special requirements based on Federal statutes of unique application to Indian trust and restricted real estate. All manner of contracts for the use of Indian lands—leases, easements, rights-of-way, etc., are involved. The determination of unique title problems is commonplace. Of particular importance is our appraisal organization with an exceptionally well-trained appraisal staff, and the special project currently underway to modernize our Indian land title records, utilizing the most recent developments in electronic automatic data processing. All of this effort is designed to serve the Indian people in a manner consonant with the Federal trust responsibility and the administrative policies of the Department and Bureau heads.

Being informed that your committee wishes an explanation of my personal views on the subject of the committee's inquiry, may I say that across the more than 30 years of service with the Bureau of Indian Affairs, I have met literally tens of thousands of Indian people. Some of these associations were but momentary.

Many are lasting acquaintances with individuals in all walks of life—with a cross section of those American citizens who are of American Indian blood. Many of the staff of the Branch of Realty are proud to claim Indian ancestry. I can only express the hope that your committee's studies may cast light upon any infringements of the constitutional rights of the American Indians, whether such transgressions result from their relationships with the Federal Government—with the governments of the States and the localities in which they reside—or by virtue of their relationships with their tribal organizations and tribal governing bodies, and that your deliberations further may point the way to resolving such constitutional rights problems as may be disclosed.

As I mentioned to you previously, Mr. Creech, my statement was intentionally brief, since I was not fully aware at the time that I prepared it of the nature or direction of your inquiry, and furthermore because of what seems to me my relative remoteness from the subject of constitutional rights. However, I would be most happy to answer any questions you may see fit to direct to me and offer the services of my particular area of responsibility in any way in which I may be of assistance to the committee.

Mr. CREECH. Thank you, Mr. Bruce. I am sure the committee will avail itself of this very kind offer.

I wonder, sir, before I begin with the questions, if there are any other observations which you would care to make to augment your statement as a result of your having been here this week and having heard the statements made by others and the questions which have been posed.

Mr. BRUCE. I might say this, sir, that certainly the statements of the other witnesses, beginning with Secretary Carver, have, I think, illuminated an area which is deserving of the shedding of further light. I think that the Department's position was quite effectively stated by the Secretary, and I would not disagree with it in principle. I think that as a matter of observation and analysis of those who have appeared before your subcommittee this week, I might say that the differences of opinion are not so much directed toward prin-

ciples, the basic principles, but to the rapidity with which these principles and suggested curative measures might be inaugurated and carried into fruition.

I think it is generally agreed that the Indian tribal court system, of which much has been said, is a system which was designed admittedly to supplant an earlier system of social and political sanctions which existed in the tribes themselves prior to the coming of the superior force and the superior political system, and that it is regarded as a transitional thing. There seems to be no question but that a transition to something either near to, parallel with, or an integration with the political system and the system of law and order of the United States and of the States themselves is inevitable as a matter of history, and we can only judge the future by the past. And it seems to me that this will come in certain forms in the future. I think the difference of personal opinion which may exist at the moment is with reference to the rapidity with which this evolution or change should or may come.

I think that it might be presumptuous for me to go far beyond that as a matter of comment in my own personal way at this time, sir.

Mr. CREECH. Thank you very much, Mr. Bruce.

In the way of contribution by your division and the Department of Interior, I would like to call to your attention, sir, House Report 2680 of the 83d Congress, the 2d session. There is a section in this report to which I have referred earlier today entitled "The State of Land Records on Indian Reservations." In cases of jurisdiction of State and the tribal authorities based on land considerations, such records could be very significant. And we wonder, sir, if the Department could supply the committee with up-to-date information for each reservation following the example set in this report. We feel that that type of information would be very helpful to us.

Mr. BRUCE. Do you have a specific reference, sir, to the portion of the report to which you refer, or are you just speaking generally?

Mr. CREECH. The portion which is entitled "The State of Land Records in the Indian Reservation."

Mr. BRUCE. All right. May I suggest this, sir, that I will be glad to examine the report—I am not at the moment familiar with this specific portion of it—and if there has been any change of any significance I would wish, if I may, to consult with you about the nature of the change. If the change is minimal and the effort to produce results extreme, may I suggest that I be permitted to consult with your staff or with you about the matter. And we will be most happy to contribute anything of significance that may have developed.

Mr. CREECH. Thank you.

Mr. BRUCE. As I indicated in my statement, we are presently engaged in a program of modernizing land records. And it occurs to me as I talked that we may be discussing a reference in the report as to the nature of the title patterns, perhaps the number of Indian owners, the kind of title records that we have. And without more knowledge I might suggest that on that subject little has transpired since the date of the House report except perhaps the addition of one or two generations of heirs to the title patterns. But I will look into it and be happy to bring it up to date if it is at all feasible. In any event, I will communicate with your staff.

Mr. CREECH. Thank you very much. The committee will appreciate your doing that.

In regard to your statement, on page 2 you refer to this special project currently underway to modernize our Indian land titles. When, sir, do you expect to have this project reach fruition?

Mr. BRUCE. This project, if I might say so with a note of pride on behalf of the Branch of Realty, is one of our best planned projects. And it is phased out over a period of 5 years. It has been in effect for shortly over a year now. The title plants—I am going around the question a bit to explain what has happened in the last year and a quarter—the title plants are constructed at the moment in four of our areas. They are only partially operational because the magnitude of the job in each area is such that it cannot be but so. We hope to have it fully operational in 5 years from the beginning of the project, that is approximately 4 years.

Mr. CREECH. You mentioned, sir, also on page 2 of your statement that the determination of unique title problems is commonplace. I wonder, sir, for the benefit of the record, if you would give us some illustrations of the type of unique type of problem you have in mind there.

Mr. BRUCE. I would be happy to discuss some of those which I consider unique and which I am certain commercial title companies and abstractors and lawyers would consider unique. And may I preface my remarks by saying that I feel confident that this is so because we have on our staff at the moment as our chief title examiner in a position designed to assist in coordinating the activities of our title plants and bringing into them the old records of the Bureau, establishing new and modern records systems—we have on our staff a man who has had extensive experience in the construction and operation and management of title plants in the Pacific Northwest a number of years, having been a member of the executive staff. I think he was chief title officer in a vice presidential capacity of a significantly important title company in the Puget Sound area. And he is convinced that the problems are unique.

Let us take as an example—and I can only give approximate dates on some of these documents, because they are so numerous in some of these things that I do not pretend to remember them, I try to remember important things, and the dates I can find in my books if I need them.

Mr. CREECH. You will have the opportunity, sir, of amending your testimony to include the proper citations.

Mr. BRUCE. Thank you, sir.

Let us take for example, the Blackfeet reservation in Montana. It is but one of a number of reservations where similar legal situations occur. At the time the alloting process, that is, the parceling out of the lands of the tribe to the individual members, was going forward under special authority from Congress, there were or were not provisions in the statutes which reserved or did not reserve to the individual Indian mineral rights in the lands which were allotted. On subsequent dates supplemental statutes were passed which created as to lands subsequently allotted precisely the reverse situation with reference to the reserving or not reserving of mineral interest in the property.

During this period when one statute was still in effect, and immediately preceding the time the second statute went into effect, let us say that an Indian requested an exchange of the lands which he had first been allotted for other land on the reservation. The exchange was received, the exchange application was received and processed and consummated over a period of time which extended from the original legal concept of allotment of mineral rights to the second period of time when the concept had been reversed by Congress.

Questions have lain dormant over the years until there came a demand for the exploitation of the mineral resources as to their ownership. This kind of thing, of course, is not necessarily resolved in the administrative, realty-management function of the Bureau which I represent today, but is worked out cooperatively between the Indian Bureau's realty and land activity and the Office of the Solicitor when we need special legal guidance.

Then with a complex of solicitor's views and opinions on this difficult question, we do regard it as our obligation to function and do function in determining many, many subsequent issues, some of which are very similar, and some of which are slightly different. And if we get to a degree where they are too different, we go back for additional legal counsel. That is but one of them.

Dr. Gilbert of the Congressional Reference Service in the Library of Congress quite recently asked me to supply additional information for him in connection with a case which was mentioned in the recent study, by the Senate committee, of the heirship problem on Indian reservations. The statement was made in a general report by the Bureau that in at least one case the least common denominator of the fractional interests held by the Indian heirs to the property was a rather astronomical sum; specifically, over 43 trillion. Dr. Gilbert asked us for the records in that case. We were able to locate them. He asked for the materials representing the history of the development of that rather complex title pattern. And we furnished to him. I forget the precise number, 40 or 50 probate decisions of the Department which went to build up this record of current title ownership. I think we might regard that type of thing as a unique title problem, although it is really in my own day-to-day terminology an imaginary "horrible," because we don't deal with it every day. Nevertheless it represents a unique situation.

That is not the kind of extremely complex thing we run into in our daily operations here in Washington, but at the field level it is not at all infrequent that our realty people are called upon to abstract 10 or a dozen or perhaps more records of departmental probate of Indian trust estates, including departmental order on wills, making distribution—death transfer of the property. The wills may or may not be simple and clear.

I have in my experience as probate attorney, come upon many wills which were very easily construed, very easily explained to the satisfaction of our clerical staff who have to handle these things, very easily explained to the people who are concerned. And on the other hand, some of them are as complex as well-drawn and complex wills in private practice.

The analysis of the effect of these transactions upon the current status of title is something that is a day-to-day part of the job of the

branch of realty as a real estate service in handling these transactions.

I do not pretend to say that they are all handled at the Washington level. We have a realty organization at most of the Indian agencies and at the area offices throughout the country, and the bulk of the decisionmaking has been delegated to those offices.

Mr. CREECH. Are there any further comments that you would care to make in that regard, sir?

Mr. BRUCE. I had assumed, sir, that I had covered the question fairly well.

Mr. CREECH. I didn't know whether you were through or not.

Mr. BRUCE. Yes.

Mr. CREECH. I would like to ask, with regard to the wills, you have just said that some of the wills may not be simple or clear, and that in some instances they are rather complex documents.

Now, am I not correct in thinking that the wills of Indians disposing of trust or restricted property must be approved by the Department?

Mr. BRUCE. Yes, indeed, sir. The Department's specific probate authority stems from the act of June 5, 1910 (36 Stat. 855). The authority to approve Indian wills stems from an amendment of February 14, 1913 (37 Stat. 678). And the validity of the will is contingent upon its approval by the Secretary, or his duly authorized representative.

Mr. CREECH. And I noted also in your biographical statement that apparently you have served in this capacity at one time yourself; is that not correct?

Mr. BRUCE. Yes, that is correct, sir, for approximately 10 years. And may I say that it was perhaps the most interesting kind of experience that one would wish for. The experience of dealing with people on their home ground, their home territory, on matters of rather personal concern to them, was most gratifying and satisfying, in that we were helping them. I felt able to help them in matters that they were particularly and specially interested in.

Mr. CREECH. The fact that some of these wills are complex documents and perhaps difficult to understand is a little bit difficult to appreciate, in view of the fact that they must be approved, is it not, by the Department? Or were they not always approved?

Mr. BRUCE. May I say this: To become a valid document transferring title to property, they have always under the law required approval by a Federal official. And I believe that the probate system initiated by the act of 1910 was the first formality. Prior to that time the Secretary of the Interior had, in connection with the sale of property, exercised a somewhat informal probate jurisdiction, in connection with sales of Indian land, which had been authorized under general statutes by the Congress, in identifying the individual Indians who had succeeded to the title of the deceased original allottee. Although there had been no formal setting up by Congress of a probate authority in the Secretary, nevertheless he had evidence taken informally, showing that the persons who presumed to convey the property were in fact the heirs of the original allottees.

The complexity of the will sometimes would take, for example, this form. An individual Indian testator or testatrix would wish the property be held during the life of someone or other of her close relatives, perhaps grandchildren, perhaps nieces, nephews, with succeed-

ing generations of heirs being brought into the picture upon the death of some one or other of those who were first in the order of succession. Some rather interesting and unique problems of the law of testate succession were thus generated.

I can't at the moment—I have been away from the work for 7 or 8 years, and I can't recall, for example, some of the more complex ones, but that is the type of thing, for example, that made it complex.

In our procedures we drafted orders which set forth the successions to the extent that it was possible at the time of probate for the guidance of our clerical staffs in the real estate branches of the Indian agencies and area offices whose responsibility it was to handle the leasing, the sale, et cetera, of these properties, so that they might be as well informed as possible of the current status of title to the particular subject tract.

Mr. CREECH. Then would I be correct in assuming from what you said that the complexity, really then, perhaps evolves around the Department's interest in seeing that the disposition of land was made along traditional Indian patterns, entailed property and that sort of thing, or was this——

Mr. BRUCE. No. May I perhaps say this in explanation of the statement, that in the probate of an estate where there is intestate succession, the identification of the heirs and the shares that they take is made in accordance with the law of the State in which the real estate is located in accordance with the usual practice. There are certain special statutes—there were certain tribal customs which could, under the procedure and the decisions of the courts, the Federal courts, be recognized with respect to the probating of wills. The desires of the testator or testatrix are effectuated by the approval of the will.

The Secretary as a matter of law is limited to either the approval or disapproval of the will.

In the matter of tribal custom, the application of tribal customs in the matter of marriage and divorce, where the tribe has not legislatively spoken on the subject, is the only area of tribal custom left to be recognized.

For example, in one of my earliest probate hearings on the Yakima Reservation, the question of Indian custom marriage was the principal issue. In that particular case the hearing ran for something in the nature of 3 or 4 days. The parties were hotly contesting the issue. Both parties, the individual who purported to be the surviving spouse in this instance as well as those members of the decedent's family who were opposed to this little girl sharing as a surviving spouse, were represented by counsel. And we went into great and tedious detail as to what the Indian custom of the Yakimas might be with reference to Indian custom marriage.

Until such time—and I have not been recently informed, and have not kept informed on the subject—until such time as the Yakima Tribe might in its own tribal governing body and through its own tribal governing processes legislate against the recognition of Indian custom marriage and divorce, it was necessary for the Secretary, under the cases—and these things have been litigated in the Federal courts—to recognize an Indian custom marriage and an Indian custom divorce where the facts of such were established. But that is the only area that comes to mind at the moment.

The Federal Government has stepped in and preempted the field in other areas where previously Indian custom had been recognized, specifically, in questions relating to inheritance rights resulting from adoption.

Mr. CREECH. Going to the trust lands and to the type of records which you keep, you may have heard this morning Senator Case talk about the difficulties posed in ascertaining what type of land various crimes actually took place on. And he was talking, I think, about crimes on trust lands and nontrust lands, and how they depended upon the agencies of record to determine what kind of land it actually is.

And since a great deal depends upon the adequacy of the records which are kept, I wonder what type of rules and regulations are currently in force to see that the record changes in the status of land are recorded immediately. And how often are these records checked, and what are your procedures? And are they readily available, these records which you keep, are they available to anyone, such as the public for instance, in the courthouse during office hours, and that sort of thing?

Mr. BRUCE. Your question, of course, goes to the very heart of the genesis of the project in which we are presently engaged. We hope upon the conclusion of the project to have available currently—and by "currently" I mean information disseminated to the operating agencies—information within a matter of a few days after the probate decision has been rendered by a hearing examiner, or after a document transferring title or affecting title has been recorded in our title plant.

At the present time, however, there are certain practical limitations on the speed with which this information can be brought into the records and analyzed and made current. Those practical limitations include the physical ability of people to do a number of day's work in a day's time, for example.

With reference to the probate hearing examiners, for example, they are able to ride circuit in their districts generally, so that the effect of a death might be reflected in the probate records and in turn in the analysis and abstracting of those records within approximately a year from the time of death. Over the years I have heard comment to the effect that this is something appalling, this is something terrible, that the Bureau's probate procedure should be speeded up.

But I would venture to say that on the average the Bureau's probate decisions are handled with reasonable dispatch, by comparison with those in the world outside of the Bureau of Indian Affairs. Certainly probate proceedings in a county court, for example, must be initiated by someone who has an incentive to move on the subject, the pleadings, the introduction of the facts, the normal processes, the time allowed for this, that, and the other portion of the proceedings. But I think that as an average, Indian probate cases are settled within a year, unless some special circumstance prevails.

I have in mind one situation where a hearing examiner died leaving a backlog of cases, a successor had to be selected and appointed and become familiar with the job, and it has taken something more than that period of time to get his particular work in current status.

But aside from those normal difficulties, the records of the Indian agencies I regard as something in the nature of a public record of the

land titles such as you would find in the county. It is the only place, in fact, where these records are available. And it is my impression that they are made available or that assistance is given by our Indian agency staffs in making them available and explaining and interpreting them to people who have a legitimate interest in exploring them.

Mr. CREECH. Thank you very much, Mr. Bruce.

I believe that Mr. Waters has some questions for you.

Mr. WATERS. Mr. Bruce, in connection with Senator Case's statements, can you tell us why it is that enforcement officers are unable to determine promptly on what kind of property the alleged crime took place?

Mr. BRUCE. I heard the Senator's statement, and I would hesitate certainly to take issue with the Senator from South Dakota. I think it might well be said that if the enforcement officer would visit the Indian agency, the office of the superintendent of the reservation where the crime occurred, that generally speaking, there would be little difficulty in determining whether it was or was not on trust property.

Perhaps the cases of which Senator Case spoke had to do with another obscure facet of Indian law. I don't profess to be an authority on the subject. It is the question of jurisdiction over crimes committed on highway rights-of-way and things of that kind, or standing across a fence firing a gun across the fence onto trust property. I did not get the impression that the Senator was referring to any special difficulties in determining the status of the property. I got the impression that his remarks were directed toward the difficulty of determining where jurisdiction lay, not because of the question of the status of the title to the property, sir.

I might complicate the issue, of course, by mentioning that there are in our Indian reservations many tracts of land in which tenants in common hold various kinds and qualities of title.

For example, an Indian spouse may die leaving a non-Indian spouse surviving and Indian children of mixed blood born of that union.

The undivided interest descending to the surviving non-Indian spouse descends in fee simple. The undivided interests descending to the Indian children are still in trust or restricted status. And there are various qualities and kinds of restrictions also. But a visit to the Indian agency having jurisdiction over the land should within a very reasonable time disclose the status of the land upon which the offense is alleged to have been committed.

Mr. WATERS. Could you tell us whether or not your section would be able to provide the subcommittee with a breakdown of the Indian land as it presently exists in the particular title in which it is held?

Mr. BRUCE. Anticipating that you may have been interested in that question, I brought along with me just some rough notes. And I would hope that is responsive to your question. Our statistics for the end of the last fiscal year have not been formalized, but the information which was handed to me as of June 30, 1961, shows that under the jurisdiction of the Bureau of Indian Affairs there is a total of 57,106,800.94 acres. I am not sure of whether I am proud or dismayed that my folks have got so many millions down to 0.94 acre. But that is their total. Of that property, the lands which are held in trust for Indian tribes of the United States represent 40,537,761.77 acres. Land owned by individual Indians either under trust patents or as

the heirs of the original trust patent allottees under extension of the trust or under other restrictions total 11,957,591 acres. Government-owned lands administered by the Bureau total 4,611,532 acres and some of our reservation allotments are held under what we call a restricted fee patent. The fee title is in the Indian ownership, subject to restriction against alienation. To the layman a restricted fee patent looks like a trust patent, and the effect is somewhat the same.

Mr. WATERS. You referred to the term "restricted fee patent," and we also run across the term "fee patent." Are these all words of a particular art in the Interior Department?

Mr. BRUCE. Yes; with one exception. I think the term "fee patent" is commonly understood in any State where public lands were transferred by the Federal Government; the term "fee patent" or "patent in fee simple" is one of wide application throughout all the public land States. And it means in effect, as you gentlemen know, the total bundle of rights that go to make up the ownership of the property.

Mr. WATERS. I wonder if you could make available to us a short list of the words that you use, such as "restricted fee patent," and "competency," and those things which have peculiar application to Indians.

Mr. BRUCE. I would be glad to do so, sir. As a matter of fact, I think they are already a part of the record in the annals of congressional committees of fairly recent vintage. And we will scan those and either reproduce them for you or supply them separately, as may seem more expeditious to get the matter to you.

Mr. WATERS. You referred also to the fractionated interest of which—I think your term was—the common denominator became astronomical in some cases; is that correct?

Mr. BRUCE. Yes. But as I say, those are the "horribles" which we hear about as tremendous examples, and they are not the day-to-day run of the cases. They might in fact become such someday if we don't find a solution. But I did refer to that.

Mr. WATERS. What measures are taken in connection with proposed solution?

Mr. BRUCE. The Senate has before it a bill, S. 1392, which, as I understand, was drafted primarily by the committee's staff and grew out of the deliberations of the Interior subcommittee in the Senate, which was introduced by Senator Church on March 21 of this year. We have the Department's report on which Secretary Carver testified extensively before the Senate subcommittee recently. The Department's report of July 10, 1961, to Senator Anderson covers that. It incorporated a suggested alternative measure. I attended some of the hearings. I did not have the privilege of attending all of the hearings.

I understand that the views expressed on the subject by persons who perhaps are far more expert in the field than I would profess to be are widely divergent. I understand that the matter is presently under intensive study by the Senate Committee on Interior and Insular Affairs (pt. 1: "Indian Heirship Land Survey," Dec. 1, 1960, 86th Cong., 2d sess.).

This is a subject that is neither new nor novel, as you and other members of the staff and the subcommittee may be well aware. The so-called Indian heirship problem, which I would prefer more technically to refer to as the problem of title management presented by

the multiple-ownership situation, has been a matter of concern by the Congress and the Department and the Indian Bureau and the Indian people themselves over as many years as I have been in the service. And it is one which is baffling us. Some of the solutions are totally unacceptable to some of these people concerned. Other solutions are totally unacceptable to other of the people concerned. I would hope that the recent intensive studies by both the House and the Senate committees on this matter will be productive of perhaps a middle ground, some way in which we can go far to resolve these difficulties. They certainly do, as I am sure any real estate operator would recognize, present a problem when you have anywhere from six or eight to two or three dozen owners of a parcel of land who are interested in deriving the maximum, the optimum benefits, from those lands.

Certainly, as trustee, the Federal Government has an obligation to them to see that they have the opportunity of deriving optimum benefit from those lands. Yet the mere fact of the multitude of ownership sets up conflicts. Congress has spoken, for example, in the act of July 8, 1940 (54 Stat. 745), authorizing Indian reservation superintendents to lease lands where there is conflict among the heirs, provided none of the heirs are using them, and thus bring them into productive economic use.

Despite that kind of authority, the problem of multiple ownership is not easy of solution.

Mr. WATERS. We have looked over a letter from the Department in connection with the Blackfeet land purchase program in which a complaint was made that the tribal attorneys did not receive an opportunity to be heard prior to the time the decisions were issued.

Would you care to elaborate on that?

Mr. BRUCE. I think, if I may remind Mr. Waters, sir, of the question that was—I believe the second question that was asked a witness several days ago, it had to do with the advertising of the land for oil and gas lease.

Mr. WATERS. That is a different question altogether.

Mr. BRUCE. Please accept my apologies. Then I do not understand the question as you stated it.

Mr. WATERS. This is a letter from an Assistant Secretary to a law firm in which the attorney complained that as the tribal lawyer he had not been given an opportunity to be heard.

Mr. BRUCE. In what connection, sir?

Mr. WATERS. In connection with the Blackfeet land purchase program.

Mr. BRUCE. I personally am not advised on the subject. I would be glad to be advised of the date of the Secretary's letter so that I might examine it and be more specific on the issues that are involved. It would be a matter that would require some research in our files, certainly.

Mr. WATERS. This is a letter dated July 16, 1959, from Assistant Secretary Ernst to Attorney Arthur Lazarus. I was unable to find the entire correspondence, only one letter. I would appreciate such clarification for the committee.

Mr. BRUCE. I would be glad to look into it. Would you prefer perhaps a simple memorandum of explanation of it as a part of my—is that agreeable, Mr. Chairman?

Senator ERVIN. Yes.

Mr. BRUCE. I will be glad to do it, sir.

Mr. WATERS. And the other one to which I referred was a letter dated July 16, 1959, to Senator Mansfield from Assistant Secretary Ernst stating in part:

> We do not know why the Blackfeet Tribal Business Council was not notified officially of the pending oil and gas lease sale advertisement. This is a matter handled by the Blackfeet Indian Agency, and we are requesting report.

And I couldn't find any report.

Mr. BRUCE. I will be glad to look into that also. As somebody remarked in answer to that question within the last day or two, the tribe must be the lessor in the leasing of tribal lands for oil and gas development. And I might just remark personally it seems rather inconceivable to me that there was not general knowledge on the part of the tribe, whether a formal communication was or was not in evidence I would be inclined to the view that certainly there was general knowledge as between the Superintendent's office and the tribal council.

Again I am presuming without knowledge of the facts, and I would be glad to look into the facts and give the information.

Mr. WATERS. And in connection with the taxes due the tribe, will you tell us whether that is within your province?

Mr. BRUCE. It is not within my province, although I might say that I am aware of the situation, that occasional tribal tax ordinances, taxes imposed upon the lessees of Indian lands, have come across my desk for review, where a tribe has asked that provision for enforcement be made a part of the lease contract. Lease contracts being a part of our function as realtors, so to speak, we are interested in those things to that extent.

Mr. WATERS. We have been advised that the tribal taxing power is not subject to any of the limitations imposed on the State and Federal legislation by the Federal Constitution. Is that likewise your understanding?

Mr. BRUCE. I would be ill advised to presume to discuss that subject, sir.

Mr. WATERS. Now, Mr. Bruce, in your 30 years of service with the Bureau, would you tell us what constitutional rights problems you believe are appropriate to the inquiry?

Mr. BRUCE. May I say that while many of us are proud to have been associated with a single arm of the Government for so many years, at this time it was perhaps unwise to mention the fact. Those years of experience do not necessarily, in my own estimation, warrant my making any authoritative statement on the subject, since my experience has not been in a field that was closely allied with that which you have under major consideration.

However, as I said in my statement, I have known over the years literally thousands of Indian people, many of whom—well, most of my friends are of Indian descent, I have become so closely allied with the organization, of which a large percent of the staff is of Indian descent, that they are almost the only people that I know. And it would grieve me personally very much if I were to observe an infringement of any of the constitutional rights of these people, whether they are those with whom I am acquainted or others.

I think that the committee has certainly selected a worthy and a much needed area of inquiry. The relationships of these people to their own tribe, and the fact that they are citizens of the United States and of the States in which they reside, and the fact that apparently under the law it is permitted, as the present law exists, for a tribe to infringe those rights distresses me. I must confess that I have not been closely associated with the problem in recent years.

My work has kept me distinctly away from that facet of Indian service work in the relationships with that part of the Indian peoples lives. It has not been made apparent to me in my day-to-day contacts in the last 10 or 15 or 20 years that this kind of infringement was possible, because I have not heard specific complaints of it myself. I do think, as Acting Commissioner Crow stated the other day, that by and large there is a tremendous amount of good being done by the admittedly interim type of court that we are talking about.

You might be interested to hear my recollections of the earliest Indian tribal court which I observed in my first experience at Cheyenne River Agency in South Dakota, beginning as I said, 2 days before Christmas in 1930. In those days jobs were hard to find, and 2 days before Christmas was not too soon to report on a job. The old judge, Harry Kingman, used to visit with me occasionally when he had the time and I had the time. He would hold court in the basement of the office of the building perhaps once or twice a week as the occasion demanded. He was a man of some years of age. And he would recount the days of his youth. And I was interested to discover that he was present at Custer's massacre. He said that he and a number of other young fellows of his age, about 14 or 15 or 16, were much disturbed that they were not permitted to get into the fight. They had to stay in camp with the women folks and help to take care of the horses. But he was there on the fringes of that historical battle.

To go back to Judge Harry Kingman, he dispensed a country type of justice that, as far as I can recall, met with little or no complaint from the people who appeared before him. They were, by and large, police court cases, disorderly conduct, and disturbing the peace in the Indian village.

Admittedly that kind of court—and I understand from the testimony of my acquaintances, and Mr. Benge and others that some of them may still exist, perhaps not quite as primitive a court as that, but some of the judges may well have equally as limited experience and be equally as unsophisticated—they obviously do not have the facilities for handling the type of case that Miss Gifford expressed justifiable concern with, the domestic relations cases, the case of delinquent children, the case of those who are mentally ill and need facilities and commitment. This kind of court does not have the facilities for employing social workers, probation officers, people skilled in the social sciences. They are limited tremendously and certainly limited in that respect. But within the area in which they function I think that by and large, many of them function very well. And in my work as probate attorney in the Pacific Northwest I became acquainted with some of the Indian judges—and personally I was not sufficiently acquainted with the details to know whether they were judges in Indian courts sponsored by the Department, on Indian

courts set up by the tribes themselves in their own codes—but they were respected citizens, and they would occasionally appear at probate cases and offer testimony, and I came to know some of them in a casual day-to-day manner and speak to them by first name, and so on. And I felt that they were accorded and that they earned a deep sense of respect from their own people.

Mr. WATERS. You certainly have earned a deep sense of respect from the subcommittee, Mr. Bruce. Thank you very much.

Senator ERVIN. I was very sorry to have been detained over on the Senate floor by reason of a vote, and I was unable to be here throughout your testimony.

There are one or two things that I would like to ask you to clarify in my knowledge or lack of knowledge in this field. As I understand it, up to the passage of the Allotment Act in 1887, the title of Indian land was vested either in the Government as trustee for them or in the tribes rather than the individual Indians; is that not true?

Mr. BRUCE. I think, as Secretary Carver said in perhaps initiating his response yesterday, to generalize in the field of Indian law is difficult. It sometimes leads to an erroneous conclusion. I would say that your comment, sir, is generally true, although it is my recollection that there were acts of Congress or treaties approved by the Congress with Indian tribes prior to 1887 under which there was a parceling out of tribal holdings to individual Indians. I hope I am correct on that, Senator. But the general pattern was set by the General Allotment Act of 1887. You are quite correct in that respect.

Senator ERVIN. In other words, you think that it is probably impossible to get a general statement, due to the variations in different treaties and different statutes with respect to particular tribes?

Mr. BRUCE. That is correct; that is my point, sir. But generally speaking, the allotment pattern—that is, the breaking up of tribal holdings and parceling it out in allotments to the individual Indians—has historically been recognized as having its genesis in the General Allotment Act of that year.

Senator ERVIN. Now, the Allotment Act of 1887 was evidently predicated upon the policy that it would be desirable to put an end to the function of the tribes as such, and permit the assimilation of the Indians into the general population of the country, was it not?

Mr. BRUCE. I have heard it said that that was at least one of the principal inspirations for the development of that statute, sir.

Senator ERVIN. Now, as I understand it, and I would like to be corrected if I am in error, the Allotment Act of 1887 provided that the Indian lands should be allotted, the tribal lands should be allotted to the individual Indians, and all lands not so allotted should be open for entry by the homesteaders, generally, like other public lands?

Mr. BRUCE. May I comment at that point, sir?

Senator ERVIN. Yes.

Mr. BRUCE. I believe that that facet of the development of the Indian land situation of which you just spoke, the opening of the lands to homesteaders, was the result not necessarily, and I must confess that I have not read the rather lengthy and tedious details of the

Indian Allotment Act of 1887, in recent years—but speaking from experience, let us take, for example, the Sioux Nation in South Dakota, where I began my experience, and the Colville Tribe in northern Washington, where I held probate court for so many years. The surplus lands of their reservation—that is, the land regarded as not needed for parceling out among the individual Indians—were opened to entry, occurred by virtue of special treaty or agreement with the Indians, ratified by Congress.

The act of March 22, 1906 (34 Stat. 80), for example, provided that the Colville Reservation after allotments were made, was open to homestead. But I do not believe sir, that it was the universal pattern under the 1887 act, to provide for opening unalloted lands to entry. It set up the allotment procedures, and there were many and many a reservation and there still is, where there were tribal holdings after the 1887 Allotment Act and they are not open to homestead; they are still a part of the original tribal estate.

Senator ERVIN. Of course, the Allotment Act of 1887 was never fully carried out. In other words, at the time of the passage of the act, it was common to refer to the Indian as the "vanishing American" because the Indian population of the United States had been decreased due to the unfortunate gifts which we gave the Indians in the form of diseases which they were not used to, and had no immunity to, and from the time since the establishment of the country down to 1888, there was a serious decrease in the Indian population.

Fortunately, that has been reversed with, I imagine, some immunity to our diseases and then by medical discoveries and making medical science more available to the reservation Indians.

What I was leading up to was, am I correct that under this Allotment Act of 1887, the land which was allotted to the Indians was allotted subject to trusteeship on the part of the Federal Government for a period of 25 years?

Mr. BRUCE. That is correct, sir. That was the general pattern.

Senator ERVIN. And in most instances, or at least in a substantial number of instances, that trusteeship has been continued, has it not?

Mr. BRUCE. In many instances, it has been continued. There was a pattern in the early part of those trust periods where the extension was on a selective basis, the period would be extended for all except allottees number so-and-so and so-and-so, and there were a number that dropped out of the trustee status by virtue of that.

But more recently, particularly since the passage of the Indian Reorganization Act of 1934, which automatically, by operation of the act itself, extended the trust period on those reservations which accepted the provisions of the act until such time as Congress could otherwise provide, then, as to those reservations which did not accept the provisions of that act, the extensions have been generally blanket orders. For awhile, there was a practice of extending them for 10 years at a time. More recently, up until the last couple of years, the extensions were annual for 1 year; the orders were drafted in my branch, submitted for signature. The Secretary now signs them, rather than the President. They extend the trust period on all those trust allotments which would otherwise expire in the following calendar year for another period of 1 year.

Beginning 2 or 3 years ago, I believe, the annual extension order has been for a further period of 5 years. Then, of course, we have other types of trusts which are specifically set and fixed, limited by law; for example, the trust on the Osage mineral estate, which will expire, as I understand, some 15 or 20 years from now, but already the Osages are being concerned about its extension, naturally. I think if I were the Osages, I would express similar concern. But we have a number of different variations.

Senator ERVIN. I shall join in the request of Mr. Waters that you furnish us with a brief memorandum giving us these different types of ownerships of land outside of the tribal land and a very brief description of the features of different types of ownership.

Mr. BRUCE. Yes, sir; I shall be glad to do that. I started to give rather tedious statistics on millions of acres of land. I shall cease and desist from giving that orally and present it in a memorandum, together with a statement, as it were, of a lexicon which we use in referring to them, and what, in our own technical sense, we have in mind when we use the terms.

(The information furnished is in the appendix at pp. 282–284.)

Senator ERVIN. Off the record.

(Discussion off the record.)

Senator ERVIN. The committee certainly is grateful to you for the assistance you have given us, and we shall undoubtedly call upon you and the other officials in the Bureau of Indian Affairs for further advice as this investigation proceeds.

Mr. BRUCE. Thank you, Senator. May I say it has been a pleasure.

Senator ERVIN. Thank you.

Mr. CREECH. The next witness is Mrs. Helen L. Peterson, executive director, National Congress of American Indians.

Mrs. Peterson is accompanied by Mr. John W. Cragun, general counsel for the National Congress of American Indians.

STATEMENT OF MRS. HELEN L. PETERSON, EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS; ACCOMPANIED BY JOHN W. CRAGUN, GENERAL COUNSEL, NATIONAL CONGRESS OF AMERICAN INDIANS

Mrs. PETERSON. Mr. Chairman, Mr. Creech, Mr. Waters, I would like to say first that the National Congress of American Indians is the only national private membership association of American Indians, with voting membership limited to the Indian tribes and individuals.

We try to bring this committee and other committees of the Congress the point of view of the Indian people themselves as we get it through the minutes and resolutions of their district meetings, their tribal council meetings, the State and regional meetings of the various tribes, and through the resolutions passed at our annual convention.

Mr. Chairman, I have turned in a written statement, and if you have had an opportunity to read it or will have an opportunity to read it, I shall not take your time here this afternoon to read that statement.

Senator ERVIN. We usually leave it optional with the witness either to read the statement or, if they prefer, we can put the entire statement in the record and make it available to everyone and allow them to highlight their statement or make such additional statements as

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they see fit. If you would like for us to do so, I shall order the entire statement placed into the record at this point. I assure you that points of it that I have not read, I shall read.

Mrs. PETERSON. Thank you very much, Senator. I would, then, like, at this hour of the day, to have the statement inserted in full. And if I might make a few comments, I can refer to particular resolutions in connection with this statement, and perhaps make a few comments to point up some of the things not in the statement, or to emphasize parts of the statement.

First, Senator Ervin, I would like to say that although for almost 20 years, I have been trying to work in the field of human relations, I have to be frank in saying that I do not know what the differences are among civil rights or civil liberties or constitutional rights or special Indian rights, and when we were invited by you to appear here, for the first time in the 8 years that I have served our organization, I was so afraid that you would have a lot of technical and legal questions that I at first asked our general counsel, Mr. Cragun, to make the statement for us.

Senator ERVIN. I am sure that we would probably be more benefited by getting some idea as to whether the Indians have been accorded fair play—I think that is a meaningful term—rather than whether they have been accorded all of their technical constitutional rights.

Mrs. PETERSON. Well, this is why, since Monday, when the hearings began and we could see that your committee cares deeply and wants to go into all of the related matters that have any bearing at all on why law enforcement is inadequate, or why the court systems which the Indians run may need help, and how they may need help, when this developed in the hearing, then I did write the statement which we have turned in to you and which we sincerely hope you will have an opportunity to read, Senator.

Now, originally, the land which we know as the Indian reservations, and the rights which the U.S. Government accorded, the special rights which the Government accorded to the Indians, developed upon these people as tribal groups, not as individuals. I think if we can remember that, it explains what sometimes appears to be a lack of concern by our Indian groups for constitutional rights or the rights of individuals. In the first place, I do not think there is a lack of concern or a lack of regard. I think your instance just related—when you served as county judge—is very true that the Indian judges achieve really very great heights of judicial skill, competence, and performance.

I sat in the court of Judge Moses Two Bulls on the Pine Ridge Reservation, S. Dak., a court that had all of the trappings and all of the dignity of anybody's court. As I listened to that man, in both English and the Dakota language, carefully read the tribal code and carefully inform the defendant of what his rights were, and then, more importantly, looking into the whole family situation so that there was real justice and real opportunity for the people who came to his court to have the best opportunity to restore their dignity and for these people to best fit into the society, I think those are the kinds of cases that Members of Congress would feel merit a great deal of help by Congress, so that these Indian systems, whether they are transitional or not, as we heard earlier, so that they can really work better.

Because there is a lot of evidence, Mr. Chairman, that those Indian systems have a great deal more justice in them, and that they work a great deal better than the white man's courts in those towns bordering the reservations where prejudice and discrimination are as acute and shameful as we find them against any people in any part of our country. I think if we can remember that the Indian people often times have their energies, their money to travel, their time, so consumed with trying to protect the land, the water rights, the timber, and the resources that they own and posess as tribal groups, sometimes it may appear that we have a concern for the group property or group rights that almost overshadows what is really a concern for individual rights, and individual dignity, too.

Senator ERVIN. I think that is perhaps some of our difficulty. When we are trying to be of aid, we have long traditions of private ownership of property, and to us, on an economic basis, that is the only sound way. But, as you point out, the Indians have a different concept, which was the tribal ownership rather than individual ownership. And we tend to think that our way is so much superior to other peoples' ways of doing it.

Mrs. PETERSON. I do not think, Mr. Chairman, our notions are legally so far apart, except we call them by different names. For instance, we have had so much discussion of the Yakima Act. The fact that the Yakima Tribe tries to keep Yakima ownership of property is not really so much different from family corporations that restrict sale of stock in the corporation to members of that family. I think that if we think in terms of merely trying to protect property for the use of individuals, and that, although white men may exchange pieces of paper and deeds, the Indians have land use assignments and families, and the right descended to members of the families, and there is very much respect for that land use right, as there is for a property or deed. So, if we think not that the Indian people did not encourage or permit or protect individuals and families' uses of land, but that they were taking the same kind of care a family corporation takes to see, when and if that Indian family does not any longer need that particular piece of land, then it is available to other members of the family, I think it would not be so far from what our non-Indian neighbors in such large numbers feel is a sensible way to do things.

Now, there may be one or two areas that have not been touched on, and I am trying here to pick up some things that we may not have thought about in these hearings. There are, as has been mentioned, in Montana, North Dakota, and South Dakota, I think, State lien laws that operate to force an Indian's property to be used to pay the State tax for welfare which he may have gotten in his lifetime. Now, it is not that this lien law does not apply also to non-Indians, but the fact that non-Indians can very easily transfer title to their land or their property to relatives, and therefore seem to disposess themselves of their property, and thus qualify for public assistance, and this cannot be so easily done by Indians.

Their property is in trust, you see, and it really brings about an operation in State lien law in respect to welfare assistance which operates differently with respect to Indians than it does with respect to non-Indians, and I think this is something the committee may want to look into.

There is also a particular situation with respect to attorneys, and I should tell you that our good counsel did not have a chance to see my statement until he came this afternoon, and these remarks are completely without review by him. But through the years, the Department of the Interior, the Bureau of Indian Affairs, the States and the Congress have had and must have at their disposal legal counsel; so also must the Indians have good legal counsel.

In the past, the delays in approval of attorney contracts have been a matter of great concern to many of the tribes, and to the National Congress, which is their organization. Two or three years ago, there was a delay of 13 months in the approval of an attorney in the State of New Mexico, where the State was going to run a right-of-way through the town of Pueblo. Finally, after a year and a half of scrapping, the highway was diverted, but here were these people without attorney of record.

So just as we regard delays of justice as denials of justice in other cases, here the adjudication of Indian claims, too, would be a matter where delays in justice amount to denials in justice.

It seems to me these are kinds of areas that the committee might look into.

Now, much has been said about the lack of appeal procedure. Actually, for years, the Indians themselves have been concerned about an appeal procedure, and even though they are fearful of the white man's court in the towns surrounding them, they know, because they go to those towns to shop, to do many things, and they know what their systems are like, and this is why they are so concerned to keep their own systems with all their faults. But the Indians are also extremely concerned in most areas to improve those systems.

The really big problem always has been lack of resources, and in my written statement, there is a statement saying that the Bureau of Indian Affairs, we think, has been very wrong, first in not really working for adequate appropriations; in some instances, not even requesting adequate appropriations, and we also think that the Department of the Interior, Bureau of Indian Affairs, has a great many ways to improve and to help Indians improve these systems which they have not used. We are hopeful that they will.

We are extremely pleased that the Interior Department Task Force has recommended an amendment of Public Law 280 (83d Cong.), which is essentially the same as the Indian tribes and our organization have recommended for the last 7 or 8 years, since Public Law 280 was passed, and since that is discussed at some length in my written statement, I shall not go into it.

But for the first time, I learned that, through the testimony of Mr. Zimmerman, in 1934, the Interior Department proposed a U.S. Indian Court which could serve both as a court of original jurisdiction and for appeals. I cannot imagine why, personally, more consideration has not been given to this and why our organization has not taken a position whether it would recommend it. Certainly at our next convention in Idaho this month, this will be discussed by our resolutions committee, and perhaps this is one of the ways that the United States could help the Indians to improve these systems. I am sure this has not been heard of in the last 10 or 12 or 15 years.

Lastly, I would like to add to the record a set of resolutions from our organization passed in annual convention, dating from 1953, and in recommendation after recommendation there is a request for assistance from the United States in appropriations so that we can have better law enforcement, better quantity and better quality, so that we can have education for not only our law enforcement organizations and the tribal judges, but for the community. Because it is important that citizens in any community demand and insist on and respect and comply with good law enforcement or it does not work.

And I wanted you, Senator, to know that in 1957, on a very meager shoestring budget, our organization, in cooperation with the Oglala Sioux on Pine Ridge, worked with the Bureau of Indian Affairs and the tribe on schools for tribal officials out of our own funds. (There again, we think the Bureau has been wrong in insisting on the Indians really breaking themselves to use their own money for law enforcement; we do not think the United States has to go quite that far.) In cooperation with the tribe, we conducted a citizenship program. One part of it was to offer small cash prizes to students in the school for essays on "Laws Are Made To Protect the Rights of Man."

I submit these to your committee to establish the wide range of adult education in the community and civic education which are necessary also in good law enforcement.

Senator ERVIN. What is the length of the resolutions you mentioned a while ago?

Mrs. PETERSON. There are eight or nine, perhaps two or three paragraphs each.

Senator ERVIN. Let the record show that these resolutions of the National Congress of American Indians will be included, printed in the record as a part of the record.

(The resolutions referred to are as follows:)

RESOLUTION No. 3 (1953)

REQUESTING AMENDMENTS TO PUBLIC LAW 280

Whereas there was adopted in the 83d Congress Public Law 280, an act to transfer civil and criminal jurisdiction to any State in which an Indian reservation is located, without the prior knowledge and consent of the Indian tribe or tribes; and

Whereas the National Congress of American Indians is opposed in principle to the adoption of legislation affecting the lives and welfare of Indians without consultation and consent of the Indians, a principle which the founders of this Nation so strongly voiced in their relations with the British Parliament; and

Whereas the President of the United States, on the occasion of signing Public Law 280, on August 15, 1953, called attention to sections 6 and 7 of that law, which had been included without prior consultation with the Indians who might be affected, and recommended that "at the earliest possible time in the next session of Congress, the act be amended to require such consultation": Now, therefore, be it

Resolved by the National Congress of American Indians, in convention assembled in Phoenix, Ariz., December 9, 1953, That this organization record its opposition to Public Law No. 280 in its present form; urge the recommendation of President Eisenhower be acted upon; request that Indian tribes be given full opportunity to be heard in connection with the proposal to transfer to the States civil and criminal jurisdiction over Indian lands; and request that Public Law 280 be amended to provide for the consent of Indian tribes affected by the legislation; be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the Secretary of the Interior, the Commissioner of Indian Affairs, and to the Indian Committees of the House of Representatives and the Senate of the United States.

RESOLUTION (1954)

Whereas Public Law 280, 83d Congress, provided that the various States shall have jurisdiction over all offenses committed by or against Indians in Indian country and over civil causes of action between Indians or to which Indians are parties, both without requiring consultation with or consent of the Indians affected; and

Whereas the National Congress of American Indians on December 9, 1953, adopted a resolution urging Congress to amend Public Law 280, 83d Congress, so as to require that civil and criminal jurisdiction over actions to which Indians are parties and offenses committed by or against Indians in Indian country be transferred from the Federal to State Governments only with consent of the Indians involved; and

Whereas the National Congress of American Indians on February 28, 1954, adopted a further resolution which has been interpreted as injecting some uncertainty in the stand taken by the NCAI; Now, therefore, be it

Resolved by the NCAI, at its convention assembled at Omaha, Nebr., this 20th day of November, 1954, That the NCAI reaffirm most clearly its position that Public Law 280 should be amended to require the consent by referendum vote of the Indians affected prior to an assumption of criminal and civil jurisdiction by the States involved.

RESOLUTION (1954)

Whereas the Congress of the United States passed Public Law No. 280 in the 1st session of the 83d Congress, transferring the jurisdiction of civil and criminal matters to the States of the Union; and

Whereas President Eisenhower signed said bill "with reluctance," and asked the Congress to amend it at an early date; and

Whereas six bills were introduced in the 2d session of the 83d Congress to amend the law to conform with the desires of the Indian people; and

Whereas none of said amendments was reported out of committee; and

Whereas the Indian people of the State of Montana are facing a legislative session of their State legislature commencing in January 1955; and

Whereas a bill of several bills will be introduced at said legislative assembly to force civil and criminal jurisdiction on the Indian people of Montana: Now, therefore, be it

Resolved, That this convention of the National Congress of American Indians, assembled at Omaha, Nebr., November 18–21, 1954, go on record opposing the passage of any legislation in the State of Montana, that would force civil and criminal jurisdiction onto the Indian people of Montana without their consent.

That if legislation is introduced in the legislative assembly, provisions be made in the bill which will call for the submitting to all tribes in the State of Montana, by a referendum vote, whether or not, they shall accept the provisions of the act transferring jurisdiction to State authority.

That copies of this resolution be sent to the Honorable Hugo Aronson, Governor of the State of Montana, to Attorney General Arnold Olson, to the president of the senate, and the speaker of the house of representatives of the State of Montana.

RESOLUTION No. 6 (1954)

Whereas the Congress of the United States of America, on August 14, 1946, created and established the Indian Claims Commission for the purpose of hearing and determining claims against the United States of America on behalf of any Indian tribe, band, or other identifiable group of Indians residing within the territorial limits of the United States or Alaska; and

Whereas the purpose of this act was to extend to said Indians the opportunity to present and litigate any and all claims which they might have against the United States of America accruing before August 13, 1946; and

Whereas numerous claims have been filed by various Indian tribes, the number of said claims is so excessive as to preclude early disposition and settlement; and

Whereas the Indian Claims Commission Act provides in part that all necessary information and data should be made available to all interested Indian tribes, claimants under this act, to assist them in the preparation and prosecution of their claims to an ultimate decision; and

Whereas said information and data has not been made available to certain Indian tribes and their attorneys: Now, therefore, be it

Resolved by the National Congress of American Indians, That the Secretary of the Interior and the Commissioner of the Bureau of Indian Affairs be, and they are hereby requested to advise all Bureau officials to make available to any Indian tribe or their attorneys, claimants under said act, any information or data requested by them for the purpose of preparing, presenting, prosecuting their claims before the Indian Claims Commission.

RESOLUTION No. 12 (1956)

BUREAU OF INDIAN AFFAIRS POLICY

Whereas it has been reported to the National Congress of American Indians, in convention assembled, September 24 to 28, 1956, Salt Lake City, Utah, that in recent weeks the Commissioner of Indian Affairs has been meeting with various tribal groups from various Indian reservations in the United States with respect to the relationships to the Federal Government, including the administration of Federal, State, and tribal laws within reservation areas, the business and economic development of reservation resources, and other problems besetting American Indians; and

Whereas the tribal representatives have been informed that these meetings were confidential, and that they might bring only the top officials of the tribe concerned, and some on inquiry have been specifically informed they might not be accompanied by their tribal attorneys; and

Whereas in dealing with the Federal Government many tribes have found it necessary, at considerable cost in terms of tribal income, to employ attorneys who can understand and advise the tribes on their rights, powers, duties, and limitations, and have not always found that the administrative officials of the Government are unfailing in their interpretations of those legal relationships; and

Whereas many groups, because of the representation that the meetings were to be confidential, and others because of their direct inquiries, did not invite their tribal attorneys, though those attorneys would have been useful to them in dealing with the problems to be raised by the Commissioner of Indian Affairs: Now, therefore, be it

Resolved by the National Congress of American Indians, in convention assembled, September 24 to 28, 1956, Salt Lake City, That we deplore the refusal of the Commissioner of Indian Affairs to allow the Indian tribes to bring the full delegation they desired, including their attorneys, and recording secretaries; and be it further

Resolved, That we especially deplore the misrepresentation to the public by the Commissioner of Indian Affairs of the wishes and attitudes expressed by the Indians who have attended the meetings called by the Commissioner. More specifically, the Indian tribes present here at this 13th annual convention are opposed to the policies of the present administration with respect to the handling of such matters as revolving credit funds and termination of Federal responsibility and in view of this opposition we must refuse to endorse or support the Commissioner in these respects, and yet it is in these very areas of concern that we have been misrepresented.

[From the Congressional Record, June 26, 1956]

CLARENCE WESLEY EXPLAINS REAL INDIAN ISSUES

Extension of remarks of Hon. Barry M. Goldwater, of Arizona, in the Senate of the United States, Tuesday, June 26, 1956

Mr. GOLDWATER. Mr. President, we hear much from non-Indians concerning what they refer to as the Indian problem. It is rare, indeed, that we have the opportunity to listen to the wise words of an Indian on the same subject; so it is with great pleasure that today I ask unanimous consent to have printed in the appendix of the Record an article written by one of Arizona's outstanding citizens, a San Carlos Apache, Clarence Wesley. The article, which appeared in the Arizona Republic of June 23, is entitled "Wesley Explains Real Indian Issue."

(There being no objection, the article was ordered to be printed in the Record, as follows:)

WESLEY[1] EXPLAINS REAL INDIAN ISSUES

(By Clarence Wesley, president, Inter-Tribal Council)

American citizens, including public officials, generally don't know what the Indian issues really are. The issues are not assimilation, or integration, or emancipation, or Government control over the Indian person, or civil rights in the usual sense of the words.

The real issues are continuing ownership of land; development of human and natural resources; protection of rights solemnly promised by treaty and law; honor in Government dealing with conquered peoples; our day in court on our claims; real opportunity for education of the same quality as is available to non-Indian citizens; adequate Federal assistance in reservation development toward the end our communities may thrive and contribute to the prosperity of the fine State in which we are located; an end to bureaucratic dictatorship and unnecessary Federal regulations; an end to wasteful and constantly changing, insensitive administration of our affairs in favor of a constant policy of minimum interference and maximum assistance to us to help ourselves.

There is something radically wrong with the kind of Federal supervision of Indian affairs we have had when after 135 years of Indian administration, Indians face more problems than ever. The only bright, constructive spots have been a few years under the Indian Reorganization Act, the enactment of the Indian Claims Commission Act which has been inadequately implemented, a rehabilitation act for one tribal group only, and rare, minor measures. Both for the sake of Indians and the general public, this should not be allowed to continue, even for another decade.

What are some of the things that are wrong? Some of the things that could be done to help? Indian tribes in this country today need long-term loans and grants for resources development, both natural resources and human resources. They need a minimum of regulation and control and a maximum of encouragement and technical assistance. Indian tribes need the kind of program that this Nation is making possible in underdeveloped countries in other parts of the world.

As to Federal appropriations for Indian affairs: True, the U.S. Congress has appropriated millions of dollars to the Bureau of Indian Affairs and does so each year. Beyond that fact, several questions need to be raised. (1) Indians don't receive any payments from the Government, or any services that other citizens don't receive out of tax moneys, from the same source. Indians don't get payments from the Federal Government just because they are Indians.

(2) How much of the Federal appropriation for Indian affairs actually benefits Indians? Many of us who work and plead for development of our resources contend that most of this appropriation goes into salaries—in the central office in Washington, D.C., in eight area offices over the Indian country, and in many reservation field offices. All of them have huge staffs compared to anything that Indian tribes or Indian organizations have to work with. Indian tribes and leaders have protested bitterly against the operations of the area offices on the

[1] Mr. Wesley was elected president of the NCAI in 1959 for a 2-year term. He is chairman of the San Carlos Apache Tribe, San Carlos, Ariz. He is a member of the Miami (Ariz.) Rotary Club and the all-Indian Junior Chamber of Commerce at San Carlos. He served formerly as general manager of his tribe and as first vice president of the NCAI.

grounds they furnish just another layer of bureaucrats, they form another buck-passing stop, they duplicate services.

The general attitude of tribal officials and Indian leaders is that authority and responsibility should be vested in the local reservation superintendent where it used to be. Problems of tribes vary widely, and if the reservation superintendent is a good man and tries to work with the Indians, he can do more good than all the higher brass put together. A good superintendent and the tribe's governing officials working together can accomplish wonders and bring about changes of lasting and permanent value on a reservation.

(3) Very few people realize that many tribes pay many of their own tribal employees and administration costs—in other words, many tribes pay much of their own way out of their own tribal income.

Public officials, including Congressmen and American citizens who complain of appropriations for Indians, should ask themselves what all the county, State, and Federal costs of schools, roads, medical care, law and order, for white communities similar in size and number and location to the Indian communities would amount to if they were all lumped together and shown as one appropriation of tax moneys. The totals would be so staggering that Indian appropriations would look puny.

Money and political power are needed to protect what little is left of our once great natural resources and to develop them not only for our own improved conditions, but for the general prosperity of our State. Modern tribal business corporations, healthy, prosperous, wholesome communities are our goal. The greed of the invaders has gradually taken our wealth from us. We have left only our political power with which to improve our conditions.

Since the courts settled the matter of allowing us to vote only in 1948, our people need much information and encouragement to exercise this effective tool in our behalf. Our Congressmen in Washington are showing more respect for our wishes and our needs as we become more active in our voting citizenship.

Our votes are our greatest hope for the future. The vote of the poorest one among us is just as powerful as the vote of the richest man in Arizona. In counting the votes, at least, we are equal to any other man. Let us not let the golden opportunity of this national presidential election year slip through our fingers. Let us devote ourselves to an all-out effort in voter education among our people in these next few months. Let us make use of the great American tradition and opportunity of political campaigning to get our issues fully aired and discussed, to sound out the candidates who will be seeking our votes, to making our views and our wishes known, to asking for pledges and commitments in advance of the time to cast our votes—this is the only time for political bargaining. When enough of us vote—on the basis of the issues and the records of the men and women who ask for our votes—we can and we will change our conditions, and we will bring about a new respect for ourselves as functioning American citizens, a new respect for our needs and wishes.

[From Congressional Record of July 27, 1956]

THE NATIONAL CONGRESS OF AMERICAN INDIANS

(Mr. Edmondson asked and was given permission to extend his remarks at this point in the Record.)

Mr. EDMONDSON. Mr. Speaker, in the closing hours of the 84th Congress I want to pay tribute to the American Indians of the United States and Alaska and to the churches of America for their intensive mission studies and their interest in legislation for American Indians. I also want to speak of a great organization, the National Congress of American Indians.

In a deeply sincere gesture of appreciation last week, American Indians invited the members of the House and Senate Subcommittees on Indian Affairs to a breakfast to express their great thanks to the U.S. Congress for passing H.R. 5566, the bill to extend the life of the Indian Claims Commission for 5 years without any crippling amendments. Indians from all over the United States and Alaska made this gesture through their organization—the National Congress of American Indians. Also, this weekend, the Otoe and Missouria Tribes, in my State of Oklahoma, are conducting a special ceremonial to thank and honor all the officials who have had a part in making possible their day in court and the final determination of their claim against the U.S. Government.

I know that the Indian people want every Member of the Congress to know of their appreciation.

In the many opportunities I have to work and eat with Indian tribes—and indeed it is a genuine Indian custom to eat together on joyous and important occasions—I have felt humbled by their qualities of generosity, reason, and patience. At our breakfast, a few days ago, though, I also felt guilty for myself and for the Congress in which I am privileged to be a Member, that we had not accomplished more in behalf of these generous and patient citizens of ours. I had tried hard on general education and sanitation bills in addition to supporting smaller measures—but surely I could have done more. I thought then of the many hours we have all spent to enact technical assistance programs for underdeveloped countries in other parts of the world, while our American Indians ask and wait patiently for this Nation to get around to a similar program for them.

But at that breakfast meeting, I also felt new hope for the American Indians not only because the life of the Indian Claims Commission had been extended but because the occasion invited one who has lived close to the Indians to notice the progress of the Indians in building an effective national organization. And I think in the closing hours of the Congress many of my colleagues in the Indian subcommittees will want to join me in paying tribute to the impressive growth in effectiveness and responsibility in the National Congress of American Indians. From the founding convention in Denver, Colo., in 1944, with only about a hundred Indians coming from 34 tribes but speaking only as individuals, the organization has grown to represent officially about 150,000, almost half of the American Indians in the United States and Alaska as represented in its tribal membership voted by the official governing bodies of the Indian tribes. Most of the Indian tribes with significant landholdings have officially voted tribal membership or financial support to the National Congress of American Indians. It was a rare privilege for me to address and observe the 1954 convention of this organization and I was then impressed and humbled by the patience of the delegates to this meeting. The seriousness with which they discussed issues, the courtesy with which they heard all their delegates out, the patience with which they continued their discussions until understanding and agreement came about gave me deep respect for their official actions and resolutions.

A distinguished leader in this effort by the Indian people to forge a responsible national organization, to give voice to Indian concerns, has been the chief justice of my own State, the Honorable N. B. Johnson of Claremore, who served as the NCAI's first president and was reelected 8 successive years. Another distinguished Oklahoman, W. W. Short, served as the second president, preceding the current president, Joseph R. Garry, great-great grandson of the great Chief Spokane-Garry. It was 20 tribes of Oklahoma under the leadership of Robert Goombi, chairman of the Kiowa-Comanche-Kiowa Apaches, who joined in designating NCAI's executive director, Mrs. Helen L. Peterson, Oglala Sioux, as "Outstanding Indian Citizen of 1955" last summer at the Anadarko, Okla., Indian Exposition. Other distinguished Oklahomans who are helping to make NCAI a unique contribution and a credit to the Nation as well as to the Indian people are numerous Indian attorneys, tribal officials, and Will Rogers, Jr.; Allie Reynolds; Maria Tallchief; and W. W. Keeler. It is the hope of many of us that this all-Indian national organization will bring its annual convention to Oklahoma in 1957 to help us observe our 50th anniversary as a State. I cannot help but point with pride to the fine contributions of Oklahoma Indians in building a needed national Indian organization, just as they have contributed so richly to other areas of our national life.

By means of the recent breakfast, the Otoe-Missouria celebration to be held tomorrow, and in many other ways, American Indians have thanked us in the U.S. Congress for doing what we must acknowledge was no more than our duty. I believe many of my colleagues will want to join me in returning thanks to the American Indian people for their patience with our slowness, in extending them our congratulations for effective, responsible and impressive work done by their national organization in the 84th Congress just ending, and a pledge that we shall increase our efforts in their behalf in the years to come and that we welcome their ideas and participation in an accelerated Federal program to improve the conditions of the American Indian people.

RESOLUTION No. 21 (1957)

LAW AND ORDER

Whereas various phases of the law and order programs on most reservations need increased support from the Federal Government; and

Whereas neither tribal governments nor the States involved are able to meet the necessary requirements to carry on satisfactory programs in the field of law and order; now, therefore, be it

Resolved by the National Congress of American Indians in convention assembled in Claremore, Okla., October 28 to November 1957, That the Federal Government provide funds necessary to maintain law and order on the reservations of the tribes where such assistance is needed.

RESOLUTION No. 7 (1957)

DISCRIMINATION

Whereas it has come to the attention of the National Congress of American Indians that discrimination by various police departments exists in areas where Indians are located and especially adjoining the Indian reservations;

Whereas such discriminatory acts tend to take the form of physical brutality, too-ready arrest, holding prisoners incommunicado, and unwholesome conditions of imprisonment; and

Whereas the victims of arrest are often not advised of their rights or provided with proper legal counsel, resulting in excessive fines and disproportionate penalties; and

Whereas they are denied the justice guaranteed to all citizens equally under the Constitution of the United States of America: Now, therefore, be it

Resolved, That the National Congress of American Indians take such action as may be indicated by the facts of the individual situation or channel any such complaints pertaining to the above to the proper agencies for appropriate action.

(Report of Committee on Discrimination unanimously adopted by the convention.)

Delray B. Echo Hawk, Chairman, Pawnee; Irene D. Mack, Menominee; Nelson Jose, Pima; Albert Cobe, Chippewa; Jennie Weso, Menominee; Levi Horsechief, Pawnee; Austin Realrider, Pawnee; Narcisse Brave, Rosebud Sioux; LaVerne Madigan, Consultant, AAIA.

[H.R. 7399, 85th Cong., 1st sess.]

A BILL To authorize assumption by the various States of civil or criminal jurisdiction over cases arising on Indian reservations with the consent of the tribe involved; to permit gradual transfer of such jurisdiction to the States; and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the United States is hereby given to any State, with respect to any Indian country within its territorial limits, to assume jurisdiction over criminal or over civil causes of action with the consent of the tribe occupying the particular Indian country affected by the assumption of jurisdiction. The extent of such jurisdiction, either civil or criminal, shall be as agreed upon from time to time by the State and the tribe concerned, and may be extended or retracted by agreement of both the State and the particular tribe as experience proves practicable and planning may indicate to them advisable. Except to the extent provided for by such consent and agreement, there shall apply unimpaired within the particular Indian country such tribal or Federal jurisdiction as would have applied in the absence of any assumption of jurisdiction by the State.

SEC. 2. The consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this Act.

SEC. 3. The Act of August 15, 1953 (Public Law 280, Eighty-third Congress; 67 Stat. 588), is hereby repealed as to any Indian country wherein either the tribe concerned or the State may, within one year following the approval of this Act, refuse to accept the State jurisdiction therein conferred.

RESOLUTION No. 21 (1958)

Whereas there was adopted in the 83d Congress, Public Law 280, an act to confer jurisdiction to the States with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes; and

Whereas such act was enacted without full opportunity of Indian people to express their views on State control; and

Whereas imposition of such controls should be subject to acceptance by the the Indians involved in a general election called for that purpose; and

Whereas Public Law 280, 83d Congress, in its present form is an unjust law; and

Whereas Public Law 280 applies a unilateral formula to all tribes regardless of their needs and special circumstances; be it

Resolved, That the Congress of the United States (86th Cong., 1st sess.) is hereby requested to amend Public Law 280 (83d Cong.) by providing that notwithstanding the provisions of sections 6 and 7 of the act, State jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable on Indian reservations only where two-thirds of the adult, enrolled Indians of the reservation accept such jurisdiction voting at a special election or referendum held for that purpose and that the Secretary of the Interior shall call such special election under rules and regulations of the governing body of the tribe concerned when requested to do so by the tribal council or other governing body or by 20 percent of the enrolled adults of the reservation.

RESOLUTION No. 26 (1958)

Whereas in 1957–58, 2,700 persons received general assistance on one (Montana) reservation, which number was 60 percent of the enrolled membership; and

Whereas a survey revealed that there were 1,021 general assistance cases on another reservation; and

Whereas this is evidence of need on some of our reservations; and

Whereas general assistance was financed in two ways:

1. By the Federal Government on some reservations;
2. By the tribes on other reservations; and

Whereas under federally financed programs individual claimants received monthly payments averaging from $13.75 to $39.50; and under tribally financed programs individual claimants received monthly payments averaging $5.33 to $7.51; and

Whereas those tribes which were forced to finance their own general assistance programs were being treated inequitably by the Federal Government, and these programs were inadequate to meet welfare needs, while tribal solvency was endangered: Be it

Resolved, That Federal agencies and employees charged with the duty of protecting Indian rights and looking after the social welfare of Indian people take positive action to the end that the agencies of government, whether they be State or Federal, do not discriminate against Indians in the matter of general welfare assistance and a person of the Indian race receives the same amount under the same rules as a non-Indian.

RESOLUTION No. 31 (1958)

Whereas contracts are being entered into with off-reservation contractors for new construction on Indian reservations who discriminate against members of the Indian community is employment; and

Whereas such construction is intended to be for the benefit of those residing on the particular reservation; and

Whereas there is extensive unemployment on the Indian reservations throughout the United States, causing relief burden to the United States and the several States: Be it

Resolved, That on all contracts for construction on Indian reservations, preference be required to be given in employment to bona fide residents of the particular reservation.

RESOLUTION No. 41 (1959)

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6. That Public Law 280 (83d Cong.) be modified to provide that the assumption by States of jurisdiction in criminal and civil actions in Indian reservations be brought about only after negotiation between a State and an Indian tribe, and only to the extent, from time to time, agreed upon by the Indian tribe;

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RESOLUTION No. 3 (1960)

Whereas the National Congress of American Indians is mindful that the right of every person, or group, to representation by counsel of his choice is one of the most important basic legal rights of all American citizens; and

Whereas other contracts for professional services and budget requests in fulfillment of tribal contracts are vital to the prompt and effective transaction of tribal business, but have suffered from delay in approval, where required, by the appropriate officials of the Department of the Interior; and

Whereas it is vital to the preservation of tribal rights, where counsel and other professional people can be employed only under contracts approved by the Secretary of the Interior or his authorized representative, that such contracts be processed and acted upon by the Secretary or his representative without unreasonable delay, or else the very rights which the tribe seeks to protect by such contracts are in danger of impairment or loss; and

Whereas recently several examples of unreasonable delay or failure to act, on the part of the Bureau of Indian Affairs, or Solicitor's Office of the Department of the Interior, on such contracts and budgets, have become common knowledge among the Indian tribes: Now, therefore, be it

Resolved, That the Secretary of the Interior and Solicitor of that Department are hereby respectfully urged to take such corrective action as may be necessary to provide for an orderly and reasonably expeditious review of and official action on, proposed contracts of Indian tribes with attorneys and other professional persons, and to review budgets in aid of such contracts.

RESOLUTION No. 4 (1960)

Whereas the Bureau of Indian Affairs in numerous instances during the past year has refused to recognize the duly elected governing bodies of Indian tribes not organized under the Indian Reorganization Act; and has required that decisions and actions of such governing bodies be submitted to referendum vote of all tribal members (for example, establishment of tribal land purchase programs, establishment of tribal credit enterprises, employment of attorneys, etc.); and

Whereas this policy of bypassing the duly elected tribal representatives has caused unnecessary delay, confusion, and frustration in many instances to the great detriment of the tribes: Now, therefore, be it

Resolved, That the National Congress of American Indians requests that where tribal constitutions establish elective governing bodies and give them general authority to manage tribal affairs the Bureau of Indian Affairs recognize the decisions and actions of such tribal governing bodies in all matters concerned with tribal business and affairs, except in matters which the constitutions have specifically reserved for decision by all tribal members;

Resolved, further, That the Code of Federal Regulations be amended where it conflicts with the policy herein recommended.

RESOLUTION No. 21 (1960)

Whereas there often exists the need for assigned counsel to defend indigents accused before Federal district courts, Indian cases under the Ten Crimes Act constituting a substantial part of such cases in Indian country; and

Whereas there now exists no provision for renumeration to be paid or provided for such assigned counsel; and

Whereas such condition presents an extreme hardship on the assigned counsel; and

Whereas it is deemed in the furtherance of justice and better protection of the rights of indigents; and

Whereas legislation has been introduced tending to correct the above mentioned conditions: Now, therefore, be it

Resolved, That the National Congress of American Indians in convention assembled at Denver, Colo., November 14–18, 1960, hereby urge that legislation be enacted to provide for adequate renumeration of assigned counsel.

RESOLUTION No. 22 (1960)

Whereas certain social problems of Indians especially relate to broken families and juvenile delinquency matters, have long been unresolved due to lack of intertribal enforcement of judgments of tribal courts, and intertribal extradition of fugitives from tribal justice; and

Whereas a conflict of jurisdiction poses a serious problem in efforts to correct such problems and injustices: Now, therefore, be it

Resolved by the National Congress of American Indians in convention assembled at Denver, Colo., November 14-18, 1960, That we urge the Secretary of the Interior, the Commissioner of Indian Affairs, and Congress to provide a uniform method of intertribal enforcement of judgments and of extradition that will apply equally to all Indian reservations.

Mrs. PETERSON. Mr. Chairman, with cordial invitation to you as chairman of your committee and your staff to come out to Lewiston, Idaho, on September 17 and spend a week with us at our annual convention, where you can hear about 60 to 80 different official tribal groups, we hope that perhaps your committee can come; we invite you, and with this, I shall conclude my statement, because I think our counsel, who has been a very great help to us, can no doubt answer the questions that I cannot.

Senator ERVIN. I wish it were possible for me in person to accept that invitation. I fear I shall not be able to because of prior commitments, but I shall certainly see if we cannot have representation by our staff at your convention.

(The complete statement of Mrs. Peterson is as follows:)

STATEMENT OF MRS. HELEN L. PETERSON, ENROLLED MEMBER, OGLALA SIOUX TRIBE, PINE RIDGE RESERVATION, S. DAK.; EXECUTIVE DIRECTOR, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, D.C.

We have understood that a primary purpose of this investigation into constitutional rights for American Indians was to see how Indian citizens were faring in those areas where the Federal jurisdiction has been specifically transferred, by act of Congress, to five particular States, namely, Nebraska, California, Minnesota, Wisconsin, and Oregon (with Warm Springs excepted in Oregon). We were pleased at this prospect since our organization has opposed such transfer of jurisdiction unless it had the consent of the tribe affected, and an important reason for this opposition on the part of our Indian constituency has been fear of what the States would do, or fail to do. In turn, this fear is based on experience with what some State and local law enforcement has done, or failed to do.

First, I should like to urge this committee to give careful consideration to the position of the National Congress of American Indians in respect to Public Law 280, 83d Congress, which brought about the specific transfers mentioned above. NCAI, by resolution of annual convention, has recommended amendment of Public Law 280 in such way as to require agreement by the particular State as well as by the particular tribes affected before jurisdiction may be transferred from the Federal to the State government. Furthermore, the NCAI-endorsed legislation would permit piecemeal transfer of jurisdiction, provided, of course, it is agreed to by the tribe and State concerned. Our bill would go further, however,

and permit the undoing of specific transfers, again provided that the tribe and the State agree this should be done.

May I explain the last statement: When Congress, under Public Law 280, transferred jurisdiction to Nebraska that State was obviously unable or unwilling to accept its new responsibility. The Omaha and Winnebago tribes were without law enforcement for almost 8 years. Recently, we are informed, those Indian citizens and their non-Indian neighbors, with professional help, including research, from the University of Nebraska have finally gotten the State to assume this responsibility. The denial to these people of protection of the law for some 8 years, the energies expended to get for themselves what other citizens take for granted, the time, travel and other resources spent on this that should have gone into more constructive development programs are shameful to contemplate, particularly in view of the fact that the lands of the Omahas and Winnebagos have been taxed all along, that these two small tribes constitute a very small fraction of the State's total population and it can hardly be claimed that this is a case where the State can't afford to furnish the protection of the law.

We ask that our organization's resolution on the amendment of Public Law 280 and a copy of the proposed legislation be inserted for the record.

Mr. Chairman, the reason for going into this in some detail is that, as these hearings opened and unfolded, it seemed that the emphasis developed on the notion that in some way Indian tribal councils are frustrating their members through denying such members their constitutional rights as citizens of the United States and of the States wherein they reside. We would like to go back to what has happened to Indians at the hands of States. We have pointed to one example in Nebraska—may I mention another? In 1956, a Sioux World War II veteran by name of Vincent Broken Rope was shot in the back and later died from the wounds over a minor incident in Gordon, Nebr., a town bordering the Pine Ridge Indian Reservation in South Dakota. A coroner's jury made a perfunctory examination and ruled that the town marshal was doing his duty but the general understanding was that this was a wholly unwarranted shooting. (The marshal was later shown to be an unstable person.) Within the same year, two white boys picked up a 15-year-old Indian girl and her brother on the highway; attacked the girl and when she fell or was pushed from the car, was killed on the highway. The boy responsible for that got 3 months in jail. In about 1956, there was a case of an Indian shot in the Platte Valley of Nebraska; only when courageous citizens in the valley persisted for months in the face of entrenched authorities did justice finally prevail. Then there were the instances when Sergeant Rice, in about 1950, and a Mr. Nash early this year, were refused burial in white men's cemeteries because they were Indians. Again, these occurred where white men, not Indian tribal councils, were responsible for justice and order in society. In Idaho a decade ago, some Indian boys were sentenced 14 years for stealing sheep.

While these may not fit the classification of denials of civil rights exactly, they do indicate something of the attitudes of prejudice, and the quality of law enforcement in regard to Indians that exist under the white man's law enforcement and court systems where there is no connection whatsoever with any Indian tribal council or tribal court.

During this summer, I have seen a telegram sent by a California U.S. attorney asking a university professor where to get legal help for Indian citizens in Bishop, Calif.

Your own committee has reported that some States are unwilling to admit Indians who are mentally ill, contending they are the special and even total responsibility of the Federal Government, yet at the same time patients are being discharged from St. Elizabeths Federal hospital. And it is a well known fact—though our organization doesn't have staff or resources to document the cases—that North Dakota and other States sometimes patently deny Indians equal access to State institutions.

The argument that Indian citizens do not now have the protection of law enforcement on their own reservations, and at the hands of their own tribal governments, but would do better at the hands of the States is simply not borne out by what we think we know.

Whatever faults the tribal systems and the Federal Government may have, the complaints are far more in terms of inadequacy of law enforcement than denial of constitutional rights, and there is no evidence that the States would do as well, at least at this stage in history where most Indians will agree that

there is prejudice and discrimination in the communities bordering their reservation homelands.

This leads to the second recommendation that Indian tribes and our organization have made in the past and we now make to this committee: that larger appropriations to provide more and better law enforcement be placed in the hands of the Federal law enforcement officials and the tribal law enforcement agencies. We think the Bureau of Indian Affairs has been wrong in recent years in insisting to an extreme degree that such a large part of this burden be borne by the tribes themselves out of their own resources. Many of their resources are extremely limited, and their efforts to develop revenue are met with many frustrations. Great improvement in the quality and quantity of law enforcement can be brought about overnight with this obvious and direct kind of action, and your committee recommendations would be of great value toward this end. (See NCAI resolutions calling for more appropriations.)

As Congressman Arnold Olson and Commissioner-designate Nash have testified in this hearing, an essential element in improving law enforcement is communication with, and the confidence of, the Indian people themselves.

While we are painfully aware of our lack of resources for research and documentation, we do feel that our organization—being the only one on the national level of the Indians, by the Indians, for the Indians—can help your committee to gain more understanding of the strengths and advantages of the tribal law enforcement agencies and court systems. Having watched the obvious good will and concern of this committee for the Indian people and the subjects under consideration in these hearings, we know that you gentlemen of the committee could not but help be moved by many of the decisions of the Indian tribal judges and policemen. While their procedures or records may not be in the same form as those of the white man, nevertheless their deep concern for justice, for compassion, for determining the kind of punishment that will come closest to helping a man restore his dignity as a person, the appealing concern for the family of the defendant, the care that is taken to inform the defendant of the provisions of the tribal code in a way that the defendant truly understands (and where this involves explanations in an Indian language, with 150 different languages still spoken by the Indians today this is something the white man's court could hardly provide), these are truly attempts at justice that this committee will want to know about. They are among the positive things to be said for these Indian systems that, transitional or not, cannot but commend themselves to enlightened white men who search for better answers to the problems of what to do with offenders against society.

Mr. Chairman, is it not so that good citizens in the District of Columbia are shocked and fearful over the muggings, the yokings, the purse snatchings, the other crimes in the National Capital, some of which go unapprehended and unpunished? Yet is it not also true that here in our Capital there are those who drag their feet on appropriations that will come closer to meeting the needs for law enforcement? Well, so is it with Indian communities. We submit that there is not nearly so much denial by Indian systems of law of constitutional rights to Indian citizens as there is inadequacy of resources for law enforcement, for the training of Indian officials and judges, and for adult education of the general Indian community population as will bring about concern for, and observance of, the constitutional rights of Indians. Our organization has already demonstrated its grave concern for more and better law enforcement, for seeking the means to bring this about, for carrying on adult education programs within the tribal councils and among the Indian citizenry at large to bring about the community acceptance and demand for good law and order practices and compliance that are essential in any community for good results. Please notice the essays written by schoolchildren on the Pine Ridge Reservation on the subject "Laws Are Made To Protect Man." This was part of just one program we have carried on for which we have had to solicit the funds in order that we might work in this area.

The National Congress of American Indians stands ready at all times to step up its efforts to encourage and assist the tribal councils, the tribal law enforcement agencies and courts, the Bureau of Indian Affairs, the Congress of the United States, the State and county governments who truly wish to cooperate, and all others who will work sincerely with the Indian people to bring about improvements in this area. We are limited only by resources with which to work.

I would like the record to show that while the United States has despoiled tribes of their tribal lands, has violated treaties and agreements, and has put itself in the position of taking after taking of tribal property without just compensation in defiance of the fifth amendment, no single instance has been mentioned where a tribe has take the property of a member without due process of law. Hundreds of claims of tribes against the United States have resulted over the years; they are now being processed by the Indian Claims Commission after the conscience of this country was appealed to because of the helplessness of tribes, as political entities, to gain access to the courts, as a result of which the Indian Claims Commission Act was adopted. But there is no similar backlog of demands against Indian tribes; tribal governments have been conservative in the extreme of tribal and individual property.

In only one instance whatever is there any demonstration of need for the United States to act. That is asserted in connection with freedom of worship—literally, the right of a group called the Native American Church to use the cactus button, peyote, in their religious celebrations. Now neither the National Congress of American Indians nor I wish to be understood as taking any position respecting peyotists; the organization has not acted upon any statement in this regard. There have been many bills in Congress and State legislatures to ban the use of peyote and much testimony on one side and the other as to whether it should be classed with habit-forming drugs. Some Indian tribes have banned it. The contention seems to be that they have erred, though Congress would not be deemed to be in error if it chose to do the same thing. I would urge only that this matter be seen in perspective. The Indian tribes, before the white man came, governed themselves according to their own rights so as to satisfy their own cultural needs. Some measure of that aboriginal jurisdiction, that status of separateness and self-determination, remains to the tribes to this day. The question is not whether freedom of religion is satisfying as a concept to the white man; whether it meets the needs of his society. The question is whether our country is bold enough to permit the survival of governments which do not necessarily conform to the white man's concept of what is an ultimate good. Otherwise, the tribes could be stripped of the last vestige of their original total rights of self-determination, just to make them over in the image of the white man.

Lest another seemingly unrelated area not be brought to the attention of your committee, let us say that we hope you good gentlemen do not fail to consider the Indians' property considerations in all of these matters. The land, the oil, the water and water rights, the timber belonging to individual Indians (even in trust) and to the tribes has often been a reason for concern about the Indians in a covetous sort of way. Throughout history it is clear that following gold or oil or uranium discoveries, or as markets open up for more timber, or as water becomes scarcer, the movements to civilize, or integrate the Indians, or concern for their individual freedom and "right" to dispose of their property without interference or protection often result in programs or policies that lead to removal of his resources from his ownership. We trust that this good committee will not open more doors to easier exploitation of the remaining fragments of the Indians' land and resources in their sincere attempts to protect the rights of these very people.

Gentlemen of this committee, by your willingness to understand, by your deep and patient study, and then by your wise recommendations and followup, you can help greatly to straighten the American people out on their vast ignorance about the Nation's oldest inhabitants, actually the first Americans. You have an opportunity to help the poorest, least educated, least healthy group in the national society, for their problems of constitutional rights are all intertwined with their social and economic problems, and their cultural differences which could lend much to our increasingly materialistic national society. The Indian tribes have neither the financial resources nor the political strength to do very much about their problems, yet they nag at the conscience of thoughtful Americans. Most Americans simply do not understand and they don't know what to do to help. Now, in 1961, the whole world watches the United States of America and it may soon look much more closely to its relations with its native peoples. These relations may very well be of vital importance in winning the confidence of emerging native peoples and other nations all over the world. Together, let us all insist upon the means to find truly better answers to their problems and may we have guidance that we do not innocently blunder into further destroying their unique qualities and communities that lend refreshing variety and richness to our national society.

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Mr. CREECH. I have just a couple of questions.

Mrs. Peterson, since the 10 courts of Indian offenses are in operation, I wonder if you feel that they effectively safeguard the constitutional rights of Indians in areas over which they have jurisdiction?

Mrs. PETERSON. I know only a little about one. May I ask Mr. Cragun to help me answer that one?

Mr. CREECH. Certainly.

Mr. CRAGUN. The answer is "Yes, they do." They are very much like other courts. They are just as concerned as any other judge in reaching an appropriate judgment, but it must be borne in mind that they are administering Indian justice in accordance, usually, with not only a code, but a code which provides that Indian customs shall be recognized, and accordingly, they pretty much follow the Indian custom.

It may not equate entirely with what a white man's court would do. So far as the Indians themselves are concerned, they are better satisfied with it than they are with the white man's courts, to which they are occasionally haled when they get off the reservation.

Mr. CREECH. Then I assume that you feel that they do safeguard the rights of the individual, the courts of Indian offenses? I wonder, then, do you perceive any objection to the same constitutional restrictions being imposed upon the other courts, the tribal courts?

Mr. CRAGUN. Well, as Mrs. Peterson says in her statement, the question there is whether you are going to insist on making white men out of these Indians in their court cases. Yes, I see an objection to it if you have preserved this jurisdiction to the tribe; the tribe is exercising this jurisdiction frequently under treaty with the United States, and then I turn around and say, oh, no, as a white man, with my prejudices, I insist that you do this my way, even if you are satisfied with what you have got. Yes, I see an objection to that.

The question is whether this Nation is great enough, in connection with its relations with a defeated people, to permit them to enjoy their desire to do things a little differently. That is fundamentally the objection to it.

Mr. CREECH. Is there not also, though, a responsibility for this Nation to see that all of its citizens enjoy the constitutional guarantees?

Mr. CRAGUN. Well, it depends, of course, on what constitutional guarantee you are talking about. In the first place, an Indian tribe is protected against hostile action by the United States. An Indian individual, in his allotment, is entitled to the benefits of the 5th and 14th amendments. There simply is no question, Indians are not deprived of protection against Federal and State Governments. They have everything every other citizen of the United States has.

The question is, Are you going to deprive them, when they are satisfied with it, of the jurisdiction, the procedures, the methods of dispensing government which are traditional with them, and which are administered through their courts, even though it does not follow the white man's prejudices?

Mr. CREECH. What you are saying, sir, is that the Indians themselves are satisfied with the traditional and tribal courts, the manner in which they operate, and they are satisfied with the manner in which

they dispense justice, even though there may be occasions when there is not a recognition of the Federal constitutional guarantees?

Mr. CRAGUN. I would have to say by and large, yes. Now, you take us, as white men, and take our own courts. Certainly, there are occasions when we can rightfully criticize them. Certainly, there are occasions when we can rightfully criticize other agencies of our Government. So you will inevitably have individual instances in which people have complaints and they may be very just complaints. But by and large, there is simply no question that the Indians are completely satisfied with their own methods of dispensing justice. They complain bitterly—I have heard it now for years and years—about Public Law 280 of the 83d Congress, which imposed State law and order on them without their consent, without even the consent of the States which were supposed to take over, and with, sometimes, nearly disastrous results.

But the answer to your question is, there are instances where people are not satisfied: there are also instances in our society. But, yes, the Indians are well satisfied with their method of dispensing justice.

Mr. CREECH. Would you like to comment on that, Mrs. Peterson?

Mrs. PETERSON. May I, please, Mr. Creech?

I think sometimes it would be very easy by getting only a piece of a picture, to get almost a wrong picture. It is true that some of the Indians kick and complain and criticize. That is true.

Senator ERVIN. If I may interrupt, it seems to me there was an Anglo-Saxon in England many centuries ago who said: "No wretch ever felt the halter draw with good opinion of the law."

Mrs. PETERSON. What I wanted to say is that there is little employment—talking about the tribal government kicking about what goes on. There is just a little bit of an element of this being a pastime in it. Let us keep in mind first that almost half of all the Indian people have made their home somewhere else. They are U.S. citizens and State citizens and they have absolute freedom to come and go anyplace they like. And if they thought this system were so bad or if they really and truly thought somewhere else was enough better, they are really free to go someplace else. Some do for one reason or another.

I am not saying those who leave go for that reason. But it is really important to know that American Indians may live and go anyplace they like, and those who stay on a reservation choose to stay on a reservation. And regardless of a few complaints, as our counsel has said, regardless of the complaints, by and large they prefer it to anything else they know, or anything else that is available to them, and by and large, their own system has within it a great deal more justice for them and a very great deal more protection from exploitation by outsiders than the so-called white man's courts all around them, who supposedly have all these guarantees of individual constitutional rights. But the plain fact is that with whatever faults there are in the Indian system, off the reservation they get a much worse deal and they have much greater problems in getting justice in the courts and in feeling that they have had a fair deal.

I think we have to conclude that with whatever complaints there are and whatever criticisms there are, there is room for improvement, but the kinds of improvement that are needed are more adequate resources for law enforcement and more adequate resources to work with

the tribes to improve the whole system, and not a switch to something that is not going to be as good as what they already have.

Mr. CREECH. Well, I believe that both the task force and the Fund for the Republic study indicated that they felt that the constitutional problems are certainly among the great problems facing them; and in discussing them here in the last several days, we have asked witnesses if they felt that by insisting upon the incorporation of the constitutional guarantees in the tribal courts by the tribal councils, by the tribal courts in their proceedings, if it would affect them. We perceived some testimony—Mr. Cragun was of the opinion that it might destroy the tribal courts. We have had other witnesses tell us that it was their feeling that they would not destroy them, that they were compatible with tribal courts; and we have had some testimony indicate that a number of tribal councils have already adopted constitutions providing for these guarantees. I wonder, then, what your feeling is?

Mrs. PETERSON. My own personal feeling is, and I think it is based on some evidence, that as the tribes have had an opportunity to learn, and as they have had an opportunity to devote energy and time, and as they have an opportunity to carry out some of these things, they do improve their codes, they do improve their systems, they will include these guarantees and constitutional rights.

I do not think there is a very widespread reluctance among the Indian people to want to do this. It is a question of lack of understanding or lack of means with which to do it, and I think it is mostly lack of means.

Mr. CREECH. Is it your feeling that if the Department's educational program, which they have discussed here earlier, were to take this message to the various tribes that they would, of their own volition, want to provide for the Federal constitutional guarantees in their own constitutions?

Mrs. PETERSON. I think that the tribes will want to do anything along this line that does not clash absolutely with tribal custom—and I am not sure I could name what those clashes would be, but I do not think there would be many.

Senator ERVIN. Do you think this is more in the nature of an educational process and should be acceptable to the tribes rather than imposed upon them?

Mrs. PETERSON. Yes; it would have to be accepted by the tribes rather than imposed, to work at all.

I would suspect that both Mr. Cragun and Mr. Lazarus, who are here and have had a great deal more experience than I have in working with the tribes on their constitutions and codes, could answer your question a great deal better than I can in that respect.

But my answer was based on what I know to be a deep respect and concern to work with law-enforcement officials at any level.

You know, in New Mexico there is a reciprocal arrangement where the tribes deputize the State officers and the State law-enforcement agencies deputize the Indian officers and they work very harmoniously. I know in some areas the surrounding county officials and the county judges work very harmoniously with the Indian tribes.

Now, knowing their respect for these things, I would count on their willingness, to the limit of their ability, but again, more importantly, the limit of their resources, to carry these things out.

You see, my experience is that there are many more complaints that people need more law enforcement and cannot get it simply because it is not there to be gotten. And it is good and well to plan these things, but to find the means to carry them out sometimes is often very difficult.

Mr. CREECH. Mr. Cragun, I wonder if you would care to comment on that question also?

Mr. CRAGUN. By question, you refer to the matter of adoption by the tribes themselves of a Bill of Rights?

Mr CREECH. Yes, sir.

Mr. CRAGUN. Well, in my experience, something called a bill of rights is not infrequently included in the basic constitution of the particular tribe. It may not be the same Bill of Rights that we refer to in the first 10 amendments of the Constitution, and then on the other hand, it may observe it pretty carefully. But I could only agree heartily with what Mrs. Peterson says: these matters are adopted by the Indians as they appeal to them; as they learn about them and come to value them, they are adopted.

Now, these changes are not rapid and if you deal with the Department of the Interior, you know it is impossible to change a code rapidly. We sometimes have changes turned down over a year after they are submitted. Being processed by the Bureau of Indian Affairs and the Solicitor's Office is not a quick matter. But they are ultimately adopted and I do think that there is considerable likelihood that if presented with the opportunity, many tribes would adopt many specific U.S. constitutional provisions, especially if they had a friendly review of them by the Department.

I might mention one that was referred to by one of the witnesses this morning, simply because my office had something to do with it. I was told by my partner, Glen A. Wilkinson, yesterday, respecting the right to counsel; for instance, the Spokane Tribe wanted to include them in their law and order code when we worked on it 4 or 5 years ago and the Department would not approve it until the tribe took over their own law and order program.

We had to resubmit it and provide that professional counsel would be excluded. The tribe did not want it. I do not know whether the Spokane group still wanted it. I understand now that the climate has changed. But while the witness this morning was unable to document that, it can be documented out of the files of my office, of the attorneys representing the Spokane, I am satisfied.

Mr. CREECH. Of course, now, they have the district court decision and the reversal of the decision of the Department.

This question has been posed: Are the Indians actually satisfied with their own law because they fear the white man's courthouse? In other words, is it relatively satisfactory, as opposed to the white man's justice, or is it absolutely satisfactory with the type of courts which they have, meaning the tribal courts?

Mrs. PETERSON. Well, I think it is some of both. I was trying to say a while ago that with whatever criticism they may level at their own tribal systems, in many areas, the things they say about the white man's courts around them are much, much worse.

It seems to me there is still another aspect here, and that is that after all, the white man's system itself includes Indian judges, Indian

policemen, and so on, and in any system of local self-government, we all must need to learn to do these things. So that I am not always sure what is being thought of as an alternative to helping the Indians learn to make these systems adequate, helping them find the means to make them adequate and carrying on the kind of community education that has real respect for and compliance with good law and order provisions.

I think they prefer their system, I am sure they do, particularly in those areas where English is very difficult for the people.

It would be hard for even the best intentioned person to carry on without knowledge of the language in some areas.

Senator ERVIN. I suspect that Indians, like ourselves, at times, either consciously or unconsciously, have a soliloquy like Hamlet's, whether it is better to bear the ills we know of than to fly to those we do not know of.

Mrs. PETERSON. Yes.

Senator ERVIN. I know many of us have the same perplexities in our minds that Hamlet did when he was soliloquizing on that subject.

Mr. CRAGUN. Mr. Chairman, if I might interject at this point I think that bearing the ills they have is not that they know not the others. They have had enough experience in the white man's courts many times to fear them. They can be discriminated against in the local communities. Now, get an Indian further away and he knows that he is on the same basis as a white man and there will not be any discrimination. But in the on-reservation and near reservation towns, in the white man's courts there, the Indian is afraid. He knows what he would be flying to, but even if he could take that white man's court over with all the white man's laws and administer it himself, he still happens to have his own code of laws, in my judgment.

Now, I have not put up to a vote with any Indians that I know, but it is my best impression as to their feeling toward their own set of laws. So that what Mrs. Peterson says, some of both is true. That is to say, in part, they fear the white man's court near reservations or Indian areas and they do not want it for that reason. But in part, also, they prefer their own tribal custom, and their own habitual method of doing things, to taking over an alien system.

Mr. CREECH. Mr. Cragun, we have been talking primarily about courts of original jurisdiction. Do you feel that in instances where the Indians have had difficulty in arranging for appeals, and of course, the district courts have refused to review cases, saying that they do not have jurisdiction in certain cases which have been presented to them. Do you feel that this is still the case with regard to the appellate procedures, or would you go along with Mrs. Peterson's feeling that it is unfortunate that the provisions which Mr. Zimmerman spoke of, which were proposed in 1934, were not enacted?

Mr. CRAGUN. Well, Mr. Chairman, I am heartily personally in favor of appellate review anywhere. If the question is addressed to my prejudices, I certainly think there ought to be appellate review. No man ought to have a final say-so over another's affairs. That is my personal view. But as to how the Indians individually feel, I have to beg off. I have not explored the problem of appeal with any of my Indian clients.

I do not know better than to hear what Mr. Benge said this morning, where he indicated that it is valued by some tribes, it might be by all. I just do not know.

Mr. CREECH. I would just like to call your attention to a statement you may not have heard this morning. Senator Case testified before the committee this morning, and he made several recommendations, one of which is that the judges for Indian tribal courts be appointed by and subject to removal by the judge of the U.S. district court within which the Indian reservation lies and that the tribal judge be given the status of U.S. commissioner, that there be a right of appeal from the tribal court to the district court.

Mr. CRAGUN. Well, I would think that imposing something like this on the tribes would be very much like saying, well, hereafter, we will not let the President appoint U.S. district judges and U.S. court of appeals judges. We will let the Supreme Court appoint them and remove them at their pleasure, because they are getting too subservient to the Executive, these district judges and court of appeals judges, we do not like the way they reflect the views of the Executive.

My feeling offhand about that is that this is wrong. These people are coming from their own people, adjudicating their own people's cases in a way best understood by them. A district judge is from an alien culture, he is not familiar with the respect or lack of it in which the particular individual is held, and I think he is not equipped to appoint a tribal judge. That seems to me to be something mighty personal to the people concerned and I think they should select them in their own way.

The only election of a judge I ever saw was by a tribal council and it might be worth repeating just so the committee is aware of the mechanics. A tribal judgeship became vacant due to the death of the existing judge. This was on the Flathead Reservation in Montana. The tribe advertised for some 5 weeks, as I recall, all over the reservation. It was printed in the newspaper that they would receive applications for tribal judge. They got in, as I recall, a half dozen or so applications. They were all apparently people of some stature, because apparently every member of the tribe—every member of the tribal council knew every one of them, was able to appraise them.

The chairman then called for votes, and I think there were 3 of them who received votes from the 10-man tribal council, written out on slips of paper. The secretary of the tribe opened them up and read out the names.

Then they voted on those three and reduced it to two and then they voted on those two and the majority had picked the one and there simply was no question. He was the one who was appointed to the new judgeship.

Now, I do not see anything wrong in a procedure like that in identifying a judge. Here was a stack of applications. Some of the people did not get the first vote of consideration. But it was quickly determined by secret ballot and I think they reached a result that was satisfactory to the tribe.

Why you should take that away from them and turn it over to a U.S. district judge, who does not know any of the candidates, I do not see.

Mr. CREECH. That is certainly a very interesting story, and we have received some other statements with regard to how some of the judges are appointed. I must confess that this certainly seems to be a much more salubrious method.

Mr. Waters, I believe you had some questions.

Mr. WATERS. Thank you, sir.

We have heard that in some instances the court of Indian offenses is selected by the Bureau officer who proposes them to the council and these voted on by the council in the presence of the officer. Was that likewise your understanding?

Mrs. PETERSON. That is getting away, again, from the people deciding this, to some extent, to a greater or lesser extent and whether it is the U.S. attorney or the Bureau of Indian Affairs or whoever it is, anytime this responsibility is removed from the hands of the people, it is just not going to be shared in, they are not going to feel as responsible for it, it seems to me, as if they determine how these people are going to be chosen and if they do it.

Mr. WATERS. You think the judge is responsible, then, to the council for his actions?

Mrs. PETERSON. Do you know if there are any places where the judge is elected on the reservation at large? It seems to me that either there are places where the judges are elected at large, or at least this is under consideration in some tribes, where all of the people elect the judge.

Senator ERVIN. Mr. Benge testified that some of the tribal judges were elected by a vote, just like members of the tribal council, but in the big majority of instances, they were appointed by the tribal council.

Mrs. PETERSON. I think this is true. I think there are some evils in the system. I think it is true that in these Indian communities, where the people tend to know one another and where there are family groups, it is more difficult to be objective, perhaps. But what I have tried to say all the way through is that there is no lack of concern among the Indian people to correct what is wrong and that the correction of what is wrong must be done by people who sincerely respect the Indian people and their ability to correct this situation, and that with some help, they will find better answers to all of these problems that have been so thoroughly discussed here.

Their record of improvement over the last 10 to 20 years is really most remarkable. It always goes back to the lack of resources and being a major reason for improvements not coming even faster.

Mr. WATERS. If I understand your position correctly, it is that the Indian would prefer his tribal court to that of the State or county court in the adjoining locality, even at the expense of the bill of rights provision which is not available to him in the tribal courts?

Mrs. PETERSON. I would not say that is true of all individual Indians, but I submit that it is true of the tribal groups as a whole, and this is reflected in many, many resolutions, many demonstrations in State capitals, where there is any attempt to change it.

Mr. Waters. By the tribal groups, I assume you are referring to the councils or the governing bodies?

Mrs. PETERSON. Both. I think it is unfortunate that there seems to be some setting apart of the tribal council over on one side and the people on the other, because the tribal councils themselves are the

creatures of the Indian people living on the reservation, who elect the councilmen and the people can change them, they do change them. Most of them have provisions for recall and they do recall them, quite often. And it seems to me that we do have to look upon the Indian tribal council somewhat as we do town and village councils, where the councils are the creations of the people themselves, and if they do not like them, they do have ways of removing them and they would remove them. They may complain, but they have ways of removing them if those people really are not doing as they want them to do.

Mr. WATERS. Would that removal likewise be effective with respect to the judges who are appointed by the council and removed by the council?

Mrs. PETERSON. I am not sure I understand.

Mr. WATERS. May I rephrase that, then?

Mrs. PETERSON. Yes, do rephrase it. I am not sure I know what you mean. Is it a little harder for the judge to be removed if the council appoints him?

Mr. WATERS. If the council appoints the judge, can he likewise be removed at the pleasure of the council?

Mrs. PETERSON. Yes, I think that is the way it is now.

Mr. WATERS. One point you touched on about the approval of the attorney contracts. I just want to clarify that for the record. I believe that the attorney contract you are referring to is the contract by a tribe with its attorney which requires the approval of the Secretary of the Interior. Is that what you are referring to?

Mrs. PETERSON. That is right.

Mr. WATERS. And that it takes as long as 13 months?

Mrs. PETERSON. It takes 7 months, 13 months, a year and a half. Two or three years ago, we had requests from at least a dozen tribes who could not get action on the review and approval of their contracts for attorneys they were trying to engage as general counsel for the tribes, yes.

Mr. WATERS. During this interim period, did they have available any legal service at all?

Mrs. PETERSON. If the lawyer is willing to go ahead without having his contract approved, sometimes the lawyer will go ahead and try to help the tribe, particularly if it is in a bad situation. But it is awkward. Nobody ever feels on as sure ground as if the lawyer's contract with the tribe has been approved. He just does not have the same standing.

Mr. WATERS Does that approval likewise apply to the attorney's compensation?

Mrs. PETERSON. Yes, I think so. Yes, the matter of compensation is a part of the contract which the tribe makes with its lawyer and all of this is subject to approval.

Mr. WATERS. Does that likewise pertain to tribal actions against the Department or on behalf of the Indians in which the Department is an adversary?

Mrs. PETERSON. Yes.

Mr. WATERS. In fact, you have your adversary setting your attorneys' fees?

Mrs. PETERSON. That is right.

Mr. WATERS. Thank you, Mr. Chairman.

Senator ERVIN. I would like to commend some of the observations made by you and Mr. Cragun, to the effect that after all there is a good deal of value to variety and not conformity.

Mrs. PETERSON. That is why we want you to come out and visit us.

Senator ERVIN. We do not get too much defense of variety or conformity, either one, in America today. I think that is one of the threats, one of our national threats—the desire for conformity. So many people want everybody to conform to their way.

Mrs. PETERSON. I hope sincerely, Senator, you have a chance to read this statement.

Senator ERVIN. I certainly will. I have read a good deal of it.

Mrs. PETERSON. I certainly hope you will come out and visit the Indian country. We will let you sit as a judge, I promise you.

Senator ERVIN. Off the record.

(Discussion off the record.)

Senator ERVIN. We are certainly indebted to you and Mr. Cragun for your appearance and I would like to commend the work which your organization is doing for these Americans.

Mrs. PETERSON. Thank you very much, Senator.

Senator ERVIN. Incidentally, if you want to elaborate any of your statements, any time in the next few weeks, we will receive it.

Mr. CREECH. Mr. Chairman, the next witness is Mr. Arthur Lazarus, Jr. Mr. Lazarus is general counsel for the Association on American Indian Affairs.

STATEMENT OF ARTHUR LAZARUS, JR., ATTORNEY AT LAW, GENERAL COUNSEL, ASSOCIATION ON AMERICAN INDIAN AFFAIRS

Mr. LAZARUS. I regret, Mr. Chairman, that I do not have a written statement available for the use of the subcommittee today. I cut short my vacation to come back to testify before the subcommittee and arrived back about 8:30 last night, so I did not have an opportunity to prepare something in writing.

I do have a few remarks that I have prepared and I beg your indulgence to hear them. Then I would appreciate an opportunity to submit a more formal statement in writing within the 2-week period that you have just mentioned.

Senator ERVIN. The committee will be delighted to have your oral observations at this time and we will be delighted to receive such a statement from you later.

Mr. LAZARUS. Thank you very much.

For the record, my name is Arthur Lazarus, Jr. I am a member of the New York and Washington law firm of Strasser, Spiegelberg, Fried, Frank & Kempelman. We serve as general counsel to the Association on American Indian Affairs and to a number of Indian tribes.

Personally, I am also a member of the Committees on Indian Affairs of the American Bar Association and the Federal Bar Association, but, of course, I do not speak today for either of those organizations.

Traditionally, the major problems of Indians and the major obstacles to their progress are in economic and social fields. We who have worked with the Indian people for a period of years have dealt

mainly with difficulties arising from poverty, from ill health, from poor schooling, and also from the difficulty of cultural adjustment—adjusting from the Indian culture to the non-Indian predominant culture.

This committee, therefore, is to be congratulated for looking into what is really an unexplored territory; that is, the possibility that deprivations of constitutional rights may be another area which stands in the way of full participation by Indians in our society.

I think, though, at the outset, we should really define exactly what this problem is or may be, what areas of constitutional rights or deprivations of constitutional rights are of real, practical concern to the Indian people. In other words, we should look at what the problem is and especially what the problem is not.

Now, in our experience, the possibility of a deprivation of constitutional rights for Indians does not necessarily take the same lines as the traditional deprivations of constitutional rights which we in the non-Indian society know best. I understand that during the hearings over the past few days, there has been much discussion of the theoretical power of Indian tribes to deprive their members of the protections of the Bill of Rights and other guarantees under the Constitution. With certain exceptions, this is not, according to our experience, a real problem to the Indian people.

I remember very well when I addressed a conference of Indian judges—these were tribal judges—in Seattle, Wash., about 2 years ago; the subject of my remarks was law and order on Indian reservations and I dealt most particularly with problems of jurisdiction.

During the course of my remarks, I made mention of a Supreme Court decision which held that the well-recognized constitutional protection of trial by jury did not hold on Indian reservations, and I was very much interested to find that the response from my audience, which was an Indian audience, at the conclusion of my remarks, during the question period, was aimed primarily at this particular point, which was something subsidiary in my general discussion.

The first point that came out from the audience was surprise that the Constitution did not apply on the reservation, because these judges had been applying it. The second aspect of the response was that they really did not feel their major problem stemmed from any deprivation of constitutional rights. They had problems of poverty, of ignorance, of juvenile delinquency, of family welfare, but they did not have on the reservation instances of illegal searches and seizures or police brutality or extensive detention before arraignment or the very many other deprivations of constitutional rights with which we in the non-Indian world are particularly familiar.

Now, let me also take up at this point the question of jurisdiction very briefly, because I was present this morning when Senator Case described the difficulty law enforcement officers have in ascertaining the title to land on which a crime may have occurred so that they then can determine which authorities have jurisdiction to apprehend and try the alleged offender. I believe Senator Case was referring to a situation that existed prior to 1948. Perhaps as an attorney I tend to think difficult problems are a little more simple than they might be, but when Congress redefined the term "Indian country" in 1948, I think it fairly well solved the problem to which Senator Case was referring. On the highway he described, it is not necessary to find

out whether the land originally came from a trust allotment or from deeded land. All we need know is whether the highway is within the exterior boundaries of the reservation or outside the exterior boundaries of the reservation. If it is inside, it is Indian country; if it is outside, it is not Indian country, and all of the matters of jurisdiction flow from that determination and the reservation border is well marked.

Our firm has handled at least three or four cases in the State of South Dakota on this subject, where the highway was within Indian country, the defendant was an Indian, and we had, on habeas corpus proceedings or on appeals in State courts, a determination finally that the State authorities had no jurisdiction because the land was inside the reservation boundary.

There is a famous case in the State of Montana where the offense of statutory rape occurred on deeded land inside a reservation and there the court again held rather unequivocally that this was Indian country, notwithstanding the fact that the land had been and still was on the tax rolls.

So I think the question of jurisdiction is probably one that is given too great emphasis or was given too great emphasis in the discussion this morning in terms of running off to determine what land title is. Really, we need only know whether the land is within the exterior boundaries of the reservation.

Then the second problem is whether the people involved are Indians or non-Indians. This generally is not a difficult problem except in highway cases, where you have the automobile traveling at a rather high rate of speed and the individual involved able to get off the reservation quickly if he happens to be on it and involved in an accident.

In that situation, we have been in many instances very fortunate in being able to work out reciprocal arrangements between the State authorities and the tribal authorities, so that law-enforcement officers are cross-deputized. The tribal officers have commissions as deputy sheriffs and the deputy sheriffs have commissions as tribal officers for the purpose of apprehending criminals on the highways. Then, when it is determined whether the man is a non-Indian or an Indian, he is taken to the appropriate court, tribal or justice of the peace, as the case may be.

The point I am trying to emphasize here is, then, that some of the difficulties that we have heard discussed in terms of law-enforcement on Indian reservations are not real difficulties. They may be theoretical difficulties, but in the operation of the tribal law-enforcement programs, they are not real difficulties. There is no question that tribal law enforcement could be improved in many areas, because this is true of law enforcement in almost every community in the United States. We see it in Washington, we see it in New York, we see it throughout the country, a continual clamor on the part of the population to improve law-enforcement techniques.

I think we would be a poorer country if our people did not raise that hue and cry continually. So, just as it exists off reservations, there is on-reservation room for improvement. I do not know of any area, however, as Mr. Benge pointed out this morning, where you could say there is a breakdown in law enforcement. There was one area in Nebraska. That breakdown occurred because tribal law en-

forcement was destroyed and the State did not move in. There was a period of 8 years in which a vacuum existed in terms of law enforcement. I believe this situation today has been brought to an end.

Now, in terms of deprivation of civil rights and constitutional rights, one of the important considerations, naturally, is voting. In the field of Indian affairs, I am happy to be able to report that this problem exists only in fringe areas. All Indians were declared to be citizens of the United States in 1924.

With respect to State elections, the leading decision in the field was handed down in 1948 in the State of Arizona—that is the case of *Harrison* v. *Laveen*. A similar case was decided in New Mexico at about the same time, the case of *Trujillo* v. *Garley*.

In each of these cases, it was decided that Indians residing on reservations are entitled to vote in National and State elections. In one case, the argument on the other side was that reservation residents were not residents of the State. In the other case, it was argued that Indians are persons under guardianship. In both cases, these contentions were overruled.

We do have on the matter of voting certain fringe issues still remaining. In Arizona, for example, there was a threat several years ago that polling places would be removed from the reservations on the theory that State laws did not apply to the acts of Indians on the reservation, and therefore offenses against the State election laws could not be punished by the States. The State therefore threatened to pull the polling booths off the reservation to places where State laws would apply.

As a practical matter, of course, this would have deprived many Indians of the right to vote. The matter was solved in two ways: One by calling the attention of the State authorities to the Federal law, which made any offense a Federal crime measured by the State law, and secondly, by, in this particular instance, authorizing the persons running the polls to be non-Indians.

We have a residual discrimination in elections in the State of New York, interestingly enough. In 1954, when the first of the segregation cases was handed down by the U.S. Supreme Court, the Governor's office announced that all discrimination in schools in the State of New York would be eliminated, and thereupon, by executive order, eliminated the separate Indian school system and wholly integrated that system into the public school system of the State.

This order has worked out entirely to the satisfaction of the Indian people; they feel their children are getting a better education and have the opportunity to meet with their neighbors.

But what has not yet been done is to incorporate the Indian school districts into the non-Indian school districts to which they were attached, so that the Indian parents are not permitted to vote in school board elections.

We have in the State of South Dakota an interesting situation where Indians moving off reservations to towns surrounding the reservation are served periodically about once every 6 months with what are called certificates of nonresidence. This is a device under State law to prevent these Indians from becoming eligible for State welfare payments. These certificates of nonresidence presumably also deprive these Indians of the right to vote, since they are not residents of the community.

In New Mexico, there is now pending an election contest from last November's election, in which one of the defeated candidates is challenging the ballots cast by Navaho Indians on the Navaho reservation. The case, I believe, was argued the day before yesterday, and to the best of my knowledge, no decision has yet been rendered. The case should be controlled by *Trujillo* v. *Garley*, which I cited earlier in my statement.

So from this, I wish to point out primarily that discrimination in voting is not a serious problem as far as Indians are concerned. This is true on reservation as well as off reservation. Our organization has not received any complaints from tribal members claiming that they were in any way discriminated against in tribal elections or that the tribal elections were not fairly held.

I have heard some complaints of nonresident Indians to the effect that they were not entitled to vote by absentee ballot, but this is the choice of the home community and it is a choice made by many of our States, which do not allow absentee voting.

Another area of discrimination against Indians and the deprivations of constitutional rights is in the field of welfare. Unfortunately, I do not have a copy of the remarks of Miss Gifford of the Bureau of Indian Affairs, and I am sure that she touched upon this subject in detail. But I do wish to point out in my own statement that here again, off reservation, there is an area of discrimination against our Indian citizens which bears investigation by this subcommittee.

I have already referred to the situation in South Dakota, where reservation residents who move off the reservation and, therefore, are no longer reservation residents, are served by local authorities with certificates of nonresidence in the localities in which they do take up their residence. This prevents them from becoming eligible for relief under State law.

In the State of Arizona, an attempt was made to bar persons of Indian blood residing on Indian reservations from the benefits of the various social security programs. As a matter of fact, Arizona submitted a plan to the Secretary of Health, Education, and Welfare, which specifically excluded such persons. The Secretary refused to approve the program, the State brought suit in the district court to compel approval, and the district court threw the case out of court, and, on appeal, that decision was affirmed. As a result, the State of Arizona, with respect to aid to crippled children, simply does not accept any Federal funds. It has no program for aid to the totally and permanently disabled, because it will not accept Federal funds which are conditioned upon giving equal treatment to Indians residing on Indian reservations.

We now have pending in the State of Minnesota a case where the local authorities have denied relief to Indians residing on reservations on the ground that they are——

Senator ERVIN. Pardon the interruption. I have been summoned to the Senate floor for a live quorum, and I do not know whether I will get back before you complete your testimony, and the hearing ends today. So I want to take this occasion to thank you for appearing before us and giving us such a lucid statement concerning some of the legal and constitutional aspects of these questions. I also wish to thank you for your assistance and to inform you again, we

will be delighted to receive a statement from you, since it is a probability I will have to stay over there 40 or 50 minutes, and the hearing might close before I have a change to return. I want also to thank the chief counsel and other members of the staff for their hard work in preparing and conducting these hearings. I do have to make the summons over there.

Mr. LAZARUS. Thank you very much.

Mr. CREECH. Mr. Lazarus, would you continue, please?

Mr. LAZARUS. Now, the situation in Minnesota is on appeal to the State supreme court, and our association has just submitted a brief amicus curiae. The case is practically on all fours with one in which we participated 6 years ago in the State of California. This is the case of *Acosta* v. *County of San Diego*, which is now the leading case in the field. The decision was that the county of San Diego could not constitutionally withhold from Indians residing on Indian reservations relief payments which were made available to persons similarly situated off the reservation.

In Browning, Mont., and I suspect in other towns in the State of Montana, we have a very unique form of discrimination against Indians in the administration of the local relief and welfare programs. The Blackfeet Tribe, which includes Browning—rather, the reservation includes Browning—the Blackfeet Tribe is the largest taxpayer in Glacier County. It pays $30,000 a year, approximately, in oil severance taxes, and is a large owner of deeded land, on which it pays regular county real property taxes. Nonetheless, despite the fact that it is the largest single taxpayer in the county, the county commissioners refuse to make any relief distributions to members of the Blackfeet Tribe unless and until the tribe made a further voluntary contribution to the county.

So the net result is that Glacier County has a relief program for Indians, and they are all Blackfeet Indians, which amounts to $50,000 a year. Of that $50,000, $40,000 is contributed by the Blackfeet Tribe and $10,000 by the county. Distributions are made out of this sum until it is wholly exhausted to members of the Blackfeet Tribe. The amount that members of the Blackfeet Tribe receive under this county welfare program is approximately one-quarter the amount received by non-Indians in the same county under the ordinary program.

So in Glacier County, Mont., we have what amounts to a triple discrimination: First, we have a discrimination against an ordinary taxpayer; second, we have a demand made upon the tribe to contribute a special levy so that the county will run a program. Then when the county runs the program, it gives Indian benefits very much less than non-Indians in the exact same situation.

Now what is happening in Browning and what is happening in Minnesota and what once did happen in California and what has happened in Arizona led to the belief among Indians, because they are most familiar with the operation of local welfare programs, led to the belief among Indians that they do not get a fair shake from the State, that they are not given the benefits of State laws and the admission to State institutions to which they are entitled as citizens of the State.

The excuse for this by the States is generally that Indians are exclusively a Federal responsibility. This is not true now and never has been true as a matter of law. So I would like to point out that in our opinion, a very fruitful area of investigation for this subcommittee would be the operation of State welfare programs vis-a-vis our American Indian citizens.

Now the subject which has received, I am sure, the greatest amount of attention by this subcommittee during the hearings over the past few days is that of law enforcement. Law enforcement is a problem not only on the reservation, it is a problem off the reservation. In our experience, it is more of a problem off the reservation than it is on, for off the reservation, Indians are subject to exactly the same laws as you and I, and that means that in the communities surrounding the reservation, they are subject to State law.

We in the association have received numerous complaints from Indians and Indian tribes of discrimination against their members by local authorities off reservation. These complaints have covered the field of police brutality, denial of counsel, extra heavy sentences, and heavy fines designed to relieve the convict of all of the money in his possession and also to take care of whatever public projects convicts are working on in the vicinity.

I know that the very first case I worked on when I came down to Washington to work for the late Felix Cohen was the now famous Idaho sheep case, in which four young Indian boys were driving along the highway and saw a young sheep in the middle of the road. Now under Idaho law, if they had run over that sheep and done some damage to their automobile, the owner of the animal would be responsible to them, because Idaho had a fence-in law. But the result of this situation was that they stopped the automobile, they picked up the sheep, and they put him in the trunk of the car. They were subsequently apprehended for a different offense. The sheep was found in the trunk of the car and they were arraigned.

It was suggested to them that they plead guilty and they would get sentenced for drunkenness and be out the following Monday morning. They did plead guilty and were each sentenced to 20 years for grand larcency for the theft of the sheep. Our association got into that case. Fortunately, the Supreme Court of the State of Idaho reversed and they were not subsequently tried.

I point this out, though, as an illustration of what Indians fear in the State courts. They fear that they get drumhead justice, that they are not apprised of their rights, that they are sentenced for acts which, for a non-Indian, would be forgotten.

I noticed in Mrs. Peterson's prepared statement, which I had the privilege of reading before my own remarks, that she also refers to the light sentences handed out to non-Indians for offenses against Indians. This, too, is an area which bears investigation.

Mr. WATERS. Pardon me, Mr. Lazarus. May I interrupt? She also referred, did she not, to your sheep case in that statement?

Mr. LAZARUS. I believe she did.

Mr. WATERS. May I also ask you one other question. You probably heard your name referred to here in the course of the hearing and I believe it was a case in which you were concerned, in connection with the Blackfeet land purchase appeal. Were you here when that was discussed?

Mr. LAZARUS. Yes.

Mr. WATERS. Are you able to tell us about that now?

Mr. LAZARUS. Yes. Without going into the merits of the appeal itself, my particular complaint was that I had requested a hearing before the Department before a decision was rendered and the decision was rendered without giving me an opportunity to be heard. Now perhaps this is lack of modesty on my part, but I think it is a lack of modesty probably true of the legal profession. We like to argue our clients' cases.

Mr. WATERS. Mr. Lazarus, I wonder if you would do us the service, if you would, please give us a little memorandum on that? The reason I ask that is the file was incomplete. I have asked for a report from the Interior in connection with the same thing. I would appreciate hearing what you have to say in view of the fact that there appeared to be a disparity between some things which can be documented by the lawyers and cannot be documented by the Department.

Further in that connection, I wonder if I could suggest this: if you would allow us to submit some additional questions to you after we have a chance to look over the prepared statement you submit?

Mr. LAZARUS. I would be happy to have those questions. I will be more than pleased to answer them.

Mr. WATERS. I feel that your experience in this will be of more value to us if we were to do it that way, if it is agreeable to you.

Mr. LAZARUS. Yes, certainly. Let me point out to you that my problem on the land purchase appeal for the Blackfeet is just part of a much larger problem in the Interior Department of the failure of the Department to advise Indians when their rights are under consideration, and therefore, the Department renders decisions without the most vitally interested party even being advised that the question is up. I will give you an illustration of this.

An oil and gas lease sale was held. This is tribal land, trust land, but the courts have all held the beneficial ownership is in the tribe and it is as if it were a 100-percent owner. The United States holds a bare legal title, merely to protect the rights of the Indians. The lease is then, let us say—let me put it this way.

An oil company bids, it must put up a deposit. The bid is accepted. Then for one reason or another, the oil company decides it does not wish to go ahead with the lease. It asks for the return of its deposit. It is within the discretion of the Secretary of the Interior to return that money or not. But it is not the Secretary's money and it is not the money of the United States, it is the money of the tribe. If he decides to keep it, it goes to the tribal treasury. But there is no procedure in the Department for telling the Indian tribe that this request of the oil company is pending and that decision is rendered without the tribe ever knowing what is happening to its money and a considerable amount can be returned to the oil company without the tribe ever having an opportunity to protect its own funds.

Mr. WATERS. I would appreciate it if you would also incorporate that into the supplemental statement.

Mr. LAZARUS. Yes, sir, I will.

Now, turning to the situation on the reservation, which is the subject of most of the discussion today, I would like to join in many of

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the remarks made by Mrs. Peterson and Mr. Cragun today to the effect that law enforcement and the bringing of constitutional protections on to Indian reservations must necessarily be a matter of education and development. I think there is a lot there already.

I also think that if the Government, then, were to attempt to force tribes to do things which they were not yet prepared to do, you would get an unfortunate reaction regardless of what the merits of the proposal were. In other words, to us, looking at it from the outside, there might be no question that it is a good idea to do a particular thing in a particular manner. This might be an entirely new concept to Indians. If exposed to it, they will agree, yes, we should do it that way. If told to do it that way, without having an opportunity to test it themselves, the reaction among many tribes with which I am familiar is, we will not be told what to do. Every time we got told what to do by the United States, we lost more of our land and more of our people, and so the initial reaction will be adverse.

Now, since 1953, the association which I represent and I, personally, have been going out at every single opportunity to talk about Public Law 280. Public Law 280 in five cases authorized States to take over jurisdiction on Indian reservations, with no further action, and in all other instances, authorized the States to change their laws or amend their constitutions to take over civil and criminal jurisdiction on the reservation, regardless of the wishes of the Indians.

Now, experience has shown that this is the wrong way to go about it. The result is that tribes throughout the country have concentrated their efforts on opposing the extension of State jurisdiction and on seeking the repeal of Public Law 280.

I have spoken to tribal leaders and there are great numbers of them who would welcome State jurisdiction in certain areas. They feel that they have no facilities for the handling of juvenile delinquents. They have no facilities for handling marital or family problems, child neglect, foster home care, a whole variety of quasi-social matters which come before courts in the non-Indian society. And these tribal leaders would welcome State law and order, State law enforcement in these particular fields at the same time that they do not wish to see the complete transfer of jurisdiction to the State.

So it has seemed to me, and as I say, I have preached whenever the opportunity arose, and we are fortunate that there is now legislation and has been for the past several Congresses, legislation to accomplish the amendment of Public Law 280 to provide two things:

First, that jurisdiction shall not be transferred to States without the free consent of all parties concerned—the local authorities and the tribes included, and second, that there may be transfers of partial jurisdiction and not an all or nothing proposition.

Now, just one other point that I wish to make before concluding this statement deals with a matter you raised yourself, Mr. Waters, on tribal taxing powers not being subject to the constitutional limitations imposed on the taxing powers of States and the Federal Government.

The leading case in the field of tribal taxing powers, or at least the most recent leading case, involved the Oglala Sioux Tribe, which happened to be one of the clients of our firm and our firm handled that litigation. There the Oglala Sioux Tribe enacted a tax or license for

non-Indians doing business on the Oglala Sioux Reservation. The theory of the tax very simply was this:

Our Oglala Sioux people are paying out of their tribal funds for our tribal law enforcement program. You non-Indians from off the reservation are doing business on this reservation—you have your ranches and your cattle and your farms here, and you are contributing nothing to law enforcement. Therefore, we are levying the tax and we are using all of the funds derived from that tax for our law enforcement program, from which you derive benefits.

Now, this is accepted constitutional law. The State of Connecticut, in one of the leading cases in the field, levied a tax upon nonresidents doing business in the State of Connecticut, even though the same tax was not levied upon residents of Connecticut. And the State was upheld in the levy of that tax because otherwise, the nonresident would be escaping legitimate burdens that should be thrust upon him.

And we won the case in the district court on those grounds. We argued on the same basis in the court of appeals. Unfortunately, the United States was also in the litigation and the United States took the position—not us, but the United States—took the position that the tax could not be attacked as unconstitutional because that feature of the Constitution did not apply to tribal taxing powers; the court of appeals followed the argument of the Federal Government in upholding the tax and rejecting the attack upon it by the non-Indian ranchers. But I point this out to you because there were perfectly legitimate alternative grounds for upholding that tribal tax and the court need never have reached the position that it did.

Let me also say that I personally feel that a legitimate argument can be made that what have been described as the self-operative features of the Constitution, or what are sometimes called in the cases inherent rights, that these features of the Constitution do apply now to the acts of Indian tribes, and that the case of *Talton* v. *Mayes*, which is the leading case in the field, merely stands for the proposition that tribes need not accord remedial rights to their members if they do not so see fit.

I may say I submitted a short brief on that subject to the district court here about 2 months ago. The particular case went off on another tangent, but I have a short discussion on that subject which I could forward to the subcommittee if you wish to see it.

Mr. CREECH. I think we would be very happy to receive all of that for the record, Mr. Lazarus, inasmuch as you are going to give us a prepared statement. I think you could set forth all of these suggestions and this discourse in the statement itself.

You certainly have given a very lucid extemporaneous statement this afternoon and the chairman has authorized me to say that we would like to pose questions to you after we receive the statement. So I think, rather than keep you here at length now, in view of the lateness of the hour, that we will look forward to receiving your statement with these incorporations and then pose questions to you at that time, if that is convenient for you.

Mr. LAZARUS. Yes, it will be perfect.

Mr. CREECH. Thank you very much. We appreciate your coming.

Mr. LAZARUS. Thank you for staying so late.

(Whereupon, at 5:23 p.m., the hearing was adjourned, subject to the call of the Chair.)

(The following was received for the record:)

SUPPLEMENTAL STATEMENT OF ARTHUR LAZARUS, JR., GENERAL COUNSEL, ASSOCIATION ON AMERICAN INDIAN AFFAIRS, INC.

The following statement is submitted pursuant to permission granted by the chairman, the Honorable Sam J. Ervin, Jr., when I appeared before the subcommittee at its hearing on September 1, 1961. In order to avoid unnecessary repetition, this supplemental presentation will not cover a number of subjects discussed in my earlier remarks and is aimed, in particular, at responding to the requests for additional information made during the course of my testimony.

At the outset, let me emphasize that, with the exception of certain major crimes which constitute Federal offenses, law enforcement for most of our Indian fellow citizens means both the application of State laws by State authorities off the reservations and the application of tribal laws by tribal authorities on the reservation. In either jurisdiction, of course, events may occur or cases may arise which pose potential constitutional questions. A significant aspect of the subcommittee's investigation into the state of the constitutional rights of American Indians, therefore, is a determination as to whether the questions so raised reflect real or merely theoretical problems.

Considerable attention has been directed during the course of these hearings, for example, to the proposition that the Bill of Rights does not apply to the acts of an Indian tribe. The experience of our association has been that this rule of law, even assuming its current validity, does not have as serious a consequence as might superficially be expected. In the first place, we are advised that a number of Indian tribes have adopted or plan to adopt a bill of rights in their own tribal constitutions, and so provide as tribal law what elsewhere is required by Federal law. Secondly, as a matter of practice, many judges and other tribal authorities have considered themselves bound by the Constitution, regardless of whether its application is mandatory, and thus actually have followed its precepts in carrying out their official responsibilities. Finally, on the basis of research in connection with recent litigation, we are convinced that if and when the issue is properly raised, the U.S. Supreme Court will hold that Indian tribes as a matter of law must respect the fundamental rights guaranteed persons under the Constitution.

The specific case to which I refer, in which the Association on American Indian Affairs has participated as amicus curiae, involves the first amendment rights of a minority group within the Navajo Tribe living on the Navajo Reservation. The legal arguments which led to our conclusion that constitutional limitations were applicable to the acts of the tribe in this situation are set forth in the association's brief in part as follows:

"The allegation is made, on occasion, that the 'provisions of the Federal Constitution protecting personal liberty and property rights do not apply to tribal action.' Cohen, 'Handbook of Federal Indian Law' (GPO, 1954) at p. 181. Upon analysis, these statements are found to stem from the case of *Talton* v. *Mayes*, 163 U.S. 376 (1896), in which the Supreme Court held that the fifth amendment, requiring indictment by a grand jury in most infamous crimes, does not govern the operations of a tribal court. * * *

"The question of whether the Supreme Court would follow its holding in *Talton* v. *Mayes* should the same legal issue again need not be reached in this case. The fact is that Talton stands only for the proposition that a tribal government, absent any Federal action, is not required to grant Indians a remedial right—a right concerning the form and manner in which the power of government is exercised—conferred by the Constitution. Left open by the holding, and not yet decided by the Supreme Court, is whether a tribal government may deny its members a fundamental right—an inviolable and personal liberty—under the Constitution, such as freedom of religion, and the remainder of this discussion is devoted to showing that it may not.

"In many respects the position of Indian tribes in relation to the U.S. Government is similar to the status of the Federal territories. Cohen, 'Handbook of Federal Indian Law,' supra, at p. 148. Considerable light upon the question here presented, therefore, can be shed by an examination into several of the so-called insular cases and related decisions, concerning special areas under the jurisdiction of the United States. For in these cases, the Supreme Court was called upon to define the rights of inhabitants in unincorporated territories, and there developed the distinction between remedial and fundamental rights under the Constitution.

"(1) In *Downes* v. *Bidwell*, 182 U.S. 244 (1901), an importer attacked as unconstitutional a special revenue statute levying a duty upon goods imported from Puerto Rico on the ground that the impost did not apply uniformly throughout the United States. Constitution, article I, section 8. The Court sustained the law in view of the unlimited power of Congress over territories, citing *Church of Jesus Christ* v. *United States*, 136 U.S. 1 (1890), and *Reynolds* v. *United States*, 98 U.S. 145 (1879), but nonetheless saw fit to add (pp. 282–283):

"'We suggest, without intending to decide, that there may be a distinction between certain natural rights enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's own religious opinions and to a public expression of them. Or, as sometimes said, to worship God according to the dictates of one's own conscience; the right to personal liberty and individual property; to freedom of speech and of the press; to free access to courts of justice, to due process of law, and to an equal protection of the laws; to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage * * * and to the particular methods of procedure pointed out in the Constitution, which are peculiar to Anglo-Saxon jurisprudence, and some of which have already been held by the States to be unnecessary to the proper protection of individuals.'

"(2) In *Hawaii* v. *Mankichi*, 190 U.S. 197 (1903), a criminal sought to upset his conviction of manslaughter as unconstitutional on the grounds that the indictment was not returned by a grand jury and that the verdict was by a vote of 9 out of 12 jurors. In rejecting these claims, the Court observed at pages 217–218 that, although "most, if not all, the privileges and immunities contained in the Bill of Rights of the Constitution were intended to apply from the moment of annexation" of Hawaii, the rights to a unanimous jury verdict and a grand jury presentment were not fundamental in nature and thus did not apply in the territorial court. In accord: *Dorr* v. *United States*, 195 U.S. 138 (1904).

"(3) In *Kepner* v. *United States*, 195 U.S. 100 (1904), on the other hand, the Supreme Court upheld a claim of double jeopardy made by a resident of the Philippine Islands.

"In each of the foregoing cases, the Supreme Court recognized the peculiar problems inherent in dealing with newly acquired territories, and with peoples whose heritage, laws, and customs might differ from our own. While intent upon safeguarding the natural rights of all persons, the Court further saw as a practical matter that the application of our entire system of jurisprudence automatically to all areas under the jurisdiction of the United States could cause a breakdown in local law enforcement. Thus, the Court found that Congress, in legislating for a territory, 'would be subject to those fundamental limitations in favor of personal rights which are formultaed in the Constitution and its amendments.' *Church of Jesus Christ* v. *United States*, supra, at page 44. At the same time, the Court would not strike down a criminal conviction in Hawaii—unconstitutional in the United States—where the right claimed involved 'merely a method of procedure which 60 years of practice had shown to be suited to the conditions of the islands, and well calculated to conserve the rights of their citizens to their lives, their property, and their well-being.' *Hawaii* v. *Mankichi*, supra, at page 218.

"The same considerations which led the Supreme Court to distinguish between remedial and fundamental rights in the territories apply with equal force on Indian reservations. Accordingly, an Indian tribe is not required by the Constitution to provide for a grand jury indictment with respect to an infamous crime. *Talton* v. *Mayes*, supra. All tribes are bound, though, to respect those basic rights and immunities under the Constitution which are indispensable to a free people."

To recapitulate, therefore, our experience has been that Indians generally do not conceive of law enforcement on their reservations as raising problems of civil rights, but rather view law enforcement by tribal authorities as a matter of treaty rights and inherent tribal sovereignty—basic principles to be defended against all attack. See, for example, *Williams* v. *Lee*, 358 U.S. 217 (1958), and *Iron Crow* v. *Oglala Sioux Tribe*, 231 F. 2d 89 (C.A. 8, 1956). A comparable situation, of course, does not exist with respect to the administration of justice

by State authorities outside of Indian reservations. In this area, Indians frequently believe (not without reason) that they are the victims of racial discrimination and thus do not enjoy the full measure of protection guaranteed all persons under the Constitution.

In my prior testimony, I reported that, with the exception of a few fringe problems of minor significance, the right of American Indians to vote in State and national elections is not now being abridged. Similarly, in the field of education, desegregation is by and large an already accomplished fact (again with a few notable exceptions) and, apart from raising the general level of training made available, the most pressing school problem is to prevent early dropouts by Indian students. Our association is proud of its role in leading the fight for Indian rights in these two areas, including in 1948 the famous Arizona voting case of *Harrison* v. *Laveen*, and, more recently, the litigation which opened the white schools of North Carolina to Lumbee Indian children.

Still on the bright side of the picture, discrimination against Indians in public accommodations, such as hotels and restaurants, seems to be on the decline. In the field of housing, on the other hand, Indians do suffer many of the same disabilities as other racial minorities. And, as I noted in detail during the course of my oral presentation, our American Indian fellow citizens are subject to special discriminations in the administration of State and local relief and welfare programs.

If the volume of complaints is any guide to the seriousness of a problem, the greatest threat to the civil liberties of Indians is presented by the enforcement of State criminal laws by local authorities in communities adjacent to or relatively near Indian reservations. These are the areas, of course, where many Indians have their only direct, observable, immediate contact with a nontribal legal system and these, accordingly, are also the areas where the attitudes of many Indians to justice as meted out by non-Indians are formed and confirmed. Unfortunately, in too many instances in too many places the administration of law and order by the State has there been tested by too many Indians and found wanting. Specifically, tribal leaders protest that off the reservation Indians frequently are the victims of police brutality and that in the local courts their fellow tribesmen are not advised of their rights, are meted out unusually long sentences and are otherwise given more onerous punishments than non-Indians, including substantial files if funds for payment are known to be available. Just to make the picture more bleak, the ocmplaint also is registered that non-Indians accused of crimes against Indians are let off without punishment or with only light punishment, and that no real effort is made even to apprehend them.

With this background of past and present violations of their constitutional rights under a system of law in many ways misrepresented and misunderstood, small wonder that the vast majority of Indians fear and oppose the unilateral extension of State jurisdiction on Indian reservations. Indeed, one of the tragic aspects of our Government's relations with Indian tribes during the past 8 years has been that so much time and energy on the part of Indian leaders has been spent in seeking repeal or amendment of Public Law 280 of the 83d Congress which, as it now stands, would allow States to extend their civil and criminal jurisdiction over the reservations within their borders regardless of the wishes of the Indians concerned. On such matters as marriage and divorce, adoption and foster home care, juvenile delinquency and like social questions, a substantial number of Indians today probably would welcome a transfer of tribal responsibilities to State and local agencies and, if this experiment worked, a gradual shift of other functions might be forthcoming. To be successful, however, the desire for change must come from the Indians themselves—reflecting that old American concept of consent by the governed—and must be accompanied by a willingness on the part of State and local authorities to do in fact what they accept in theory. In this regard, I earnestly commend for study by this subcommittee S. 1479, a bill introduced by Senators Lee Metcalf and Mike Mansfield of Montana precisely to provide for approval by the Indians to the assumption by the various States of civil and criminal jurisdiction on reservations and to permit the gradual transfer of such jurisdiction through negotiation and mutual adjustment. At the present time, in the absence of this legislation, Indians have no assurance that their needs and wishes will in any way be respected by State authorities and the logical consequence is flat opposition to any diminution of tribal jurisdiction.

The reluctance of Indians to swallow State law enforcement in one large gulp, of course, does not constitute unquestioning endorsement of the present administration of justice on Indian reservations. No one doubts (least of all

the Indians) that tribal law and order systems can and should be improved. Moreover, this subcommittee already has heard testimony on the need for better educated Judges, for more and better trained policemen for a separation of judicial from other governmental functions, for readily available appellate procedures, for the right to counsel, for an extension of court-related social services, etc. If made a reality by joint effort of the tribes and the Government, each and every one of these changes would be a significant step forward in protecting the constitutional rights of Indians.

Rather than dwell upon the foregoing subjects, which have been discussed at length by other witnesses, I shall devote the remainder of this statement to a less publicized aspect of Indian civil rights—the right of Indians to be free from arbitrary decisions by Federal officials. More specifically, our association has been concerned for many years over the failure and refusal of the Bureau of Indian Affairs in its regulations and in actual practice to afford Indian tribes an opportunity to be heard when decisions vitally affecting tribal rights and property are being made. For here is an area where the letter as well as the spirit of the Constitution can be honored by a stroke of the pen, at no cost to the United States, and for years nothing was done to correct existing evils.

As an illustration, let me cite the case I handled as counsel for the Blackfeet Tribe to which reference was made during the course of my testimony. Leaving aside the merits of the controversy, suffice it to say that on July 6, 1959, I appealed to the Commissioner of Indian Affairs from an adverse decision of the area director in Billings, Mont. At the conclusion of my letter, which constituted the appeal, there appeared the following sentence:

"In the event that an adverse ruling is contemplated and you (the Commissioner) propose to affirm the area director's action, we further request a hearing before a decision is rendered."

On July 31, 1959, the appeal was rejected without giving me notice or the slightest opportunity to argue on behalf of the tribe.

On August 27, 1959, on instructions from the Blackfeet Tribal Council, I appealed the Commissioner's decision to the Secretary of the Interior, again asking for a chance to be heard in the following terms:

"In our original appeal letter of July 6, 1959, to the Commissioner, we asked that '[i]n the event that an adverse ruling is contemplated and you propose to affirm the area director's action, we further request a hearing before a decision is rendered.' This petition for oral argument was ignored—a violation of administrative due process which alone should cause reversal of the Commissioner's decision. We now renew our request that we be granted a hearing in the event that an adverse ruling on this appeal is contemplated and you propose to affirm the Commissioner's action."

On January 19, 1961, after a delay of 15 months and 1 day before he left office, Assistant Secretary of the Interior George W. Abbott rejected the appeal and further declared with respect to the request for oral argument:

"Appellant has requested an oral hearing, but in view of the obvious requirements of the tribal constitution, incorporated by reference in the corporate charter, it is not felt that such a hearing would be justified."

So much for a tribe's right to a hearing where some administrator doesn't like its position.

The foregoing illustration, unfortunately, is not an isolated example, but rather until recently has been the general administrative practice. During the past 5 years, three other important decisions were rendered with respect to the interests of the Blackfeet Tribe without giving the Indians an opportunity to be heard (or even notice that the matter was under consideration) in advance of the ruling: (1) Opinion M–36545, dated December 16, 1958, relating to timber as a capital asset of the Blackfeet Tribe; (2) Opinion M–36393, dated December 26, 1956, 63 I.D. 408, relating to the ownership of minerals underlying lands on the Blackfeet Indian Reservation; and (3) Opinion M–36346, dated June 8, 1956, relating to elections on amendments to the Blackfeet constitution. I am confident that other tribes have been the victims of similar experiences.

On September 22, 1960, the Interior Department moved one step forward toward administrative due process for Indians through the promulgation of regulations governing appeals from the administrative decisions in the Bureau of Indian Affairs (25 C.F.R., pt. 2; 25 F.R. 9106). Section 2.4 of the new regulations provides in part that "Notice shall be given of any action taken or decision made from which an appeal may be taken under the regulations in this part, to any Indian or Indian tribe whose legal rights or privileges are affected thereby." The new regulations, on the other hand, do not provide for notice in

advance of the initial decision, and do not deal with the matter of hearings. Moreover, since the regulations are limited to actions by the Bureau of Indian Affairs, there are glaring loopholes in their coverage. As was recently noted by the Committee on Indian Matters of the American Bar Association ("Administrative Law Review," vol. 13, p. 261):

"One of the great needs in practice before the Department of the Interior is for proper notification of attorneys for Indian tribes and individual Indians where applications and proceedings are before the Bureau of Land Management or the Geological Survey and affect the rights of the Indian tribes or individual Indians. For example, determination of rights under certain oil and gas leases between oil companies and Indian tribes have been made by Geological Survey without notice to the Indian tribes affected."

The Interior Department, therefore, need not look beyond its own procedures in order to find an area where Indians could use a little fairer treatment.

In conclusion, let me express once again the sincere appreciation of the Association on American Indian Affairs for the work of this subcommittee in seeking information on the constitutional rights of the American Indian. In such statutes as the Indian Reorganization Act of 1934 and the Indian Claims Commission Act of 1946, Congress has attempted to remedy our Nation's past mistakes in Indian affairs and to foster a political, social, and economic climate in which Indian tribes and individual Indians can develop to their fullest capacity. Exposure and correction of abuses in the field of civil rights for Indians cannot help but contribute to that worthy goal.

STRASSER, SPIEGELBERG, FRIED & FRANK,
Washington, D.C., July 23, 1959.

Re Blackfeet land purchase program.

HON. GLENN L. EMMONS,
Commissioner of Indian Affairs, U.S. Department of the Interior, Washington, D.C.

DEAR COMMISSIONER EMMONS: Under date of July 6, 1959, we filed a formal appeal to you from a decision by the area director, Billings area office, that the Blackfeet Tribe of the Blackfeet Indian Reservation, Mont., a corporation chartered under section 17 of the Indian Reorganization Act, 25 U.S.C. 477, may purchase land within the exterior boundaries of the Blackfeet Reservation only in accordance with article VII, section 12 of the constitution adopted by the Blackfeet Tribe of the Blackfeet Indian Reservation, Mont., a political body organized under section 16 of the I.R.A., 25 U.S.C. 476. The net result of the area director's decision is that the Blackfeet Tribe now is flatly prohibited from using tribal funds to purchase a substantial portion of the lands within the Blackfeet Reservation being offered to the highest bidder at supervised sales conducted from time to time by the Blackfeet Indian Agency.

In further support of our appeal, and as a supplement thereto, we wish to call your attention to the following facts:

Let us assume that the area director's ruling that the "Blackfeet Tribe lacks purchase authority" to acquire lands within the reservation which fell into heirship status after December 13, 1935, is allowed to stand. (See art. VII, sec. 12(b) of the Blackfeet constitution.) In all likelihood, then, such lands—which constitute the bulk of the property involved in supervised sales—will be acquired by non-Indians and thus will pass into fee simple status.

Article VII, section 12(a) of the Blackfeet constitution, however, empowers the Blackfeet Tribe to acquire land within the Blackfeet Reservation which is not now in Indian ownership. Under any conceivable construction of this provision, the tribe clearly is authorized to purchase from the non-Indian buyer the very same tracts which the area director says it cannot purchase from the Indian sellers. Moreover, under Assistant Secretary Ernst's policy memorandum to you of March 31, 1959, "the land will be taken in a trust status if the tribe so desires."

By dint of considerable paperwork, plus a needless windfall profit to non-Indian middlemen at the expense of individual Indian sellers as well as the tribal buyer, therefore, the Blackfeet Tribe lawfully can achieve in three steps what the area director says may not be achieved in one.

We think you will agree that a decision which forces the Blackfeet Tribe to purchase Indian lands from non-Indians at potentially inflated prices is wholly contrary to the interests of the tribe and is similarly inconsistent with the policy

of the Department to encourage tribal land purchase programs. We think you will further agree that the rapid transfer of land from trust to fee simple and back to trust status not only is senseless in terms of the result, but also creates an intolerable administrative burden. Accordingly, we again urge that the area director's ruling be promptly reversed.

Respectfully submitted.

STRASSER, SPIEGELBERG, FRIED & FRANK,
By ARTHUR LAZARUS, Jr.

STRASSER, SPIEGELBERG, FRIED & FRANK,
Washington, D.C., July 6, 1959.

Re Blackfeet land purchase program.

Hon. GLENN L. EMMONS,
Commissioner of Indian Affairs,
U.S. Department of the Interior,
Washington, D.C.

DEAR COMMISSIONER EMMONS: We are writing to appeal a decision by the area director, Billings area office, that the Blackfeet Tribe of the Blackfeet Indian Reservation, Mont., a corporation chartered under section 17 of the Indian Reorganization Act, 25 U.S.C. 477, is prohibited from purchasing land within the exterior boundaries of the Blackfeet Reservation except in accordance with article VII, section 12 of the constitution adopted by the Blackfeet Tribe of the Blackfeet Indian Reservation, Mont., a political body organized under section 16 of the I.R.A., 25 U.S.C. 476. The relevant facts in this case are as follows:

Article VII, section 12 of the Blackfeet constitution reads in its entirety:

"*Purchase of land by tribe.*—Tribal funds may be used, with the consent of the Secretary of the Interior, to acquire land, under the following conditions:

"(a) Land within the Blackfeet Reservation or adjacent to the boundaries thereof which is not now in Indian ownership may be purchased by or for the Blackfeet Tribe.

"(b) Restricted land, which is in heirship status at the time of the adoption and approval of this constitution (December 13, 1935), may be purchased by or for the tribe, with the consent of all the adult heirs, and the legal guardians of minor heirs, payment therefor to be made as may be agreed upon.

"(c) Land owned by any member of the tribe who is over the age of 60 years or is physically incapacitated and who is without dependents may be transferred by its owner to the tribe in exchange for a pension upon such terms as may be agreed upon.

"(d) Land owned by any member of the tribe who desires to leave the reservation permanently may be purchased by the tribe, under such terms as may be agreed upon."

Paragraph 5 of the Blackfeet charter, on the other hand, reads in part:

"The tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the constitution and bylaws of the said tribe, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the tribal constitution and bylaws.

* * * * * * *

"(b) To purchase, take by gift, bequest or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, subject to the following limitations (none of which are here material)."

Since the dates of their ratification, the Blackfeet constitution and charter have been construed as complementary grants of authority to a single entity, the Blackfeet Tribe, so the broad corporate power to purchase property under paragraph 5(b) above has been exercised only on the terms and conditions specified under section 12 above.

This situation, however, now has changed. In on opinion (M–36515) dated November 20, 1958, Deputy Solicitor of the Interior Department Edmund T. Fritz concluded that an Indian tribe organized as a political body under section 16 of the Indian Reorganization Act is a separate entity and possesses "different powers, privileges, and responsibilities" from the same Indian tribe chartered as a business corporation under section 17 of the I.R.A. We believe that this

opinion, which summarily reverses almost 25 years of unbroken administrative and tribal precedent, is mischievous and erroneous. We further understand, though, that Opinion M-36515 is binding upon the Bureau of Indian Affairs unless and until withdrawn.

Operating on the latter assumption, the Blackfeet Tribal Business Council recently voted to transfer certain funds in the possession of the Blackfeet Tribe, a political body organized under 25 U.S.C. 476 (hereinafter referred to as the tribe), to the Blackfeet Tribe, a corporation organized under 25 U.S.C. 477 (hereinafter referred to as the corporation). The funds so transferred from the tribe to the corporation all were allocated to the purchase of land within the Blackfeet Reservation. The specific purpose of the transfer was to enable the Blackfeet Indians acting through the corporation to buy real property pursuant to the broad powers conferred in paragraph 5(b) of the Blackfeet charter rather than in accordance with the more narrow power set forth in article VII, section 12 of the Blackfeet constitution. This purpose, of course, is wholly consistent with the Interior Department's policy of encouraging Indian tribes to use their own funds to the maximum extent for the purchase of lands within their reservations.

Following the foregoing financial maneuver, the Blackfeet Tribal Business Council, now speaking for the corporation, informed local officials of the Bureau that it intended to bid on lands offered for sale within the Blackfeet Reservation as authorized by the Blackfeet charter. Under date of June 22, 1959, Acting Superintendent R. E. Miles advised the council that "you are unable to purchase any tracts on the reservation unless the transaction is in accordance with section 12 of the Blackfeet tribal constitution. * * *" (A copy of this letter is attached hereto as exhibit A.) Mr. Miles' position in turn was based upon a decision on the same subject by Area Director Percy E. Melis, dated June 18, 1959, a copy of which is attached hereto as exhibit B.

Despite this negative response from the area office, the corporation in fact did bid at a supervised sale conducted by the Blackfeet agency on June 24, 1959. The corporation submitted the high bid on over 20 tracts at the sale. Furthermore, on 10 of those tracts the corporation was the only bidder. Nevertheless, as of this writing, the area office still maintains that the "Blackfeet Tribe lacks purchase authority."

The upshot of the decision below is that the Blackfeet Indians, acting through their tribal corporation, have been deprived of their right to use their own money to buy the land they so desperately need. In addition, individual Indian sellers have been deprived of the highest price offered for their property, and in 10 instances are being deprived of any purchaser at all. Finally, the policy of the Department to encourage tribal land purchase programs is being wholly thwarted. For these reasons, the area office ruling of June 18, 1959, is being appealed and should be promptly reversed.

The merits of this appeal as a matter of law are clear. Paragraph 5(b) of the Blackfeet charter empowers the corporation to "purchase * * * property of every description, real and personal. * * *" If Opinion M-36515 is correct, i.e., the tribe and the corporation are separate and distinct entities, then the corporation may buy land without regard to the authority or lack of authority to buy such land vested in the tribe. The tracts on which the corporation was the high bidder at the supervised sale held on June 24, 1959, obviously fall within the definition of "property of every description, real and personal."

We are aware that the powers of the corporation under paragraph 5 of the Blackfeet charter are "subject to any restrictions contained * * * in the constitution and bylaws of the said tribe." Article VII, section 12 of the Blackfeet constitution, however, is a declaratory statement of the power of the tribe to purchase land under that particular instrument, and is not a general "restriction" upon the buying powers of the Blackfeet people. Specifically, section 12 is couched in terms of an affirmative right to purchase lands under certain conditions, and does not contain any prohibition against or other negative limitation upon the purchase of lands not in the four named categories. Accordingly, the right to buy real property of every description set forth in paragraph 5(b) is a new and expanded power confirmed in the charter, a corporate power in the language of paragraph 5 "*in addition* to all powers already conferred or guaranteed by the tribal constitution" in article VII, section 12.

Area Director Melis' decision apparently is based upon a letter dated April 13, 1959, from Deputy Commissioner W. Barton Greenwood (a copy of which is attached hereto as exhibit C), holding that the tribe then was precluded from acquiring a specific tract of land because it did not come within one of

the four classes enumerated in article VII, section 12 of the constitution. We respectfully submit that Deputy Commissioner Greenwood's letter is not here in point because, as was noted by the Assistant Solicitor, Indian Legal Activities, "the tribal charter appears not to be involved" in the earlier matter. As previously stated, the Blackfeet land purchase program now is being conducted by the corporation pursuant to the Blackfeet charter, rather than by the tribe pursuant to the Blackfeet constitution.

Secondly, Deputy Commissioner Greenwood's views in turn are based upon advice from the Assistant Solicitor, Indian Legal Activities, "who counsels us to take the more *conservative* course." [Emphasis added.] This approach to the question, of course, is erroneous as a matter of law. The U.S. Supreme Court repeatedly and consistently has declared that treaties with Indian tribes and laws affecting Indians must be *liberally* construed for the benefit and protection of the Indians. *Jones* v. *Meehan*, 175 U.S. 1, 10–11 (1899); *United States* v. *Shoshone Tribe*, 304 U.S. 111, 116 (1938); *Tulee* v. *Washington*, 315 U.S. 681, 684–5 (1942). Tribal constitutions and charters are subject to no different rule of construction.

Lastly, Deputy Commissioner Greenwood alleges that the legality of purchases of land not in the categories of article VII, section 12, would be clouded and, as a matter of policy, "we (the Bureau) do not propose to risk the possibility of an adverse ruling." We submit, on the other hand, that the potential cloud upon the Indians' title is not a significant factor. First, the law is clear that no defect in title will exist. Second, any such defect would be important only with respect to resale of the land, and the Blackfeet Tribe is barred by law from selling its real property. Finally, the alleged defect is meaningless in practical terms since we doubt that any court would allow a vendor later to rescind a sale to the corporation by virtue of a constitutional provision not adopted for the original seller's benefit.

For the foregoing reasons, we respectfully request that the June 18, 1959, decision of the area director be promptly reversed and the Blackfeet Tribal Corporation authorized to purchase with its own funds any and all lands within the Blackfeet Reservation pursuant to paragraph 5(b) of the Blackfeet charter. In the event that an adverse ruling is contemplated and you propose to affirm the area director's action, we further request a hearing before a decision is rendered.

In view of the fact that the supervised sale of June 24, 1959, is now being processed and similar sales will be held in the near future, we ask that this appeal be given immediate consideration. In the interim, we urge that all transactions under the June 24 sale involved in this appeal be held in abeyance pending final disposition of the matter by the Department.

Respectfully submitted.

STRASSER, SPIEGELBERG, FRIED & FRANK,
By MR. ARTHUR LAZARUS, Jr.

U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS,
Washington, D.C., July 31, 1959.

MR. ARTHUR LAZARUS, Jr.
c/o Strasser, Spiegelberg, Fried & Frank,
Washington, D.C.

DEAR MR. LAZARUS: Thank you so much for your most interesting letter of July 6, 1959, with regard to the Blackfeet Tribe's land purchase program. For the reason indicated below, we must adhere to the opinion previously expressed that the Blackfeet Tribe may only purchase property in accordance with section 12 of article VII of its constitution. If the tribe desires to extend its authority beyond the limitations of that section, it may do so by appropriate constitutional amendment as we have heretofore advised it.

In your letter, you state that the tribe voted to transfer tribal funds to the tribal corporation and that these were allocated to the purchase of land within the reservation. You further allege that the purpose of the transfer was "to enable the *Blackfeet Indians acting through the corporation* to buy real property pursuant to the broad powers conferred in paragraph 5(b) of the Blackfeet charter rather than in accordance with the more narrow powers set forth in article VII, section 12, of the Blackfeet constitution."

Resolution No. 91–58 of June 11, 1959, in its third whereas clause states that the Blackfeet Tribe owns certain real property and desires to clarify the provisions for its management and the acquisition of additional property. Therefore, the Blackfeet Tribal Council confirms that all property presently owned or thereafter acquired by the *tribe* shall be acquired and managed by the *corporation* which is authorized to acquire such property as the governing body of the corporation decides may be to the interest of the *tribe*. Therefore, it would seem apparent that the *corporation is authorized to manage and acquire property not for itself but for the tribe*. Consequently, it is merely acting as the agent of the tribe and is subject to all the restrictions of section 12, article VII of the constitution governing tribal actions.

You further conclude that the aforementioned section 12 is merely a permissive right and should not be considered a limitation upon the tribe's right to purchase land in ways other than those stated therein. Our Solicitor entertains a contrary view. Furthermore, it seems to us that if the tribe were of your opinion, it would not have attempted to use the device of the corporation to acquire land as it would have asserted a constitutional right to obtain it without the necessity of passing Resolution 91–58.

It is true that that portion of paragraph (b) of section 5 of the charter grants the right "to purchase * * * or otherwise own, hold, manage, operate, and dispose of" real property. This language is broader than that of section 12 of article VII of the constitution. The charter also states that this power is "in addition to all powers conferred or guaranteed by the constitution" but the constitution confers no other such powers on the corporation. Furthermore, the entire section is subject to the preliminary statement that the authority granted is subject to any restrictions contained in the tribe's constitution, and the constitution contains the restrictions of the aforementioned section 12.

The Blackfeet Tribe is not being deprived, as you state, of its right to use its own money to buy the land it so desperately needs, because if the need were so desperate it could have amended its constitution to permit the acquisition of such property. Furthermore, the tribe can transfer tribal funds to the corporation for the sole use of the latter. In such case, the corporation could purchase lands for the corporation itself and not for the tribe. Whether the restrictions of section 12 would remain is doubtful but the doubt can be removed by an amendment of the corporation charter specifically to remove the phrase "subject to any restrictions contained * * * in the tribe's constitution."

We should like to be able to assist the tribe in its land purchase program but we do not feel that we would be doing this by approving a resolution which we thought was contrary to a limitation contained in the tribal constitution.

Sincerely yours,

GLENN L. EMMONS, *Commissioner.*

STRASSER, SPIEGELBERG, FRIED & FRANK,
Washington, D.C., August 27, 1959.

Re Blackfeet land purchase program.

BIA Reference: Tribal programs 8361–59.

Hon. FRED A. SEATON,
Secretary of the Interior,
Washington, D.C.

DEAR SECRETARY SEATON: We are writing formally to appeal a decision of the Commissioner of Indian Affairs, issued July 31, 1959, upholding a prior ruling by the area director, Billings area office, that the Blackfeet Tribe of the Blackfeet Indian Reservation, Mont., a corporation chartered under section 17 of the Indian Reorganization Act, 25 U.S.C. 477, may purchase land within the exterior boundaries of the Blackfeet Reservation only in accordance with article VII, section 12 of the constitution adopted by the Blackfeet Tribe of the Blackfeet Indian Reservation, Mont., a political body organized under section 16 of the Indian Reorganization Act, 25 U.S.C. 476.

The grounds for our appeal from the initial area office ruling are fully set forth in our letters of July 6 and 23, 1959, to Commissioner Glenn L. Emmons, copies of which are attached hereto. These assignments of error are equally applicable to the Commissioner's decision affirming the action of the area director and, therefore, are incorporated in and made a part of this appeal by refer-

ence. In addition, the instant appeal is based upon a direct conflict between Commissioner Emmons' decision of July 31, 1959, and Solicitor's Opinion M-36515, dated November 20, 1958.

Stripped of surplusage, the Commissioner's ruling rests solely upon the two following contentions:

(1) That in this instance the corporation is "merely acting as the agent of the tribe" and thus is subject to all limitations contained in the Blackfeet constitution upon actions of the tribe; and

(2) That in any event paragraph 5(b) of the Blackfeet charter includes by reference the "restrictions" set forth in article VII, section 12 of the Blackfeet constitution.

Neither of these points is valid.

(1) Categorizing the corporation as "the agent" of the tribe does not resolve any material issue presented by this appeal, and really constitutes nothing more than the proclamation of a meaningless label. Of course the corporation is the "agent" of the tribe in this case and under all other circumstances, since the corporation was formed precisely for the purpose of serving as an arm of the tribe. Indeed, a contrary conclusion hardly seems possible in view of section 17 of the Indian Reorganization Act, which limits the issuance of a Federal corporate charter thereunder to tribes organized as political entities under section 16 of the act, and particularly in view of paragraph 1 of the Blackfeet charter, which expressly recites that incorporation is intended "to further the economic development of the Blackfeet Tribe of the Blackfeet Indian Reservation in Montana by conferring upon the said tribe certain corporate rights, powers, privileges, and immunities * * * and to provide for the proper exercise by the tribe of various functions heretofore performed by the Department of the Interior." In other words, under the law the Blackfeet corporation is wholly a creation of the Blackfeet Tribe, an instrument for carrying out its purposes, and in effect its alter ego.

Notwithstanding this clear-cut statutory interrelationship, the Solicitor of the Interior Department concluded in opinion M-36515, dated November 20, 1958, that an Indian tribe organized as a political body under section 16 of the Indian Reorganization Act is a separate entity and possesses "different powers, privileges and responsibilities" from the same Indian tribe chartered as a business corporation under section 17 of the IRA. (Significantly, the Commissioner's decision of July 31, 1959, does not refer to opinion M-36515, although that holding is cited in our letter of July 6, 1959.) In order to take advantage of the Solicitor's 1958 ruling, the Blackfeet Tribal Business Council transferred certain funds from the tribe to the corporation for the purchase of land within the Blackfeet Reservation. As noted in our appeal:

"The specific purpose of the transfer was to enable the Blackfeet Indians acting through the corporation to buy real property pursuant to the broad powers conferred in paragraph 5(b) of the Blackfeet charter rather than in accordance with the more narrow powers set forth in article VII, section 12 of the Blackfeet constitution."

The Bureau of Indian Affairs has blocked the Blackfeet Indians from following the foregoing course by holding the provisions of the Blackfeet constitution governing land purchases by the tribe equally applicable to the corporation. The basic question presented by this appeal, therefore, is whether such a conclusion is correct or, in the light of opinion M-36515 and the provisions of the Blackfeet charter, whether the corporation actually has "different powers, privileges, and responsibilities" from the tribe. Merely labeling the corporation "the agent" of the tribe, a relationship required by statute, is sheer jargon and does not begin to furnish an answer to this question.

The direct conflict between the Commissioner's decision of July 31, 1959, and the Solicitor's ruling in opinion M-36515 cannot be resolved. The Solicitor's opinion holds that a tribe (political body), organized under section 16 of the IRA, is separate from the same tribe (corporation) and thus may not exercise the powers conferred on the corporation in the charter issued pursuant to section 17 of the IRA. The Commissioner's decision, on the other hand, declares that the tribe (corporation), chartered under section 17 of the IRA, is merely the agent of the tribe (political body) and thus may exercise only the powers conferred on the political body in the constitution issued pursuant to section 16 of the IRA. Standing together, therefore, the Commissioner's decision and the Solicitor's opinion would read section 17 right out of the Indian Reorganization Act.

The foregoing result clearly is contrary to the plain language of the law and, accordingly, one ruling or the other must fall. As long as opinion M-36515 is in full force and effect and is binding upon the Bureau of Indian Affairs, the Commissioner's designation of the corporation as "the agent" of the tribe is devoid of substantive content and his decision based upon that empty term is wholly erroneous.

(2) The Commissioner's argument that paragraph 5(b) of the Blackfeet charter includes by reference the "restrictions" set forth in article VII, section 12 of the Blackfeet constitution is anticipated and completely answered in our appeal letter of July 6, 1959, as follows:

"We are aware that the powers of the corporation under paragraph 5 of the Blackfeet charter are 'subject to any restrictions contained * * * in the constitution and bylaws of the said tribe.' Article VII, section 12, of the Blackfeet constitution, however, is a declaratory statement of the power of the tribe to purchase land under that particular instrument, and is not a general 'restriction' upon the buying powers of the Blackfeet people. Specifically, section 12 is couched in terms of an affirmative right to purchase lands under certain conditions, and does not contain any prohibition against or other negative limitation upon the purchase of lands not in the four named categories. Accordingly, the right to buy real property of every description set forth in paragraph 5(b) is a new and expanded power confirmed in the charter, a corporate power in the language of paragraph 5 '*in addition* to all powers already conferred or guaranteed by the tribal constitution' in article VII, section 12."

Indeed, the Commissioner seems to acknowledge the weakness of his own thesis by conceding that, if the corporation were purchasing lands for itself and not for the tribe, "[w]hether the restrictions of section 12 would remain is doubtful * * *" (letter of July 31, 1959, p. 2). If the "restrictions" of article VII, section 12 of the Blackfeet constitution in fact are included in paragraph 5(b) of the Blackfeet charter, the corporation would be bound thereby when acting as a principal as well as when acting as an agent. The second of the two grounds upon which the Commissioner's decision is based, therefore, also is without substance or merit.

In our original appeal letter of July 6, 1959, to the Commissioner, we asked that "[i]n the event that an adverse ruling is contemplated and you propose to affirm the area director's action, we further request a hearing before a decision is rendered." This petition for oral argument was ignored—a violation of administrative due process which alone should cause reversal of the Commissioner's decision. We now renew our request that we be granted a hearing in the event that an adverse ruling on this appear is contemplated and you propose to affirm the Commissioner's action.

Respectfully submitted.

STRASSER, SPIEGELBERG, FRIED & FRANK,
By ARTHUR LAZARUS, Jr.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, January 19, 1961.

IA-1155—NO. 1885-56

BLACKFEET TRIBE OF THE BLACKFEET INDIAN RESERVATION, MONTANA, A CORPORATION

Appeal from decision of Commissioner of Indian Affairs. Affirmed.

APPEAL FROM THE BUREAU OF INDIAN AFFAIRS

The Blackfeet Tribe of the Blackfeet Indian Reservation, Montana, a corporation chartered under Section 17 of the Indian Reorganization Act, 25 U.S.C., sec. 477, has appealed to the Secretary of the Interior from a decision of the Commissioner of Indian Affairs, dated July 31, 1959, denying it permission to acquire land, except in accordance with the provisions of Article VII, section 12, of the Blackfeet Constitution.

Section 12 of Article VII provides as follows:

"*Purchase of land by tribe.*—Tribal funds may be used, with the consent of the Secretary of the Interior, to acquire land, under the following conditions:

"(a) Land within the Blackfeet Reservation or adjacent to the boundaries thereof which is not now in Indian ownership may be purchased by or for the Blackfeet Tribe.

"(b) Restricted land, which is in heirship status at the time of the adoption and approval of this constitution (December 13, 1935), may be purchased by or for the tribe, with the consent of all the adult heirs, and the legal guardians of minor heirs, payment therefor to be made as may be agreed upon.

"(c) Land owned by any member of the tribe who is over the age of sixty (60) years or is physically incapacitated and who is without dependents may be transferred by its owner to the tribe in exchange for a pension upon such terms as may be agreed upon.

"(d) Land owned by any member of the tribe who desires to leave the reservation permanently may be purchased by the tribe, under such terms as may be agreed upon."

The corporate charter seemingly contains a much broader provision for the acquisition of lands, and appellant sought to proceed under this charter without reference to the Constitution. The provision in Paragraph 5 of the Charter is as follows:

"The Tribe, subject to any restrictions contained in the Constitution and laws of the United States, or in the Constitution and By-laws of the said Tribe, shall have the following corporate powers, in addition to all powers already conferred or guaranteed by the Tribal Constitution and By-laws.

* * * * * * *

"(b) To purchase, take by gift, bequest or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, subject to the following limitations (none of which are here material)."

The appellant regards the provisions of the constitution above quoted as declaratory only, and does not consider them to be in the nature of a restriction or limitation. In addition to the powers enumerated in the Constitution, appellant feels that it has such additional powers as may be provided in the corporate charter. Such an interpretation does not appear to be justified.

In its own words, the charter has enveloped itself in the constitution and adopted certain provisions of it as its own. In its declaration of corporate powers it states specifically that such powers shall be subject to any restrictions contained in "the Constitution and By-laws of the said Tribe." This means that section 12 of Article VII of the Constitution is a controlling authority for its corporate activities. Any doubt which results from any apparent conflict between the constitution and the charter may be resolved by an amendment to the constitution which has the effect of removing the restrictions or limitations above set out.

Appellant has requested an oral hearing, but in view of the obvious requirements of the tribal constitution, incorporated by reference in the corporate charter, it is not felt that such a hearing would be justified.

Therefore, the decision of the Commissioner of Indian Affairs is affirmed, and the appeal of the Blackfeet Tribe of the Blackfeet Indian Reservation is dismissed.

(Sgd.) GEORGE W. ABBOTT,
Assistant Secretary of the Interior.

STATEMENT OF FRANK B. HORNE, REGIONAL SOLICITOR, DEPARTMENT OF THE INTERIOR, SACRAMENTO, CALIF., SUBMITTED FOR THE RECORD

By letter of August 18, 1961, you invited me to appear before your Subcommittee on Constitutional Rights. You requested an expression of my "views on what constitutional rights apply and what rights do not apply to * * * (Indian) citizens."

When it was determined that I would be unable to appear personally with representatives of the Department of the Interior, you indicated a desire to have a written statement from me on the subject. Because this subject is treated in some detail in "Federal Indian Law," my observations will be brief and general in this instance.

The general theme of "Federal Indian Law," which was published by the Department of the Interior in 1958, is stated in the first paragraph of chapter I:

"Indians born in the United States and subject to its jurisdiction are citizens of the United States and the States wherein they reside. As citizens, they have constitutional rights, liberties, privileges, and immunities, and they also have correlative legal duties and obligations."

Those rights sometimes referred to generally as civil liberties are not necessarily self-executing rights. Constant personal assertion and governmental enforcement are essential to their continued vigor. A healthy respect by all citizens of the United States and a general obligation on the part of each of us to maintain such rights of other citizens are constant goals to be sought under our system of a government of law. Perfect or complete achievement of these goals, as our history demonstrates, is difficult and perhaps impossible to attain, but this historical difficulty affords no valid reason to abate the continued effort and constant struggle that are required. Viewed in this manner, an examination of the subject of civil liberties of Indian citizens can be constructive and perhaps rewarding.

The struggle within the framework of our National Government to maintain civil liberties is as much a part of the inheritance of Indian citizens as non-Indian citizens. This is exemplified in *U.S. ex. rel. Standing Bear* v. *Crook*, 25 Fed. Cas. No. 14891 (1879) wherein a right to abandon tribal and Indian status was asserted and recognized. In the field of Indian affairs the problem of civil liberties has been complicated by its interrelation to the national problems of managing Indian affairs, particularly those pertaining to property. Separation of responsibilities has been difficult to achieve by reason of the fact that lurking in the background is the ever-present exercise of plenary national power over Indian affairs. It was a prime problem in 1832 (see *Worcester* v. *Georgia*, 6 Pet. 515, 536, 553–554) and it remains a difficult problem today (see *Williams* v. *Lee*, 358 U.S. 217, 218, 223 (1959)).

In the management of Indian affairs, the National Government has maintained a special status for many of our Indian citizens. This special status is not necessarily unique. For example, a special status is created for armed services personnel in the exercise by Congress of its legislative powers to make rules for government and regulation of the Armed Forces of the Nation. A special status also has been created in the past in connection with the exercise by Congress of legislative power to make needful rules and regulations respecting the territory and property of the United States. A full measure of civil liberties is not necessarily assured to citizens in such a federally created status. The mention of this point is not for the purpose of judging programs in which civil liberties may be limited. It is simply for the purpose of seeking perspective in considering the scope of constitutional rights of Indians who are in a special status either as individuals or as members of tribal organizations.

Civil liberties of Indians in this special status may become intermingled with many other problems such as the problem of conducting the municipal-type government exercised by tribal organizations, the exercise of the voting franchise, the rights of individuals in communally-held tribal property, the problems of taxation and legitimate tax avoidance, and the matters of religion and religious practices.

Without attempting an exhaustive analysis or presentation, it may be noted that in the absence of definitive action on the part of the United States, residual tribal sovereignty will continue to exist in tribal governments which will be upheld by the courts. See *Williams* v. *Lee*, supra. To the extent that Congress desires a change in tribal governmental practices relating to civil rights, it may supply the guidelines by legislation. If it does not do so, situations such as existed in *Toledo et al.* v. *Pueblo de Jemez et al.*, 119 F. Supp. 429 (1954); U.S. Department of the Interior, "*Federal Indian Law*" (1958), pp. 916–917, may continue to arise from time to time. While there is proper concern with tribal government when situations such as the *Toledo* case arise, it may be of interest to note what can happen among respected non-Indian groups. For example, the following item of interest is found in Chafee and Pound, "Cases on Equitable Relief Against Torts" (1933), appendix A, p. 136:

"COLUMBUS, OHIO, May 16.—Seven bishops and preachers of the Amish Mennonite Church of Holmes County were enjoined from further 'moidening,' 'miting' or boycotting Eli J. Ginerich, a former member of the church, in a decision handed down today by Judge E. B. Kinkead of the Franklin County Court.

"The suit arose out of the refusal of Ginerich to countenance the rules of the Amish Church requiring 'miting,' a form of boycott, because of his insistence of wearing rubber in his suspenders, which is against the church rules, and because of his withdrawal from the church. As a result of his action, the seven bishops and preachers issued a 'miting' order against him and consequently he was unable to obtain help on his farm, cider mills refused his apples, his daughter was unable to be married, his brother was 'mited' for refusing to 'mite' him, and he became practically an outcast, testimony showed."

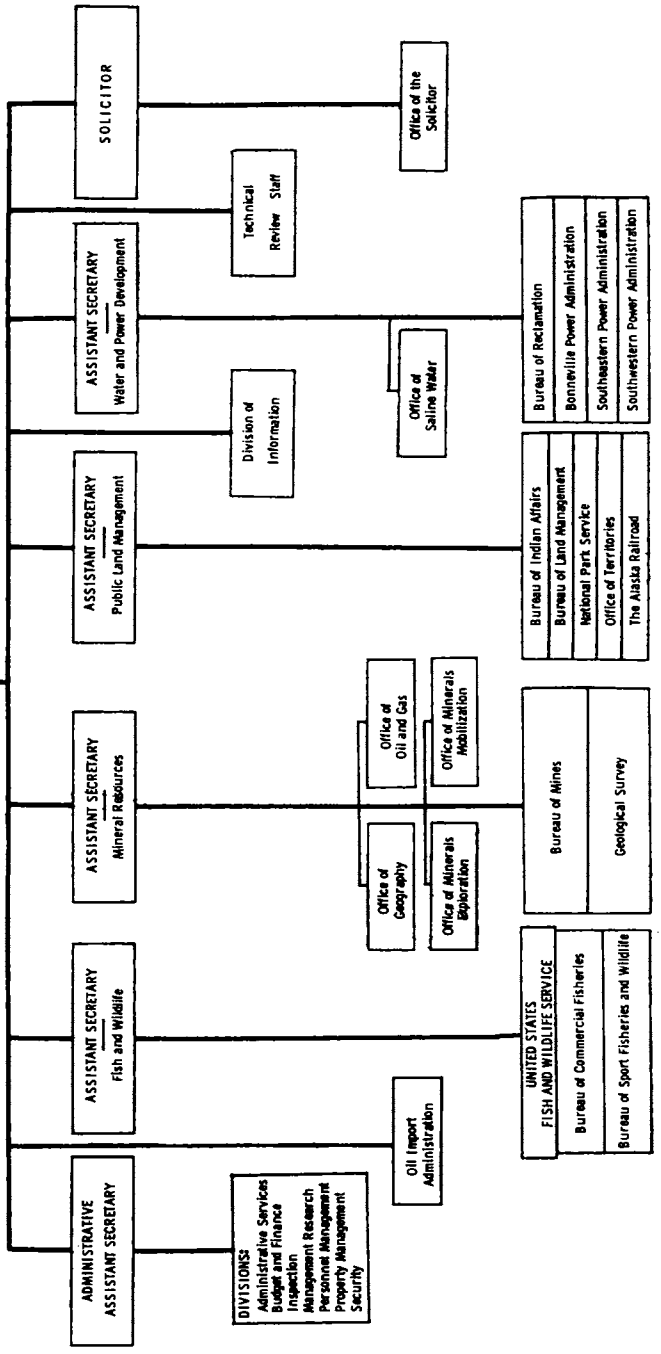
By way of comparison, Toledo and his friends complained that the Pueblo de Jemez had refused them the right to bury their dead in the community cemetery, denied them the right to build a church on pueblo land, prohibited them from using their homes for church purposes, deprived them of the right to use the communal threshing machine, etc. The Federal court nevertheless said it was without jurisdiction and that the problems of jurisdiction and control belonged to Congress.

The United States by act of Congress has, of course, consented to State assumption of jurisdiction with certain exceptions. (See act of August 15, 1953, 67 Stat. 588.) But Congress has not required that States do so nor has it filled the gap in Federal jurisdiction. That is where part of the difficulty lies. If Congress enacted a mandatory requirement that States assume jurisdiction, which seems permissible under the 14th amendment to the Constitution of the United States, it is fairly obvious that State constitutional impediments, including those specified by Congress in enabling acts whereby certain territories became States would fall. Indians could not thereafter be denied the equal protection of State laws.

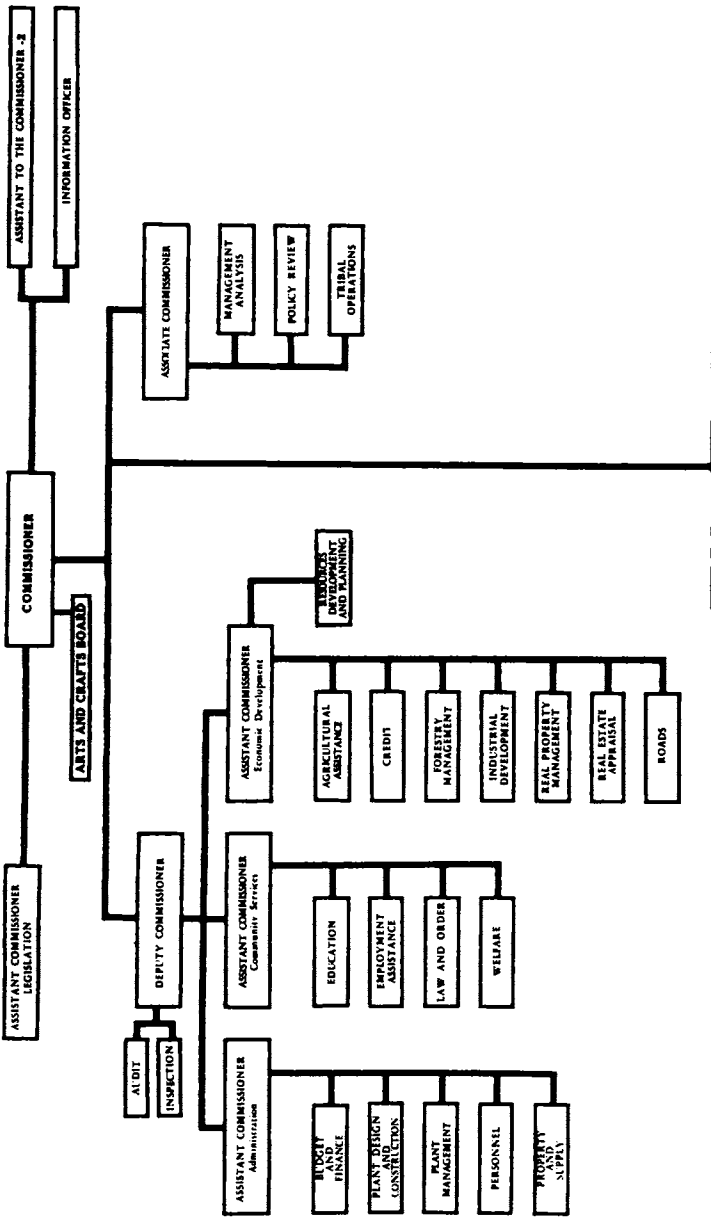
Commendable progress has been achieved at the State level. Especially noteworthy, and a landmark decision in the field of voting, is *Harrison* v. *Laveen*, 67 Ariz. 337, 196 P. 2d 456 (1948). However, much remains to be accomplished. Congress in its wisdom can legislate and supply guidelines or make adjustments in jurisdiction. Training and experience, the other essential ingredients, must be acquired by tribal organizations exercising governmental authority. Time itself probably will take care of many problems of Indians in this field.

76907—62—pt. 1——16

APPENDIX A.—ORGANIZATIONAL CHART OF THE DEPARTMENT OF THE INTERIOR



APPENDIX B.—ORGANIZATIONAL CHART OF THE CENTRAL OFFICE, BUREAU OF INDIAN AFFAIRS



March 2, 1962

Proposed by Commissioner of Indian Affairs to Secretary of Interior on March 2, 1962.

APPENDIX E

LIST OF AREA AND AGENCY FIELD OFFICES AND THE FIELD OFFICES UNDER THE CENTRAL OFFICE, BUREAU OF INDIAN AFFAIRS

ABERDEEN AREA OFFICE

Cheyenne River Agency
Flandreau Indian Vocational School
Fort Berthold Agency
Pierre Agency
Pine Ridge Agency
Rosebud Agency
Sisseton Agency
Standing Rock Agency
Turtle Mountain Agency
Wahpeton Indian School
Winnebago Agency

ANADARKO AREA OFFICE

Cheyenne and Arapaho Area Field Office
Chilocco Indian School
Haskell Institute
Kiowa Area Field Office
Pawnee Area Field Office
Potawatomi Area Field Office
Shawnee Area Field Office

BILLINGS AREA OFFICE

Blackfeet Agency
Crow Agency
Flathead Agency
Flathead Irrigation Project
Fort Belknap Consolidated Agency
Fort Peck Agency
Northern Cheyenne Agency
Wind River Agency

GALLUP AREA OFFICE

Consolidated Ute Agency
Institute of American Indian Arts
Intermountain School
Jicarilla Agency
Mescalero Agency
Navajo Agency
United Pueblos Agency
Zuni Agency

JUNEAU AREA OFFICE

Anchorage Area Field Office
Bethel Area Field Office
Fairbanks Area Field Office
Nome Area Field Office
Seattle Liaison Office

MINNEAPOLIS AREA OFFICE

Great Lake Agency
Minnesota Agency

MUSKOGEE AREA OFFICE

Choctaw Agency
Five Civilized Tribes Agency
Osage Agency
Quapaw Area Field Office
Sequoyah Vocational School

PHOENIX AREA OFFICE

Colorado River Agency
Fort Apache Agency
Hopi Agency
Nevada Agency
Papago Agency
Phoenix Indian School
Pima Agency
San Carlos Agency
San Carlos Irrigation Project
Sherman Institute
Unitah and Ouray Agency

PORTLAND AREA OFFICE

Chemawa Indian School
Colville Agency
Fort Hall Agency
Northern Idaho Agency
Wapato Irrigation Project
Warm Springs Agency
Western Washington Agency
Yakima Agency

SACRAMENTO AREA OFFICE

California Agency
Hoopa Area Field Office
Riverside Area Field Office

FIELD OFFICES UNDER CENTRAL OFFICE

Cherokee Agency
Seminole Agency
Missouri River Basin Investigations Project
Field Safety Offices:
  Northern Territory
  Southern Territory
Plant Management (Utilities and Communications)
Industrial Development:
  Chicago
  Los Angeles

APPENDIX G

Chart listing the number and location of tribes having tribal law and order codes and the tribes using the Code of Federal Regulations, title 25, and tribes using tribal custom courts compiled by the Bureau of Indian Affairs Law and Order Branch [1]

ABERDEEN AREA

(820 South Main St., Aberdeen, S. Dak., Martin N. B. Holm, area director)

Reservation and court location	Type of court	Days and times of regular court sessions	Location of reservation jail	Remarks
Cheyenne River: Cheyenne Agency, Eagle Butte, S. Dak., municipal center.	Tribal	No regular sessions; superior and junior judge on duty 8 a.m. to 5 p.m., Monday through Friday.	Building 2077, Cheyenne Agency, Eagle Butte, S. Dak.	New facility.
Pine Ridge: Municipal center, Pine Ridge, S. Dak.	do	Daily, 10 a.m. to 5 p.m., except Saturday, Sunday, and holidays. Special district courts as needed.	Pine Ridge, S. Dak. Honor Farm, Oglala Detention, Wamblee	Remodeled facility (1961). Rehabilitation project. Overnight holdover.
Rosebud: Municipal Center, Rosebud, S. Dak.	do	Monday through Friday, 10 a.m. to 3 p.m.	Municipal center, Rosebud, S. Dak.	New facility.
Pierre (Crow Creek and Lower Brule):				
Municipal center, Fort Thompson, S. Dak.	Court of Indian offenses.	No regular sessions; caseload determines.	Municipal center, Fort Thompson, S. Dak.	Do.
Lower Brule, S. Dak.	Tribal	do	Holding facility only; use Fort Thompson jail.	
Standing Rock: Municipal center, Fort Yates, N. Dak.	Tribal (CFR modified).	Monday through Friday, 2 p.m.	Municipal center, Fort Yates, N. Dak.	
Turtle Mountain:				
Chippewa: Municipal center, Belcourt, N. Dak.	Court of Indian offenses (25 CFR 11).	Daily, 8 a.m. to 12 noon	Municipal center, Belcourt, N. Dak.	New facility (1959).
Devil's Lake: Agency office building, Fort Totten, N. Dak.	do	Daily, 1 p.m. to 5 p.m.	Fort Totten, N. Dak.	
Fort Berthold (Arikara-Gros Ventres-Mandan): Mandaree, N. Dak., 40 miles west west and south of Newton Agency office.	Tribal	No regular sessions; caseload determines.	Mandaree, N. Dak.	

BILLINGS AREA

(804 North 29th St., Billings, Mont., Percy E. Melis, area director)

Blackfeet: Browning and Babb, Mont	Tribal	Monday through Saturday, 9 a.m.	Blackfeet Agency, Browning, Mont.	
Crow: Crow Agency, Mont	do	Monday, Wednesday, and Friday, 10 a.m.	Crow Agency, Mont	
Flathead: Dixon, Mont	do	Monday, Wednesday, and Friday, 9 a.m.	Flathead Agency, Dixon, Mont	
Fort Peck, Poplar, Mont	do	Monday through Friday, 9 a.m.	Fort Peck Agency, Poplar, Mont.	
Northern Cheyenne: Lame Deer, Mont	do	do	Northern Cheyenne Agency, Lame Deer, Mont.	
Fort Belknap Consolidated Agency (Fort Belknap and Rocky Boy's Reservation):				
1. Harlem, Mont	do	Monday and Thursday, 9 a.m.		
2. Lodge Pole district	do	Monday and Thursday, 1 p.m.		
3. Hays district	do	Mondayand Thursday, 2:30 p.m.		
4. Rocky Boy's Subagency	do	Tuesday and Thursday, 9 a.m.		
Wind River: Fort Washakie, Wyo	do	Monday, Wednesday and Friday, 9 a.m.	Wind River Agency, Fort Washakie, Wyo.	2 facilities at location.

GALLUP AREA

(Post Office Box 1260, Gallup, N. Mex., W. Wade Head, area director)

Southern Ute: Tribal affairs building, Ignacio, Colo.	Tribal	Monday and Tuesday, all day	Basement of tribal affairs building.	Ignacio, Colo., is 18 miles south and west of Durango, Colo.
Ute Mountain Ute: Tribal courtroom building, Towaoc, Colo.	do	Judge available Monday through Friday at office. Cases set as required.	Separate building at Towaoc, Colo.	Towaoc, Colo., is 10 miles west of Cortez, Colo.
Jicarilla Apache: Tribal council building, Dulce, N. Mex.	do	Monday and Thursday, 10 a.m. and 1 p.m.	Police building, Dulce, N. Mex.	Dulce, N. Mex., is 90 miles east of Farmington, N. Mex., on State Highway 17.
Mescalero Apache: Basement of agency administration building, Mescalero, N. Mex.	do	Every other Monday, 9 a.m. to 4:30 p.m.; October meetings set for October 2 and 16, etc.	Separate building at Mescalero, N. Mex.	Mescalero is approximately 15 miles west of Ruidoso, N. Mex.
Zuni Pueblo: Tribal affairs building, Zuni, N. Mex.	Tribal custom	No regular sessions; caseload determines.	Adjacent to tribal affairs building, Zuni, N. Mex.	Zuni, N. Mex., is located 40 miles south of Gallup, N. Mex.
Laguna Pueblo: Tribal administration building, Laguna, N. Mex.	do	Each Tuesday, at 9 a.m.		Laguna is located approximately 70 miles southeast of Gallup on U.S. 66.
Isleta Pueblo: East of Isleta Church, Isleta, N. Mex.	do	Each Tuesday, at 7 p.m.		Isleta is located approximately 20 miles south of Albuquerque on U.S. 85.
Other pueblos (Acoma, Cochiti, Jemez, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Juan, San Ildefonso, Santa Ana, Santa Clara, Santa Domingo, Taos, Tesuque, and Zia): Court sessions held at various places, i.e., meeting house, Governor's home, community hall, etc., no set place.	do	No regular sessions, usually in evenings beginning at 7 p.m. until concluded, on all evenings, weekends included.	None; usually by contract with closest county jail. BIA has contracts.	Along U.S. 85 from Santa Fe to Albuquerque, generally.

Footnotes at end of table, p. 246.

Chart listing the number and location of tribes having tribal law and order codes and the tribes using the Code of Federal Regulations, title 25, and tribes using tribal customs courts compiled by Bureau of Indian Affairs Law and Order Branch [1]—Continued

GALLUP AREA—Continued

Reservation and court location	Type of court	Days and times of regular court sessions	Location of reservation jail	Remarks
Navajo:				
1. Headquarters, Fort Defiance, Ariz., judicial building.	Tribal	Monday through Friday, 10 a.m.	Fort Defiance, Ariz.	In addition to regular jails at headquarters and substations, overnight lockup facilities are available at: (1) Lupton, Ariz.; (2) Tohatchi, N. Mex. Facilities on Navajo are all recent construction under tribal program.
2. Navajo police substation, Chinle, Ariz.	do	Wednesdays at 9:30 a.m. (served by Tuba City).	Chinle, Ariz.	
3. Crownpoint, N. Mex., substation	do	Monday through Friday, 10 a.m.	Crownpoint, N. Mex.	
4. Tuba City, Ariz., substation	do	do	Tuba City, Ariz.	
5. Shiprock, N. Mex.	do	do	Shiprock, N. Mex.	
6. Cononcito Chapter House, New Mexico.	do	Every other Thursday, at 10 a.m.; served by circuit judge from Navajo tribal court, Fort Defiance, Ariz.	None	
7. Alamo-Navajo Chapter House, Alamo, N. Mex.	do	Circuit judge serves on completing duty at Cononcito court.	None	

MINNEAPOLIS AREA

(2908 Colfax Ave., South, Minneapolis, Minn., Thomas L. Carter, acting area director)

Red Lake: Red Lake, Minn.	Tribal	Monday and Friday, 1 p.m.	Red Lake, Minn.	

PHOENIX AREA

(3508 North 7th St., Phoenix, Ariz., Frederick M. Haverland, area director)

Colorado: Parker, Ariz.	Tribal	Monday through Friday, 9:30 a.m. to 5 p.m.	Parker, Ariz.	
Havasupai: Supai, Ariz.	do	Convenes as necessary		
Hualapai: Peach Springs, Ariz.	do	Monday through Friday, 9:30 a.m. to 5 p.m.	Peach Springs, Ariz.	New facility to be constructed, fiscal year 1962.
Fort Apache:				
Whiteriver, Ariz.	do	Monday through Friday, 8 a.m. to 5 p.m.	Whiteriver	
Cibecue, Ariz.	do	Monday and Tuesday, 8 a.m. to 5 p.m.	Cibecue, Ariz.	
Hopi: Keams Canyon, Ariz.	do	Monday through Friday, 10 a.m. to 5 p.m.	Keams Canyon, Ariz.	

Kaibab: Fredonia, Ariz.	Court of Indian offenses (25 CFR 11).	Convenes as necessary	
Duck Valley: Owyhee, Nev.	Tribal	Mondays at 3 p.m.	
Fort McDermitt: McDermitt, Nev.	do	Convenes on call	McDermitt, Nev.
Pyramid Lake: Nixon, Nev.	do	do	
Walker River: Schurz, Nev.	do	do	Schurz, Nev.
Uintah and Ouray: Fort Duchesne, Utah.	Court of Indian offenses.	Monday and Friday, 10 a.m. to 5 p.m.	Fort Duchesne, Utah.
Gila River Maricopa (Ak-Chin): Sacaton, Ariz.	Tribal	Monday through Friday, 9 a.m. to 5 p.m.	Sacaton, Ariz.
Papago: Tribal building, Sells, Ariz.	do	do	Sells, Ariz.
San Carlos: San Carlos, Ariz.	do	Monday through Friday, 9:30 a.m. to 5 p.m.; caseload determines.	San Carlos and Bylas, Ariz.
Salt River, Fort McDowell: Agency and McDowell Rds., Scottsdale, Ariz.	do	Monday, Wednesday, and Friday, 9 a.m. to 5 p.m.	Agency and McDowell Rds., Scottsdale, Ariz.

Footnotes at end of table, p. 246.

Chart listing the number and location of tribes having tribal law and order codes and the tribes using the Code of Federal Regulations, title 25, and tribes using tribal customs courts compiled by Bureau of Indian Affairs Law and Order Branch [1]*—Continued*

PORTLAND AREA

(1002 Northeast Holliday St., Portland, Oreg., R. D. Holtz, area director)

Resevation and court location	Type of court	Days and times of regular court sessions	Location of resevation jail	Remarks
Colville:				
Colville tribal court, 637 Omak St., South Omak, Wash.[2]	Tribal	No regular sessions; caseload determines.		
Colville Agency, Nespelem, Wash.[3]	do	Mondays, 10 a.m. to 4:30 p.m. and as needed; caseload determines.	Municipal center, Colville Agency, Nespelem, Wash.	
Inchelium Subagency, Inchelium, Wash.[4]	do	Tuesdays, 7 p.m. to 10:30 p.m. and as needed.	1 mile north of Inchelium, Wash.	
Keller area, Keller, Wash., 3 mi. south on San Poil Highway.[5]	do	No regular sessions; caseload determines.		
Spokane: Spokane Subagency, Wellpinit, Wash.	do	Mondays and Fridays, 4:30 p.m. to 10:30 p.m. and as needed.	1 mile south of Spokane Subagency, Wellpinit, Wash.	
Fort Hall (Shoshone-Bannock): Confederated tribal building, Fort Hall Agency, Fort Hall, Idaho.	do	Mondays and Fridays at 10 a.m. except when court day falls on a holiday, then Tuesday and Thursday.		
Warm Springs: Tribal administration building, Warm Springs Agency, Warm Springs, Oreg.	do	Monday, Wednesday, and Friday, 8 a.m. to 5 p.m.; Tuesday and Thursday as needed.	Adjacent to tribal administration building, Warm Springs, Warm Springs, Oreg.	
Yakima: Tribal jail building, Yakima Agency, Toppenish, Wash.	do	Monday, Wednesday, and Friday, at 2 p.m. (judge available in regular working hours as needed.)	Yakima Agency, Toppenish, Wash.	
Makah (western Washington): Tribal office building, Neah Bay, Wash.	do	No regular sessions; caseload determines.	2-cell holding facility at Neah Bay.	

[1] Anadarko, Muskogee, Sacramento, and Juneau areas have no Indian courts.
[2] Couer d'Alene.
[3] Nez Perce.
[4] Kootenai.
[5] Kalispell. None.

APPENDIX H

Chart of the various tribes under each area office with information included about the activities of the Indian court system—Status as of Nov. 1, 1961, compiled by Bureau of Indian Affairs, Law and Order Branch—Continued

(1) Reservation	(2) Total court cases civil and criminal		(3) Number of cases where defendant was represented by another member				(4) Number of cases where court appointed counsel for defendant [1]				(5) Number of contracts for prisoner care between BIA and/or tribe with local facility			(6) Total number of cases in which jury trials were held		(7) Verdicts in jury trials		(8) Have jury fees of CFR courts been changed? (25 CFR 11.7(e)) If so, what amount?	
			1960		1961		1960		1961										
	1960	1961	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Bureau	Tribal	Cite specific authority	Civil	Criminal	Unanimous	Majority	Fees	Mileage
ABERDEEN AREA																			
Cheyenne River	394	509	0	1	0	1	0	0	0	0	0	0		1	0	[2]		[2]	[2]
Fort Berthold	214	100	3	8	0	4	0	1	0	0	0	0		0	1	1	0	[2]	[2]
Crow Creek	299	420	0	19	0	25	0	0	0	0	1	0	(25 U.S.C. 13; Snyder Act) annual appropriation act.	0	1	1	0	No	No.
Lower Brule	160	258	0	12	0	24	0	0	0	0	1	0	do	0	8	8	0	[2]	[2]
Pine Ridge	2,001	1,967	30	800	70	950	1	31	1	30	0	0		1	9	10	0	[2]	[2]
Rosebud	426	1,569	0	8	0	1	0	8	0	1	0	0		0	1	1	0	[2]	[2]
Standing Rock	2,946	2,964	0	2	0	4	0	0	0	0	0	0		0	0	0	0	No	No.
Turtle Mountain	651	494	0	0	0	28	0	0	0	0	0	0		0	28	26	2	No	No.
Devil's Lake	403	439	0	0	0	2	0	0	0	0	1	0	(25 U.S.C. 13; Snyder Act) annual appropriation act.	0	0	0	0	No	No.
MINNEAPOLIS AREA																			
Red Lake	399	600	1	0	0	0	0	0	0	0	2	0	do	0	0	0	0	No	No.
Total	7,893	9,320	34	850	70	939	1	40	1	31	5	0		2	48	47	2		

See footnotes at end of table, p. 250.

Chart of the various tribes under each area office with information included about the activities of the Indian court system—Status as of Nov. 1, 1961, compiled by Bureau of Indian Affairs, Law and Order Branch

(1)	(2)		(3)				(4)				(5)			(6)		(7)		(8)	
Reservation	Total court cases civil and criminal		Number of cases where defendant was represented by another member				Number of cases where court appointed counsel for defendant [1]				Number of contracts for prisoner care between BIA and/or tribe with local facility			Total number of cases in which jury trials were held		Verdicts in jury trials		Have jury fees of CFR courts been changed? (25 CFR 11.7(e)) If so, what amount?	
	1960	1961	1960		1961		1960		1961		Bureau	Tribal	Cite specific authority	Civil	Criminal	Unanimous	Majority	Fees	Mileage
			Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal									
BILLINGS AREA																			
Blackfeet	2,859	1,866	0	0	0	0	0	0	0	0	0	0		0	2	2	0	[2]	[2]
Crow	935	60	5	0	0	0	0	0	0	0	0	0		0	0	0	0	No	No.
Flathead	147	114	0	0	0	0	0	0	0	0	0	2	Tribal constitution	0	0	0	0	[2]	[2]
Fort Peck	1,159	1,176	6	30	6	50	0	0	0	2	0	2	do	0	0	0	0	No	No.
Fort Belknap	244	142	0	0	0	0	0	0	0	0	0	2	do	0	0	0	0	[3]	[3]
North Cheyenne	1,039	1,453	3	12	2	18	0	0	0	0	0	2	do	0	0	0	0	[3]	[3]
Rocky Boy's	172	129	0	0	0	0	0	0	0	0	0	1	do	0	1	0	1	[3]	[3]
Wind River	751	612	0	0	0	0	0	0	0	0	0	0		0	0	0	0	No	No.
Total	6,806	6,097	9	42	8	68	0	0	0	2	0	9		0	3	2	1		
GALLUP AREA																			
United Pueblos: [4]																			
a. Acoma	44	31	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]
b. Cochiti	6	6	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]
c. Isleta	13	30	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]
d. Jemez	27	15	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]
e. Laguna	143	199	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]
f. Nambe	4	------	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]
g. Picuris	9	5	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]
h. Pojoaque	------	------	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]
i. Sandia	1	2	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]
j. San Felipe	10	16	0	0	0	0	0	0	0	0	1	0		0	0	0	0	[3]	[3]

k. San Ildefonso	3	7	0	0	0	0	0	0	0	0	1	0		0	0	0	0	(3)	(3)
l. San Juan	35	18	0	0	0	0	0	0	0	0	1	0		0	0	0	0	(3)	(3)
m. Santa Ana	2	8	0	0	0	0	0	0	0	0	1	0		0	0	0	0	(3)	(3)
n. Santa Clara	7	11	0	0	0	0	0	0	0	0	1	0		0	0	0	0	(3)	(3)
o. Santo Domingo	19	26	0	0	0	0	0	0	0	0	1	0		0	0	0	0	(3)	(3)
p. Taos	20	21	0	0	0	0	0	0	0	0	1	0		0	0	0	0	(3)	(3)
q. Tesuque		5	0	0	0	0	0	0	0	0	1	0		0	0	0	0	(3)	(3)
r. Zia	29	7	0	0	0	0	0	0	0	0	1	0		0	0	0	0	(3)	(3)
s. Alamo (Navajo)	10	4	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
t. Canoncito (Navajo)	3	6	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Subtotal	385	417	0	0	0	0	0	0	0	0	18	0		0	0	0	0		
Southern Ute	265	299	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Ute Mountain	375	362	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Jicarilla	539	384	1	5	1	3	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Mescalero	465	851	1	1	1	2	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Zuni	484	461	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Navajo	6,017	13,111	351	5,666	727	12,384	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Total	8,530	15,825	353	5,672	729	12,389	0	0	0	0	18	0		0	0	0	0		
PHOENIX AREA																			
Colorado River	89	124	2	10	0	6	2	5	0	3	0	0		0	0	0	0	(3)	(3)
Havasupai	32	70	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Fort Apache	1,921	1,908	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Hualapai	340	372	0	2	0	0	0	0	0	0	0	1	Tribal constitution	0	0	0	0	(3)	(3)
Hopi (Kaibab included)	339	341	3	55	10	51	0	0	0	1	0	0		0	3	3	0	Yes; $6 per day.	Yes; 5 cents per mile.
																		No	No.
Duck Valley	98	188	0	0	0	0	0	0	0	0	0	0		0	1	1	0	(3)	(3)
Fallon		2	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Fort McDermitt	22	31	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Pyramid Lake	24	17	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Walker River	29	17	0	0	0	0	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Gila River and Maricopa	1,286	1,011	7	15	3	12	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Salt River and Fort McDowell	553	672	4	18	1	26	0	0	0	0	0	1	Tribal constitution	0	0	0	0	(3)	(3)
Papago	1,220	1,064	3	8	7	12	0	0	0	0	0	0		0	0	0	0	(3)	(3)
San Carlos	3,476	3,726	6	5	9	7	0	0	0	0	0	0		0	0	0	0	(3)	(3)
Uintah and Ouray	542	697	0	0	0	0	0	0	0	0	0	0		0	0	0	0	No	No.
Total	9,971	10,240	25	118	30	114	2	5	0	4	0	2		0	4	4	0		

See footnotes at end of table, p. 250.

Chart of the various tribes under each area office with information included about the activities of the Indian court system—Status as of Nov. 1, 1961, compiled by Bureau of Indian Affairs, Law and Order Branch—Continued

(1) Reservation	(2) Total court cases civil and criminal		(3) Number of cases where defendant was represented by another member				(4) Number of cases where court appointed counsel for defendant [1]				(5) Number of contracts for prisoner care between BIA and/or tribe with local facility			(6) Total number of cases in which jury trials were held		(7) Verdicts in jury trials		(8) Have jury fees of CFR courts been changed? (25 CFR 11.7(e)) If so, what amount?	
			1960		1961		1960		1961										
	1960	1961	Civil	Criminal	Civil	Criminal	Civil	Criminal	Civil	Criminal	Bureau	Tribal	Cite specific authority	Civil	Criminal	Unanimous	Majority	Fees	Mileage
PORTLAND AREA																			
Coleville	370	607	2	3	3	3	0	1	0	0	0	2	Tribal constitution	0	0	9	0	[3]	[3]
Spokane	146	108	1	0	0	0	0	0	0	0	0	3	do	0	0	0	0	[3]	[3]
Fort Hall	274	206	0	0	0	0	0	0	0	0	0	1	do	0	1	1	0	[3]	[3]
Northern Idaho:																			
a. Kalispel [4]																			
b. Nez Perce [5]																			
c. Coeur d'Alene [4]																			
Warm Springs	342	257	0	0	0	0	0	0	0	0	0	1	Tribal constitution	0	0	0	0	[3]	[3]
Makah	20	18	0	0	0	0	0	0	0	0	0	1	do	0	0	0	0	[3]	[3]
Yakima	1,890	1,879	7	32	1	10	0	0	0	0	0	0		0	0	0	0	[3]	[3]
Total	3,042	3,075	10	35	4	13	0	1	0	0	0	8		0	1	1	0		
Bureau total	36,242	44,557	431	6,712	841	13,523	3	46	1	37	[6]23	19		2	56	54	3		

[1] The use of the word "counsel" does not mean professional attorneys.
[2] Pending.
[3] Not applicable.
[4] Annual Appropriations Act and the Snyder Act (25 U.S.C. 13; act of Nov. 2, 1921.) Contracts are with the following counties and cities: (*a*) Valencia County, (*b*) Bernalillo County, (*c*) Sandoval County, (*d*) Taos County, (*e*) Socorro County, (*f*) Rio Grande County, (*g*) City of Grants, (*h*) City of Santa Fe, (*i*) City of Espanola.
[5] No CFR or tribal courts operate on these reservations.
[6] The Federal authority to contract for services arises from the Annual Departmental Appropriations Act under language stating" * * * for the maintenance of Law and Order * * *" and under the general contracting authority found in the Act of November 2, 1921 (25 U.S.C. 13).

APPENDIX I.

SUMMARY BY AREA OFFICES OF THE NUMBER OF APPEALS FROM THE DECISIONS WITHIN THE INDIAN COURTS [1]

ABERDEEN AREA

1. Number of appeals, 9.
2. Letter to area director from Superintendent, Pierre Agency of August 17, 1961.
3. Letter to agency special officer, Rosebud, from senior judge, Rosebud tribal court dated August 17, 1961.
4. Letter to area director from Superintendent, Standing Rock, of August 17, 1961.
5. Letter to assistant area special officer from clerk, Turtle Mountain Agency of August 17, 1961, with copy of appeals material in *Donald Grandboise* case.
6. Letter to area director from acting Superintendent, Fort Berthold, of August 17, 1961.
7. Letter to area director from Superintendent, Cheyenne River Agency of August 22, 1961, with appeals material in *Sibby Marshall* case.
8. Appeals case material from Pine Ridge Agency as follows:
   (*a*) Rebecca Stands.
   (*b*) Frank Good Voice Elk.
   (*c*) William Good Voice Elk.
   (*d*) Rose M. Bald Eagle.
   (*e*) Wilbur Lone Wolf.

BILLINGS AREA

1. Number of appeals, 2.
2. Letter to Commissioner from acting area director dated August 21, 1962, with appeals material in *Seth Red Thunder* (*Fort Peck*) and *William Morsette* (*Rocky Boy's*) cases.

GALLUP AREA

1. Number of appeals, 5.
2. Letter to Commissioner from Superintendent, Jicarilla Agency, received August 29, 1962.
3. Letter to Commissioner from General Superintendent, United Pueblos Agency, dated August 23, 1961.
4. Letter to Commissioner from Superintendent, Consolidated Ute Agency, dated August 21, 1961, with appeals materiai on *Virgil Red* case.
5. Navajo portion of CJA–5–59 outlining appeals procedure with material on *Hazel Toledo*, *Eva Chee*, and *Harry Shortey* cases.
6. Letter to Commissioner from Acting Superintendent, Mescalero Agency, dated August 23, 1961, with appeals material in *Frank Chino* case.
7. Letter to Commissioner from Superintendent, Zuni Agency, of August 22, 1961.

MINNEAPOLIS AREA

1. Number of appeals, 1.
2. Letter to Commissioner from acting area director dated August 24, 1961, with appeals material in *Calvin Beaulieu* case.

PHOENIX AREA

1. Number of appeals, 14.
2. Letter to area director from Superintendent, Colorado River Agency, of August 24, 1961, with appeals material on Lydia Wilder, Nelson Wilder, and Ted Walema, Sr., at Hualapai.
3. Copy of radiogram to area director from Superintendent, Fort Apache, of August 21, 1961.
4. Letter to area director from Superintendent, Hopi Agency, of August 18, 1961.
5. Letter to area director from Superintendent, Papago Agency, of August 17, 1961.
6. Letter to area director from Superintendent, Pima Agency, of August 22, 1961.

[1] Compiled by Bureau of Indian Affairs, Law and Order Branch.

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7. Copies of court dockets from San Carlos Agency concerning appeals cases of *Virgil Kozie, Andy Johnson, Phil Cassadare, Mary and Henry Porter, Sam Stewart,* and *Nugent Cassadare.*

8. Letter to area director from Superintendent, Nevada Agency, dated August 22, 1961, with letter from Agency special officer to Superintendent, dated August 21, 1961, concerning David Piea appeal.

9. Appeals material in *Etta McCurdy* and *Julius Twohy* cases at Uintah-Ouray Reservation.

10. Copy of consolidated material prepared by Phoenix area office.

PORTLAND AREA

1. Number of appeals, 2.

2. Letter to area director from Superintendent, Fort Hall Agency, of August 21, 1961.

3. Letter to area director from Acting Superintendent, western Washington, dated August 21, 1961.

4. Letter to area director from Superintendent, Warm Springs, of August 23, 1961, with appeals material in *Victor Smith* case.

5. Letter to area director from Superintendent, Yakima Agency, dated August 24, 1961, with appeals material on *Lauretta* and *Lawrence Goudy* cases.

6. Copy of letter to Commissioner from area director of August 28, 1961.

APPENDIX J

List of reservations by State showing whether State or Indian court jurisdiction obtains, compiled by Bureau of Indian Affairs, Law and Order Branch

	Indian court jurisdiction	State court jurisdiction
Alaska: All Indian country		X [1]
Arizona:		
Fort McDowell Reervation	X	
Camp Verde Reservation	X	
Cocopah Reservation		X [2]
Colorado River Reservation	X	
Fort Apache Reservation	X	
Fort Mohave Reservation	X	
Gila Bend Reservation	X	
Gila River Reservation	X	
Havasupai Reservation	X	
Hopi Reservation	X	
Kaibab Reservation	X	
Navajo Reservation	X	
Papago Reservation	X	
Salt River Reservation	X	
San Carlos Reservation	X	
Walapai (Hualapai) Reservation	X	
California: All Indian country		X [1]
Colorado:		
Southern Ute Reservation	X	
Ute Mountain Reservation	X	
Florida:		
Big Cypress Reservation		X [2]
Brighton Reservation		X [3]
Dania Reservation		X [3]
Idaho:		
Coeur d'Alene		X [3]
Fort Hall	X	
Nez Perce		X [3]
Iowa: Sac and Fox		X [4]
Kansas:		
Iowa		X [5]
Kickapoo		X [5]
Potawatomi		X [5]
Sac and Fox		X [5]
Michigan:		
L'Anse		X [3]
Ontonagon		X [3]
Isabella		X [3]
Bay Mills		X [3]
Minnesota: All reservations (except Red Lake)	X	X [1]
Montana:		
Blackfeet	X	
Crow	X	
Fort Belknap	X	
Fort Peck	X	
Flathead	X	
North Cheyenne	X	
Rocky Boy's	X	
Nebraska: All Indian country		X [1]
Nevada:		
Fallon	X	
Walker River	X	
Moapa	X	
Las Vegas Colony	[6]	
Duck Valley	X	
Fort McDermitt	X	
Summit Lake	X	
Yerington	X	
Campbell Ranch	[6]	
Lovelock	[6]	
Pyramid Lake	X	
Winnemucca		X [7]
Battle Mountain Colony		X [7]
Elko Colony		X [7]
Ruby Valley		X [7]
South Fork		X [7]
Odgers Ranch		X [7]
Ely Colony		X [7]
Goshute		X [7]
Reno Sparks Colony		X [7]
Washoe tribal farm and so-called Pine Nut allotments		X [7]
Dresslerville Colony		X [7]
Carson Colony		X [7]
Duckwater		X [7]
Yomba		X [7]
New Mexico:		
Jicarilla	X	
Mescalero	X	
All Pueblos	X	

See footnotes at end of table, p. 253.

List of reservations by State showing whether State or Indian court jurisdiction obtains—Continued

	Indian court jurisdiction	State court jurisdiction
New Mexico—Continued		
Ramah Navajo Community	X	
Puertocito Navajo Community.	X	
Canyoncito Navajo Community.	X	
New York: All reservations	----	X [6]
North Carolina: Cherokee	----	X [9]
North Dakota:		
Devils Lake	X	
Fort Berthold	X	
Standing Rock	X	
Turtle Mountain	X	
Oklahoma: All Indian country	----	X [10]
Oregon:		
Grande Ronde-Siletz	----	X [11]
Klamath	----	X [1]
Oregon:		
Warm Springs	X	
Umatilla	----	X [1]
South Dakota: [12]		
Crow Creek	X	
Sisseton	----	X [13]
Cheyenne River	X	
Lower Brule	X	
Pine Ridge	X	
Rosebud	X	
Yankton	----	X [14]
Utah:		
Goshute	----	X [15]
Kanosh	----	X [16]
Koosharem	----	X [16]
Shivwitz	----	X [16]
Skull Valley	----	X [2]
Uintah and Ouray	X	
Washington:		
Skokomish	----	X [17]
Muckleshoot	----	X [17]
Quileute	----	X [17]
Chehalis	----	X [17]
Nisqually	----	X [17]
Tulalip	----	X [17]
Suquamish	----	X [17]
Squaxin Island	----	X [17]
Quinault	----	X [17]
Hoh	X [18]	
Lower Elwha	----	X [19]
Lummi	X [18]	
Makah	X	
Ozette	X [20]	
Port Gamble	X [18]	
Puyallup	----	X [21]
Shoalwater	----	X [15]
Swinomish	X	
Wisconsin: All Indian country in State	----	X [1]

[1] Act of Aug. 15, 1953 (Public Law 280, 83d Cong.; 67 Stat. 588).
[2] State assumes jurisdiction although appropriate legislature action is lacking.
[3] Act of Florida Legislature approved June 14, 1961, pursuant to Public Law 280.
[4] Act of June 30, 1948 (62 Stat. 1161).
[5] Act of June 8, 1940 (54 Stat. 249).
[6] These are Indian colonies and are "Indian country" under 18 U.S.C. 1151 but are not reservations where Indian courts can be established.
[7] Act of Nevada Legislature enacted Mar. 16, 1955, pursuant to Public Law 280.
[8] Acts of July 2, 1948 (62 Stat. 1224) and Sept. 13, 1950 (64 Stat. 845).
[9] *U.S.* v. *Wright*, 53 F. 2d. 301, opinion of North Carolina attorney general, dated Nov. 12, 1953.
[10] Jurisdiction acquired by State when Oklahoma was admitted to Union, according to letter from Governor of Oklahoma to Secretary of the Interior, dated Nov. 18, 1953.
[11] Public Law 280 but Federal supervision terminated by act of Aug. 13, 1954 (68 Stat. 724).
[12] State of South Dakota assumed civil and criminal jurisdiction over Indians on highways through reservations in State by act of legislature approved Mar. 9, 1961, pursuant to Public Law 280.
[13] State assumes jurisdiction over crimes on nontrust land within former reservation. *Appl. of Demarrias*, 91 N.W. 2d. 480. *State* v. *Demarrias*, 107 N.W. 2d. 255.
[14] No present reservation boundaries. State assumes jurisdiction except for major offenses on scattered trust tracts.
[15] Part of this reservation located in Nevada and under State law. Utah assumes jurisdiction over minor crimes.
[16] Terminated by act of Sept. 1, 1954 (68 Stat. 1099).
[17] Washington State law, ch. 240, Laws of 1957, pursuant to Public Law 280.
[18] No Indian court in existence.
[19] State assumes jurisdiction although no formal action taken by either State or tribe.
[20] No Indian resides on reservation.
[21] Only some 30 acres of Indian trust land in small scattered tracts. State assumes jurisdiction over tribal members. No formal assumption.

APPENDIX K

SUMMARY BY AREA OFFICES OF THE STATUS OF LAW AND ORDER ON INDIAN RESERVATIONS, COMPILED BY BUREAU OF INDIAN AFFAIRS, LAW AND ORDER BRANCH

CENTRAL OFFICE JURISDICTION

Three Indian reservations come within the jurisdiction of the central (Washington, D.C.) office of the Bureau of Indian Affairs. These are: (1) Eastern Band of Cherokee Indians, Cherokee, N.C.; (2) Seminole Tribe of Florida, Dania, Fla.; and (3) Mississippi Choctaw, Philadelphia, Miss. All three of the reservations receive the services of State enforcement and judicial agencies. None of the tribes have an approved code of law and order, and all civil and criminal process is through the State courts.

The Eastern Band of Cherokees, through the imposition of a sales tax assessed on traders doing business on the reservation, defray a portion of the expenses involved in enforcement of State laws and other related community services. The band pays the expenses of operating the police department through a portion of this tax. With respect to application of State laws, see *U.S.* v. *Wright* (53 F. 2d 301) and opinion of State attorney general dated November 12, 1953.

No Indian courts are in operation on these reservations.

The State of Florida assumed civil and criminal jurisdiction over the Seminole Indians living on Federal reservations on July 1, 1961, pursuant to provisions of Public Law 280 with the enactment by the Florida Legislature of house bill No. 2241, approved by the Governor on June 14, 1961. There are no Federal expenditures on the three reservations for the maintenance of law and order.

In addition, civil and criminal jurisdiction over the reservations in the State of New York was vested in the State by the acts of July 2, 1948 (62 Stat. 1224), and September 13, 1950 (64 Stat. 845).

ABERDEEN AREA JURISDICTION

Nebraska

Under the provisions of the act of August 15, 1953 (Public Law 280, 83d Cong.; 67 Stat. 588), the State of Nebraska assumed civil and criminal jurisdiction over the Indian reservations situated within the State. These reservations are: (1) Winnebago; (2) Omaha; (3) Ponca; and (4) Santee Sioux.

North Dakota

Devils Lake Sioux Tribe, Fort Totten.—This reservation is a subagency of the Turtle Mountain Consolidated Agency, Belcourt, N. Dak. Law and order here is maintained under the provisions of 25 CFR 11. A court of Indian offenses is maintained on the reservation. All the expenses of the preventive and enforcement program are borne by the Federal Government. There is no tribal contribution. The Federal Government presently employs eight persons in the program at this agency. These include judicial, enforcement, and administrative personnel.

Turtle Mountain Band of Chippewas, Belcourt.—Law and order is maintained at this agency under the provisions of 25 CFR 11. The Bureau of Indian Affairs maintains a staff of 11 persons here and is financially responsible for the prevention and enforcement program. The tribal council has recently indicated a desire to formulate its own code of law and order to replace the departmental regulations contained in 25 CFR 11. The tribe does not contribute to the support of the program. Some juvenile services are obtained from the State at both Belcourt and Fort Totten.

Three Affiliated Tribes of the Fort Berthold Reservation, New Town.—A tribal code of law and order and a tribal court operate at this agency which serves the Arickara, Gros Ventre, and Mandan Tribes residing on the Fort Berthold Reservation. All the operational expenses are assumed by the Federal Government. The three tribes participate in the program to the extent of paying the salary of a clerk of courts and temporary additional officers during feast celebrations in the summer months. The Bureau maintains a staff of nine to serve the needs of the Indian people. The code of law and order was recently revised and conforms in many respects to the applicable State laws.

Standing Rock Sioux, Fort Yates.—This reservation occupies nearly all of Sioux County, N. Dak., and a portion of Corson County in South Dakota. A court of Indian offenses operating under the authority contained in 25 CFR 11 is maintained here. A code of offenses, under which minor crimes are han-

dled, was enacted by the tribal council and approved by the Secretary of the Interior for use in lieu of the offenses in 25 CFR 11. A Bureau staff of 10 employees, paid from gratuity funds, is provided to carry out the program. The tribe participates in the program by providing salaries and expenses for eight additional program personnel. Supervision of the tribal employees has been placed with the Bureau staff at the request of the tribal council. However, in the case of the court, the Bureau's role is limited to technical advice and assistance when requested by the court.

South Dakota

Cheyenne River Sioux, Eagle Butte.—A unique situation obtains at this jurisdiction. The tribal council, under the constitution and bylaws has the authority "to promulgate ordinances for the purpose of safeguarding the peace and safety of residents of the Cheyenne River Reservation and to establish courts for the adjudication of claims or disputes arising among the members of the tribe and for the trial and punishment of members of the tribe charged with the commission of offenses set forth in such ordinances." These ordinances are not subject to review or approval by the Secretary of the Interior. The main program at Cheyenne River is financed by the tribe while the Bureau has a criminal investigator assigned to the agency to supervise the tribal program and render technical advice and assistance.

Sisseton-Wahapeton Band of Sioux, Sisseton.—There is no tribal code nor are the departmental regulations in effect at this jurisdiction. All offenses except the major crimes committed on trust land are brought before the State courts for disposition. The Bureau maintains a staff of three persons to discharge Federal responsibility and to assist State and local officers in a general enforcement program in the area. There is no tribal participation in this program.

Crow Creek Sioux and Lower Brule Band of Sioux, Pierre.—Crow Creek Sioux, located at Fort Thompson, S. Dak., has no approved tribal code of law and order and operates under the provisions of 25 CFR 11. The tribal participation in the program is limited to the employment of a court clerk.

The Lower Brule Band of Sioux, located at Lower Brule, S. Dak., has an approved code of law and order and pays the salaries of a clerk and associate judge.

Both tribes are under the jurisdiction of the Pierre Indian Agency, Pierre, S. Dak. The Bureau maintains a staff of 16 persons to carry out the program at both locations. A new municipal center, serving both tribes, has recently been completed and placed in operation at Fort Thompson.

Rosebud Sioux, Rosebud.—This location serves both the Rosebud Sioux and the Yankton Sioux. A subagency is maintained at Wagner, S. Dak., to serve the Yankton Sioux. The Rosebud Sioux operate under an approved code of law and order. However, tribal participation in the law and order program is limited to payment of two clerks of court and additional temporary officers during feast celebrations at Rosebud. There is no tribal participation at Yankton. The Bureau maintains a staff of 15 persons, 1 of whom is assigned to the Wagner subagency to carry out its program at these locations. A new municipal center has recently been constructed and placed in operation at Rosebud to serve the needs of the reservation.

Pine Ridge Sioux, Pine Ridge.—The tribe has an approved law and order code. There is equal participation by the tribe and the Bureau in the overall program. Supervision of all personnel is vested in the Bureau staff. A tribal farm, designed to assist the rehabilitation of repeat offenders, has been a part of the successful program here in the past several years. A recent addition and remodeling of the facilities has resulted in a more effective and efficient program for the reservation.

Flandreau Sioux, Flandreau.—There is no law and order program in operation at this jurisdiction. The tribe is composed of members who reside in and near the town of Flandreau. A bureau school is maintained at Flandreau. There is no approved code of law and order and no enforcement personnel assigned to the location. All offenses are handled through local courts.

BILLINGS AREA

Blackfeet Tribe, Browning, Mont.—A tribal program is in operation at this agency with the tribe carrying the entire program. A staff of 11 persons is employed by the tribe which has an approved code of law and order patterned, in the main, after 25 CFR 11. The Bureau maintains one criminal investigator

to provide technical advice and assistance and carry out Federal responsibilities especially in connection with the 11 major crimes.

Crow Agency, Mont.—A court of Indian offenses, operating under 25 CFR 11, is maintained at this reservation. The tribe employs 13 persons and the Bureau 3 in carrying out the program. Supervision for the tribal participation is by the tribal council in cooperation with Bureau personnel. A recent addition to the Bureau staff is assigned to the Yellowtail Dam project now under construction on the reservation.

Fort Belknap Consolidated Agency, Harlem, Mont.—Both the Fort Belknap group and the Rocky Boy's Band operate under approved codes of law and order. However, there is no tribal participation in the law and order program. The Bureau maintains a staff of seven persons who serve both reservations.

Fort Peck Agency, Poplar, Mont.—The law and order program is governed by the provisions of 25 CFR 11 at this agency. The Assiniboine-Sioux Tribes employ eight persons in the tribally supervised program. The Bureau provides the services of a criminal investigator whose primary function is the discharge of Federal responsibilities and the furnishing of technical advice and assistance to the tribes.

Flathead Agency, Dixon, Mont. (Confederated Salish-Kootenai Tribes).—A tribal court, operating under an approved code of law and order, is maintained at this location. The tribe employs five persons in the program and technical advice and assistance are provided by a Bureau criminal investigator.

Northern Cheyenne Agency, Lame Deer, Mont.—The program here is equally divided between the Bureau and the Tongue River Tribe. An approved tribal law and order code is in effect. The tribe employs four persons and the Bureau three in carrying out the overall program.

Wind River Agency, Fort Washakie, Wyo. (Shoshone-Arapaho Tribes).—Provisions of 25 CFR 11 are in effect at Fort Washakie. The two tribes employ a total of 15 persons in the program, with expenses of the operation being shared jointly by both tribes. In addition, the Bureau maintains a criminal investigator to render technical advice and assistance to generally oversee the program.

GALLUP AREA

Consolidated Ute Agency, Ignacio, Colo.—This agency serves both the Southern Ute Reservation at Ignacio, and Ute Mountain Ute Reservation at Towaoc, Colo. The two tribes operate under approved codes of law and order. The Southern Utes employ 8 persons in the program and the Ute Mountain Utes employ 15. A Bureau criminal investigator provides technical advice and assistance to both tribes as well as the Jicarilla Apache Tribe at Dulce, N. Mex.

Jicarilla Apache Agency, Dulce, N. Mex.—Eleven persons are employed by the Jicarilla Tribe in its law and order program under an approved code of law and order. A criminal investigator stationed at Towaoc, Colo., as indicated above, provides services to this group as well as the two Ute Tribes in Colorado.

Mescalero Apache Agency, Mescalero, N. Mex.—The Mescalero Apache Tribe has an approved code of law and order and the tribe employs nine persons in its enforcement and prevention program. The Bureau has two employees on its staff with supervision of the tribal program given to the Bureau staff.

Navajo Agency, Window Rock, Ariz.—This tribe operates a prevention and enforcement program under the supervision of a commissioner of police and an employee force of some 230 persons with an annual expenditure of more than $1,500,000. An approved code of law and order is in effect on the reservation which is patterned after 25 CFR 11. However, a number of amendments, approved by the Secretary of the Interior, have modernized the basic documents to a degree. The Bureau maintains a staff of four persons to carry out Federal responsibilities. The reservation itself covers areas in four States; namely, Arizona, New Mexico, Utah, and Colorado and an effective program is difficult.

United Pueblos Agency, Albuquerque, N. Mex.—There is only one written code within the Pueblo group and this is in effect for Isleta Pueblo. The other 17 Pueblos are served by the traditional courts of the Pueblos. These courts consist of the Governor and other Pueblo officers sitting as a court and employing historical Pueblo custom and law to decide each case brought before the officials. All violations of Federal statutes are, of course, processed through the appropriate Federal court. The Bureau employs 10 persons on its staff located at the United Pueblos Agency at Albuquerque. These personnel are stationed at

strategic locations within the jurisdiction of the Agency so as to render service to all the Pueblos.

The Laguna Pueblo employs four people to assist in the law and order program at this location. From time to time during the year, some 26 other temporary officers are employed, without compensation, by all Pueblos to assist the Federal officers during celebrations and fiestas.

Among the Pueblos served by the United Pueblos staff are ones located as follows: Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, San Lorenzo, Pojoaque, Sandia, San Felipe, San Il de Fonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia, and Zuni.

Two other groups which are served by the United Pueblos Agency are the Canyoncito and Alamo Navajo groups. The Navajo tribal code of law and order is in effect at these locations, but due to the distance from the main Navajo Agency at Window Rock, services are frequently obtained from United Pueblos Agency. A traveling circuit judge from the Navajo tribal court serves these two locations.

Zuni Agency, Zuni, N. Mex.—As with the other Pueblos, the Zuni Pueblo maintains law and order through its traditional court and laws. The Bureau employs a criminal investigator here and the Pueblos employs two police.

MINNEAPOLIS AREA

Minnesota

All Indian country within the State of Minnesota, with the exception of the Red Lake Reservation, has come within State jurisdiction under the provisions of the act of August 15, 1953 (Public Law 280, 83d Cong., 67 Stat. 588).

The Red Lake Band of Chippewas operate a law and order program within the framework of 25 CFR 11, although the tribe has its own code of offenses included. The Red Lake Band employs eight persons from tribally appropriated funds and an additional three persons from local tribal funds in carrying out the program. The Bureau has assigned a criminal investigator to provide technical advice and assistance to the tribal program.

Wisconsin

Reservations within the State of Wisconsin also come within the provisions of Public Law 280, cited above.

Iowa

Criminal jurisdiction over the Sac and Fox Reservation was vested in the State by the act of June 30, 1948 (62 Stat. 1161).

Michigan

The State has generally assumed jurisdiction over the Indian country in the State although no formal transfer of jurisdiction by congressional statute exists.

PHOENIX AREA

Colorado River Agency, Parker, Ariz.—The Colorado River Tribes of the Colorado River Reservation have their own law and order program under a tribal law and order code. The tribes employ five persons, including two judges, in their program. The Bureau employs a criminal investigator to discharge Federal responsibility in the investigation of major crimes and to furnish advice and assistance to the tribal police force.

The Hualapai Tribe has its own law and order code. It employs two policemen and two judges. The Bureau employs a criminal investigator to furnish advice and assistance to the tribe.

The Havasupai Tribe has its own law and order code but it does not contribute financially to the program. The Bureau maintains a policeman and a judge to maintain order on this reservation.

Fort Apache, Whiteriver, Ariz.—A tribal code of law and order has been adopted by the tribe. The tribe employs some 15 persons in carrying out the prevention and enforcement program. Supervision, technical advice, and assistance are provided by a Bureau criminal investigator.

Hopi Agency, Keams Canyon, Ariz.—Under the jurisdiction of this agency are the Hopi and Kiabab Indians. A court of Indian offenses, operating under the authority contained in 25 CFR 11 is in operation at both Keams Canyon and

Kaibab. A Bureau staff of six persons is maintained to carry out the program. Five persons are employed by the two groups to assist in carrying out the program. The Hopi Reservation is in a unique situation in that it is located entirely within the exterior boundaries of the Navajo Reservation. Generally, domestic problems are handled by the villages of the Hopi Reservation with strong tribal custom prevailing in most instances.

Pima Agency, Sacaton, Ariz.—Under the jurisdiction of the Pima Agency are the following reservations: Gila River, Fort McDowell, and Salt River. All have approved codes of law and order under which the prevention and enforcement programs are operated. Seven Bureau employees are assigned to the Gila River Reservation to carry out Federal responsibilities. The Gila River-Pima Maricopa Tribe has eight employees. On the Salt River Reservation, the Bureau has one criminal investigator who also serves Fort McDowell. The Salt River tribe employs 13 persons while the Fort McDowell group employs only one policeman and one game warden.

Papago Agency, Sells, Ariz.—This tribe has an approved law and order code. The tribe employs 4 persons to assist with the Bureau supervised program. There are 9 Bureau employees engaged directly in the law and order program.

San Carlos Apache Agency, San Carlos, Ariz.—Sixteen tribal employees are engaged in the law and order program at this agency which operates under an approved code of law and order. The Bureau maintains a criminal investigator to carry out the Federal responsibility with respect to major offenses and supervise the tribal program at the tribe's request.

Nevada Agency, Stewart, Nev.—By act of the Nevada Legislature of March 16, 1955, pursuant to Public Law 280, 83d Congress, the State assumed jurisdiction over all Indian country within the State subject to the condition that the county commissioners of any county could petition the Governor to except and exclude the county from the operation of the act. By proclamation of the Governor, the following reservations or Indian settlements were excluded from State jurisdiction: Fallon Reservation, Walker River Reservation, Moapa Reservation, Las Vegas Colony, Duck Valley Reservation, Fort McDermitt Reservation, Summit Lake Reservation, Yerington Reservation, Campbell Ranch, Lovelock, and Pyramid Lake Reservation. All the rest of the Indian country is under State jurisdiction. All of the reservations that are not under State jurisdiction have tribal courts and codes of law with the exception of the Las Vegas Colony, the Campbell Ranch, the Lovelock Colony, which are colonies rather than reservations, and the Summit Lake Reservation. The Bureau maintains 7 employees to assist with the maintenance of law and order on the reservations not under State jurisdiction and the tribes employ 3.

Uintah and Ouray Reservation, Fort Duchesne, Utah.—A court of Indian offenses, operating under the authority contained in 25 CFR 11, is maintained at this agency. The tribe employs 7 persons in the preventive and enforcement phase of the program. The Bureau employs a criminal investigator to supervise the tribal employees.

PORTLAND AREA

Colville Agency, Coulee Dam, Wash.—Colville Tribe has an approved code of law and order under which the tribal program is operated. The tribe employs 6 persons in its regular program who are paid from appropriated tribal funds and an additional 16 persons, including temporary help, who are paid from local tribal funds. The Bureau has a staff of three persons assigned to carry out the Federal responsibilities mainly in the serious offenses and providing of technical advice and assistance to the tribe.

Spokane Tribe is also under the jurisdiction of the Colville Agency. The tribe employs 3 persons on a permanent basis and an additional 17 persons on an intermittent and temporary basis to carry out its program under an approved code of law and order. Bureau assistance is rendered from the staff maintained at the Colville Agency.

Western Washington Agency, Everett, Wash.—This agency has jurisdiction over a number of smaller tribes, bands, and groups in western Washington. With respect to the State of Washington, the State legislature enacted chapter 240, laws of 1957 (RCW 37.12.010–.070), which provided that an Indian tribe within the State may petition the Governor to proclaim State jurisdiction on its

reservation. At the present time, the following tribes in Washington have so petitioned and been brought under State jurisdiction:

Tribe	Date	Tribe	Date
Skokomish	Sept. 28, 1957	Tulalip	July 7, 1958
Muckleshoot	Oct. 25, 1957	Suquamish	July 14, 1958
Quileute	Dec. 2, 1957	Squaxin Island	Sept. 25, 1959
Chehalis	Dec. 13, 1957	Quinault [1]	July 14, 1958
Nisqually	Jan. 1, 1958		

[1] In 1959, the superior court for Grays Harbor County, Wash., held that the assumption of jurisdiction by the State over the Quinault Reservation was void. The decision is now pending on appeal in the State supreme court. The State has not maintained law and order on the Quinault Reservation since the superior court decision.

The State has no jurisdiction over the remaining reservations under this agency. Although some of them have law and order codes, there is no active program on the reservation.

The Swinomish, Makah, and Lummi groups have approved law and order codes but there are presently no Indian courts operating at these jurisdictions. None of the remaining groups or bands have approved codes and 25 CFR 11 has not been applied at these locations.

The Bureau maintains a law and order specialist at the Western Washington Agency to serve all these bands and groups from a central location. This position was established only recently. There is very considerable tribal concern over hunting and fishing rights reserved to the various tribes under treaties had with the Federal Government.

Warm Springs Agency, Warm Springs, Oreg.—This tribe operates under an approved code of law and order and employs a total of 11 persons in carrying out the tribal program. In addition, a staff of three Bureau employees assist in the operation of the coordinated program.

All of the rest of Indian country in Oregon is subject to State jurisdiction under Public Law 280, 83d Congress.

Yakima Agency, Toppenish, Wash.—The Yakima Tribes have an approved code of law and order and the tribes carry the major portion of the program. A total of 19 persons are employed by the tribe while the Bureau has a staff of 3 to assist in the program and carry out Federal responsibilities and provide technical advice and assistance.

Fort Hall Agency, Fort Hall, Idaho (Shoshone-Bannock Tribes).—An approved code of law and order is in effect at Fort Hall which includes the operation of a tribal court. The Bureau maintains a staff of four employees to assist in carrying out the tribal program. Five persons are employed by the tribe for this purpose.

Northern Idaho Agency, Lapwai, Idaho.—Under the jurisdiction of this agency are the Nez Perce, Coeur d'Alene, Kootenai, and Kalispel Tribes.

None of these tribes have an approved code of law and order nor are the departmental regulations, 25 CFR 11, applied. Except as to the major crimes, State laws are applied. No tribal program is maintained but the Nez Perce Tribe employs one policeman who assists in the enforcement of State laws on the reservation.

The Bureau maintains two employees who are concerned with the major crimes and who assist county and State officers in the enforcement problems occurring at this location.

California

The provisions of the act of August 15, 1953 (Public Law 280, 83d Cong.; 67 Stat. 588), extended State jurisdiction to all Indian country within the State of California.

OKLAHOMA AREA

No Bureau law enforcement programs nor tribal law and order programs are operated within the State because the State assumes jurisdiction.

Kansas

Criminal jurisdiction over the Indian country in Kansas was vested in the State by the act of June 8, 1940 (54 Stat. 249).

APPENDIX L

SOLICITOR'S MEMORANDUM REGARDING THE JURISDICTION OF THE TRIBAL COURTS AND THE COURTS OF INDIAN OFFENSES OVER UNRESTRICTED LANDS

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, April 27, 1939.

Memorandum for the Commissioner of Indian Affairs.

The following questions have been put to me in connection with the law enforcement activities of Indian courts, including both the courts of Indian offenses under the departmental regulations and the tribal courts under tribal codes, and of Indian police officers:

(1) May an Indian court exercise jurisdiction over acts committed by Indians on unrestricted lands within an Indian reservation, where the Indians concerned are properly before the court?

(2) May an Indian court exercise jurisdiction over acts committed by Indians on lands outside of an Indian reservation, where the Indians concerned are properly before the court?

(3) May an Indian police officer make arrests on unrestricted lands within an Indian reservation?

(4) May an Indian police officer make arrests outside of an Indian reservation?

I. JURISDICTION OVER ACTS COMMITTED ON UNRESTRICTED LANDS

Questions of court "jurisdiction" frequently turn out upon analysis to be a confused mixture of questions dealing with international law, constitutional law, statutory construction, and common law principles. It is important, therefore, that we define the question that concerns us as clearly and realistically as possible. In asking whether an Indian court has "jurisdiction" over acts committed in certain areas we are concerned to ascertain whether such a court commits a wrongful act, that is to say, an act which is punishable, actionable, or enjoinable in a State or Federal court, if it orders the trial and punishment of an Indian who is before the court, on the basis of an act which that Indian has performed in the area designated.

A question of jurisdiction arises when an Indian who is before an Indian court claims that the judges of such court are acting without proper authority and that such action, therefore, constitutes assault, false imprisonment, trespass, or some similar offense under State or Federal law. It is, therefore, necessary in passing upon such a jurisdictional question to inquire into the basis of authority upon which an Indian court acts. This is a subject which has been dealt with elsewhere at some length. The viewpoint of this Department, as expressed in an opinion on "Powers of Indian Tribes" approved October 25, 1934 (55 I.D. 14), is to the following effect:

"The attempts of the Interior Department to administer a rough-and-ready sort of justice through courts of Indian offenses, or directly through superintendents, cannot be held to have impaired tribal authority in the field of law and order. These agencies have been characterized, in the only reported case squarely upholding their legality, as 'mere educational and disciplinary instrumentalities by which the Government of the United States is endeavoring to improve and elevate the condition of these dependent tribes to whom it sustains the relation of guardian' (*United States* v. *Clapox*, 35 Fed. 575; and *Cf. Ex parte Bi-a-lil-le*, 12 Ariz. 150, 100 Pac. 450; *United States* v. *Van Wert*, 195 Fed. 974). Perhaps a more satisfactory defense of their legality is the doctrine put forward by a recent writer that the courts of Indian offenses 'derive their authority from the tribe, rather than from Washington' (W. G. Rice, Jr., "The Position of the American Indian in the Law of the United States," 16 Jour. Comp. Leg. (3d Ser.), pt. 1, pp. 78, 93 (1934)).

"Whichever of these explanations be offered for the existence of the courts of Indian offenses, their establishment cannot be held to have destroyed or limited the powers vested by existing law in the Indian tribes over the province of law and order and the administration of civil and criminal justice" (at p. 64).

Recognition by the Supreme Court of the dual role of the tribe and of the Interior Department in providing disciplinary action over Indians not provided for by Federal criminal statutes is contained in the holding in *United States* v. *Quiver*, 241 U.S. 602, and the following quotation therefrom (p. 605):

"We have now referred to all the statutes. There is none dealing with bigamy, polygamy, incest, adultery, or fornication, which in terms refers to Indians, these matters always having been left to the tribal customs and laws and to such preventive and corrective measures as reasonably could be taken by the administrative officers."

The authority of the Interior Department to establish courts of Indian offenses as an administrative means of educating and civilizing the Indians was analyzed with some thoroughness and upheld in the Solicitor's memorandum of February 28, 1935. This memorandum pointed out the number of cases in which the authority for promulgating law and order regulations by the Department is taken for granted by the courts (*Bad Elk* v. *United States*, 177 U.S. 529; *United States* v. *Mullen*, 71 Fed. 682 (D.C. Neb. 1895)). See also *United States* v. *Taylor*, 33 F. (2d) 608, 612. The authority of the Department was found by the Solicitor to rest principally on the statutes placing supervision of the Indians in the Secreary of the Interior coupled with the long line of appropriation acts, through 60 years, appropriating funds for the pay of Indian judges and Indian police to maintain order on Indian reservations.

The authority of the Indian tribes to control the conduct of members of the tribe through tribal courts and other disciplinary agencies has likewise been demonstrated, particularly in the Solicitor's opinion of October 25, 1934, above referred to (55 I.D. at 56–64), and has been unmistakably upheld in *Ex parte Crow Dog*, 109 U.S. 556, and *United States* v. *Quiver*, *supra*.

Whether the Indian court is an administrative court of Indian offenses or a tribal court, it appears that each has sufficient authority to include in its jurisdiction the trial and punishment of offenses by Indians which were committed on unrestricted land.

If, on the one hand, courts of Indian offenses be considered as suggested in the *Clapox* case, to be not regular judicial bodies but "mere educational and disciplinary instrumentalities," the propriety of educational and disciplinary action which such "courts" undertake will depend upon the relationship between the court and the person disciplined. On this view the location of the offense to which the discipline is directed becomes unimportant. An Indian service hospital treats a diseased Indian regardless of where the disease was acquired. An Indian service teacher may control the conduct of his pupils and administer discipline on a railroad car traveling through Texas, as well as on restricted Indian land. (See *Peck* v. *A.T. & S.F. Ry. Co.*, 91 S.W. 323.) An Indian will be regarded as married or divorced, a member of a given tribe, an eligible candidate for a certain position or office, regardless of where the acts leading to such a personal status may have taken place. So, if action of a court of Indian offenses is regarded as "educational and disciplinary" rather than strictly judicial, such action is not restricted in its horizon to a given territory. The Indian who assaults his fellow tribesman on fee-patented land within the reservation is subject to disciplinary action by the court of Indian offenses in the same measure as if the offense had been committed on restricted Indian land. Perhaps the closest analogy for this "educational, and disciplinary" theory of the functions of a court of Indian offenses is to be found in the common law of domestic relations. The common law still confers a disciplinary power upon parents with respect to their children. To a certain extent guardians generally may exercise such power over their wards. In none of these cases is the exercise of such authority limited by any consideration of the locality of the misconduct. (See *Townsend* v. *Kendall*, 4 Minn. 412, 77 Amer. Dec. 534.)

In *United States* v. *Earl*, 17 Fed. 75, it was held that an Indian ward off the reservation nevertheless was in the charge of an Indian agent within the meaning of a statute forbidding the sale of liquor to such Indians. In *Peters* v. *Malin*, 111 Fed. 244, the court stated that wherever Indians are maintaining their tribal relations, the control and management of their affairs is in the Federal Government irrespective of the title to the land upon which they might, for the time being, be located. In that case the State law of guardianship was held not to apply to tribal Indians either at an industrial school off the reservation or on a reservation the title to which was in the Governor of Iowa. Moreover, the State criminal law was held not to apply to the removal of a child from a reservation and his detention from a Government school, indicating that these acts outside the reservation were of concern only to the Federal Government because of the personal relationship between the Government and its wards. "The relation of dependency existing between tribal Indians and the National Government does not grow out of the ownership of the land either by the Indians or the Government" (p. 250).

This principle has been followed in administrative practice since the beginning. The superintendents and the courts of Indian offenses have not in the past refrained from using corrective measures for violations of the regulations because the violations occurred on nontrust land. It may be doubted whether the Indian courts have ever made a practice of inquiring into the title of the land where the violation occurred. Nor have the departmental regulations required such inquiry and restraint. The 1904 law and order regulations of the Indian office (secs. 584–591), Regulations of the Indian Office, 1904) gave the courts of Indian offenses original jurisdiction over Indian offenses, including participating in the sun dance, contracting a plural marriage, preventing the attendance of children at school, and other misdemeanors committed by Indians "belonging to the reservation," without any limitation as to where the offense might be committed. It was not intended that Indians could dance the sun dance and practice polygamy with impunity simply because they did so on nontrust land. Such a distinction would have defeated the educational purpose of the regulations. On the contrary, the 1904 regulations went so far as to authorize police surveillance of the Indians leaving the reservation and to contemplate their arrest and punishment for infraction of the rules outside the reservation (secs. 585–589).

However, whatever may be the disciplinary authority of the Secretary of the Interior over the conduct of Indian wards outside an Indian reservation, the Indian reservation itself has been considered an area peculiarly set apart as a domain within which the Federal Government exercises guardianship over the Indians. This guardianship is extended to all the Indians within the reservation, regardless of their residence or temporary location on unrestricted land. In the early days after the allotment act there was a tendency to withdraw protection from citizen and fee-patented Indians. This tendency was later reversed and Federal guardianship over tribal members has been recognized in spite of citizenship, possession of fee patents, or residence on unrestricted land. A recent and far-reaching recognition of administrative supervision over all Indians within the boundaries of the reservation is found in the case of *United States* v. *Dewey County*, 14 F. (2d) 784 (D.C., S.D., 1926); aff'd *Dewey County* v. *United States*, 26 F. (2d) 435 (C.C.A. 8th, 1928). The following quotations which uphold the authority of the Department to make rules and regulations governing all the Indians on the reservation, particularly fee-patent Indians residing on fee-patented lands, are set forth because of their peculiar applicability to the questions involved:

"In the light of the plain determination of the question of the right, the power, and the duty of Congress to terminate this relation of guardian and ward, the [fee patent] Indians named in the complaint must be held to be wards of the Government, unless there is legislation of Congress plainly indicating the intent and purpose to terminate the relation. Defendant urges consideration of the act of June 25, 1910 (36 Stat. 855) * * *.

"This, in my judgment, is far short of a congressional declaration that the relationship of guardian and ward shall, by the issuance of the [fee] patent, cease. It is simply a step recognizing some progress by the Indian as being competent to handle the particular piece of land, and the act grants to him only the power to manage and dispose of the particular land. There is neither language plainly expressing, nor from which it may be reasonably inferred, that there is any intent or purpose that they should be taken out of the tribe of Indians, that their tribal relations should cease, and they should have no further interest in the tribal lands or in the moneys to be paid for such lands; *that they should, from that time forward, not be subject to the agent provided for the band of Indians to which they belong, nor to the rules and regulations promulgated by the Indian Department as to the Government of the reservation and all of the Indians thereon*, the education of their children, and the policy that the agent is required to work out with and for the members of the tribes. * * *

"In the absence of further declaration on the part of Congress that the guardianship of the Government shall terminate as to these Indians, it seems clear that it must be so held as to those Indians to whom [fee] patents have been issued, who are found by this record to be members of the Cheyenne Band of Sioux Indians; that they all had their allotments; that they all resided on their [fee patent] allotments or near them *within the original limits of the Cheyenne River Reservation, and some of them within the diminished portions thereof;* that all of said Indians, at all times mentioned in the complaint, appeared on the rolls at the Cheyenne River Agency; that they are entitled to participate

and partake of tribal funds and of the rents and profits of all tribal lands, together with the fact that the Government maintains an agency and *agent in charge of said tribe of Indians, including these particular Indians named in the complaint,* are still wards of the Government; that the Government is still the guardian of all of these Indians, with control of their property, except insofar as that control of their property is released by the legislation above referred to, and the Indians are thereby granted the power to manage and control the particular piece of land involved in the fee-simple patent." [Italic supplied.]

The foregoing authorities make it clear that if Indian courts are viewed as administrative agencies of the Interior Department, their authority is not limited to offenses committed on restricted land.

If, on the other hand, the Indian courts are viewed as tribal courts, deriving their power from the unextinguished fragments of tribal sovereignty, it must be recognized that this sovereignty is primarily a personal rather than a territorial sovereignty. The tribal court has no jurisdiction over non-Indians unless they consent to such jurisdiction. Its jurisdiction is solely a jurisdiction over persons. We must therefore beware of reading into the measure of this jurisdiction the common-law principle of the territoriality of criminal law. As was said in the case of *Ex parte Tiger*, 47 S.W. 304, 2 Ind. T. 41:

"If the Creek Nation derived its system of jurisprudence through the common law, there would be much plausibility in this reasoning. But they are strangers to the common law. They derive their jurisprudence from an entirely different source, and they are as unfamiliar with common-law terms and definitions as they are with Sanskrit or Hebrew."

We must recognize that the general common-law doctrine of the territoriality of criminal law has validity in practice only insofar as it is embodied in our criminal statutes. It is not a principle of logic or eternal reason. There are numerous well-recognized exceptions to this doctrine.

There are, in the first place, certain offenses for which citizens of the United States are punishable in U.S. courts, no matter where the offenses are committed (e.g., 18 U.S.C., secs. 1,5). The power of the Federal Government to govern the conduct of our citizens abroad by subjecting them, when they return to this jurisdiction, to trial and punishment for offenses committed abroad, has never been successfully challenged. (See *The Appollon*, 9 Wheat. 362, at 370.) If this power has been exercised, in fact, only in exceptional cases, that is because *as a matter of policy* it is generally believed that the power to punish for extraterritorial offenses should be invoked only under special circumstances.

A second departure from the general rule of territoriality is presented by the jurisdiction vested in Congress over Indian affairs. It is well settled that this congressional jurisdiction does not apply simply to the "Indian country" but applies to offenses no matter where committed:

"The question is not one of power in the National Government, for, as has been shown, Congress may provide for the punishment of this crime wherever committed in the United States. Its jurisdiction is coextensive with the subject matter—the intercourse between the white man and the tribal Indian—and is no limited to place or other circumstances" (*United States* v. *Barnhart*, 22 Fed. 288).

Again, it is a matter of policy, and not of law, to say how far Congress should extend its laws over Indians "off the reservation." The Indian liquor laws are the outstanding instance of a jurisdiction not limited to offenses committed within the reservation (25 U.S.C., sec. 241).

A third recognized departure from the territorial principle is found in the application of Federal laws to our citizens in certain eastern countries. Americans committing offenses in uncivilized countries, for instance, are triable before U.S. consuls (22 U.S.C., sec. 180), and Americans committing offenses in China are triable in the U.S. Court for China (*Biddle* v. *United States*, 156 Fed. 759) over which the Circuit Court of Appeals for the Ninth Circuit exercises appellate jurisdiction (22 U.S.C., secs. 191–202).

A fourth important limitation upon the doctrine of territoriality is the rule that in civil cases a court which has jurisdiction over the parties may consider all the elements of the case regardless of geographical considerations.

If, then, an Indian court is to be considered a judicial organ of Indian tribal sovereignty, we must recognize that this sovereignty is not a strictly territorial sovereignty, but primarily a personal sovereignty. We may therefore approach the problem of defining the scope of this sovereignty without begging the question by assuming in advance that the sovereignty is limited to any particular

kind of land. The recognized exceptions to the usual rule of territoriality are closer to the situation here presented than the rule itself.

In defining the powers of an Indian tribe we look to Federal laws and treaties not for the basis of sovereignty but for the limitations on tribal powers. *United States* v. *Quiver*, 241 U.S. 602; *Talton* v. *Mayes*, 163 U.S. 376; *Ex parte Crow Dog*, 109 U.S. 556; *Patterson* v. *Council of Seneca Nation*, 245 N.Y. 433, 157 N.E. 734.

As was said in the opinion of this Department on "Powers of Indian Tribes," 55 I.D. 14, at page 19:

"Perhaps the most basic principle of all Indian law, supported by a host of decisions hereinafter analyzed, is the principle that *those powers which are lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished.* Each Indian tribe begins its relationship with the Federal Government as a sovereign power, recognized as such in treaty and legislation. The powers of sovereignty have been limited from time to time by special treaties and laws designed to take from the Indian tribes control of matters which, in the judgment of Congress, these tribes could no longer be safely permitted to handle. The statutes of Congress, then, must be examined to determine the limitations of tribal sovereignty rather than to determine its sources or its positive content. What is not expressly limited remains within the domain of tribal sovereignty, and therefore properly falls within the statutory category, 'powers vested in any Indian tribe or tribal council by existing law.'"

In the absence of Federal law to the contrary, it is for the tribe to decide as a matter of its own public policy whether members of the tribe who may properly appear before the judicial agency of the tribe, shall be triable and punishable for acts committed on unrestricted land. The answer given to this question in the Law and Order Regulations approved by the Secretary of the Interior November 27, 1935, and approved by numerous tribal councils before and after that date, is unmistakable. Section 1 of chapter 1 reads:

"A court of Indian offenses shall have jurisdiction over all offenses enumerated in chapter 5, when committed by an Indian, within the reservation or reservations for which the court is established.

"With respect to any of the offenses enumerated in chapter 5 over which Federal or State courts may have lawful jurisdiction, the jurisdiction of the court of Indian offenses shall be concurrent and not exclusive. It shall be the duty of the said court of Indian offenses to order delivery to the proper authorities of the State or Federal Government or of any other tribe or reservation, for prosecution, any offender, there to be dealt with according to law or regulations authorized by law, where such authorities consent to exercise jurisdiction lawfully vested in them over the said offender.

"For the purpose of the enforcement of these regulations, an Indian shall be deemed to be any person of Indian descent who is a member of any recognized Indian tribe now under Federal jurisdiction, and a 'reservation' shall be taken to include all territory within reservation boundaries, including fee patented lands, roads, waters, bridges, and lands used for agency purposes."

The question remains, then, whether this statement of authority is in conflict with any Federal law.

That the original sovereignty of an Indian tribe extended to the punishment of a member by the proper tribal officers for depredations or other forms of misconduct committed outside the territory of the tribe cannot be challenged. Certainly we cannot read into the laws and customs of the Indian tribes a principle of territoriality of jurisdiction with which they were totally unfamiliar, and which no country has adopted as an absolute rule. That Indian tribes friendly to the United States acted to punish their members for depredations committed against whites outside of the Indian country is a matter of historical record. Will any one claim that such punishment was unconstitutional? The fact is that the United States, over a long period, encouraged the Indian tribes to help in controlling the conduct of their members outside of the Indian country, and in order to encourage such control made the tribe responsible for such individual offenses.

The analysis of Federal laws applicable to the situation under consideration indicates that the right of Indian tribal authorities to punish errant members of the tribe for offenses, no matter where committed, has not only never been denied but has been positively recognized. The act of June 30, 1834 (4 Stat. 731), which is still in many respects the basis of Indian administration, placed upon

the Indian "nation or tribe" the responsibility of securing redress for depredations committed by individual members of the nation or tribe outside of, as well as within, the Indian country. The section in question, as amended by the act of February 28, 1859 (11 Stat. 401), appears today as section 229 of title 25 of the United States Code, reading as follows:

"SEC. 229. *Injuries to property by Indians.*—If any Indian, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from Indian country into any State or territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or subagent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which such Indian shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time not exceeding 12 months, such superintendent, agent, or subagent shall make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury" (R.S., sec. 2156).

This provision placing responsibility upon the tribal authorities for the wrongs of individual Indians committed outside of the reservation clearly contemplates that the tribal authorities will deal in proper fashion with such individual Indians. While the occasion that gave rise to this legislation may have disappeared, the judicial basis of tribal action which the legislation assumed has never been challenged.

Provisions similar to that above quoted are found in many treaties with Indian tribes. (See for instance treaty with the Kiowas, etc., May 26, 1837 (7 Stat. 533), secs. 3, 5; treaty with the Comanches, etc., July 27, 1853 (10 Stat. 1013), art. 5; treaty with the Rogue River Indians, Sept. 10, 1853 (10 Stat. 1018), art. 6; treaty with the Blackfeet, Oct. 17, 1855 (11 Stat. 657), art. 11.)

Federal laws affecting the personal status of Indians have no direct bearing upon our present problem. The general allotment law of February 8, 1887 (24 Stat. 390), as amended by the act of May 8, 1906 (34 Stat. 182), provides:

"At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or territory in which they may reside * * *" (25 U.S.C., sec. 349).

Because of this provision fee patent allottees have been held to be subject to the laws of the State wherever they may be within the reservation. *Eugene Sol Louie* v. *United States*, 274 Fed. 47 (C.C.A. 9th, 1921); *State* v. *Monroe*, 83 Mont. 556, 274 Pac. 840 (1929). However, this fact does not mean that so long as the fee patent Indians live within the outer boundaries of the reservation and maintain tribal relations they are not also subject to the rules and regulations of the Department and to the tribal ordinances governing tribal members. That they are so subject is stated in the recent case of *United States* v. *Dewey County*, from which extensive quotation to this effect is given above.

Moreover, the Allotment Act certainly did not make a fee patented allotment a place of sanctuary on which even an unallotted member of the tribe may commit offenses without the risk of future punishment by his tribe. Fee patented lands are undoubtedly subject to State jurisdiction, but in the words of the Supreme Court, there is "no denial of the personal jurisdiction of the United States" (*United States* v. *Celestine*, 215 U.S. 278, 291), and neither is there any denial of the personal jurisdiction of the tribe. It is for the Federal Government itself to decide whether it shall retain jurisdiction over certain offenses by Indians, e.g., liquor offenses on fee patented land, and relinquish to the State jurisdiction over certain other offenses. Likewise, it is for the Indian tribe itself, subject only to limitation by Congress, to decide whether it shall retain jurisdiction over certain offenses committed by members of the tribe on such land.

The fact that Federal courts have refrained from taking jurisdiction of Indian offenses on fee patented lands does not negative the jurisdiction of the Indian courts. Since the fallacy of identifying the jurisdiction of the one with the other is a ready one, an analysis of the fundamental distinctions between them is desirable.

The Federal district courts have been authorized by Congress to exercise jurisdiction over specific crimes committed by Indians or white people against Indians in the "Indian country" and in "Indian reservations." The Federal courts have no jurisdiction other than that granted by Federal statute. On the other hand, the Indian tribes retain all their original jurisdiction over their members except as may be limited by Federal statutes. Likewise, the authority of the Department to exercise administrative supervision over Indians is not based upon a statutory specification of crimes and criminal jurisdiction but, as previously indicated, upon a statutory duty of guardianship and congressional authorization to maintain order on Indian reservations. See *United States* v. *Quiver*, 241 U.S. 602, at 605.

The Federal court exercises an aboslute and exclusive jurisdiction over Indians when their crimes fall within the circumstancs covered by the statutes. There is no statutory authority for concurrent jurisdiction of State and Federal courts when an Indian or Indian land becomes subject to State jurisdiction. If the Federal courts have jurisdiction, the State courts do not, and vice verso. However, there is no prohibition on a determination by the Interior Department to exercise corrective measures over Indians within the reservation when the State has jurisdiction but refuses to handle the case or upon a similar determination by the tribes that members uncorrected by State action shall be subject to correction by the tribal court.

Furthermore, the Federal courts are exercising judicial power as courts established by Congress pursuant to the U.S. Constitution, whereas the Department through the Court of Indian Offenses is not exercising judicial power but administrative guardianship powers and the tribe is exercising tribal powers over the persons of its members. The establishment of an Indian court and the extent of its jurisdiction is, therefore, in both cases an administrative policy question. No court is established where there is little restricted land. Courts are established, however, where there is much restricted land within a reservation. The Federal courts are obligated to take jurisdiction of crimes coming within the Federal statutes upon restricted lands regardless of administrative need. It would not be argued that there is any obligation on the part of the Department to provide corrective measures on such restricted lands if it is not advisable or necessary. In other words, it has often been recognized that the jurisdiction of the Federal courts and of the Indian courts does not coincide, since they derive their authority from different powers and function for different purposes.

I have reviewed the Federal laws which might be viewed as restricting or limiting the power of an Indian court to try and to punish an Indian for an offense committed on unrestricted land within a reservation. I find no Federal law imposing any such limitation.

Is there any provision of the Federal Constitution that precludes such exercise of jurisdiction? Would such an exercise of authority, in an area where the State may exercise a concurrent jurisdiction, constitute "double jeopardy" and violate the fifth amendment to the Federal Constitution?

Even if it could be maintained, in the face of the decision in *Talton* v. *Mayes*, 163 U.S. 376, that constitutional limtiations under the due process clause are applicable to an Indian court, there is no force in the argument that the exercise of jurisdiction by such a court in these cases would subject the offender to double jeopardy. The fact that an offense committed outside of restricted Indian lands may be subject to punishment in State courts does not make it unconstitutional for the court of another sovereignty to punish the same person for the same act. The decided cases clearly establish the principle that an individual who in a single act offends against the laws of several jurisdictions may be constitutionally punished by the agencies of each jurisdiction.

In the cases of *Moore* v. *Illinois*, 14 How. 13, the Supreme Court, per Justice Grier, declared:

"* * * Every citizen of the United States is also a citizen of a State or territory. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraciton of the laws of either. The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal of the United States, and hindering him in the execution of legal process, is a high offense against the United States, for which the perpetrator is liable to punishment; and the same act may be also a gross breach of the peace of the State, a riot, assault, or a murder, and subject the same person to a punishment, under the State laws, for a misdemeanor or felony. That either or both may if they see fit) punish such an offender, cannot be doubted. Yet it cannot be truly averred that the offender has been twice punished for the same offense;

but only that by one act he has committed two offenses, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by the other; consequently, this court has decided, in the case of *Fox* v. *The State of Ohio* (5 How. 432) that a State may punish the offense of uttering or passing false coin, as a cheat or fraud practised on its citizens; and, in the case of the *United States* v. *Marigold* (9 How. 560) that Congress, in the proper exercise of its authority, may punish the same act as an offense against the United States" (at p. 20).

Again in the case of *United States* v. *Lanza*, 260 U.S. 377, the Supreme Court, per Taft, C. J., declared:

"The defendants insist that two punishments for the same act, one under the National Prohibition Act and the other under a State law, constitute double jeopardy under the fifth amendment; and in support of this position it is argued that both laws derive their force from the same authority—the second section of the amendment—and therefore that in principle it is as if both punishments were in prosecutions by the United States in its courts" (at pp. 379–80).

"We have here two sovereignties, deriving power from different sources, capable of dealing with the same subject matter within the same territory. Each may, without interference by the other, enact laws to secure prohibition, with the limitation that no legislation can give validity to acts prohibited by the amendment. Each government in determining what shall be an offense against its peace and dignity is exercising its own sovereignty, not that of the other" (at p. 382).

In view of these decisions of the U.S. Supreme Court, it is clear that the fact that an act is punishable in State courts is no bar to punishment in an Indian court. There remains, of course, a question of public policy to be considered in asserting jurisdiction over acts which are subject to another jurisdiction. This question is met by a specific provision in the Law and Order Regulations above set forth, under which cases in which Indian tribal jurisdiction is concurrent with State jurisdiction are to be turned over to State authorities, *if such authorities are willing to exercise jurisdiction.* This is undoubtedly a reasonable provision in view of the fact that the State may be, in many cases, unwilling to exercise even an admitted jurisdiction over Indians with respect to acts committed on unrestricted Indian lands within a reservation.

It should further be noted that the Law and Order Regulations do not purport to cover offenses committed outside of Indian reservations. There is, therefore, no immediate occasion to consider the legal and administrative problems that would be raised by any such exercise of jurisdiction. It is enough for our present purposes to note that the exercise of jurisdiction by an Indian court, under the departmental law and order or tribal codes, does not diminish the jurisdiction of State courts, does not subject the offender to double jeopardy, and is not prohibited by any known Federal statute.

There remains the final question whether the action of an Indian court in trying and punishing an Indian for an offense committed within the jurisdiction of the State courts may violate any State law. While it is impossible to decide an issue of this sort in the abstract with entire certainty, it is enough to say that I know of no State legislation which would interfere with such exercise of jurisdiction by an Indian court, and since the matter is one that concerns the relations between an Indian and his tribe it would appear to be a matter on which State legislation would be ineffective. *Worcester* v. *State of Georgia*, 6 Pet. 514; *United States* v. *Quiver*, 241 U.S. 602; *United States* v. *Hamilton*, 233 Fed. 685; *In re Blackbird*, 109 Fed. 139; *In re Lincoln*, 129 Fed. 247; and see Opinion M. 28568, approved December 11, 1936, on the right of State game wardens to make searches on an Indian reservation.

In view of the foregoing authorities, I am of the opinion that an Indian court which orders the trial and punishment of an Indian before the court, on the basis of acts committed on unrestricted lands within an Indian reservation, does not offend against any State or Federal law. The first question proposed is therefore to be answered in the affirmative.

II. JURISDICTION OVER ACTS COMMITTED OUTSIDE OF INDIAN RESERVATION

In view of the fact that the existing Law and Order Regulations and tribal codes restrict the jurisdiction of Indian courts to acts committed within an Indian reservation, and in view of the fact that no amendments to extend such jurisdiction over lands outside of Indian reservations are before the Depart-

ment, the question of the legality of such jurisdiction need not be answered at this time.

III. ARRESTS ON UNRESTRICTED LANDS

The legality of an arrest made by an Indian police officer on unrestricted lands within an Indian reservation will ordinarily be tested by an action for false imprisonment brought in the courts of the State. It will help us to avoid some of the confusions that have grown up around the term "jurisdiction" if we fix our attention upon the concrete question of the liability of an Indian police officer for an arrest of an Indian who is subject to the jurisdiction of an Indian court, where such an arrest takes place on unrestricted land within the boundaries of the reservation.

The question may then first be considered as one of State law.

There is no dispute as to the general rule that when the peace officer of one sovereignty is outside the territory of that sovereignty, he is only a private citizen and can make arrests only as a private citizen and only for violation of the laws obtaining in that territory. Any other arrest or detention by such an officer will amount to false imprisonment. To this general principle, however, there are many exceptions established by statute or by common law.

There are, in the first place, certain personal relationships which justify arrest or detention without regard to locality. The most notable example of such a relationship is that under which military and naval authorities are empowered to arrest, detain or discipline soldiers and sailors wherever they may be. Likewise, the commander of a ship may exercise similar powers over the crew, and in case of extreme necessity, over passengers as well. A similar rule has been applied to railroad conductors in relation to passengers. (See *Peck* v. *A.T. & S.F. Railway Company*, 91 S.W. 323.) Similarly, a parent may exercise custody over a child, school authorities may detain pupils, custodians of institutions may impose confinement upon those committed to their care, and generally speaking, a guardian may assert custody over his ward, without thereby becoming liable in damages or punishable in the criminal courts. In all these cases the custody is justified by the realtionship between the parties, which is not limited to a particular locality. Thus, in the case of *Townsend* v. *Kendall*, 4 Minn. 412, 77 Am. Dec. 534, it was held that a guardian appointed in Ohio who followed his ward into Minnesota and there took custody of the ward was not liable in an action for false imprisonment. The court declared:

"The power once conferred follows the person of the ward. It would lead to great inconvenience if it should be held that a guardian could not exercise his authority or be recognized outside of the State or locality of his appointment. Such a ruling would embarrass the guardian in investing the funds of his ward in securities of other States, and render it necessary that he should be reappointed in every State or country through which he should pass with his ward in traveling, if an emergency should arise in which it became necessary to assert his authority. * * * we think the better rule is, upon principle and authority, to recognize the foreign appointment of a guardian as creating that relation between the parties in this State, subject, of course, to the laws of this State, as to any exercise of power by virtue of such relation either as to the person or property of the ward."

A second exception to the general rule that arrest or detention must be justified by the law of the locality has been established by statute in borderline cases where a strict application of the rule of territoriality would interfere with practical law enforcement. Thus, in the case of *Helm* v. *Commonwealth*, 81 S.W. 270, 271 (Ky.), the court declared:

"The rule is admitted that ordinarily an officer's authority is limited to the district which elected him, but this is a matter within the legislative control, and his authority may by the legislature be made coextensive with his county, although he is elected by one of its subdivisions."

See to the same effect *State* v. *Seery*, 95 Iowa 652, 64 N.W. 631.

These examples are cited simply to show that the question of whether agents of another jurisdiction may make arrests within the jurisdiction of a given State is something which that State can decide for itself. There is no constitutional obstacle to prevent a State from allowing the agents of another sovereignty to detain or arrest persons who have a peculiar relationship to that sovereignty.

If the question is thus considered one of local law within the State in which the reservation is situated, no categoric answer to the question that is put to me can be made for all States. It may be helpful, however, to suggest certain general considerations upon the basis of which the detention or arrest of an

Indian by an Indian police officer on land which is not restricted may be justified where the laws of the State are silent or ambiguous on the point.

In the first place, it should be recognized that the general rule that a police officer has authority only within the territory of the sovereignty that he serves is not completely applicable to a police officer of an Indian reservation, for the reason that his authority is primarily a personal rather than a territorial authority. This personal relationship does not depend for its existence upon the tenure of the land upon which the arrest is made. *Peters* v. *Malin*, *supra*.

In the second place, it should be pointed out that in an action for false imprisonment the existence of a personal relationship justifying custody is a defense. The authorities which set forth the bases of such a relationship cover, in principle, the "ward Indian" in his relationship to his tribe and to the United States. On this point, the decision in *Townsend* v. *Kendall* cited above, is extremely persuasive.

In the third place, we recognize that the inconveniences which have led courts and legislatures to recognize exceptions to the rule of territoriality exist in a significant degree on a checkerboarded Indian reservation. If the power to make an arrest were controlled by questions of land tenure, we should have what has been called government in spots. In the case of *State* v. *Lott*, 21 Idaho 646, the court declared:

"If, on the other hand, the State has jurisdiction everywhere except on an Indian allotment, it would be 'government in spots' only, and the civil and police officers of the State would have to go armed with the latest revised maps and plats from the General Land Office in order to know where and when they could exercise the authority of the State in bringing offenders against its laws to justice."

In view of the serious inconvenience that would be created by any such limitation upon the power to make arrests on a checkerboarded reservation, it should require an unmistakable statute or a clear judicial decision to justify the position that an Indian police officer has no authority over a "ward Indian" on unrestricted land within the reservation.

Aside from the fact that under State law an Indian policeman may be privileged to arrest a tribal member on unrestricted land within the reservation for violation of departmental regulations and tribal ordinances, such an arrest may be said to be positively sanctioned by Federal law.

Since the Indian Department Appropriation Act of May 27, 1878 (20 Stat. 63, 86), Congress has annually appropriated funds for the pay of Indian police to be employed in "maintaining order." For more than 20 years, in the period approximately from 1890 to 1910, the purpose of the employment of the police was described as follows: "to be employed in maintaining order and prohibiting illegal traffic in liquor on the several Indian reservations and within the Territory of Alaska, in the discretion of the Secretary of the Interior." For approximately the next 20 years their function was described simply as "maintaining order" with no specification of locality. The Appropriation Act of May 9, 1938 (Public No. 497, 75th Cong., 3d sess.), appropriates a fund for "maintaining law and order on Indian reservations" including the pay of judges of Indian courts and Indian police.

These acts place an obligation upon the Interior Department to provide for the maintenance of order among the Indians, at least within the reservations, if not without, and leave to administrative discretion the direction of the Indian police and the determination of the means necessary to accomplish the end. If it is necessary to the maintenance of order within an Indian reservation for the Indian police to arrest an Indian anywhere within the reservation for violation of the departmental regulations or tribal laws, authority for the action of the Indian police is found in these acts. In this connection it must be remembered that these acts have been passed annually for 60 years in the light of continued administrative practice and must be said to recognize and accept that practice. The past administrative practice has been to enforce the departmental regulations against the Indians everywhere within the reservations, whether by arrest or by the reduction of rations, as in the early days, or by other appropriate means. This practice was implicit in the 1904 law and order regulations and was made more explicit in section 1 of chapter 1 of the 1935 law and order regulations which provided that "For the purpose of the enforcement of these regulations, * * * a 'reservation' shall be taken to include all territory within reservation boundaries * * *."

It has already been noted in considering question 1 above that the entire Indian reservation has been viewed as an administrative unit, for purposes of enforcing the law and order regulations of the Department or the ordinances of the Indian tribe. This principle, we have noted, was recently expressed in the case of *United States* v. *Dewey County*, which described fee patent Indians on fee patent lands as subject to the rules and regulations of the Department for "the government of the reservation." The same considerations which lead to the view that such Indians are subject to regulations for the "government of the reservation" lead to the parallel conclusion that such Indians are subject to arrest where arrest is authorized under statutes providing for "maintaining law and order on Indian reservations." If Indians generally are subject to administrative control anywhere within the reservation, regardless of the status of the land on which they are found, it is reasonable to conclude that they are also subject to arrest anywhere within the reservation, as a necessary means to the exercise of that control.

In view of the foregoing analysis, I am of the opinion that there is no legal reason to repeal or modify the existing law and order regulations so far as they deal with the matter of arrests by Indian police officers. Specific questions that may arise in various jurisdictions on the basis of the statutes or common law of the various States will be dealt with as they arise, in the light of the foregoing general considerations and such special circumstances as may be involved in the particular case.

IV. ARRESTS OUTSIDE OF A RESERVATION

The Interior Department Appropriation Act of May 9, 1938, is similar to a large number of previous appropriation acts, as indicated in connection with the third question, in providing for Indian police to maintain order "on Indian reservations." Such acts restrict the operations of the Indian police to the boundaries of the reservations. One such appropriation act was so construed by the Attorney General in his opinion of August 28, 1886 (18 Ops. Atty. Gen. 440), in which he informed the Interior Department that the Indian police had no *ex officio* jurisdiction *beyond* the reservation boundaries in view of the provisions of the appropriation act. Under existing laws and regulations, therefore, the fourth question proposed must be answered in the negative.

(Signed) FREDERIC L. KIRGIS,
Acting Solicitor.

Approved May 2, 1939.

(Signed) OSCAR L. CHAPMAN,
Assisitant Secretary.

APPENDIX M

SOLICITOR'S MEMORANDUM REGARDING CONTRACTING FOR LAW ENFORCEMENT BY THE USE OF THE JOHNSON-O'MALLEY ACT

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
March 24, 1955.

Memorandum to: Commissioner of Indian Affairs.
From: Acting Solicitor.
Subject: Contracts for law enforcement.

Reference is made to your memorandum of March 9, 1955, requesting my opinion on whether the Johnson-O'Malley Act (25 U.S.C. 452 et seq.) authorizes the Secretary to make contracts with States, upon which Congress has conferred criminal jurisdiction over Indians or which may assume such jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), whereby the United States could make payments to such States for performing law enforcement services among Indians.

The Johnson-O'Malley Act authorizes the Secretary to contract with States or political subdivisions thereof "for the education, medical attention, agricultural assistance, and social welfare, including relief of distress" of Indians in such States. It is my opinion that the language of the statute is not sufficiently broad to authorize the Secretary to enter into such contracts with States for law enforcement services.

J. REUEL ARMSTRONG,
Acting Solicitor.

APPENDIX N

TRIBAL COUNCIL RESOLUTIONS AND ORDINANCES, MAY 16, 1953–AUGUST 31, 1961, SUBMITTED BY TRIBAL ORGANIZATIONS TO THE AGENCIES, AREA OFFICES, COMMISSIONER ON INDIAN AFFAIRS AND THE SECRETARY OF INTERIOR

ABERDEEN AREA

Cheyenne River Agency

Five resolutions were submitted for review by the superintendent, all of which were approved. Reference is made to the fact that other resolutions required approval by the Secretary of Interior, but the number of such resolutions is not indicated.

Flandreau Indian School.—Seven resolutions were submitted for review by the superintendent, all of which were approved. Of this number four were approved by the area director, two were not answered, and one was disapproved.

Fort Berthold Agency

Two hundred and ninety-eight resolutions were submitted for review by the superintendent. Of this number, 177 were approved by the superintendent and 121 were forwarded to the area office and the Washington, D.C. office for their information.

Pierre Agency

Crow Creek Reservation.—Eight hundred and six resolutions and three ordinances were submitted to the superintendent. Of this number, 418 resolutions and 3 ordinances were approved by the superintendent. Five resolutions were disapproved and 383 resolutions required no action by the Bureau of Indian Affairs.

Lower Brule Reservation.—Six hundred and forty-nine resolutions and 15 ordinances were submitted for review by the superintendent. Of this number, 419 resolutions and 15 ordinances were approved by the superintendent. Eight resolutions were disapproved and 222 resolutions required no action by the Bureau of Indian Affairs.

Pine Ridge Agency

Seven hundred and four resolutions were submitted for review by the superintendent. The information supplied indicated that many of these resolutions did not require action by the Bureau of Indian Affairs. The number of resolutions approved is not indicated but seven resolutions were disapproved.

Rosebud Agency

A large number of resolutions and ordinances were presented but were not tabulated. The following is a tabulation made by the subcommittee staff: 59 resolutions were submitted to the superintendent and approved. Nineteen resolutions were disapproved and 85 resolutions did not indicate the action taken by the superintendent. Seven ordinances were approved and six did not indicate the action taken.

Sisseston Agency

Three resolutions and two ordinances were submitted for review by the superintendent. Of this number, two resolutions were approved, one resolution was disapproved, one ordinance was approved and one was disapproved.

Standing Rock Agency

Eight hundred and fifteen resolutions and six ordinances were submitted for review by the superintendent. Although the records were sketchy, they indicate 43 resolutions approved and 2 disapproved. For 1953–55, there is no record of submissions by the superintendent or indication of final actions on the individual resolutions. For 1956, there is no record of submissions of resolutions for approval by higher authority, although there is a record of one disapproval by the Commission of Indian Affairs. For 1957, seven resolutions were forwarded for approval, but there is no record of final actions on the resolutions.

Turtle Mountain Agency

Turtle Mountain Chippewa Tribe.—One hundred and twenty resolutions and one ordinance were submitted for review by the superintendent. The existing records do not indicate what action was taken on the above resolutions or the ordinance during this period.

Devils Lake Sioux Tribe (Fort Totten).—One hundred and two resolutions and two ordinances were submitted for review by the superintendent. The existing records do not indicate the action taken during this period.

Winnebago Agency

Winnebago Tribe.—Twenty-one resolutions were submitted for review by the superintendent and three resolutions were submitted to the Secretary of the Interior. No information is available as to the action taken.

Omaha Tribe.—One hundred and eight resolutions were submitted for review by the superintendent and five resolutions were submitted to the Secretary of the Interior. No information is available as to the action taken.

Santee-Sioux Tribe.—Fifty-four resolutions were submitted for review by the superintendent and seven resolutions were submitted to the Secretary of the Interior. No information is available as to the action taken.

ANADARKO AREA

Absentee Shawnee Tribe.—Ten resolutions were submitted for review by the superintendent. Of this number six resolutions were approved by the area director, two were approved by the Secretary of Interior, and two did not indicate the action taken.

Absentee Delaware Tribe.—Five resolutions were submitted for review by the superintendent. Of this number, three resolutions were approved by the Commissioner of Indian Affairs, one was approved by the area director and one resolution did not indicate the action taken.

Caddo Tribe.—Seven resolutions were submitted for review by the superintendent. Of this number, three resolutions were approved by the Secretary of the Interior, three by the area director and one of the resolutions did not indicate the action taken.

Cheyenne-Arapaho Tribe.—Seventeen resolutions and one ordinance were submitted for review by the superintendent. Of this number, 13 resolutions were approved by the area director, 2 by the Secretary of the Interior, and 2 by the Commissioner of Indian Affairs. No action was indicated on the ordinance.

Citizen Potawatomi Tribe.—Four resolutions were submitted for review by the superintendent. All of these resolutions were approved by the Secretary of the Interior.

Iowa of Kansas Tribe.—Two petitions were submitted and approved by the Secretary of Interior.

Iowa of Oklahoma Tribe.—One resolution was submitted and approved by the Secretary of Interior.

Kiowa, Comanche, and Apache Tribes.—Twenty-one resolutions were submitted for review by the superintendent. Eight of these were approved by the Commissioner of Indian Affairs, and 10 were approved by the area office. One resolution was disapproved by the Secretary of Interior and one by the area office. No action was indicated on one of the resolutions.

Kaw Tribe.—Two resolutions were submitted and approved by the Commissioner of Indian Affairs.

Kickapoo Tribe of Kansas.—Five resolutions were submitted for review by the area director. Of this number, three were approved by the area director and one by the Secretary of Interior. No action was indicated on one of the resolutions.

Kickapoo Indian Tribe of Oklahoma.—Four resolutions were submitted for review by the area director. Of this number, one was approved by an Act of Congress, one by the Secretary of Interior, one by the Commissioner of Indian Affairs, and one by the area director.

Otoe-Missouria Tribe.—Eight resolutions were submitted for review by the area director. Of this number, two were approved by the Commissioner of Indian Affairs, and four were approved by the area office. No action was indicated on two of these resolutions.

Pawnee Tribe.—Six resolutions were submitted for review by the area director. Of this number, four were approved by the area director and no action was indicated on the other two resolutions.

Ponca Tribe.—Fifteen resolutions were submitted for review by the area director. Of this number, 10 were approved by the area director and 3 were recommended by the area director, but the action on these recommendations were not indicated. No action was indicated on two of the other resolutions.

Prairie Band of Potawatomi Indian Tribe.—Five resolutions were submitted for review by the area director. Of this number, three were approved by the Commissioner of Indian Affairs, one by the area director, and one did not indicate the action taken.

Sac and Fox Tribe of Kansas.—A resolution and a petition were submitted for review by the area director. No action was taken on the resolution by the Commissioner of Indian Affairs and the petition was approved by the Secretary of Interior.

Sac and Fox Tribe of Oklahoma.—Seventeen resolutions were submitted for review by the area director. Of this number, seven were approved by the area director, six were recommended by the area director, and the further action is not indicated. Three resolutions did not indicate the action to be taken.

Tonkawa Tribe.—Three resolutions were submitted for review by the area director. Of this number, one was approved by the Commissioner of Indian Affairs, one was recommended by the area director, but the further action is not indicated. No information is available on the action regarding the other resolution.

Wichita Tribe.—Ten resolutions were submitted for review by the area director. Of this number, five were approved by the area director, one was approved by the Commissioner of Indian Affairs, two were recommended by the area director, but the further action is not indicated. One was disapproved by the area director due to a lapse in time and no information is available in regard to the other resolution.

BILLINGS AREA

Blackfeet Agency

One hundred resolutions were submitted for review. Of this number, 37 were approved and 15 were disapproved by the superintendent, 7 were approved and 1 was disapproved by the area director, 8 resolutions were approved and 8 were disapproved by the Secretary of the Interior. Four resolutions remained pending at the time of the agency report and no information is available on the action regarding 20 other resolutions.

Crow Agency

Two hundred and fifty-six resolutions were submitted for review. Of this number, 196 were approved by either the superintendent or the area director; 32 were disapproved. Fourteen resolutions were pending, 2 were withheld, and no action was indicated for 12 other resolutions.

Flathead Agency

Three hundred and forty-five resolutions were submitted for review. Of this number, the superintendent approved 153 resolutions, recommended 161, and forwarded 177 resolutions. The area director approved 15 resolutions, disapproved 2, recommended 2, and forwarded to the Bureau of Indian Affairs 35 resolutions. The Commissioner of Indian Affairs approved 14 resolutions and returned 1.

Fort Belknap

Four hundred and fifty resolutions were submitted for review. Of this number 249 were approved by the superintendent and 27 did not indicate the action taken. Sixty-six resolutions were submitted to the area director. Eight of these resolutions were disapproved and no action was indicated on the remaining 58 resolutions. Thirty-seven resolutions were submitted to the Commissioner of Indian Affairs. Of this number, four were disapproved and the action on the remaining resolutions is not indicated.

Fort Belknap-Rocky Boy's Subagency

Sixty-three resolutions were submitted for review. Of this number, 57 were approved, 1 was disapproved, and no action is indicated on the remaining resolutions. The report does not indicate who reviewed the various resolutions.

Fort Peck Agency

Sixty-two resolutions were submitted for review by the superintendent. Of this number, 55 were approved, 4 were disapproved, and 3 were retained by the superintendent. Eighty-two resolutions were submitted for review by the area director, the Commissioner of Indian Affairs, or the Secretary of Interior. Of this number, 80 were approved, 1 disapproved, and 1 returned to the tribe. The

report does not indicate the exact official who reviewed these resolutions. Three ordinances were submitted and approved by the area director, the Commissioner of Indian Affairs, or the Secretary of Interior.

Northern Cheyenne Agency

One hundred and fifty-seven resolutions were submitted for review. Of this number, 138 were approved and 2 were disapproved by the superintendent. Twenty-six were approved and five were disapproved by the area director. The Secretary of Interior approved 10 and disapproved 10 resolutions. No action is indicated on 10 remaining resolutions.

Wind River Agency

One hundred and ninety-five resolutions were submitted for review. Of this number, 183 were approved and 2 were disapproved by the superintendent. Fifty-five resolutions were forwarded to the Bureau of Indian Affairs. The action on these resolutions is not indicated.

GALLUP AREA

Southern Ute Agency

Three hundred and ten resolutions were submitted for review. Of this number, 167 were approved by the superintendent and 104 were approved by the area director. The Commissioner of Indian Affairs approved 31 resolutions and the Secretary of Interior approved 8.

Ute Mountain Utes Agency

Two hundred and seventy-eight resolutions were submitted for review. Of this number, 220 were approved and 1 disapproved by the area director. Forty-five resolutions were approved by the Commissioner of Indian Affairs and 12 resolutions were approved by the Secretary of Interior. The report does not indicate any action by the superintendent.

Jicarilla Agency

One thousand one hundred resolutions were submitted for review. Of this number, the superintendent approved 918 and disapproved 23. Eighty-three were approved by the area director and three were disapproved. The Commissioner of Indian Affairs approved 36 resolutions and disapproved 6. Three resolutions were approved by the Secretary of Interior, 27 were favorably reviewed, and 1 was disapproved.

Mescalero Agency

Two hundred and fourteen resolutions were submitted for review. Of this number, 188 were approved and 26 were disapproved. The report from this agency does not indicate who reviewed the various resolutions.

Navajo Agency

Two hundred and seventy-one resolutions were submitted for review. Of this number 79 were approved and 3 were disapproved by the area director. The Commissioner of Indian Affairs approved 171 and disapproved 9. Eight resolutions were approved and one disapproved by the Secretary of Interior.

United Pueblos Agency

One thousand eight hundred and sixty-three resolutions were submitted to the superintendent. The report from this agency indicates the following information:

"This agency does not have complete information on the total number of tribal enactments for the period of May 16, 1953, to August 31, 1961. There are only three pueblos that formally organized under the Reorganization Act of 1934. None of their constitutions require approval of their tribal resolutions, as is required by some tribal constitutions in the country. The other pueblos that are not organized under the Reorganization Act do not maintain adequate records, so that only those resolutions which directly affect the Bureau programs and resolutions that require Bureau participation and approval are transmitted through this jurisdiction."

Zuni Agency

One hundred and six resolutions were submitted for review. Of this number, 105 were approved and 1 was disapproved. The report does not indicate who reviewed the various resolutions.

JUNEAU AREA

No reports were submitted from this area.

MINNEAPOLIS AREA

Great Lakes Agency

Bad River Band of the Lake Superior Tribe of Chippewa Indians submitted 10 resolutions to the area director, all were approved. The Commissioner of Indian Affairs approved three resolutions and disapproved one. Seven resolutions were approved by the Secretary of Interior.

Bay Mills Indian Community had two resolutions approved by the Commissioner of Indian Affairs and one approved by the Secretary of Interior.

Forest County Potawatomi Community had five resolutions approved by the area director and six approved by the Commissioner of Indian Affairs.

Hannahville Indian Community indicated one resolution approved by the area director and two approved by the Commissioner of Indian Affairs.

Keweenaw Bay Indian Community indicated seven resolutions approved by the area director and one approved by the Commissioner of Indian Affairs.

Lac Courte Oreilles Band of Lake Superior Chippewa Indians indicated that 16 resolutions were approved by the area director and 8 by the Commissioner of Indian Affairs.

Lac du Flambeau Band of Lake Superior Chippewa Indians indicated that four resolutions were approved by the area director, seven by the Commissioner of Indian Affairs, and eight by the Secretary of Interior.

Oneida Tribe of Indians of Wisconsin indicated that three resolutions were approved by the Commissioner of Indian Affairs.

Red Cliff Band of Lake Superior Chippewa Indians indicated that seven resolutions were approved by the area director, two by the Commissioner of Indian Affairs and one by the Secretary of Interior.

Sac and Fox Tribe of the Mississippi in Iowa indicated that four resolutions were approved by the Commissioner of Indian Affairs.

Saginaw Chippewa Indian Tribe of Michigan did not indicate that any resolutions were submitted.

Sokaogon Chippewa Community indicated that eight resolutions were approved by the area director and one by the Commissioner of Indian Affairs.

St. Croix Chippewa Indians of Wisconsin indicated that three resolutions were approved by the area director and one by the Commissioner of Indian Affairs.

Stockbridge Munsee Community indicated that one resolution had been approved by the area director, the Commissioner, and the Secretary of Interior.

Minnesota Agency

This agency includes the Consolidated Chippewa, Red Lake Agencies, and various scattered Sioux groups. Minnesota Chippewa Tribe indicated that 10 resolutions were approved and 1 disapproved by the area director. The Commissioner of Indian Affairs approved 10 resolutions and the Secretary of Interior approved 3.

Red Lake Band of Chippewa Indians indicated that 18 resolutions were approved and 3 were disapproved by the area director. Twenty resolutions were approved and six were disapproved by the Commissioner of Indian Affairs. The Secretary of Interior approved 10 resolutions and disapproved 3.

Lower Sioux Indian Community indicated one resolution was approved by the Secretary of Interior.

Prairie Island Indian Community indicated one resolution was approved by the Commissioner of Indian Affairs.

Upper Sioux Indian Community indicated that one resolution was approved by the area director and one was disapproved by the Commissioner. The reports from the Great Lakes and Minnesota Agencies do not indicate whether these were the only resolutions submitted for review.

MUSKOGEE AREA

Five Civilized Tribes

Cherokee Tribe submitted two resolutions to the Commissioner of Indian Affairs. No action is indicated. The report does not include the many recommendations made in letter form by the Cherokee Tribe to the area director, the Commissioner of Indian Affairs, or the Secretary of Interior.

Chickasaw Tribe did not submit any resolutions.

Choctaw Tribe (Oklahoma) submitted 11 recommendations to the Commissioner of Indian Affairs. No action is indicated.

Creek Tribe submitted 11 resolutions for review. Four resolutions were approved by the area director. Six resolutions were submitted to the Commissioner of Indian Affairs but no action is indicated.

Seminole Tribe submitted 45 resolutions for review. Of this number, 13 were approved by the area director. Twenty-five resolutions were submitted to Washington. No action is indicated on 32 resolutions.

Mississippi Choctaw Tribe submitted 82 resolutions for review. Of this number, 46 were approved by the area director and one resolution was tabled. Two resolutions were submitted to the Commissioner of Indian Affairs. No action is indicated on 33 resolutions.

Delaware Tribe submitted one resolution for review which was approved by the area director.

Osage Tribe submitted 22 resolutions. Of this number, 17 were approved by the area director, 3 were submitted to the Commissioner of Indian Affairs and no action is indicated on the remaining 2 resolutions.

Ottawa Tribe submitted four resolutions for review. Three were approved by the area director and no action is indicated on the remaining two resolutions.

Peoria Tribe submitted two resolutions for review but the action is not indicated.

Wyandotte Tribe submitted six resolutions for review. Of this number four were referred to the Commissioner of Indian Affairs. The action is not indicated for any of the six resolutions.

Miami Tribe submitted seven resolutions for review. One resolution was submitted to the Secretary of Interior but no action is indicated for any of the resolutions.

Quapaw Tribe submitted 10 resolutions for review. Of this number, five were approved by the area director, one was referred to the Secretary of Interior, and no action is indicated on five of the remaining resolutions.

Seneca Cayuga Tribes submitted eight resolutions for review. Of this number, one was approved by the area director and no action is indicated on seven of the other resolutions.

Eastern Shawnee did not submit any resolutions for review.

Shawnee (affiliated with the Cherokee Tribe) submitted one resolution for review by the Commissioner of Indian Affairs. The action is not indicated.

PHOENIX AREA

Colorado River Agency

Colorado River Tribe submitted 40 resolutions and 6 ordinances for review. Of this number, 25 resolutions were approved by the Commissioner of Indian Affairs and 4 were disapproved. Five resolutions were approved by the area director, four were approved by the superintendent, and two were disapproved. Of the six ordinances submitted, five were approved by the superintendent.

Hualapai Tribe submitted 62 resolutions and 6 ordinances. Of this number, 14 were approved by the superintendent and 1 was disapproved. Twelve resolutions were approved by the area director, and 32 were approved by the Commissioner of Indian Affairs. All six of the ordinances were approved.

Havasupai Tribe submitted 25 resolutions and 3 ordinances. Of this number, three resolutions were approved by the superintendent and four were disapproved. Twelve resolutions were approved by the area director and four were approved by the Commissioner of Indian Affairs and one resolution was disapproved by the Commissioner. Of the three ordinances submitted, three were approved by the superintendent and one was rescinded by the Secretary of the Interior.

Fort Mojave Tribe submitted 18 resolutions for review. Of this number, 11 were approved by the superintendent, 5 by the area director, and 2 were approved by the Commissioner of Indian Affairs. One ordinance was submitted and approved by the superintendent.

Quechan Tribe submitted 11 resolutions for review. Of this number, five were approved by the area director and four were approved by the Commissioner of Indian Affairs. No action is indicated on two of the resolutions. Two ordinances were submitted and disapproved by the Commissioner of Indian Affairs.

Yavapai (Prescott) Tribe submitted two resolutions for review which were approved by the area director.

Yavapai-Apache Tribe submitted nine resolutions for review. Of this number, two resolutions were approved by the superintendent, four by the area director, and three by the Commissioner of Indian Affairs.

Fort Apache Agency

Submitted 149 resolutions for review. Of this number, 130 were approved by the Secretary of Interior and 12 were disapproved. No action was indicated for the 16 remaining resolutions. Twenty-nine ordinances were submitted for review. Of this number 28 were approved by the superintendent and 4 were rescinded by the Secretary of Interior.

Hopi Agency

Hopi Tribe submitted 41 resolutions for review. Of this number, 27 were approved by the superintendent, 15 by the Secretary of Interior, 1 was rescinded, 1 left pending, and no action was taken on 1 resolution. Four ordinances were submitted for review and all were approved by the superintendent.

Kaibab Tribe submitted 19 resolutions for review and all were approved by the superintendent.

Nevada Indian Agency

Duck Valley Paiute Reservation submitted 50 resolutions for review by the superintendent. Of this number, 50 resolutions were approved by the superintendent, and 1 resolution was reviewed and approved by the Secretary of Interior. Nineteen ordinances were submitted and approved by the superintendent. The Secretary of Interior also reviewed and approved four ordinances.

Duckwater Paiute Tribe submitted six resolutions for review which were approved by the superintendent.

Fort McDermitt Paiute Tribe submitted 12 resolutions for review which were approved by the superintendent. Ten ordinances were submitted and approved by the superintendent.

Carson Colony did not submit any ordinances or resolutions which required action by the superintendent.

Moapa Paiute Tribe submitted 16 resolutions for review which were approved by the superintendent. One ordinance was submitted and approved by the superintendent and the Secretary of Interior.

Pyramid Lake Paiute Tribe submitted 66 resolutions for review to the superintendent. Of this number, 63 were approved by the superintendent, 3 were noted, and 1 was submitted and approved by the Secretary of Interior. Three ordinances were submitted to the superintendent and the Secretary of Interior and approved.

Reno-Sparks Colony submitted two ordinances which were approved by the superintendent.

Summit Lake Paiute Tribe submitted four resolutions and one ordinance which were approved by the superintendent.

Walker River Paiute Tribe submitted 13 resolutions which were approved by the superintendent. Four ordinances were submitted for review by the superintendent and one ordinance was submitted to the Secretary of Interior. These were approved.

Washoe Paiute Tribe submitted 22 resolutions for review by the superintendent. These were approved. Two ordinances were submitted and approved by the superintendent and one was approved by the Secretary of Interior.

Fallon Paiute Tribe submitted three resolutions which were approved by the superintendent.

Yomba Paiute Tribe submitted two resolutions which were approved by the superintendent.

Te-Moak Paiute Tribe submitted 39 resolutions which were approved by the superintendent.

Yerington Paiute Tribe submitted two resolutions which were approved by the superintendent.

Goshute Paiute Tribe submitted 28 resolutions which were approved by the superintendent. Three ordinances were submitted and approved by the superintendent and one by the Secretary of Interior.

Papago Agency

Submitted 183 resolutions to the Secretary of Interior. Of this number, 174 were approved by the Secretary, 4 were disapproved. 3 were rescinded, and no action was indicated on 1.

Pima Agency

Gila River Pima-Maricopa Community submitted 177 resolutions for review by the superintendent. Of this number, 157 were approved by the superintendent, 16 were disapproved and 1 was rescinded.

Salt River Community submitted 129 resolutions for review by the superintendent. Of this number, 115 were approved by the superintendent, 3 were disapproved, 8 were approved by the Secretary of Interior, and no action was indicated on 2 of the resolutions.

Fort McDowell Mohave-Apache Community submitted 43 resolutions for review by the superintendent. Of this number, 38 were approved by the superintendent, 3 were disapproved, and 2 did not indicate the action taken. Thirteen resolutions were submitted to the Secretary of the Interior, 12 of which were approved, and 1 rescinded.

Maricopa (Ak Chin) Tribe submitted 70 resolutions which were approved by the superintendent.

San Carlos Agency

Submitted 10 resolutions and 30 ordinances for review. Of this number, nine resolutions were approved by the superintendent and one by the Secretary of Interior. Thirty ordinances were approved by the superintendent; however, the Secretary of the Interior rescinded nine of these.

Uintah and Ouray Agency

Submitted 2,195 resolutions for review. Of this number, the superintendent approved 304, recommended 42 others, and forwarded 32 resolutions to the Commissioner of Indian Affairs. Twelve resolutions were approved by the Secretary of the Interior and no action was indicated on 1,676 resolutions.

PORTLAND AREA

Colville Agency

Colville Tribes submitted 247 resolutions for review. Of this number, 58 were approved and 13 were disapproved by the area director. One hundred and sixty-seven were approved and nine were disapproved by the Commissioner of Indian Affairs.

Spokane Tribe submitted 75 resolutions for review. Of this number, 22 were approved and 4 were disapproved by the area director. The Commissioner of Indian Affairs approved 39 resolutions and disapproved 9. The Secretary of the Interior rescinded one of the resolutions.

Fort Hall Agency

Submitted 37 resolutions for review. Of this number, 16 were approved and 6 were disapproved by the area director. The Commissioner of Indian Affairs approved 11 resolutions and disapproved 3. One resolution was rescinded by the Secretary of the Interior.

Northern Idaho Agency

Coeur d'Alene Tribe submitted 129 resolutions for review. Of this number, 103 were approved by the area director. Twenty-five resolutions were approved and one was disapproved by the Commissioner of Indian Affairs.

Kalispel Tribe submitted 16 resolutions for review. Of this number, 11 were approved by the area director and 5 were approved by the Commissioner of Indian Affairs.

Kootenai Tribe submitted 10 resolutions for review. Of this number, seven were approved by the area director and three by the Commissioner of Indian Affairs.

Nez Perce Tribe submitted 184 for review. Of this number, 147 were approved by the area director and 37 were approved by the Commissioner of Indian Affairs.

Umatilla Subagency

Submitted eight resolutions which were reviewed and approved by the Commissioner of Indian Affairs.

Warm Springs Tribe submitted 35 resolutions for review. Of this number, 5 were approved by the area director, 28 were approved and 2 were disapproved by the Commissioner of Indian Affairs.

Western Washington Agency

Chehalis Tribe did not submit any resolutions.

Lummi Tribe did not submit any resolutions.

Makah Tribe submitted one resolution which was approved by the Commissioner of Indian Affairs.

Muckleshoot Tribe did not submit any resolutions.
Nisqually Tribe did not submit any resolutions.
Port Gamble Tribe did not submit any resolutions.
Puyallup Tribe did not submit any resolutions.
Quileute Tribe did not submit any resolutions.
Skokomish Tribe submitted one resolution which was approved by the Commissioner of Indian Affairs.
Swinomish Tribe submitted two resolutions for review. One was approved and the other disapproved by the Commissioner of Indian Affairs.
Tulalip Tribe submitted 10 resolutions for review. Eight were approved and two disapproved by the Commissioner of Indian Affairs.
Yakima Tribe submitted 107 resolutions for review. Of this number, 66 were approved and 4 were disapproved by the area director. One hundred and one were approved and three were disapproved by the Commissioner of Indian Affairs. Three were rescinded by the Secretary of the Interior.

California Agency

Auburn Rancheria submitted one resolution which was approved by the area director.
Big Sandy Rancheria submitted two resolutions for review. One was approved by the Secretary of the Interior and one remains pending.
Big Valley Rancheria submitted two resolutions for review. Both resolutions were approved by the area director.
Chico Rancheria submitted one resolution which was approved by the Commissioner of Indian Affairs.
Cloverdale Rancheria submitted one resolution which was approved by the area director.
Colusa Reservation and Rancheria submitted five resolutions for review. Of this number, four were approved by the area director and one by the Commissioner of Indian Affairs.
Dry Creek Reservation submitted one resolution which remains pending.
Fort Bidwell Reservation submitted 12 resolutions. Eight resolutions were approved by the area director and four were approved by the Commissioner of Indian Affairs. Three resolutions were not approved and one remains pending.
Fort Independence Reservation submitted one resolution which was not approved by the area director.
Greenville Rancheria submitted one resolution which was not approved by the area director.
Guidiville Rancheria submitted four resolutions for review. One resolution was approved by the area director and three by the Commissioner of Indian Affairs.
Hopland Rancheria submitted one resolution which was approved by the area director.
Indian Ranch Reservation submitted two resolutions which were approved by the Commissioner of Indian Affairs.
Manchester Rancheria submitted two resolutions for review. One was approved and the other remains pending.
Middletown Rancheria submitted one resolution which was approved by the area director.

Owens Valley

Bishop Reservation submitted 22 resolutions for review. Of this number, 13 were approved by the area director and 9 were approved by the Commissioner of Indian Affairs. Two resolutions were not approved and one remains pending.
Big Pine Reservation submitted one resolution which was approved by the area director.
Lone Pine Reservation submitted one resolution which was approved by the area director.
Picayune Rancheria submitted one resolution which was approved by the area director.
Pinoleville Rancheria submitted one resolution which was not approved by the area director.
Round Valley Reservation submitted 29 resolutions for review. Of this number, 18 were approved by the area director, 9 by the Commissioner of Indian Affairs, and 2 by the Secretary of the Interior. Three resolutions were not approved and 8 remain pending.

Rumsey Rancheria submitted 6 resolutions for review. Three were approved by the area director and the Commissioner of Indian Affairs. Three were not approved.

Santa Rosa Rancheria (Kings County) submitted one resolution which was approved by the area director.

Sulphur Bank Rancheria submitted one resolution which was approved by the area director.

Tule River Reservation submitted 66 resolutions for review. Of this number, 48 were approved by the area director, 16 by the Commissioner of Indian Affairs, and 2 by the Secretary of the Interior. Ten resolutions were not approved and two remain pending.

Tuolumne Rancheria submitted two resolutions for review. One was approved by the area director and the other by the Commissioner of Indian Affairs.

X-L Ranch (*Pit River*) submitted 13 resolutions for review; 11 were approved by the area director, 1 by the Commissioner of Indian Affairs, and one by the Secretary of the Interior. Two were not approved and three remain pending.

Pit River Tribe submitted one resolution which remains pending.

Hoopa Area Field Office

Hoopa Reservation submitted 73 resolutions for review; of this number, 35 were approved by the area director, 29 by the Commissioner of Indian Affairs, and 4 by the Secretary of the Interior. Five resolutions were not approved and two remain pending.

Quartz Reservation submitted eight resolutions for review. Of this number, five were approved by the area director and three by the Commissioner of Indian Affairs. Two resolutions were not approved.

Resighini Rancheria submitted one resolution which remains pending.

Rohnerville Rancheria submitted one resolution which was not approved.

Smith River Rancheria submitted six resolutions for review. Of this number, three were approved by the area director and two by the Commissioner of Indian Affairs. One resolution was not approved.

Trinidad Rancheria submitted four resolutions for review. Of this number, three were approved by the area director and one by the Commissioner of Indian Affairs. Three were not approved, but the report does not indicate which official did not approve the resolutions.

Palm Springs Office

Agua Caliente Reservation submitted 58 resolutions for review; of this number, 27 were approved by the area director, 20 by the Commissioner of Indian Affairs, and 5 by the Secretary of the Interior. Five resolutions were not approved and two remain pending.

Riverside Area Field Office

Augustine Reservation submitted one resolution which remains pending.

Barona Reservation submitted three resolutions for review. Two were approved by the area director and one by the Commissioner of Indian Affairs.

Baron Long Reservation submitted five resolutions for review. The area director approved two and the Commissioner of Indian Affairs three.

Cabazon Reservation submitted six resolutions for review. Three resolutions were approved by the area director, one by the Commissioner of Indian Affairs, and one by the Secretary of the Interior. One resolution remains pending.

Cahuilla Reservation submitted one resolution which was approved by the Commissioner of Indian Affairs.

Campo Reservation submitted four resolutions for review. Of this number, one was approved by the area director and three by the Commissioner of Indian Affairs.

Inaja Reservation submitted one resolution which was approved by the Commissioner of Indian Affairs.

La Jolla Reservation submitted one resolution which remains pending.

Los Coyotes Reservation submitted two resolutions which were approved by the solicitor.

Manzanita Reservation submitted two resolutions for review. One was approved by the Commissioner of Indian Affairs and the other by the Secretary of the Interior.

Mesa Grande Reservation submitted two resolutions which were approved by the Commissioner of Indian Affairs.

Mission Creek Reservation submitted seven resolutions for review. Three resolutions were approved by the area director, one by the Commissioner of Indian Affairs, and two by the Secretary of the Interior. One resolution remains pending.

Morongo Reservation submitted six resolutions for review. Three resolutions were approved by the Commissioner and three by the Secretary of the Interior.

Pala Reservation submitted 10 resolutions for review; of this number, 4 were approved by the area director, 4 by the Commissioner of Indian Affairs, and 2 by the Secretary of the Interior.

Pauma Reservation submitted one resolution which was approved by the area director.

Pechanga Reservation submitted two resolutions of which one was approved by the area director and the other was not approved.

Rincon Reservation submitted seven resolutions for review. Two resolutions were approved by the Commissioner of Indian Affairs and three by the Secretary of the Interior. One resolution was not approved and three remain pending.

San Juan Capistrano Band submitted one resolution which was approved by the Commissioner of Indian Affairs.

San Luis Rey Band submitted one resolution which was approved by the Commissioner of Indian Affairs.

San Pasqual Reservation submitted one resolution which was approved by the Secretary of the Interior.

Santa Ynez Reservation submitted one resolution which was approved by the Commissioner of Indian Affairs.

Santa Ysabel Reservation submitted one resolution which remains pending.

Santa Rosa Reservation submitted three resolutions for review. One resolution was approved by the area director and two were approved by the Commissioner of Indian Affairs.

Soboba Reservation submitted five resolutions for review. Of this number, two were approved by the area director, and three remain pending.

Sycuan Reservation submitted one resolution which was approved by the Secretary of the Interior.

Torres-Martinez Reservation submitted 12 resolutions for review. Of this number, eight resolutions were approved by the area director, six by the Commissioner of Indian Affairs, and two by the Secretary of Interior. Four Resolutions were not approved and two remain pending.

Field offices under the central (Washington, D.C.) office are—

Cherokee Agency did not submit a report.

Seminole Agency submitted 40 resolutions and ordinances which were approved by the Secretary of Interior. Sixty-seven resolutions and ordinances were approved by the superintendent.

CONCLUSIONS

A systematic examination of tribal resolutions and ordinances leads to certain conclusions regarding administrative procedures in these matters and the effects of such procedures on Indians in the exercise of their constitutional rights.

Poor recordkeeping makes it difficult to assess the exercise of constitutional rights by Indians or the restrictions or protections of these rights by tribal organizations. A great amount of variation in the returns from the field agencies regarding actions of tribal resolutions and ordinances makes it difficult to determine to what degree Indians in general are enjoying their constitutional rights as citizens.

An immense amount of work was required from the staff of this subcommittee and Indian affairs analysts of the Legislative Reference Service, Library of Congress, in assembling and digesting the assorted material sent from the Bureau of Indian Affairs.

A lack of coordination between field offices and the central office of the Bureau of Indian Affairs seems to affect the Indian in his exercise of rights. The chain of command between local field agencies and the central office of the Bureau of Indian Affairs is so complex and cumbersome that any action can involve almost interminable delay. In other words, the Indian finds himself waiting for long periods of time before he learns how he can do the thing which other citizens take for granted.

Any attempt to assess the Indian in the exercise of his rights as seen in tribal resolutions and ordinances assembled by the Washington, D.C., office appears to be rather futile. Only by going directly to field offices themselves and seeing the system in action can the subcommittee conclusively demonstrate whether Indians are or are not being restricted in the exercise of their constitutional rights.

APPENDIX O

A DEFINITION OF TERMS REGARDING INDIAN LAND

INDIAN HEIRSHIP LAND SURVEY[1]

Question 8. Definitions of terms.

Allotment.—The act or process of dividing the lands of an Indian tribe into parcels or tracts and conferring certain property rights therein upon the individual members of the tribe. The tract or parcel to which ownership rights are thus individualized. The term includes tracts on the public domain, as well as those within reservations, acquired by Indians under section 4 of the General Allotment Act of February 8, 1887 (24 Stat. 388), the act of February 28, 1891 (26 Stat. 795), the act of June 25, 1910, section 31 (36 Stat. 863), and other similar provisions of law of application to special situations.

Trust allotment.—A parcel of land allotted in severalty to an Indian with the legal title in the United States and the beneficial or equitable title in the Indian allottee.

Restricted fee allotment.—A parcel of land allotted to an Indian with the legal or fee title in the Indian, subject, however, to a restriction against alienation, encumbrance, or taxation.

Petitions for sale.—Except for the act of June 25, 1910 (36 Stat. 855), which authorizes the Secretary to sell and convey certain trust allotted heirship lands if he finds one or more of the heirs to be incompetent to manage his own affairs, all of the general statutory authorities for the sale of Indian lands require that such sale be made upon the petition of, upon the application of, or with the consent of, the Indian owners. The term has been used to describe this action on the part of the Indian owner. It refers also to the written instrument of request, application, etc.

Consent to sale.—An agreement to, or acceptance of, the terms of a particular sale. When a petition or application for sale has been filed and processed to the point where a prospective purchaser has submitted a high bid in an advertised sale or made an acceptable offer in a negotiated sale, consents to sale are obtained from the owners. Where the conveyance is to be made by deed, the consent to sale may be in the form of execution of the deed. From a procedural standpoint, the petition or application for sale may be compared to the listing of real property with a real estate agent and the consent to sale may be compared to the agreement to the final terms of a sale.

Also, perhaps less frequently, the term is used to describe the action and the document used in those instances in which a sale is made under the Secretary's authority found in the act of June 25, 1910 (36 Stat. 855), the owners being questioned in advance regarding the proposed sale, and their concurrence being manifested by a form of "consent to sale."

Conveyance of title.—The words "of title" are redundant because, in the popular sense, and as generally used by lawyers, "conveyance" denotes any transfer of title, legal or equitable. See "Black's Law Dictionary" (3d ed., p. 431) for this and other definitions to the same general effect. This is the sense in which the term is used in the Bureau of Indian Affairs.

Instrument of conveyance.—Any instrument or document which transfers title from one person or entity to another.

Patent.—The word "patent" means an instrument of title by which a government, either State or Federal, conveys its lands.

Trust patent.—The instrument under which a trust allotment is held. This instrument declares that the United States "does and will hold the land" allotted to the Indian "in trust" for the Indian and his heirs to whom such allotment is made.

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[1] Indian Heirship Land Survey of the 86th Cong., 1st sess., Dec. 1, 1960, committee print.

Fee simple patent.—A patent which conveys an absolute or fee simple estate. Such an estate, in American law, is one in which the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs and legal representatives upon his death intestate (Black's 3d ed., p. 761).

Restricted fee patent.—The instrument under which a restricted fee allotment is held. The instrument passes fee simple title to the allottee but recites the restriction against alienation, encumberance, or taxation.

Certificate of competency.—The instrument used to remove the restriction contained in a restricted fee patent. Certificates of competency were authorized to be issued by the act of June 25, 1910 (36 Stat. 855). This act provides in substance that the Secretary of the Interior may, in his discretion and upon application therefor, issue a certificate of competency to any Indian who owns a restricted fee allotment. Such certificate has the effect of removing the restrictions contained in the restricted fee patent.

The foregoing does not apply at Osage, where there is special use of the term pursuant to statutes of special application.

Deed.—An instrument of conveyance. (See above.)

Competent.—The special relationship which the Government has with individual Indians is based upon the idea that the Indians were dependent people and not capable of managing their own affairs without Federal protection and supervision. The words "competent" and "incompetent" or "noncompetent" do not have the same meaning in Indian Bureau usage as they have in general usage. In general usage, an "incompetent" person is one who does not, under the law, have certain legal rights, including the right to contract, such as a minor or a person adjudged to be non compos mentis. The term "competent" in Indian Bureau usage has, by having been used in the various statutes, come to be a synonym of "capable." This term is found in the statutes authorizing the issuance of patents in fee or other instruments terminating Federal trusteeship or removing restrictions on individual Indian land. The context in which the word appears in the statutes is clearly indicative of its meaning. See, for example, the act of February 8, 1887, section 6 (24 Stat. 390; 25 U.S.C. 349), amended May 8, 1906 (34 Stat. 182), which provides—

"That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to each allottee a patent in fee simple * * *."

The act of June 25, 1910, section 1 (36 Stat: 855; 25 U.S.C. 372), provides:

"If the Secretary of the Interior decides the heir or heirs of such decendent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent he may, in his discretion, cause such lands to be sold * * *."

It is suggested that it may prove helpful in this connection to examine the material on pages 551 to 557, inclusive, in "Federal Indian Law," on the subject of incompetency, and the restricted meanings and special uses of the term in Indian law. The cited material includes an excellent analysis of this subject.

Decedent.—A deceased person. One who has died testate or intestate.

Testate.—The condition of one who leaves a valid will at his death.

Intestate.—The condition of a person who dies having made no will, or having made a will which is defective and which may not be approved. Such a person is said to have died intestate, and his estate descends to his heirs at law.

Probate.—In a strict sense, this term relates to the judicial act or determination of a court having competent jurisdiction establishing the validity of a will. However, in general usage the term includes all matters of which probate courts have jurisdiction, and in this sense it is used to describe the broad area of responsibility and authority vested in the Secretary of the Interior by the act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended, and the act of February 14, 1913 (37 Stat. 678; 25 U.S.C. 373), to ascertain the heirs of deceased allottees, to approve wills, and settle estates.

Approved Indian will.—A will of a deceased Indian, disposing of trust or restricted property, which has been approved pursuant to the act of February 14, 1913 (37 Stat. 678; 25 U.S.C. 373).

Heir.—Although in precise usage the term denotes an individual who succeeds to an estate in case of intestacy, it is frequently used in a popular sense to designate a successor to property either by will or by law.

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Devisee.—A person to whom real property has been devised or given by will.

Examiners of inheritance.—Federal employees to whom the Secretary of the Interior has delegated the authority granted by the act of June 25, 1910 (36 Stat. 855; 25 U.S.C. 372), as amended by the act of February 14, 1913 (37 Stat. 678; 25 U.S.C. 373), to probate the trust or restricted estates of deceased Indians.

Heirship estate.—We doubt that this combination of terms is used to any appreciable extent. It would, no doubt, refer to lands in heirship status, as defined below:

> Heirship lands—Heirship status: Refers to land which has passed to the heirs or devisees of the original Indian owner.
>
> Lands in multiple ownership—Fractionated land: Includes heirship lands, and may also be descriptive of an ownership pattern which includes co-owners who have acquired an undivided interest in property by purchase, gift, or exchange, in addition to those who became co-owners by inheritance or devise. The ownership of undivided interests in land is expressed in fractions, with a common denominator, and the term fractionated stems from this fact.

Undivided interest.—A person who owns land as a tenant in common with other individuals is said to have an undivided interest in the land.

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