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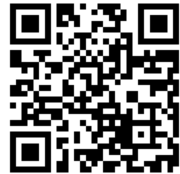

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READJUSTMENT OF INDIAN AFFAIRS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

PART 1

Printed for the use of the Committee on Indian Affairs

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READJUSTMENT OF INDIAN AFFAIRS

THURSDAY, FEBRUARY 22, 1934

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met in its committee room, Capitol, at 3 p.m., Hon. Edgar Howard (chairman) presiding.

Present: Representatives Howard, Cartwright, Chavez, Rogers, Ayers, O'Malley, Stubbs, Hill, Werner, Peavey, Collins, Christianson, and Dimond.

The CHAIRMAN. At this point the reporter will insert the bill under consideration by this committee.

(The bill referred to is here printed in full as follows:)

[H. R. 7902, 73d Cong., 2d sess.]

A BILL To grant to Indians living under Federal tutelage the freedom to organize for purposes of local self-government and economic enterprise; to provide for the necessary training of Indians in administrative and economic affairs; to conserve and develop Indian lands; and to promote the more effective administration of justice in matters affecting Indian tribes and communities by establishing a Federal Court of Indian Affairs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—INDIAN SELF-GOVERNMENT

SECTION 1. That it is hereby declared to be the policy of Congress to grant to those Indians living under Federal tutelage and control the freedom to organize for the purposes of local self-government and economic enterprise, to the end that civil liberty, political responsibility, and economic independence shall be achieved among the Indian peoples of the United States, and to provide for cooperation between the Federal Government, the States, and organized Indian communities for Indian welfare. It is further declared to be the policy of Congress that those functions of government now exercised over Indian reservations by the Federal Government through the Department of the Interior and the Office of Indian Affairs shall be gradually relinquished and transferred to the Indians of such reservations, duly organized for municipal and other purposes, as the ability of such Indians to administer the institutions and functions of representative government shall be demonstrated, and that those powers of control over Indian funds and assets now vested in officials of the Federal Government shall be terminated or transferred to the duly constituted governments of local Indians communities as the capacity of the Indians concerned, to manage their own economic affairs prudently and effectively, shall be demonstrated. It is further declared to be the policy of Congress to assist in the development of Indian capacities for self-government and economic competence by providing for the necessary training of Indians, and by rendering financial assistance and cooperation in establishing Indian communities.

SEC. 2. In accordance with the foregoing purposes, the Secretary of the Interior is hereby authorized to issue to the Indians residing upon any Indian reservation or reservations or subdivision thereof a charter granting to the said community group any or all of such powers of government and such privileges of corporate organization and economic activity, hereinafter enumerated, as may seem fitting in the light of the experience, capacities, and desires of the

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Indians concerned; but no such charter shall take effect until ratified by a three-fifths vote at a popular election open to all adult Indians resident within the territory covered by the charter.

Upon receipt of a petition for the issuance of a charter signed by one fourth of the adult Indians residing on any existing reservation, it shall be the duty of the Secretary of the Interior to make the necessary investigations and issue a proper charter, subject to ratification, or shall proclaim the conditions upon which such charter will be issued; and such petition, with a record of the findings and of the action of the Secretary, shall be transmitted by the Secretary of the Interior to Congress: *Provided*, That whenever the Secretary of the Interior shall acquire land not comprised within any existing reservation for the purpose of establishing a new Indian community, pursuant to the authority granted by title III of this Act, he shall issue a charter to take effect at some future time and shall therein prescribe the conditions under which persons of at least one-fourth degree of Indian blood shall be entitled to become members of such community, and the acceptance of such membership by the qualified persons shall constitute an acceptance and ratification of such charter.

SEC. 3. Each charter issued to an Indian community shall define the territorial limits of the community and the criteria of membership within the community; shall, wherever such community is sufficiently populous and endowed with sufficient territory to make the establishment of local government possible, prescribe a form of government adapted to the needs, traditions, and experience of such 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 community assets thereby relinquished, the extent of which compensation and the manner of payment thereof to be fixed by charter provision. Each charter shall further specify the powers of self-government to be exercised by the chartered community, and shall provide for the planned extension of these powers as the community offers evidence of capacity to administer them. Each charter shall likewise prescribe the powers of management or supervision to be exercised by the chartered community over presently restricted real and personal property of individual Indians or tribes, and shall provide for the bonding of any community officials or Federal employees entrusted with the custody of community funds and for such forms of publicity and accounting, and for such continuing supervision by the Office of Indian Affairs over financial transactions and economic policies as may be found by the Secretary of the Interior to be necessary to prevent dissipation of the capital resources of the community or unjust discrimination in the apportionment of income; and each charter shall further provide for the gradual elimination of administrative supervision as the Indian community shows progress in the effective utilization of its resources and the prudent disposal of its assets.

Sec. 4. The Secretary of the Interior is authorized to grant to any community which may be chartered under this Act, either by original charter or by supplement to such charter initiated or ratified by a three fourths vote, any or all of the powers hereinafter enumerated, subject to the provisions of law fixed by section 8 of this title, or any rules or regulations promulgated pursuant thereto, respecting the terms upon which certain functions of the Federal Government shall be transferred to the chartered community, and to provide, in such original charter or supplement, for the definition, qualification, or limitation of any powers which may be granted, in any manner deemed necessary or desirable for the effectuation of the purposes and policies above set forth.

(a) To organize and act as a Federal municipal corporation, to establish a form of government, to adopt and thereafter to amend a constitution, and to promulgate and enforce ordinances and regulations for the effectuation of the functions hereafter specified, and any other functions customarily exercised by local governments.

(b) To elect or appoint officers, agents, and employees, to define the qualifications for office, to fix the salaries of officials to be paid by the community, to prescribe the qualifications of voters, to define the conditions of membership within the community, and to provide for the adoption of new members.

(c) To regulate the use and disposition of property by members of the community, to protect and conserve the property, wild life, and natural resources of the community, to cultivate and encourage arts, crafts, and culture, to administer charity, and to protect the health, morals, and general welfare of the members of the community.

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(d) To establish courts for the enforcement and administration of ordinances of the community, which courts shall have exclusive jurisdiction over all offenses of, and controversies between, members of the chartered community, under the ordinances of such community, and jurisdiction exclusive or nonexclusive over all other cases arising under the ordinances of the community, and shall have power to render and enforce judgments, criminal and civil, legal and equitable, and to punish violations of local ordinances by fine not exceeding $500, or, in the alternative, by imprisonment for a period not exceeding six months: *Provided*, That no person shall be punished for any offense for which prosecution has been begun in any other court of competent jurisdiction.

(e) To accept the surrender of the tribal, corporate, or community interests of individual members who desire to abandon the community, and to pay a fair compensation therefor, to act as guardian or to provide for the appointment of guardians for minor and other incompetent members of the community, and to administer tribal and individual funds and properties which may be transferred or entrusted to the community by the Federal Government.

(f) To operate, maintain, and equip any public improvement and, as a Federal agency, to condemn and take title to any lands or properties, in its own name, when necessary for any of the purposes authorized by charter, and to levy assessments for community purposes, or to require the performance of labor on community projects, in lieu of assessments.

(g) To acquire, manage, and dispose of property, subject to applicable laws restricting the alienation of Indian lands and the dissipation of Indian resources, to make contracts, to issue nontransferable certificates of membership, to declare and pay out dividends, to adopt and use a corporate seal which shall be judicially noticed in all Federal courts, to sue and be sued in its own name, to employ counsel and to pay counsel fees not in excess of limits to be fixed by charter provision, to have succession until its membership may become extinct, and to exercise any other privileges which may be granted to membership or business corporations.

(h) To compel the transfer from the community for inefficiency in office or other cause, of any employee of the Federal Indian Service locally assigned; to regulate trade and intercourse between members of the community and nonmembers; and to exclude from the territory of the community, with the approval of the Secretary of the Interior, nonmembers whose presence endangers the health, security, or welfare of the community: *Provided, however*, That nothing in this section or in this Act shall be construed to forbid the service in the territory of any Indian community of any civil or criminal process of any court having jurisdiction over any person found therein.

(i) To exercise any other powers now or hereafter delegated to the Office of Indian Affairs, or any officials thereof, to contract with governmental bodies of State or Nation for the reception or performance of public services, and to act in general as a Federal agency in the administratin of Indian Affairs, upon the condition, however, that the United States shall not be liable for any act done, suffered to be done, or omitted to be done by a chartered Indian community.

(j) To exercise any other powers, not inconsistent with the Constitution and laws of the United States, which may be necessary or incidental to the execution of the powers above enumerated.

An Indian community chartered under this Act shall be recognized as successor to any existing political powers heretofore exercised over the members of such community by any tribal, or other native political organizations comprised within the said community, not withheld by such tribal or other native political organization, and shall, subject to the terms of said charter, further be recognized as successor to all right, interest, and title to all funds, property, choses in action, and claims against the United States heretofore held by the tribes or other native political organizations comprised within the community, or to a proportionate share thereof, except as such succession may be limited by the charter, subject to existing provisions of law with respect to the maintenance of suits against the United States, and subject further to such provision for the apportionment of such assets among nonmembers of the community having vested rights therein, as may be prescribed by the charter.

SEC. 5. When any Indian community shall have been chartered, it shall be the duty of the Commissioner of Indian Affairs to cause regular reports concerning their respective functions to be made to the constituted authorities of the community, to advise and consult with such authorities on problems of local administration and Federal policy, and to allow such authorities free access to the records and files of the local agency.

Any Indian community shall have the power to compel the transfer from the community of any persons employed in the administration of Indian affairs

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within the territorial limits of the community other than persons appointed by the community: *Provided, however,* That the Commissioner of Indian Affairs may prescribe such conditions for the exercise of this power as will assure to employees of the Indian Service a reasonable security of tenure, an opportunity to demonstrate their capacities over a stated period of time, and an opportunity to hear and answer complaints and charges.

SEC. 6. The Secretary shall prepare annual estimates of expenditures for the administration of Indian affairs, including expenditures for functions and services administered by an Indian community, pursuant to the authority conferred by section 8 of this title. It shall be the duty of the Secretary to transmit to the authorized representative of an Indian community any estimates and justifications thereof for expenditures to be made in whole or in part within the territorial limits of the community. Any recommendation of the authorized representatives of the community, including the approval or rejection of any item in whole or in part, or the recommendation of any other expenditure, shall be transmitted by the Secretary to the Bureau of the Budget and to the Congress concurrently with the submission of the estimates of the Secretary.

The Secretary shall also transmit to the authorized representatives of an Indian community a copy of any bill, or amendment of a bill, for the benefit of Indians, authorizing, in whole or in part, the appropriation or expenditure, within the territorial limits of such community, of any funds from the Federal Treasury for which the Secretary of the Interior has submitted no estimates, and the Secretary shall transmit their written recommendations to the Congress.

The Secretary shall also transmit to the authorized representatives of an Indian community a description of any project involving the expenditure, in whole or in part, of any funds appropriated for the general welfare within the territorial limits of the community.

No expenditure hereafter authorized or appropriated for by Congress shall be charged against any such Indian community as a reimbursable debt, unless such appropriation and expenditure have been recommended or approved by such Indian community through its duly constituted authorities; and any funds of the community deposited in the United States Treasury shall be expended only by the bonded disbursing agent of such community.

SEC. 7. The Secretary of the Interior may from time to time delegate to any Indian community, within the limits of its competence as defined by charter, the authority to perform any act, service, or function which the United States administers for the benefit of Indians within the territorial limits of the community and may enter into annual agreements with the constituted authorities of the community with respect to the terms and conditions of such delegation.

SEC. 8. The Commissioner is authorize and directed to proceed immediately after the passage of this Act, to arrange and classify the various functions and services administered for Indians by the United States into divisions and subdivisions which may be separably transferred. The Commissioner is further authorized and directed to proceed, immediately after the passage of this Act, to made a study and investigation of the conditions upon which separable functions and services may be transferred to the Indian communities and thereupon to promulgate, direct, and express rules and regulations to goven such transfer.

The said rules and regulations shall set forth all conditions reasonably necessary to assure the satisfactory and continued administration of the function or service transferred. The said rules and regulations shall include standards of fitness for Indians with respect to health, age, character, knowledge, and ability, for any position maintained, now or hereafter, before or after transfer to an Indian community, for the administration of functions or services within the territorial limits of any community, and a classification of all positions for which the requisite knowledge and training may be acquired by Indians through experience or apprenticeship in the position. The said rules and regulations shall also set forth for each separable function or services, a condition of its transfer, the positions for which Indians shall qualify and the required number of qualified Indians for each such position, provisions assuring a reasonable security of tenure, and any other conditions reasonably necessary to assure the continued and the satisfactory administration of transferred functions or services.

Any Indian community may, through procedure set up in its charter, appoint a member to any vacant position under the Indian Service maintained for the administration of functions or services for Indians within the territorial limits of the commuinty. The appointee shall not take office until he shall have previously received the certificate of approval of his fitness for the position in question from the Commissioner. The Commissioner shall issue such certificate of ap-

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proval to any member of an Indian community recommended by the duly authorized representatives of the community and who is qualified for the position under the rules and regulations prescribed pursuant to this section.

Any Indian community may, upon a three-fourths vote at a popular election open to all adult members, request the transfer of any separable function or service, and the Secretary of the Interior shall transfer such function or service and, if necessary, confer by supplement to the community charter, the legal capacity to exercise such function or service, subject only to the following terms and conditions;

(a) The community must comply with all conditions prescribed by the rules and regulations of the Secretary of the Interior pursuant to the authority of this section. The community may transmit to the Congress any objection it may have to the conditions imposed, together with its budget recommendations for the next fiscal year.

(b) The Secretary of the Interior shall certify to the Secretary of the Treasury the amount of any sums or any unexpended balance of such sums theretofore or thereafter expressly appropriated, or the proportionate share of any general appropriation, for the administration of such function or service within the territorial limits of the community. The Secretary of the Treasury shall place such sums to the credit of the community, to be paid out on the requisition of the bonded disbursing agent of the community. The expenditure of such funds shall be subject to all Federal laws and regulations governing the expenditures of Federal appropriations.

(c) The Commissioner shall aid and advise the community, and the local Federal employees shall cooperate in any feasible manner at the request of the community, in the administration of the function or service transferred. The Commissioner shall also make available to the Indian community any facilities, including any lands, buildings, and equipment previously used but no longer needed by the United States in the administration of Indian affairs within the community.

(d) Whenever the Secretary of the Interior shall determine that the community has failed to comply with the conditions imposed for the continued administration of the function or service transferred, the Secretary or the Commissioner of Indian Affairs shall reassume the administration of such function or service and the Secretary shall report to the next regular session of the Congress with appropriate recommendations.

(e) The community, or its duly authorized representatives, shall make on or before September 1 of each year, an annual report for the fiscal year ended June 30, previously, to the Secretary, concerning the administration of the function or service transferred to the community, including an account by the disbursing agent of the community of receipts and expenditures of moneys placed to the credit of the community under this section.

(f) The Secretary of the Interior shall make an annual report to Congress on the administration of the functions and services transferred to the community, and shall include in such reports the reports of the Indian communities required by paragraph (e) of this section.

Sec. 9. The Secretary and the Commissioner shall continue to exercise all existing powers of supervision and control over Indian affairs now entrusted to them or either of them which are not transferred by charter or supplement thereto or by Act of Congress to organized Indian communities, and shall have power to enforce by administrative order or veto, if so provided within the charter, or, in any event, by legal process in any court of competent jurisdiction, all provisions contained in a charter for the protection of the rights of minorities within the community, all provisions therein contained for the conservation of the resources of the community, and all other provisions that limit, qualify, or restrict the powers granted to the community.

Sec. 10. The Secretary of the Interior may, upon granting a charter to an Indian community, convey or confirm to such community, as an agency of the Federal Government, any right, interest, or title in property which may be held by the United States in trust for members of the community, and in any lands, buildings, or equipment previously used by the United States in the administration of Indian affairs within the community, and in any liens or credits of the United States held by virtue of loans to or expenditures on behalf of Indian members of the said community.

Sec. 11. Nothing in this Act shall be construed as rendering the property of any Indian community or of any member of such community subject to taxation by any State or subdivision thereof, or subject to attachment or sale under legal

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process, or as an expression of intent on the part of the United States to abandon the duties and responsibilities of guardianship of any Indians becoming members of chartered communities.

SEC. 12. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, not to exceed $500,000 in any one fiscal year, to be expended at the order of the Secretary of the Interior, and with the consent of the Indian communities concerned, in defraying the expenses of the organization and development of communities chartered under this Act, including the construction and furnishing of community buildings, the purchase of clerical supplies, and the improvement of community lands.

SEC. 13. The following definitions of terms used in this title shall be binding in the interpretation of this statute:

(a) The term "Commissioner" whenever used in this Act shall be taken to refer to the Commissioner of Indian Affairs, and the term "Secretary" to the Secretary of the Interior, and the terms "Commissioner" and "Secretary" whenever used in this Act in reference to the exercise of any power shall be construed as authorizing the delegation of such power to subordinate officials.

(b) The term "Indian" as used in this title to specify the persons to whom charters may be issued, shall include all persons of Indian descent who are members of any recognized Indian tribe, band, or nation, or are descendants of such members and were, on or about February 1, 1934, actually residing within the present boundaries of any Indian reservation, and shall further include all other persons of one fourth or more Indian blood, but nothing in this definition or in this Act shall prevent the Secretary of the Interior or the constituted authorities of a chartered community from prescribing, by provision of charter or pursuant thereto, additional qualifications or conditions for membership in any chartered community, or from offering the privileges of membership therein to nonresidents of a community who are members of any tribe, wholly or partly comprised within the chartered community.

(c) The term "residing upon any Indian reservation" as used in this title to specify the persons to whom charters may be issued shall signify the maintaining of a permanent abode at the time of the issuance of a charter and for a continuous period of at least one year prior to February 1, 1934, and subsequent to September 1, 1932, but this definition may be modified by the Secretary of the Interior with respect to Indians who may reside on lands acquired subsequently to February 1, 1934.

(d) The term "charter" as used in this Act shall denote any grant of power by the United States, whether or not such power includes the privilege of corporate existence.

(e) The "three-fifths vote" required for ratification of a charter and the "three-fourths vote" required for proposal or ratification of any supplement thereto or transfer of any Federal function or service shall be measured with reference to the total number of votes cast; the chartered community, or, if the community has not yet been chartered, the Secretary of the Interior shall designate the time, place and manner of voting, shall declare the qualifications of voters, and shall be the final judge of the eligibility of voters and of the validity of ballots.

(f) The term "disposition of property" as used in this title shall denote any transfer of property by devise or intestate succession, as well as transfer inter vivos.

(g) The term "punish" as used in this title shall not be construed to affect the amount or extent of civil judgments.

(h) The term "public" as used in this title shall include all matters affecting either the property owned or controlled by a chartered community, or the health, morals, or welfare of a considerable part of the membership of such community.

(i) The term "dividend" as used in this title shall be construed to include any distribution of funds by a chartered community out of current or accrued income and any other distribution of funds which may be approved by the Secretary of the Interior.

(j) The power "to sue and be sued" as used in this title shall not be construed to grant to the courts of any State any jurisdiction over a chartered community or the members thereof not now possessed over an Indian tribe or its members, nor to sanction execution upon the assets of the community, nor shall this power be construed to deny the right of the United States to intervene in any suit or proceeding in which it now has the right to intervene.

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(k) The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, band, nation, pueblo, or other native political group or organization.

(l) The term "reservation" wherever used in this Act shall be construed to comprise all the territory within the outer boundaries of any Indian reservation, whether or not such property is subject to restrictions on alienation and whether or not such land is under Indian ownership.

(m) The term "territory of a chartered community" wherever used in this Act shall be construed to comprise all lands, waters, highways, roads, and bridges within the boundaries of an Indian community as fixed by charter, regardless of whether the title to such property is in the United States, an Indian tribe or community, a restricted Indian or the heirs of a restricted Indian, or whether it is in a fee-patent Indian, or any other person, agency, or government.

(n) The term "transfer" as used in this title to apply to any function or service shall designate the relinquishment by the Secretary of the Interior or the Commissioner of Indian Affairs of any rights and duties incident to the performance of such function or service and the assumption of such rights and duties by the Indian community as an agency of the Federal Government.

Title II—Special Education for Indians

Section 1. The Commissioner is authorized and directed to make suitable provision for the training of Indian members of chartered communities and other Indians of at least one-fourth degree of Indian blood, in the various services now intrusted to the Office of Indian Affairs and in any additional services which may be undertaken by a chartered Indian community, including education, public-health work, and other social services, the administration of law and order, the management of forests and grazing lands, the keeping of financial accounts, statistical records, and other public reports, and the construction and maintenance of buildings, roads, and other public works. The Commissioner may use the staffs and facilities of existing Indian boarding or day schools for such special instruction, and he may provide for the training and education of Indian students in universities, colleges, schools of medicine, law, engineering, or agriculture, or other institutions of recognized standing and may subsidize such training and education under the following conditions:

(a) The Commissioner shall extend financial aid and assistance on the basis of financial need to qualified Indians for the payment of tuition and other costs of education, including necessary costs of support. One half of the amount so expended shall be a non-interest-bearing, reimbursable loan to be repaid in installments whenever the beneficiary shall have received employment anywhere, but the obligation shall be temporarily suspended during any period of unemployment.

There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $50,000 annually to defray subsidies made under the foregoing paragraph.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commissioner may grant scholarships to any qualified Indian of special promise, no part of which shall be reimbursable.

There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $15,000 annually to defray the cost of scholarships awarded under the foregoing paragraph.

Formal contracts shall not be required for compliance with section 3744 of the Revised Statutes (U.S.C., title 41, sec. 16), with respect to the grants of subsidies or scholarships to Indian students under the foregoing provisions.

Sec. 2. It is hereby declared to be the purpose and policy of Congress to promote the study of Indian civilization and preserve and develop the special cultural contributions and achievements of such civilization, including Indian arts, crafts, skills, and traditions. The Commissioner is directed to prepare curricula for Indian schools adapted to the needs and capacities of Indian students, including courses in Indian history, Indian arts and crafts, the social and economic problems of the Indians, and the history and problems of the Indian Administration. The Commissioner is authorized to employ individuals familiar with Indian culture and with the contemporary social and economic problems of the Indians to instruct in schools maintained for Indians. The Commissioner is further directed to make available the facilities of the Indian schools to competent individuals appointed or employed by an Indian community to instruct the elementary and secondary grades in the Indian arts, crafts, skills, and traditions. The Commissioner may contribute to the compensation of such indi-

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viduals in such proportion and upon such terms and conditions as he may deem advisable. For this purpose the Commissioner may use moneys appropriated for the maintenance of such schools.

Title III—Indian Lands

Section 1. It is hereby declared to be the policy of Congress to undertake a constructive program of Indian land use and economic development, in order to establish a permanent basis of self-support for Indians living under Federal tutelage; to reassert the obligations of guardianship where such obligations have been improvidently relaxed; to encourage the effective utilization of Indian lands and resources by Indian tribes, cooperative associations, and chartered communities; to safeguard Indian lands against alienation from Indian ownership and against physical deterioration; and to provide land needed for landless Indians and for the consolidation of Indian landholdings in suitable economic units.

Sec. 2. Hereafter no tribal or other land of any Indian reservation or community created or set apart by treaty or agreement with the Indians, act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

Sec. 3. The Secretary of the Interior is authorized to withdraw from disposal the remaining surplus lands of any Indian reservation heretofore opened or authorized to be opened, to sale, settlement, entry, or other form of disposal by Presidential proclamation, or under any of the public land laws of the United States. Any land so withdrawn shall have the status of tribal or community lands of the tribe, reservation, or community within whose territorial limits they are located: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act.

The Secretary of the Interior shall determine what lands, lying outside of areas classified for consolidation under Indian ownership pursuant to section 6 of this title, are not needed by the Indians, and such lands shall be reopened to sale, settlement, entry, or other lawful form of disposal in accordance with existing law.

Sec. 4. The existing periods of trust placed upon Indian allotments and unallotted tribal lands and any restriction of alienation thereof, are hereby extended and continued until otherwise directed by Congress. The authority of the Secretary of the Interior to issue to Indians patents in fee or certificates of competency or otherwise to remove the restrictions on lands allotted to individual Indians under any law or treaty is hereby revoked.

No lands or other capital assets owned by an Indian community, or any interest therein, shall be voluntarily or involuntarily alienated: *Provided, however,* That the community may grant the use of the surface of, or any mining privileges in, any land to a nonmember, by lease or revocable permit for a period not to exceed one year, or, with the approval of the Secretary, for a longer period, and may, with the approval of the Secretary, sell or contract to sell to a nonmember any standing timber, or dispose of any capital improvements, owned by the community.

Sec. 5. No sale, devise, gift, or other transfer of Indian lands held under any trust patent or otherwise restricted, whether in the name of the allottee or his heirs, shall be made or approved: *Provided, however,* That such lands may, with the approval of the Secretary, be sold, devised, or otherwise transferred to the Indian tribe from whose lands the allotment was made or the chartered community within whose territorial limits they are located: *And provided further,* That the Secretary of the Interior may authorize exchanges or lands of equal value whenever such exchange is in his judgment necessary for or compatible with the proper consolidation of Indian lands classified for the purpose pursuant to the authority of section 6 of this title.

Sec. 6. The Secretary of the Interior is authorized and directed to classify areas of land allotted in whole or in part now under restricted Indian ownership which are reasonably capable of consolidation into suitable units for grazing, forest management, or other economic purposes, and to proclaim the exclusion from such areas of any lands not to be included therein. In order to bring about an orderly and sound acquisition and consolidation of lands and to promote the effective use of Indian resources and the development of Indian economic capacities, the Secretary is hereby authorized and directed to make economic and physical investigation and classification of the existing Indian lands, of intermingled and adjacent non-Indian lands and of other lands that may be required

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for landless Indian groups or individuals; to make necessary maps and surveys; to investigate Indian aptitudes and needs in the agricultural and industrial arts. in political and social affairs and in education, and to make such other investigations as may be needed to secure the most effective utilization of existing Indian resources and the most economic acquisition of additional lands. In carrying out the investigations prescribed in this section the Secretary is authorized to utilize the services of any Federal officers or employees that the President may assign to him for the purpose, and is further authorized, with the consent of the States concerned, to enter into cooperative agreements with State agencies for similar services.

SEC. 7. The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to acquire, through purchase, relinquishment, gift, exchange, or assignment, lands or surface rights to lands, within or outside of existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians for whom reservation or other land is not now available and who can make beneficial use thereof, and for the purpose of blocking out and consolidating areas classified for the purpose pursuant to the authority of section 6 of this title. The Secretary is authorized, in the case of trust or other restricted lands or lands to which fee patents have hitherto been issued to Indians and which are unencumbered, to accept voluntary relinquishments of, and to cancel the patent or patents or any other instrument removing restrictions from the land.

There is hereby authorized to be appropriated, for the acquisition of such lands and for expenses incident thereto, including appraisals and the investigations provided for in section 6 of this title, a sum not to exceed $2,000,000 for any one fiscal year. The unexpended balances of appropriations made for any one year pursuant to this Act shall remain available until expended.

The Secretary of the Interior is hereby authorized to accept voluntary relinquishments from any Indian allottee or Indian homestead entryman, or from his heirs, of all rights in and to any land included in any Indian public domain allotment, homestead, or application therefor, which has heretofore or may hereafter be made, where such land lies within the exterior boundaries of any Indian reservation or area heretofore or hereafter set apart and reserved for the use and benefit of any Indian tribe or band; and the Secretary of the Interior is hereby authorized and empowered to cancel any patent which may have been issued conveying such land, or any interest therein, to any Indian allottee or Indian homestead entryman.

Title to any land acquired pursuant to the provisions of this section shall be taken in the name of the United States in trust for the Indian tribe or community for whom the land is acquired, but title may be transferred by the Secretary to such community under the conditions set forth in this Act.

SEC. 8. Any Indian tribe or chartered Indian community is authorized to purchase or otherwise acquire any interest of any member or nonmember in land within its territorial limits, and may expend any tribal or community funds, whether or not held in the Treasury of the United States, for this purpose, whenever, in the opinion of the Secretary of the Interior the acquisition is necessary for the proper consolidation of Indian lands.

The Secretary of the Interior is authorized to transfer to an Indian tribe or community, and to accept on behalf of the tribe or community, any member's interest in restricted farming, grazing, or timberlands, and shall issue a nontransferable certificate in exchange, evidencing a proportionate interest in tribal or community lands of similar quality, if in his opinion such transfer is necessary for the proper consolidation of Indian lands: *Provided, however,* That any Indian making beneficial use of such transferred lands shall be entitled to continue the occupancy and use of such lands, and to any improvements thereon, or to receive adequate compensation for such improvements, subject to the provisions of section 14 of this title. For the purpose of this section "proportionate interest" shall be construed to mean a right to use or to receive the income from an equivalent amount of tribal or community land of similar quality or to receive the money value of any lawful disposition of the interest transferred if such right of use is not exercised. A member's proportionate interest may descend to the heirs of such member but not to any nonmember, and his right of use of transferred land, if exercised, may similarly descend to the heirs of such member.

The Secretary of the Interior may sell and convey to an Indian, to an Indian tribe, or community, any restricted lands inherited by any member, whenever, in his opinion, the sale is necessary for the proper consolidation of Indian lands.

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The time and mode of payment of the purchase price of any lands authorized to be sold or purchased under this section shall be governed by the agreement between the parties, but insofar as practicable the purchase price shall be paid in annual installments equal to the estimated annual proceeds realizable from any lawful disposition of the land, and the vendor, if a member, may accept any right of use in tribal or community lands as satisfaction of the purchase price in whole or in part.

SEC. 9. The Secretary of the Interior shall assign the use of tribal or community lands to any member according to the right or interest of such member for a period not to exceed the life of the assignee and shall make rules and regulations governing such assignments. The Secretary of the Interior may in addition assign to any such member the right of exclusive occupancy of any community lands for farming or domestic purposes in proper economic units: *Provided*, That any Indian making beneficial use of land shall be entitled to preference in the assignment of the use of such land and to any improvements thereon or to adequate compensation for such improvements.

All rights of exclusive occupancy of, and all physical improvements lawfully erected on, tribal or community lands, shall descend according to rules of descent and distribution to be prescribed by the Secretary of the Interior.

SEC. 10. Wherever the Secretary shall find that existing State laws governing the determination of heirs, so far as made applicable to any restricted Indian lands by congressional enactment, are not adapted to Indian needs and circumstances, he may promulgate independent rules governing such determination, including such rules as may be necessary to prevent any subdivision of rights to lands or improvements thereon which is likely to impair their beneficial use.

The Secretary may delegate to a chartered Indian community the authority conferred by this section.

SEC. 11. On and after the effective date of the passage of this Act, and beginning with the death of the person presently entitled, all right, interest, and title in restricted allotted lands, but not including any proportionate interest acquired pursuant to section 8 of this title or any improvements lawfully erected, shall pass to the chartered community within whose territorial limits such lands are located or, if no community has been chartered, to the tribe from whose lands the allotment was made: *Provided, however*, That individuals who would be otherwise entitled, save for the provisions of this section, shall acquire a contingent interest in such lands, and title to any such lands shall vest in such individuals when and only when the Secretary shall determine that such lands lie outside any area classified for consolidation pursuant to section 6: *And provided further*, That prior to such determination the individuals otherwise entitled shall enjoy the use and income realized from any lawful disposition of such lands.

The Secretary shall issue to the individuals otherwise entitled a nontransferable certificate evidencing a descendible interest in tribal or community lands of similar quality in the proportion which the acreage of the farming grazing, or timber lands, whichever, passing to the tribe or community at any time bears to the total tribal or community acreage of farming, grazing, or timber lands: *Provided, however*, That such persons shall enjoy a preference in the assignment of lands passing to the tribe or community in accordance with the provisions of this section.

No will purporting to make any other disposition of such lands shall be approved.

SEC. 12. The Secretary of the Interior is authorized and directed to issue to each member of an Indian tribe or community which owns or controls lands allotted in whole or in part a nontransferable certificate evidencing the member's right to an equal interest in all tribal or community assets, including the right to make beneficial use of a proportionate share thereof: *Provided, however*, That in the administration of sections 8, 9, 10, and 11 of this title, members so entitled may be given the right to actual beneficial use of more than their proportionate shares of such tribal or community lands and resources: *And provided further*, That in the administration of sections 8, 9, 10, and 11 of this title, appropriate deductions may be made from the undivided interest of any member proportionate in value to any special interest acquired or inherited by such member, in exchange for property passing, transferred, or sold, to a tribe or community, or any restricted lands retained in severalty by such member.

SEC. 13. Each certificate issued pursuant to the authority of any section of this title shall be issued in triplicate, one copy of which the Secretary of the Interior shall retain in a register to be kept for the purpose and the others of which he [shall] forward to the tribe or chartered Indian community. The said tribe or

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community shall deliver to the Indian in whose favor it is issued one of such certificates so forwarded and shall cause the other to be copied into a register of the tribe or community to be provided for the purpose, and shall file the same.

The Secretary may delegate to a chartered community the authority conferred by this section and may countersign certificates of interest issued by such community to its members.

SEC. 14. The Secretary of the Interior is authorized and directed to classify and divide the lands owned or controlled by an Indian tribe or community into economic units suitable for farming, grazing, forestry, and other purposes, and may lease or permit the use of, and may regulate the use and management of, such lands whenever in his opinion necessary to promote and preserve their economic use The Secretary may delegate to a chartered Indian community the authority conferred by this section.

SEC. 15. The Secretary of the Interior is authorized and directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, and like purposes. The Secretary may delegate to a chartered Indian community the authority conferred by this section.

SEC. 16. The Secretary of the Interior is authorized to proclaim new Indian reservations on lands purchased for the purposes enumerated in this Act, or to add such lands to the jurisdiction of existing reservations. Such lands, so long as title to them is held by the United States or by an Indian tribe or community, shall not be subject to taxation, but the United States shall assume all governmental obligations of the State or county in which such lands are situated with respect to the maintenance of roads across such lands, the furnishing of educational and other public facilities to persons residing thereon, and the execution of proper measures for the control of fires, floods, and erosion, and the protection of the public health and order in such lands, and the Secretary of the Interior may enter into agreements with authorities of any State or subdivision thereof in which such lands are situated for the performance of any or all of the foregoing functions by such State or subdivision or any agencies or employees thereof authorized by the law of the State to enter into such agreements, and for the payment of the expenses of such functions where appropriations therefor shall be made by Congress.

SEC. 17. Nothing contained in this title shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or to be established hereafter.

SEC. 18. Whenever used in this title the phrase "a member of an Indian tribe" shall include any descendant of a member permanently residing within an existing Indian reservation.

SEC. 19. Whenever used in this title the phrase "lands owned or controlled by an Indian tribe or community" shall include all interest in land of any of its members.

SEC. 20. The provisions of this Act shall not be construed to prevent the removal of restrictions on taxable lands of members of the Five Civilized Tribes nor operate to effect any change in the present laws and procedure relating to the guradianship of minor and incompetent members of the Osage and Five Civilized Tribes, but in all other rsepects shall apply to such Indians.

SEC. 21. None of the provisions of this Act, except the provisions of title II, relating to Indian education, shall apply to the Indians of New York State.

TITLE IV—COURT OF INDIAN AFFAIRS

SECTION 1. There shall be a United States Court of Indian Affairs, which shall consist of a chief judge and six associate judges, each of whom shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive an annual salary of $7,500 payable monthly from the Treasury.

SEC. 2. The said Court of Indian Affairs shall always be open for the transaction of business, and sessions thereof may, in the discretion of the court, be held in the several judicial circuits and at such places as said court may from time to time designate. The authority of the court may be exercised either by the full court or by one or more judges duly assigned by the court to sit in a particular locality or to hold a special term for a designated class of cases.

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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 tribe or 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 of cancelation of a fee patent or the removal of restrictions from inherited or allotted lands, funds, or other property held by the United States in trust 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 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. 7. The procedure of the Court of Indian Affairs shall be determined by rules of court to be promulgated by it, existing statutes regulating procedure in courts of the United States notwithstanding. Such rules shall regulate the form and manner of executing, returning, or filing writs, processes, and pleadings; the removal of causes specified in section 5; the taking of appeals specified in section 6; the joinder of parties and of causes of action, legal and equitable; the interposition of defenses and counterclaims, legal and equitable; the raising of questions of law before trial; the taking of testimony by examination before trial and other proceedings for discovery and inspection; the issuance of subpenas to summon witnesses and compel the production of documents at trial; the summoning of jurors and the waiver of jury trial; the form and manner of entry of judgments; the manner of executing judgments; the conduct of supplementary proceedings; the survival of actions and the substitution of parties; the amounts and manner of payment of fees to the clerk or the marshal of the court; the practice of attorneys; and such other matters as may require regulation in order to provide a complete system of procedure for the conduct of the court. In general the rules of court shall conform as nearly as possible to the statutes regulating the procedure in the district courts of the United States, the rules of the Supreme Court governing causes in said district courts, and the practice in the courts of the State in which the controversy arises, save that the rules shall so far as possible, be nontechnical in character and fitted to the needs of prospective litigants.

SEC. 8. The court may provide, by rules to be promulgated by it, for appeals [illegible] full court from judgments rendered on circuit by less than a majority of the [illegible]rt.

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Sec. 9. All substantial rights accorded to the accused in criminal prosecutions in the district courts of the United States shall be accorded in prosecutions in the Court of Indian Affairs. The trial of offenses punishable by death or by imprisonment for a period exceeding five years shall be had within or in the vicinity of the reservation or Indian community where the offense was committed.

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. In civil cases the common law rules of evidence, including the rules governing competency of witnesses, shall prevail: *Provided, however,* That the court shall have the power to amend such rules by rule of court or judicial decision to make them conform as nearly as possible to modern changes evidenced by the statutes and decisions of the United States and the several States, and to adapt them, where necessary, to the solution of problems of proof peculiar to the cases before the court.

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.

Sec. 13. The Court of Indian Affairs shall be a court of record possessed of all incidental powers, including the power to summon jurors, to administer oaths, to have and use a judicial seal, to issue writs of habeas corpus, to punish for contempt, and to hold to security of the peace and for good behavior, which may be exercised by the district courts of the United States, and such powers shall be subject to all limitations imposed by law upon said district courts. The orders, writs, and processes of the Court of Indian Affairs may run, be served, and be returnable anywhere in the United States. The said court shall perform such administrative functions as Congress may assign to it. The said court shall have the power to render declaratory judgments, and such judgments, in cases of actual controversy, shall have the same force as final judgments in ordinary cases.

Sec. 14. The judges of the Court of Indian Affairs shall hold office for a period of ten years; they may be removed prior to the expiration of their term by the President of the United States, with the consent of the Senate, for any cause.

Sec. 15. The final judgment of the Court of Indian Affairs shall be subject to review on questions of law in the circuit court of appeals of the circuit in which such judgment is rendered. The several circuit courts of appeals are authorized to adopt rules for the conduct of such appellate proceedings, and, until the adoption of such rules, the rules of such courts relating to appellate proceedings upon a writ of error, so far as applicable, shall govern. The said circuit courts of appeals shall have power to affirm, or, if the judgment of the Court of Indian Affairs is not in accordance with law, to modify or reverse the judgment of that court, with or without remanding the case for a rehearing, as justice may require; the judgment of the circuit court of appeals shall be final, except that it may be subject to review by the Supreme Court as provided in the United States Code, title 28, sections 346 and 347.

Sec. 16. The fees of jurors and witnesses shall be fixed in accordance with the provisions of law governing such fees in United States courts generally as provided in the United States Code, title 28, sections 600 to 605.

Sec. 17. The costs and fees in the Court of Indian Affairs shall be fixed and established by said court in a table of fees: *Provided,* That the costs and fees so fixed shall not exceed, with respect to any item, the costs and fees now charged in the Supreme Court.

Sec. 18. The Court of Indian Affairs shall appoint a chief clerk, a reporter, and such assistant clerks and marshals, not to exceed seven each, as may be necessary for the efficient conduct of its business. The said officials shall be under the direction of the court in the discharge of their duties; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session.

Sec. 19. The Attorney General shall provide the Court of Indian Affairs with suitable rooms in courthouses or other public buildings at such places as the court may select for its sessions.

Sec. 20. The chief clerk of the court shall, under the direction of the chief judge, employ such stenographers, messengers, or attendants and purchase such books, periodicals, and stationery as may be needful for the efficient conduct of

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the business of the court, and expenditures for such purposes shall be allowed and paid by the Secretary of the Treasury upon claim duly made and approved by the chief judge.

SEC. 21. The judges of the Court of Indian Affairs and the clerks and marshals thereof shall receive necessary traveling expenses, and expenses not to exceed $5 per day for subsistence while traveling on duty and away from their designated stations.

SEC. 22. With respect to all matters relating to the receipt of fines, costs, fees, bail, and other payments to officials of the court, the custody of funds and the rendering of accounts therefor, the bonding of court officials charged with such custody, the payment of moneys for salaries, traveling expenses, clerical services, the publication of reports of opinions, and office expenses, the laws, departmental regulations, and rules of court applicable to similar matters in the Supreme Court shall apply to the Court of Indian Affairs except as otherwise provided in this chapter.

SEC. 23. The Secretary of the Interior is hereby authorized to appoint not to exceed ten special attorneys whose duty it shall be to advise and represent such Indian tribes or communities as the Secretary of the Interior may designate, and the individual members thereof or to represent the United States on behalf of such tribes or communities or the individual members thereof. Within ten days of the institution of any proceedings on behalf of such tribes or communities or members thereof, the special attorneys provided for herein shall serve upon the appropriate United States district attorney written notice of the pendency of any such proceedings, together with copy of all the pleadings on file in any such proceeding.

SEC. 24. As used in this title, the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

SEC. 25. Appropriations for the Federal Court of Indian Affairs and for incidental expenses shall be made annually based upon estimates submitted by the Attorney General, and appropriations for the special attorneys shall be made annually, based upon estimates submitted by the Secretary of the Interior.

(NOTE.—Certain matter pertaining only to the Papago Indian Reservation in Arizona, presented out of order at this point, was ordered to be withheld for insertion at a later stage of the hearing.)

The CHAIRMAN. Now, gentlemen of the committee, I understand we are meeting today for the purpose of considering the bill H.R. 7902 and hearing the Department with reference thereto, and that we would not take any votes on amendments or anything of that kind. The fact of the matter is I do not believe that it would be best for us to consider amendments at the present time until we shall have heard the Department's full explanation of the entire bill. However, I would suggest that if any member of the committee, as we go along, desires to present an amendment he might write it out and hand it to the official reporter and give notice that he will offer it at some later meeting when we shall read the bill for amendment. We are not reading it for amendment now, and with that understanding I think we might go along much more rapidly. Unless some member of the committee has anything further to offer now, I will ask the Commissioner or his assistants to begin the explanation of the bill from the beginning now, and when we leave off today, at our next special meeting we will take the bill up at the place we cease considering it today. Is that your understanding, Mr. Peavey?

Mr. PEAVEY. It is satisfactory to me.

Mr. CARTWRIGHT. That is the way I understood it.

The CHAIRMAN. Now, Mr. Commissioner, if you or your representative will take up this bill at the beginning and try to make it just as plain to each one of us as it is to yourself, we will thank you for your efforts in that direction.

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Mr. COLLIER. We have with us here today a number of representatives of the Indian Office and of the Department, of the Solicitor's Office, and it is not my intention to go along continuously just addressing you. Above all I desire that your minds be satisfied and I trust that at any point you will challenge me and compel me to refer any technical matter to the attorneys and others. Might I be allowed before starting in seriatim with the bill to state very briefly some of the large reasons for legislation of this type, because those reasons explain the bill. In order that I will not take more than a few minutes of your time on this general statement, I would ask permission to be allowed to insert in the record this memorandum concerning the bill which was prepared for the members of the committee by the Indian Office.

Mr. CARTWRIGHT. You have that right.

(The statement referred to is here printed in full as follows:)

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D.C.

To Superintendents, Tribal Councils, and Individual Indians:

The bill for land and self-government for the Indian people (S. 2755 or H.R. 7902) has been presented to Congress. Within a short time—a few weeks at most—it will be brought up for action. Before this happens, it is of paramount importance that everyone concerned acquaint himself fully with the provisions of this piece of legislation.

The administration wishes that the Indians shall convene and shall freely present their questions and voice their opinions. Dates have been set for such conventions as follows:

The Plains Indians, Rapid City, S.Dak., March 2–5.

All Pueblo Council, Santo Domingo, N.Mex., March 11.

Navajo Council, Fort Defiance, Ariz., March 12 and 13.

Northwest (Idaho, Washington, Oregon, and north California), Salem, Oreg., March 8 and 9.

Southern Arizona (Pima-Papago, Truxton Canon, Colorado River, Fort Apaczo, San Carlos), Phoenix, Ariz., March 15 and 16.

Mission and Yuma Indians, Riverside, Calif., March 17 and 18.

But in order to insure intelligent expression, pro or con, there must be definite factual information in everyone's mind as to what the bill contanis.

The best way for everyone to get such information is from the measure itself. You are being sent a copy of the bill, together with a memorandum fully explaining it. It is earnestly desired that all Service people, all Indians, and all others concerned, fully prepare themselves with knowledge of the legislation S. 2755, or H.R. 7902, before the meetings referred to above take place. This is urgent.

JOHN COLLIER, *Commissioner.*

FEBRUARY 19, 1934.

THE PURPOSE AND OPERATION OF THE WHEELER-HOWARD INDIAN RIGHTS BILL (S. 2755; H.R. 7902)

(A memorandum of explanation respectfully submitted to the Members of the Senate and House Committees on Indian Affairs by John Collier, Commissioner of Indian Affairs)

I

The Indians are continuing to lose ground; yet Government costs must increase, while the Indians must still continue to lose ground, unless existing law be changed.

Two thirds of the Indians in two thirds of the Indian country for many years have been drifting toward complete impoverishment.

While being stripped of their property, these same Indians cumulatively have been disorganized as groups and pushed to a lower social level as individuals.

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During this time, when Indian wealth has been shrinking and Indian life has been diminishing, the costs of Indian administration in the identical areas have been increasing. The complications of bureaucratic management have grown steadily greater.

Ruin for the Indians, and still larger costs to the Government, are insuring by the existing system.

Neither the Indians themselves, nor the Indian Service, can reverse the downhill process, or even materially delay it, unless certain fundamental impracticabilities of law can be changed.

The disastrous condition, peculiar to the Indian situation in the United States, and sharply in contrast with the Indian situations both of Canada and of Mexico, is directly and inevitably the result of existing law—principally, but not exclusively, the allotment law and its amendments and its administrative complications.

The approximately one third of the Indians who as yet are outside the allotment system are not losing their property; and generally they are increasing in industry and are rising, not falling, in the social scale. The costs of Indian administration are markedly lower in these unallotted areas.

Nevertheless, these unallotted Indians are handicapped by certain features of existing law which are handicapping all Indians, unallotted and allotted alike.

And the decentralization of Indian service, along with the training and placement of Indians in their own service, is sharply limited by existing law, with respect both to the allotted and to the unallotted areas.

Therefore the pending bill, in some of its most essential parts, extends benefits to all the Indians, not exclusively to the allotted Indians.

II

The present memorandum is not an exhaustive treatment of the subject.

There immediately follows a condensed statement of the facts which necessitate legislation, and thereafter a description of the provisions of the bill. Intense interest exists among the Indians. Already, though they have not had time to receive the bill, and are unacquainted with its most essential provisions, Indian tribes are supplying a multitude of endorsements and of condemnations. This memorandum is not presented as a conclusive or complete brief upon the subject. But it does give the essential facts, and it clearly describes all of the technical features of the bill.

III

The allotment system; what it has done, is doing, and will do to Indian property and life; and why it must be changed if the Indians are to prosper or Indian service is to be permanently improved.

The backbone of Indian law since 1887 has been the allotment act and its amendments and administrative regulations.

The law originally possessed, and still possesses, virtues which can be preserved and made effective. The bill does preserve them. But these virtues, potential rather than realized, have been slight indeed when contrasted with the destructive effects of the law and the system.

HOW ALLOTMENT HAS WORKED AND NOW WORKS

Land allotment, under the general and special allotment acts, has been mandatory. To each Indian—man, woman, and child—living and enrolled at a specified date, a separate parcel of land has been attached. The residual lands, fictitiously called "surplus", have been mandatorilly bought from the tribes by the government and thereafter have been disposed of to whites.

The individualized parcels of land have been held under Government trust over longer or shorter periods. Sometimes, where the land was agricultural, the Indian family has lived upon and has used one or more of the allotments attached to its several members. Where the land was of grazing character, or was timber land, allotment precluded the integrated use of the land by individuals or families, even at the start.

Upon the allottees' death, it has been necessary to partition the land equally among heirs, or to sell it, and in the interim it has been leased.

Most likewise of the land of living allottees has been leased to whites.

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STATISTICS OF LOSS OF LAND THROUGH ALLOTMENT

Through sales by the Government of the fictitiously designated "surplus" lands; through sales by allottees after the trust period had ended or had been terminated by administrative act; and through sales by the Government of heirship land, virtually mandatory under the allotment act: Through these three methods, the total of Indian landholdings has been cut from 138,000,000 acres in 1887 to 48,000,000 acres in 1934.

These gross statistics, however, are misleading, for, of the remaining 48,000,000 acres, more than 20,000 acres are contained within areas which for special reasons have been exempted from the allotment law; whereas the land loss is chargeable exclusively against the allotment system.

Furthermore, that part of the allotted lands which has been lost is the most valuable part. Of the residual lands, taking all Indian-owned lands into account, nearly one half, or nearly 20,000,000 acres, are desert or semidesert lands.

Allotment, commenced at different dates and applied under varying conditions, has divested the Indians of their property at unequal speeds. For about 100,000 Indians the divestment has been absolute. They are totally landless as a result of allotment. On some of the reservations the divestment is as yet only partial and in part is only provisional. Many of the heirship lands, awaiting sale to whites under existing law, have not yet been sold, and the Indian title is not yet extinguished. Under the allotment system it inevitably will be extinguished.

The above statement relates solely to land losses. The facts can be summarized thus:

Through the allotment system, more than 80 percent of the land value belonging to all the Indians in 1887 has been taken away from them; more than 85 percent of the land value of all the allotted Indians has been taken away.

And the allotment system, working down through the partitionment or sale of the land of deceased allottees, mathematically insures and practically requires that the remaining Indian allotted lands shall pass to whites. The allotment act contemplates total landlessness for the Indians of the third generation of each allotted tribe.

THE REMAINING LANDS RENDERED UNUSABLE

A yet more disheartening picture will immediately follow the above statement. For equally important with the outright loss of land, is the effect of the allotment system in making such lands as remain in Indian ownership unusable.

There have been presented to the House Indian Committee numerous land maps, showing the condition of Indian-owned lands on allotted reservations. The Indian-owned lands are parcels belonging (*a*) to allottees and (*b*) to the heirs of deceased allottees. Both of these classes of Indian-owned land are checkerboarded with white-owned land already lost to the Indians, and on many reservations the Indian-owned parcels are mere islands within a sea of white-owned property.

Farming, at least at the subsistence level, and commercial farming within irrigated areas, is still possible on those parcels belonging to living allottees. But grazing, upon the grazing land of living allottees, and businesslike or conservative forest operation, upon the allotted forest land of living allottees, are largely, often absolutely, impossible.

On the checkerboarded land maps, the heirship lands each year become a greater proportion of the total of the remaining Indian land. These heirship lands belong to numerous heirs, even up to the number of hundreds.

And one heir possessed equities in numerous allotments, up to the number of hundreds.

The above conditions force some of the Indian allotted land out of any profitable use whatsoever, and they force nearly all of it into the condition of land rented to whites, and rented under conditions disadvantageous to the Indians. The denial of financial credit to Indians is, of course, an added influence.

The Indians are practically compelled to become absentee landlords with petty and fast-dwindling estates, living upon the always diminishing pittances of lease money.

And here there becomes apparent the administrative impossibility created by the allotment system.

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ALLOTMENT COSTS THE GOVERNMENT MILLIONS IN BARREN EXPENDITURES THAT CANNOT SAVE THE INDIAN LANDS OR CAPITAL, WHILE EMBITTERING AND RUINING THE INDIANS

The Indian Service is compelled to be a real-estate agent in behalf of the living allottees; and in behalf of the more numerous heirs of deceased allottees. As such real-estate agent, selling and renting the hundreds of thousands of parcels of land and fragmented equities of parcels, and disbursing the rentals (sometimes to more than a hundred heirs of one parcel, and again to an individual heir with an equity in a hundred parcels), the Indian Service is forced to expend millions of dollars a year. The expenditure does not and cannot save the land, or conserve the capital accruing from land sales or from rentals.

The operation gets nowhere at all; under the existing system of law it cannot get anywhere; it creates between the Indians and the Government a relationship barren, embittered, full of contempt and despair; it keeps the Indians' own minds focused upon petty and dwindling equities which inexorably vanish to nothing at all.

For the Indians the situation is necessarily one of frustration, of impotent discontent. They are forced into the status of a landlord class, yet it is impossible for them to control their own estates; and the estates are insufficient to yield a decent living, and the yield diminishes year by year and finally stops altogether.

It is difficult to imagine any other system which with equal effectiveness would pauperize the Indian while impoverishing him, and sicken and kill his soul while pauperizing him, and cast him in so ruined a condition into the final status of a nonward dependent upon the States and counties.

The Indian Bureau's costs must rise, as the allotted lands pass to the heirship class. The multiplication of individual paternalistic actions by the Indian Service must grow as the complications of heirship grow with each year. Such has been the record, and such it will be, unless the Government, in impatience or despair, shall summarily retreat from a hopeless situation, abandoning the victims of its allotment system. The alternative will be to apply a construction remedy as proposed by the present bill.

IV

The bill breaks this hopeless impasse.

For a number of years, it has been clearly recognized within the Indian Service that conditions must continue to grow worse, regardless of attempted administrative reforms, unless the allotment situation in its totality be modified.

And for a number of years the directions of practicable modification have become increasingly clear, both within the Indian Service and among observers outside it. The indicated solution has been stated with clarity, and more than once, in debates on the Senate floor and in reports by the Indian Investigation Committee of the Senate. The preceding administration recognized the impasse which had been reached under the allotment system, but did not put forward legislation to break the impasse.

The present bill, in those aspects which are most truly emergency items, is a bill to correct the allotment system, saving the remaining lands, enabling the Indians to get their lands into usable shape, and providing the machinery and authority for restoring, to those Indians already rendered landless, useable lands, if they will demonstrate their wish to possess and use the restored lands.

V

The bill curbs Federal absolutism and provides Indian Home Rule under Federal guidance.

However, as already stated, the bill is not limited to the correction of the allotment system and the restoration of lands to Indians.

It deals with a number of matters which are of intense concern to all Indians without exception.

The first of these is Indian self-government or home rule, or participation in Indian business. At present, such self-government or participation as the Indians may enjoy is a matter of privilege exclusively. It depends upon the whim of the administration. Fundamentally, under existing law, the Government's Indian Service is a system of absolutism.

The bill seeks to curb this administrative absolutism and it provides the machinery for a progressive establishment of home rule by tribes or groups of Indians.

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The sections of title I of the bill, as analyzed in the pages which follow, are their own justification.

VI

The bill admits qualified Indians to the position in their own service.

Thirty-four years ago, in 1900, the number of Indians holding regular positions in the Indian Service, in proportion to the total of positions, was greater than it is today.

The reason primarily is found in the application of the generalized civil service to the Indian Service, and the consequent exclusion of Indians from their own jobs.

But in addition, until now there have not been extended to Indians the educational opportunities which would equip them for leadership among their own own people or for the holding of technical positions in the Indian Service.

This is an intolerable situation, universally and properly resented by the Indians. The bill contains a carefully thought out series of provisions designed to correct the indefensible situation. It is provided that Indians who can qualify for any stated paid positions on their reservations shall, if found by the Secretary of the Interior to be qualified, be entitled to hold such stated positions; and their tribes may require the Secretary of the Interior to give the positions to the Indians who thus qualify, replacing the white employees in question.

In addition, the bill provides that when an Indian community has become organized and chartered, the complete responsibility for the maintenance, by the community, of those services which it is found competent to maintain, may be transferred to the community. The appurtenant funds would be transferred, with due safeguards.

It further is provided that objectionable white employees may be removed from reservations, after appropriate procedures including a full hearing on the facts. The control is placed with the Indians themselves.

Likewise it is provided that estimates for future expenditures of Government money for Indian Service prepared by the Interior Department shall be submitted to the organized Indian communities in advance of the date when they are submitted to the Bureau of the Budget or to Congress; and that the judgment of the community shall be transmitted to the Bureau of the Budget and to Congress along with the departmental estimates.

It is believed that the mechanisms which are set up in the bill are conservative, and yet that they will be effective, and that they will result in a definite and early increase of productive efficiency in the Indian Service with a corresponding and large decrease in cost to the Federal Government.

VII

To reapply wasted millions for Indian benefit.

The bill authorizes appropriations of various sums for land acquisition, for the organization of Indian communities, and for education. If the bill shall pass with its correction of the allotment evils, there will be administrative savings in the field of property administration alone probably equaling or exceeding the appropriations which are authorized by the bill. These practically wasted expenditures are today procuring no safety and producing no gain for the Indians, yet they are mandatory in law and they are unavoidable if the existing situation of the allotted lands is to remain uncorrected. The millions saved through the changes sought in the bill would be reapplied under the authorizing legislation of the bill to make the Indians self-supporting, increasingly prosperous, and self-managing within their own communities and upon their own lands.

VIII

What the bill does not do.

(1) The bill does not disturb, but expressly safeguards and preserves, every vested right which has accrued through the workings of allotment; and guarantees to allottees and their heirs every equity which they now possess, including the right to own their improvements, to stay where they are, and to transmit their improvements, their homesteads, and their equities to heirs.

(2) The bill would take nothing from an Indian; it would only add to the property and the advantages of such Indians as it affected.

(3) The bill is not a scheme for taking land from Indians who still possess land and dividing it among Indians who have no land.

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(4) The bill would not compel Indians to use their lands instead of renting them; but it would help the use of their lands by Indians, and would lay the basis for increased rentals.

(5) The bill does not introduce any socialistic or communistic idea or device. The facilities which it extends to Indians are those facilities of organization and those modern instrumentalities of business which are the commonplaces of American life and which are indispensable to the prosperity of Americans.

(6) The bill does not seek, and would not operate, to cause Indians to go in any predetermined direction so far as their habits and religious and cultural preferences are concerned. It does extend to all Indians that minimum of home-rule in domestic and cultural matters which is basic to American life.

(7) The bill does not bring to an end, or imply or contemplate, a cessation of Federal guardianship and special Federal service to Indians. On the contrary, it makes permanent the guardianship services, and reasserts them for those Indians who have been made landless by the Government's own acts.

(8) The bill does not force upon the Indians anything, except that it stops the alienation of what lands they still possess, and forbids majorities within Indian communities to oppress minorities if majorities should ever wish to exercise such oppression.

(9) The bill does not even force home rule on the Indians. Its home-rule features, and those features having to do with the substitution of Indians for whites in Indian Service, are exclusively permissive; no Indian group need take advantage of them; and in the event that any group does take advantage of them, no cut-and-dried formula of organization or procedure is imposed by the bill.

(10) Finally, the bill does not arrogate to the Indian Office or to the Interior Department added power. On the contrary, the bill divests these offices of much arbitrary power; makes them responsible to the Indians whom they serve, and responsible with much greater detail than at present to the courts, and to the Congress which has delegated to the Indian Office far too wide a discretion in the past. But the bill does vest in the Secretary of the Interior the power of initiative, which must be an administrative power and which is necessary if the Indian lands are to be salvaged and if Indian self-help, through organized action by Indians, is to be forwarded.

IX

The future of the Indian under this program.

It will properly be asked, what is the ultimate goal of this legislation? Does it contemplate for the Indian a permanent tribal status, isolation from the white man, collective as distinguished from individual enterprise, and nonassimilation into American civilization?

The answer is a clear-cut one: No. The futures of the Indian tribes will be diverse, as their backgrounds and present situations are diverse. The bill will not predetermine these futures. It is they who should determine their own futures.

The bill seeks to establish the legal conditions through which the Indian will be released from economic and social imprisonment and will begin to work out a real destiny in America:

It provides him with economic security against the wastage of his assets.

It provides him with a workable plan of land management and development whereby he can achieve economic independence.

It promotes his individual enterprise in farming, livestock growing, and other forms of land use. Community land ownership, where established, will be a means to prevent land alienation and to secure economic land use; but the use of the land will remain primarily individual.

It provides him with civic and business responsibility and the opportunity to manage property and money.

It provides him with the opportunity for education and experience in administrative and technical functions.

It begins a process of localizing Indian administration and assimilating it into local governmental services.

How otherwise can Indians gain the experience in self-support and in business and civic affairs which is the indispensable condition to any real assimilation as distinguished from the spurious assimilation implied in the mere haphazard scattering of pauperized and underpriveleged Indian among the white population?

The consolidation of Indian lands, made possible by the bill, will not be an instrument of isolation, but an indispensable means of putting Indian lands

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(especially forest and grazing lands) into units for profitable and conservative management. The land program of the bill fits in closely with the larger program of intelligent land use for white-owned and public domain lands, now being worked out by this administration. In no sense does it imply exclusion from, or lack of contact with, the white world. It makes possible at least a modest competition of Indians with their white neighbors in place of the inferiority status which economic and social disintegration has forced on so many Indians.

This memorandum now proceeds to a narrative description and analysis of the bill.

Analysis of the Bill, by Titles

TITLE I. INDIAN SELF-GOVERNMENT

The provisions of title I of the bill look to the chartering of organized Indian communities or municipalities, and to transfer of various functions and services now administered by the Interior Department to such organizations. None of the provisions of this title has any application outside of Indian communities voluntarily accepting Federal charters. The whole process of organizing chartered Indian communities is predicated upon voluntary action and basic agreement on the part of the Federal Government and the Indians concerned. By the provisions of this title, no community can be chartered except by the Secretary of the Interior and with the consent of three fifths of the Indians concerned.

The provisions of this title set forth the procedure for the organization of a chartered community; list the rights and duties which may be granted to it and outline the process of making such grants; set forth the relationships between a chartered community and the Federal Government, the State government, the members of the community, and other persons; and finally provide for the financing of certain functions transferred by the Federal Government to the organized community.

Except for certain restrictions with regard to the Indians of New York, the Five Civilized Tribes and the Osage Indians, this statute purports to be of general application throughout the United States. It attempts to deal with situations as diverse as those exemplified by the comparatively isolated unallotted reservations of the Southwest, in which self-government has persisted in fact for centuries; and certain long-allotted reservations of the Northwest, in which almost the last vestiges of Indian and tribal social organization have disappeared. It must deal with groups of Indians which, through intermarriage and assimilation, have taken on the social and economic habits and viewpoints of the surrounding white civilization, and with other groups which have adhered proudly to the peculiar heritage of their own history. It must deal with Indians who have been excellent farmers for centuries, and with other Indians who have been economically helpless since the destruction of the buffalo. It must deal with certain Indian tribes that boast an average income considerably above the average for the country as a whole, and with other tribes whose income is less than one twentieth of the latters average. The traditional approach to Indian legislation has been by way of blanket enactment, and there is scarcely a provision in the Indian Code which has not worked beneficially in some sections of the country and very unfortunately in others. The attempt in the past to pour about 200 different Indian tribes on 214 reservations, each with its own peculiar social habits and traditions, each with its own peculiar economic needs and opportunities, into a single legislative mold, has been perhaps the most prolific source of Indian grievance against the Federal Indian administration.

By way of reaction to the excessive inflexibility of blanket legislation in the past and the overcentralized administration which such legislation has imposed on the Office of Indian Affairs, there has arisen in recent years an increasing number of requests for special legislation dealing with the particular problems of one reservation or another. Examples of such proposed legislation are the bills for the incorporation of the Klamath Indians last introduced in the Senate in 1932 by Mr. McNary (72d Cong., 2d sess., S. 3588); and for the incorporation of the Menominee Tribe of Indians introduced in the House February 12, 1931, by Mr. Browne (71st Cong., 3d sess., H.R. 17052). For Congress to assume the task of passing upon the claims of each particular Indian group and dealing with the problems of 214 reservations in 214 or more separate statutes would clearly involve an assumption by Congress of onerous and complex administrative functions.

The present bill pursues a middle road between blanket legislation everywhere equally applicable and specific statutes dealing with the problems of particular

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tribes. It sets up, in effect, an administrative machinery for dealing with the various problems of different Indian reservations, and lays down certain definite directions of policy and restrictions upon administrative discretion in dealing with these problems.

It is recognized that the unlimited and largely unreviewable exercise of administrative discretion by the Secretary of the Interior and Commissioner of Indian Affairs has been one of the chief sources of complaint on the part of the Indians. It is the chief object of the bill to terminate such bureaucratic authority by transferring the administration of the Indian Service to the Indian communities themselves. While the process of transfer is left largely flexible, the Indians are given some measure of control. Thus section 2 of title I provides that on the petition of 25 percent of adult Indians residing on any existing reservation, the Secretary must either issue a charter, subject to ratification, or proclaim the conditions upon which such charter will be issued; and provides further that the Secretary must forward the petition to Congress, together with a record of his findings and action. Section 2 also provides that no charter will be issued unless ratified by a large majority of the Indian group concerned, and section 8 provides that the Indian community may take exception to any of the rules and regulations prescribed by the Commissioner as a condition of transfer, and that such exception shall be transmitted to the Congress along with its budget recommendations of that year. In brief, the bill attempts to provide a system of congressional review of administrative authority.

The first section of the bill states the fundamental purpose of the bill, i.e., to promote Indian self-government, gradually to turn over to organized Indian communities the various functions and powers of supervision which the Interior Department now exercises, and to offer to Indians the opportunities of training and financial assistance which will be needed to carry out this program. It will be seen that the bill looks toward the elimination of the Office of Indian Affairs in its present capacity as a nonrepresentative governing authority over the lives and property of Indians. It contemplates that the Office of Indian Affairs will ultimately exist as a purely advisory and special service body, offering the same type of service to the Indians of the Nation that the Department of Agriculture offers to American farmers. But the proposed bill does not attempt a prediction with regard to the exact period needed for this transition. It sets up an empirical process, beginning with the chartering of an Indian community, and continuing with further grants and transfers of political authority and economic freedom; the velocity of this process will inevitably depend upon the desires and capacities of the Indians.

The mechanism of chartering an Indian community is set forth in section 2. It is contemplated that two distinct types of communities may be chartered. Upon existing reservations, any charter must receive the approval of three fifths of the adult Indians residing within the territory of the chartered community. Where new land is purchased for Indians, under the authority conferred by title 3 of this bill, and new reservations proclaimed on such lands, the foregoing procedure is naturally inapplicable, and it is therefore provided that a charter may be issued prior to the colonization of such lands, and that persons of one fourth or more Indian blood will thereupon be permitted to settle upon such lands and to organize a community having the form and powers prescribed by the given charter. While the issuance of charters is and must be discretionary on the part of the Secretary of the Interior, provision is made whereby the Indians of any reservation may take the initiative and compel the Secretary either to issue a charter or to record and forward to Congress his reasons for not granting a charter and to proclaim the conditions upon which a charter will be issued.

As defined in section 13 of title I, Indians to whom charters may be granted include all persons of Indian descent who are members of existing tribes, or descendants of members and who reside within existing reservations, and all Indians of one fourth degree blood or more. The object of this definition is to include all Indian persons who, by reason of residence, are definitely members of Indian groups, as well as persons who are Indians by reason of degree of blood.

The bill contemplates that the charter powers of different communities may differ profoundly. Section 3 of this title specifies those provisions which all charters must contain, to wit, a definition of the territorial limits of the community and the conditions of membership therein; an outline of the governmental powers to be exercised by the community (except where the community is too small to warrant a grant of governmental powers); a series of guarantees of civil liberties; a definition of the powers of management or control by the Indian community over its own property and the property of its members;

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certain requirements for the supervision of community finances; and a general plan for the expansion of the powers of the community when the community shows progress in the administration of its political and economic affairs.

In addition to these general principles, common to all charters which may be issued under this bill, there is contained in section 4 of this title a detailed list of enumerated powers which the Secretary may grant and the Indian community may accept, by the provisions of its charter or by supplementary provisions. This list includes substantially all the powers of government and control over person and property which may ordinarily be exercised by a municipal corporation, with certain additions and exceptions based upon the peculiar needs of an Indian community and its peculiar status as an agency of the Federal Government.

By the terms of section 3 every Indian community must be granted some power of supervision over community and individual Indian property and will be entitled to increasing powers of self-government as it demonstrates its capacity to exercise such functions. By the terms of section 4 the Secretary, in his discretion, may grant any or all of a group of enumerated powers which may be roughly described as typical municipal corporation powers, with such additional powers as may be necessitated by the peculiar problems of Indian communities.

The listing of powers which may be granted is intended to afford a firm legislative basis for any grants which an intensive study of the needs and desires of any particular group of Indians may show to be necessary to the establishment of a satisfactory community organization. In some cases it is contemplated that the community will be ready to take over very quickly the chief functions and services now entrusted to the Indian Office, and to manage its own governmental affairs much as any incorporated village or county does. In other cases, it is expected that the Indians will have neither the desire nor the capacity to exercise substantial governmental powers for some time, but they may request and receive charter powers which will enable them to organize effectively for economic purposes, to administer certain features of the land system provided in title III, and to define the rights of individuals with respect to tribal assets. In any case, grants of power made by the Secretary of the Interior must, in conformity with sections 3 and 4 of this title, contain such provisions for Federal supervision as will assure the preservation of Indian capital assets and the protection of individual rights and liberties.

There is no serious question as to the constitutional capacity of Congress to grant the various powers of self-government enumerated in section 4. Substantially all of the stated powers or powers which the Federal Government has, from time to time, granted to its territorial governments or to municipal subdivisions thereof, as well as to many other types of Federal corporation. But in large measure, the charters granted under this bill to Indian communities will be a recognition of tribal powers which Congress has never seen fit to abrogate, rather than a grant of new powers. The right of an Indian tribe to deal with many matters affecting the lives and property of its members has repeatedly been upheld by the Federal courts; the machinery of granting charters should be used to clarify and define the relations of an Indian tribe to its members, the status of existing tribal councils, and other similar matters which are at present the subject of great confusion both to the Indians and to the Indian Office. The last pargaraph of section 4 therefore specifically provides for succession to existing tribal powers, as well as tribal assets, by the chartered Indian community.

The bill recognizes that, prior to the time that the Indians are technically and financially able to perform many functions, they should, nevertheless, have a large measure of self-determination in those matters which affect their welfare. Section 5 of title I therefore provides that the Commissioner of Indian Affairs shall cause regular reports to be made to the Indian communities concerning any affairs affecting the community. Section 5 also grants the community the power to compel the transfer of undesirable Federal employees. The Commissioner, however, is authorized to prescribe the necessary safeguards to assure Federal employees an adequate probationary period and an opportunity to hear and answer complaints.

Even before the Indian communities are definitely qualified to undertake the administration of the functions now performed by the United States, section 7 authorizes the Secretary of the Interior to enter into annual agreements with the community for the performance of such functions whenever the community is by charter empowered to perform them. Such delegation is temporary and experimental only.

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Section 8 of title I, considered in connection with title II, establishes a system for the gradual and permament transfer to Indian communities as Federal agencies of the various functions now performed by the Secretary of the Interior and the Commissioner of Indian Affairs. It directs the Commissioner to classify the various functions which may be separably transferred. It also directs the Commissioner to establish standards of fitness for Indians; to specify the positions for which Indians must qualify and the number of Indians who must qualify for each position; and to prescribe any other conditions necessary to assure a satisfactory and continued administration of the function transferred.

Title II is designed to provide the necessary education and training to enable Indians to meet the conditions so prescribed. The first section directs the Commissioner to make suitable provisions for the technical training of Indians, and authorizes appropriations for grants and reimbursable loans for the purpose. Section 2 directs the Commissioner to provide for Indians an education in peculiar Indian problems, including Indian history and Indian social and economic problems.

Section 8 allows the Indian community to appoint qualified Indians to any vacancy. When Indian appointees within any particular separable function are sufficient in number, and when the Indian community demonstrates that there are enough qualified Indians to assure a continued administration, uninterrupted by the dismissal or death of any particular appointee, and when the community has not such other conditions as the Commissioner may prescribe, the community, by a three-fourths vote, may demand the transfer of such function and the legal capacity to perform it.

It is to be noted that section 8 of title I directs that the rules and regulations prescribed pursuant thereto must be "express and direct", and that the conditions so prescribed are exclusive. In other words, it is intended that the standards prescribed shall be only such as are capable of specific and objective enumeration. The standards must be such as to establish a definite goal toward which the Indians may work with reasonable assurance that, after satisfying specific requirements, they may achieve self-government.

In brief, section 8 of title I, considered in connection with title II, proceeds on the principle that standards adequate to assure a satisfactory and continued administration must first be established; that thereafter the Indians should be trained to meet the qualifications so established, and that when the process of education has sufficiently prepared the Indian community, the community is entitled to administer its own affairs.

Title I recognizes the difficulty of establishing self-government without granting some measure of self-determination with respect to the expenditure of moneys on behalf of the Indians. Section 6 therefore directs the Secretary to submit to the authorized respresentatives of an Indian community all estimates of expenditures intended for such community. The community may accept or reject any item or recommend any other, and their recommendations must be transmitted to the Bureau of the Budget and to the Congress.

Section 6 also directs the Secretary to transmit to the authorized representatives of an Indian community a copy of any bill or amendment of a bill for the benefit of Indians, authorizing the appropriation or expenditure of any moneys within the territorial limits of an Indian community, and to transmit also a description of any project, such as a Public Works project, to be undertaken within the territorial limits of the community.

Section 6 further provides that no Indian community shall be charged with a reimbursable debt without its consent and also directs that no community funds shall be expended, save on the order of the disbursing agent of the community. The provisions last mentioned are designed to prevent any future construction of useless irrigation and like projects at the expense of the Indians, and to prevent the expenditure of Indian moneys for administrative expenses which yield no direct benefit to the Indians concerned.

Section 6 is not only designed to give the Indian communities some voice in the manner and purposes for which moneys are to be expended on their behalf but is also designed to enable the Indian community to finance any function which is transferred to it pursuant to section 8 of title I. It is specifically provided that the Indian community acts as a Federal agency in the administration of transferred functions, and by the provisions of section 6 of title I the Secretary of the Interior is directed to inlcude in his annual estimates of expenditures for the administration of Indian Affairs expenditures for functions and services administered by an Indian community.

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Section 9 of this title provides that the Secretary of the Interior and the Commissioner of Indian Affairs shall continue to exercise those powers now vested in them which are not transferred to Indian communities by charter, supplement, or act of Congress. It further provides that restrictions upon the powers of a chartered community provided for in its charter shall be enforced either by administrative supervision (where the charter so provides) or by judicial proceedings brought by the Secretary or the Commissioner. Such proceedings, under the terms of title IV of this act, would necessarily be brought in the Court of Indian Affairs.

Section 10 provides that existing interests of the Federal Government in property held for the use or benefit of members of the Indian community may be intrusted to the community when it is chartered. It is contemplated that the financial problems involved in the organization of a municipal government can be substantially simplified by turning over to the authorities of the community the necessary lands, buildings, and equipment which the Indian Service is now using, and that in many cases it may prove advisable to permit the community to take over the rights of the Federal Government with respect to liens, credits, and other property interests of the Federal Government in the community lands and resources.

Section 11 of this title is a precautionary statement of the underlying intent of the bill, namely to set up the Indian community in the place of the Indian Office as the proper agency for the administration of Federal responsibilities to the Indian, rather than to avoid such responsibilities. As a Federal agency, the property of a chartered community is constitutionally exempt from State taxation, and the affairs of the Indian community continue to be as they now are, subject to Federal jurisdiction rather than State jurisdiction.

Section 12 contains an authorization for the appropriation of a sum not to exceed $500,000 in any one fiscal year, to be expended by the Secretary, with the approval of the Indian community concerned, for the construction of community buildings, the improvement of public lands of the community, the purchase of necessary equipment, and other expenses incidental to the organization of a municipality.

Section 13 provides specific definitions of many of the terms used in the statute and is designed to prevent unnecessary legal controversy in their application.

Finally (in comment on this title I), to meet a persistent misconception:

This bill is not designed to deny to Indians an opportunity to take their place in the outside world. On the contrary, the training provided under title II must necessarily increase the opportunity of Indians to compete in a white world. And section 3 of title I guarantees to any person who may forfeit his membership by abandoning the community, compensation for his interest in the community assets. Furthermore, under section 4, paragraph (b), of title I, the chartered community may be authorized "to define the conditions of membership within the community." With such authority the community may permit any individual desiring to abandon the community to continue to enjoy his rights as a member. In brief, this bill is designed not to prevent the absorption of Indians in white communities but rather to provide for those Indians unwilling or unable to compete in the white world some measure of self-government in their own affairs.

TITLE II. SPECIAL EDUCATION FOR INDIANS

Title II explains itself. Its sections both authorize and direct that Indians showing talent shall be given those opportunities for training which will fit them to hold the positions of the Government's Indian Service and to be leaders among their people on all lines involving technical proficiency. This title is of manifest importance in its bearing upon titles 1 and 3.

TITLE III.—INDIAN LANDS [1]

Two major problems have developed in the administration of the allotment system. The first is the creation of an ever-increasing class of landless Indians through the alienation and dissipation of their chief capital asset. The second is the break-up of restricted lands into units unfit for economic use. This resulted in the first instance from the allotting in small units of forest and grazing

[1] A fundamental part of the program of economic rehabilitation for the Indians must be provision of credit facilities such as are abundantly available to white farmers but which, with insignificant exceptions, have been denied to Indians. An addition to title III is being drafted with the advice of the Federal Farm Credit Administration and will be presented in the immediate future.

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ranges, and secondly from the multiplication of the claims of heirs after the death of the original allottee. Partition has proved impracticable. The only solution has been the sale or lease of the lands and a division of the proceeds, quickly dissipated by the recipients.

Title III aims first to prevent the further alienation and dissipation of Indian lands. Section 2 forbids further allotment; section 3 authorizes the Secretary of the Interior to withdraw surplus lands from settlement; section 4 continues and extends existing restrictions on the alienation of tribal and allotted land, and forbids the alienation of lands of Indian communities, subject to the necessary exceptions that the community may lease or permit the use of the land or sell standing timber; and section 5 forbids any sale, devise, gift, or other transfer of restricted allotted lands save to an Indian tribe or community or in exchange for lands of equal value.

Title III aims next to restore to landless Indians some of the lands improvidently alienated in the administration of the allotment system. Section 6 provides, inter alia, that the Secretary may make the necessary investigations to determine the needs and capacities of landless Indians, and section 7 authorizes the Secretary to purchase the necessary lands which may be added under section 16 either to existing reservations or be established as new reservations for scattered groups. The Rocky Boy Reservation of Montana is a precedent for the latter procedure.

Title III next aims to consolidate allotted lands into proper economic units. Section 6 authorizes and directs the Secretary of the Interior to classify the areas of Indian lands still remaining which might be organized into such units; authorizes the Secretary to make investigations for the purpose and to determine where and how such consolidation can be effected. Section 7 authorizes the Secretary to purchase any allotted land for the tribe, to make exchanges of allotted lands for other Indian and especially interspersed non-Indian lands which break up the economic units, and directs that such land shall be held in trust for the Indian tribe or community for which the land was purchased.

Section 8 authorizes an Indian tribe or community to purchase any lands, including allotted lands, and authorizes the Secretary to sell lands in heirship status to the tribe or community. In order to enable the tribes and communities to make such purchases, the section directs that the purchase price shall, insofar as practicable, be paid in installments equal to the estimated annual rental of the lands purchased.

Section 8 also authorizes the Secretary to transfer any individual restricted interest to a tribe or community in exchange for an equivalent descendible interest in the entire tribal or community lands of the same quality. "Lands of the same quality" refers to lands classified as useful for the same economic purpose as those transferred, for example, farming, grazing, or forestry. The equivalent interest is defined in this section in a manner to assure the Indian of an exactly equal value, either in land use or income.

The act contemplates another method of bringing allotted lands into corporate ownership without disturbing the status quo during the lifetime of the present owner. Section 11 declares that all restricted property, with certain noted exceptions, passes to an Indian or community on the death of the person presently entitled. In exchange, the individuals who would have otherwise inherited such land receive a certificate evidencing an interest in the tribal or community lands of similar quality in the proportion to which the acreage of lands so passing bear to the total acreage of tribal or community lands of similar quality. The proportionate interest is determined on the acreage basis because the valuation basis would require a valuation of the entire tribal or community assets. It is believed that there is constitutional authority to abolish inheritance among Indians and that this change is no deprivation of any valid right. However, since the act contemplates numerous land purchases for the use of the needy, the Indians are in reality assured of increasing their land rights. To insure the economic use of lands temporarily still held in severalty, the Secretary is authorized by section 14 to organize all Indian lands, whether still owned in severalty or not, into proper economic units, and, if necessary, to regulate their use as economic units and to lease or permit the use of such lands as economic units. If the heirship lands present an impossible task of administration, the Secretary may, as provided in section 7, purchase such lands, or may, pursuant to section 8, sell them to a tribe or community on terms which in effect give the vendor what he had before, that is, the annual rental, or equivalent right of use.

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To summarize, sections 8 and 11 establish a method of exchanging an interest in severalty for a proportionate interest in the total tribal or community lands of similar quality. The act does not expressly permit exchange of such interests in lands of one quality for land of another quality, for example, farming for grazing land. Section 5 (second proviso) authorizes an exchange of restricted lands held in severalty expressly, and if this does not clearly authorize an exchange of interests acquired pursuant to sections 8 and 11, it perhaps ought to be so amended

Sections 8 and 11 not only assure Indians of such a proportionate interest but also assure Indians presently occupying and using their lands the right to continue to do so, and assure their descendants the right to continue such use, or, if the ancestor's lands have been previously transferred, to a preference in any distribution of the right to use such lands passing to the tribe or community on the death of the present owner.

In their totality, sections 8 and 11 thus in effect assure to present allottees every substantial right heretfore enjoyed.

After recognizing and ,in substance, confirming all individual interests heretofore created, title III deals with the problem of the distribution of the remaining tribal or community lands, including those purchased on behalf of the tribes and communities. Section 12 recognizes the tribal law by confirming to each member an equal share. This right is a membership right and nondescendible. Section 12 recognizes, however, the necessity of providing an incentive to improve and cultivate the land and therefore offers a disproportionately large interest to those who make beneficial use of their lands. Section 12 also recognizes the necessity of giving the needy a priority in the lands purchased and of preventing those who continue to retain their holdings in severalty from unjustly increasing their share as a result of purchases of Indian lands for the tribe or community. The second proviso accordingly allows appropriate deductions from the interest of individuals in certain cases. Section 10, which empowers the Secretary to modify existing rules of distribution, is, among other things, also designed to effect a more equitable distribution of land by permitting the Secretary to exclude distant relatives from sharing in the distribution of estates.

Having thus determined the extent of the interest of the various individual Indians, title III, section 9, authorizes the Secretary to make assignments of the land according to the extent of such individual interests. Since land can be used in small individual units for farming and domestic purposes without destroying the economic unit, the Secretary may assign to individuals the right of exclusive occupancy of such units. Such rights of occupancy are made descendible, but section 10 empowers the Secretary to prevent subdivisions of interest by inheritance into unworkably small units. All other assignments contemplate use within economic units shared by the entire tribe or community, or a large group thereof. In brief, grazing units will be enjoyed in common by large groups.

Section 16 proclaims the exemption of all lands from taxation. It would be idle to place restrictions on alienation in one section and nevertheless permit the inevitable involuntary alienation of land through tax sales. But section 16 recognizes as legitimate the objections raised in the Steiwer report on tax exemption of land, wherein it was demonstrated that the States perform services for Indian wards for which they receive inadequate compensation. Section 16, therefore, proclaims that the United States will shoulder the responsibility of providing all public services for persons residing on lands purchased for Indians, and authorizes the Secretary to enter into contracts with the States to pay them for performing such services.

Section 18 is intended to include individuals excluded form any final roll of an Indian tribe but nevertheless belonging in every social sense to the Indian group.

TITLE IV. COURT OF INDIAN AFFAIRS

Title IV of the proposed bill attempts to establish adequate judicial machinery for dealing with the many problems which the general program of self-government and land development will inevitably present. From the very first step of acquiring lands and determining what persons are qualified to vote on the acceptance of a charter, there is bound to be a normal number of disagreements and controversies among the Indians concerned and between Indians and others. If such controversies are made the occasion of litigation in existing Federal and State courts, the delays and expense incident to such litigation will put endless obstacles in the way of the general program of self-government and land development. It will be as impossible to secure unanimous agreement within an Indian community on basic questions of political and economic welfare, as it would be

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in a white community. Some dissatisfaction will exist. But it would be fatal to give to dissatisfied individuals or their lawyers the chance to make a profit by holding up a generally satisfactory plan with the threat of expensive litigation in courts far distant from the community and not adapted to the speedy solution of such controversies.

The purpose of this title, then, is to safeguard the evolution of the chartered Indian communities by providing a convenient tribunal adapted to the just, speedy, and inexpensive determination of legal controversies affecting the Indian communities, and able to give its full time and attention to the administration and development of Indian law. Such a court will protect the Indian community and the Secretary of the Interior, alike, against unnecessary obstruction and delay in the carrying out of the program contemplated in this bill. At the same time, it will give the assurance of effective protection of the constitutional rights of individuals in the administration of that program.

At present controversies arising in the administration of Indian affairs are dealt with more or less summarily by the Indian Office, without opportunity for court review. The Indians have long protested against the continuance of this irresponsible power in a body which is neither elective nor subject to the general procedural safeguards attached to courts. This protest is just and should be heeded. The effect of the first and third titles of this bill is gradually to substitute for the irresponsible determinations of the Indian Office a government of laws fixed with the assent of the governed and guaranteed by Federal charters. Such charters should be interpreted not by the Federal agency which issued them but by an impartial judicial body. The new judicial duties to which the first portions of this bill give occasion cannot well be entrusted to existing courts. The nearest Federal District Court is frequently hundreds of miles from a reservation. To bring Indian defendants and Indian witnesses to these district courts is usually a matter of great expense and difficulty. It is difficult to secure the services of Federal marshals and district attorneys for the type of cases usually arising on Indian reservations. The ordinary jurisdiction of the district courts is largely limited to cases arising under Federal law and to controversies between citizens of different States wherein the amount involved is over $3,000. The judicial machinery adapted to such jurisdiction is not well suited to the usual offenses and controversies arising on an Indian reservation. The result has been that such cases and controversies fail to receive adequate attention anywhere. It would be extremely unwise to inaugurate the general self-government and land development program by throwing an increased burden of Indian jurisdiction upon the present Federal district courts and district attorneys.

On the other hand, it would be impossible to expect State courts to deal with these problems. The chartered Indian community is necessarily an agency and instrumentality of the Federal Government. For the present, Federal responsibilities which apply to Indian tribes must continue to apply to Indian communities. The legal problems arising in this situation are necessarily problems of Federal rather than State law. Not until the chartered Indian Community is a complete autonomous governmentsl unit able to exist without special Federal appropriations or special Federal control will it be able to take a legal place within the State

If, then, existing Federal and State facilities are not equipped to deal with the legal problems which the program embodied in this bill raises, some new judicial agency must be created. To a certain extent, of course, the legal controversies in which the Indians of a chartered community are involved can be determined within the local Indian courts of the community; but title I provides that such courts shall not have jurisdiction to impose fines greater than $500 or sentences of imprisonment in excess of 6 months; and the jurisdiction of local Indian courts may be even more narrowly restricted. Furthermore, there will be many classes of controversy between an Indian community and its members, between white persons and an Indian community or its members, and between the Indian community and other Federal agencies, in which it would be unreasonable to endow the local courts with exclusive jurisdiction. These are the categories of jurisdiction which are by the terms of title IV allotted to a special Federal court of Indian affairs.

The constitution of the court of Indian affairs is prescribed in sections 1, 2, and 14 of title IV. The court of Indian affairs is to consist of a chief judge and, six associate judges, each of whom is to be appointed by the President with the consent of the Senate. These judges will hold office for 10 years unless removed for cause by the President with the consent of the Senate. Section 2 of this title provides that the court may exercise its authority either in full session or through

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one or more of its judges assigned to a particular locality. It is contemplated that circuits will be established providing regular sessions of the court from time to time through the year for each Indian community.

The jurisdiction of the court of Indian affairs is defined by section 3 of this title. Such jurisdiction extends over all cases involving Federal crimes committed within an Indian reservation or community, all cases to which an Indian tribe or community is a party, all cases arising under the ordinances of an Indian community or involving commerce with Indians wherever at least one party to such a case is not an Indian, and all cases involving any law that deals with the affairs of an Indian tribe or community, the right of Indians to allotments, or involving any questions of heirship partitional competency with respect to Indian lands. It is distinctly provided, however, that the jurisdiction of the Federal court of Indian affairs shall not extend to maters now properly coming before the Court of Claims or other special Federal courts (e.g. the Court of Customs Appeals, the Board of Tax Appeals), and that the jurisdiction of the Federal court shall not extend over matters that may hereafter lawfully be delegated to the local courts of an Indian community. The effect of this section and of the succeeding section, section 4, is to deprive the Federal district courts of their existing jurisdiction, excepting, of course, pending suits, and to transfer such jurisdiction to the proposed court of Indian affairs.

Power to defend its jurisdiction is given to the court by section 5 of this title which permits it to order the removal of cases properly falling within its jurisdiction from other courts, whether of States or of local Indian communities, which may seek to exercise such jurisdiction. This removal clause is, of course, based upon the ordinary removal power of other Federal courts.

Section 6 contemplates that there may be cases in which both the local courts of an Indian community and the court of Indian affairs will have concurrent jurisdiction and provides that in such cases appeal may be had from the decisions of the local Indian court to the court of Indian affairs.

Section 7 grants to the court of Indian affairs wide powers over the determination of its procedure, with the direction that such rules shall so far as possible be nontechnical in character and fitted to the needs of prospective litigants.

Sections 8 to 23 of title IV supplement section 7 and deal with various matters of procedure. These sections in general guarantee constitutional rights in cases coming before the court, provide for appeal in proper cases from the court to the Circuit Courts of Appeals and the Supreme Court, and establish certain procedural rules based upon the existing rules applicable to district courts, Circuit Courts of Appeals and the Supreme Court of the United States and to such special courts as the Court of Customs Appeals, the Court of Claims, and the Board of Tax Appeals.

Finally, section 23 provides for the appointment by the Secretary of the Interior of 10 special attorneys who shall advise and represent Indian tribes or communities and their members.

Authorization for the necessary appropriations required by this title is contained in section 25.

It should be noted that while this title does not expressly repeal the provisions of law which now authorize reservation superintendents to appoint Indian judges for the trial of offenses and controversies upon the reservation, the execution of the program provided in the proposed bill must necessarily transfer any jurisdiction claimed by such judges either to the local Indian court of the community or to the Federal court of Indian affairs. Likewise, although the positions of Indian probate attorneys, now provided for, are not abolished, and should not be abolished until other agencies are actually functioning, the bill contemplates that their functions will be transferred either to the local courts of Indian communities or to the Federal court of Indian affairs.

Mr. Collier. I would point out certain broad facts, stating only those facts which are outside of controversy. The point of departure for this legislation is the land-holding system of the Indians within the allotted areas. The allotted areas include substantially all of Oklahoma, Nebraska, most of the Wisconsin area, most of the Minnesota areas, substantially all of the Dakota areas, Wyoming, Montana, the Pacific coast including California, the Pima Reservation of Arizona, and the Jicarilla-Apache Reservation of New Mexico; in other words, more than two thirds of all of the Indian land has been sub-

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jected to allotment and much more than two thirds of the number of Indians have been allotted.

When the general allotment law of 1887 was passed the Indians owned land totaling 138,000,000 acres. Today, and I may say exclusively due to the operation of the allotment system, that great domain has been cut down to 47,000,000 acres, and lost area includes the most valuable land. Roughly, 20,000,000 acres of the remaining Indian lands are desert lands or semidesert, nearly or quite worthless. I would add that all the losses of land have taken place through allotment and have occurred only in the allotted areas. If you compare the Indian-owned land within the unallotted area today with what it was in 1887, you will find not a shrinkage but an increase of Indian-owned land in unallotted areas.

All of this would be unimportant if it related only to the past. The matter of intense concern is that every element in the allotment system which in the past has worked to divest the Indians of their land is working now, every element in it, and the most important factor in the allotment system from the point of view of depriving the Indians of their land is entirely uncontrollable by administrative action. I refer to the forced disposal of land after the death of the allottee. That land must either be partitioned among the heirs or sold. It must be sold if a single competent heir demands it, and then a sale is compulsory. Today there are about 7,000,000 acres of the best allotted alnd, agricultural land, awaiting sale to the whites, having passed into the heirship class. Temporarily the Secretary of the Interior has stopped that sale by an order, just an administrative act which could not be permanent while the allotment law and the allotment system exists.

Mr. WERNER. Would it be a temporary proposition, as a matter of law?

Mr. COLLIER. I think that is a subject of dispute. I hope it will not be decided. It is the first step we took to save those lands pending permanent remedial action by Congress.

I create a misconception if I lead you to think that it is mere loss of land area which is all-important, although that is important in the long run.

It is very important that more than 100,000 Indians have already been rendered completely landless by allotment. We just got in from the Five Civilized Tribes new statistics this week. They show that of 101,000 allotted members of the Five Civilized Tribes, the number who have totally lost their land and have no land now is 72,000 as a result of allotment and so on.

But it is possibly more serious that the allotment system has put a large amount of the allotted land, most of the allotted land, into a condition where it cannot be well used either by the Indian who owns it nor by the white people who rent it. The reason becomes apparent as soon as one examines the land map of an allotted reservation.

In a nutshell the reason is this: Alienation under allotment takes place in a spotty way throughout the entire area within the reservation. Indian land is not lost in solid blocks. It passes into white hands in scattered parcels which increase year by year until the remaining Indian lands are checkerboarded by white lands. In many areas they have shrunk to mere dots on the map surrounded

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by large areas of white land. That would not necessarily be fatal were it just farming land we are dealing with. It is fatal where it is range land as any of you from the West know. You cannot handle range land that is checkerboarded, dotted, broken up, neither can a man use it or run it advantageously. But it has gone beyond that.

We have allotted the forest land of these tribes direct to individuals, little squares belonging to individual allottees. The only way to handle such allotted forest land is by just simply to clean it out. To handle allotted timber efficiently, scientifically is impossible.

We have to add to this situation the basic fact that through all these years and now the Indians have not had access to financial credit. They are the only element in the population that is denied credit facilities. That has been an important element in compelling them to lease their lands instead of using their lands. But they would be compelled to lease their lands by other conditions as well. The Indians in the areas outside of the Southwest when the buffalo were killed off were faced with the need of rapid and radical changes in their mode of living. They were not agricultural.

They were never helped by the Government to make the shift to the pursuit of agriculture. Not only were they not given credit, but they were not given any other kind of help and they were encouraged to depend mainly on rationing for a long period of time. Today the hang-over of the rationing period is very important in the life of the northwest tribes.

I must trace out one more item. Your allottee dies. His estate is probated and claimed by 2 heirs or 10 heirs or a hundred heirs, 260 in one case that I was recently shown. Each heir will have a little equity in a dozen or fifty allotments. He is entitled to a few cents or a few dollars of rental from each of perhaps 100 allotments and he is one of 100 Indians entitled to a portion of the rental from one allotment. The Indian Bureau is the custodian of this property, the guardian of the money and the real-estate agent for the land. We must lease it, or we must sell it, and we must divide the proceeds; we must be custodian over the proceeds insofar as they belong to incompetent Indians and minors so year by year the operation of the Indian Bureau is forced more and more into these endless complications of petty banking and real estate manipulations of multitudinous sales and leases, hundreds of thousands of transactions annually which cost the Government millions of dollars a year and yet do not stop the wastage of property. This system is not satisfying the Indians; it is not doing any good and yet it is inescapable under the allotment law. More and more money every year is spent while the property diminishes and the income of each individual Indian diminishes; we spend more and more making an elaborate bureaucracy, but no matter what we do under this system we cannot help the Indians to their feet. The system compels an impersonal legal looting of the Indian estate and we cannot do anything about it. The Indian knows it and he is thrown into a condition of bitterness and cynicism concerning the Government and concerning his own situation. He is hopeless and he feels insufficient, he feels defeated, not by war but by the indirect operation of this impersonal land system that he does not half understand.

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That is a fatal condition from the point of view of the Indian morale and of healthful relations between the Indian Service and the Indian; it is fatal in its bearing on the relation of Indian to Indian because the essence of the allotment plan is that each individual should inherit from everyone else. He is not responsible except for his own little diminishing equity. Not even a family holds land in common, but each individual holds it against the world—except that, in cold reality, he cannot hold it against anybody. It goes and it goes and it goes.

This situation affects every phase of the Indian Service in the allotted areas. It goes into every part of our school work, our health work, our agricultural extension work, and it practically prohibits in effect the Indians self-help or self-government in those areas. It is an intolerable and incredible situation. You have got to find some way out.

Mr. WERNER. Who instituted the allotment system?

Mr. COLLIER. That is a very interesting question. It was first tried out in the year 1837 with the Brotherton Indians of New York State, who were given allotments in that State and lost every last acre. From time to time it was tried out again through succeeding years. The development of allotments as a universal scheme arose directly to meet the situation existing in Oklahoma. The Oklahoma tribes, the Five Civilized Tribes, primarily had been moved into Oklahoma under guaranties definite and solemn of perpetual tenure and specific tenure to areas of land. In the case of the Cherokees, the Cherokees, for example, were settled in North Carolina under such a guaranty. The Government broke it and moved them to Kansas. Again they made them that guaranty and again broke the pledge and moved them into Oklahoma, broke up their lives twice successively and finally they settled them west of the Mississippi.

In the meantime the Government had not kept part of its bargain—which was to help the tribe keep the whites from infiltrating into their lands. Hundreds of thousands of whites came into—improperly into—Indian territory. What were they going to do? By the year 1880 it was pretty well understood in Congress and in the Indian Bureau that the causes of the Indian wars which were still raging in the frontier were probably those continuous violations of treaties by the Government. Nearly all of the Indian wars arose out of acts of aggression by the Government directed against Indian land in violation of treaties. We have a very bad record about those Five Civilized Tribes, a record which was fully exposed some years ago. Perhaps you are familiar with Helen Hunt Jackson's book published in 1882, A Century of Dishonor, which had an effect similar to that of Uncle Tom's Cabin. It swept the country. It told the story. We did not want to get into another situation like that in Oklahoma and go through another scandal or another set of open predatory violations of treaties, and so the allotment system was devised, in my judgment, and I think the record bears it out, as an indirect method peacefully under the forms of law of taking away the land that we were determined to take away but did not want to take it openly by breaking the treaties. Therefore, we compelled each Indian to take a piece of land. These allotment laws were mandatory. The Indian did not have full choice. Then we said: The lands left over after each Indian has had his specified parcel is surplus lands. We pay the

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Indian $1.25 whether they like it or not, and throw this land open to the whites. All that was legal and a legalistic system. Then the allotted area was to cut down 46,000,000 acres through the sale of the incompetent lands by the Secretary of the Interior and the lifting of restrictions on the sales of land of deceased allottees.

It is apparent that not all of the people who advocated this allotment system had this cynical purpose. For example, Carl Schurz was a great advocate of the allotment scheme when he was Secretary of the Interior, and he was one of our great Americans. If you will read his report you will find he is principally occupied with the fear that the Indian as long as he remains tribal will be backward. The allotment was a cruel but well meant scheme to make him abandon his tribal relations. The belief was that when he got a parcel of land he would become ambitious about that parcel of land and would develop increasingly the kind of individualistic ambition about a piece of land held in fee that is common among white people.

All of that might have happened if we had allotted the land and if then the Government had completely gotten out of the picture. There would have been a terrible ravage. Most of the Indians would have lost their land. There would have been terrible misery. At awful cost to the Indians we would have liquidated the Indian problem as only a small minority would have matrued as owners of land like you and me.

But we did not do anything of the kind. We allotted them under trust. We proceeded to administer the allotments for them and we wound them up under paternalistic restrictions. The very act intended to put them on their feet and make them self-helping and self-governing, developed paternalistic and bureaucratic restrictions under which they lived and so it has gone on until now.

Mr. WERNER. One other question for the purpose of enlightenment as far as I am concerned. It is not a fact that some of the tribes petitioned for an allotment of land?

Mr. COLLIER. I am not able to answer whether tribes had petitioned, but you frequently get incomplete allotments and then you will have individuals petitioning for their shares out of the residual tribal land to be allotted to them. That law of allotments comes largely from the Lone Wolf Supreme Court decision in reference to a member of the Cherokee Tribe whose allotment was confiscated.

Mr. WERNER. What about the Omaha Tribe? Did they not petition for allotments?

Mr. SIEGEL. Allotments of land?

Mr. COLLIER. I am not able to answer whether the Omahas did or not.

Mr. SIEGEL. Individually?

Mr. COLLIER. There may be people here who know that. I do not remember.

Mr. SIEGEL. In answer to your question I do not know whether the Omahas did, but the Fort Belknap Indians requested allotments from property which the tribe still had as a tribe, and section 6 of title 1 of this bill expressly affects the tribe and community of Indians for such purposes; in other words, the only way the Indians could get direct benefit from their property was for the Government to administer this tribal property and divide it into individual units.

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Mr. COLLIER. Concerning the proposed remedy or practice, I will say this very urgently, to avoid misunderstanding as to whether or not I think allotment has done good, that while it has been a devilish thing it remains true that allotment has created equities and vested rights in those Indians who still have got allotted land. It is evident that any scheme of rectifying the situation must fully take into account the equities and the vested rights of these allottees and their heirs who still possess land. That is elementary, and I insist on it because out in the west particularly a number of tribes have gotten the idea that this bill was a scheme for taking the land belonging to the Indians who still have land, dividing it up among the Indians who have no more land. They have that idea fixed in their minds somehow that this is a scheme for going out and taking the land from those who still have land and giving it to individuals who have no land. Not only is that not the plan, and not only does the bill provide protection for these vested rights through and through, but assuming we have the constitutional authority to do anything of the kind and wanted to do it, we would be idiotic because to take the allotted land that still remains and try to make that land serve the needs of more than twice as many Indians as are now the owners of that land, would simply be impoverishing the entire group and would not accomplish any good end. We are quite definite and clear that there must be changed conditions and new laws before the Indians can be supported on the lands. I will come to that later.

I will say generally that the guiding conception in mind and the sentiment of the bill is this, that the checkerboarded lands must be consolidated and they may be consolidated through exchanges as in some places in the southern Navajo area. Where there is a shrinkage there there may be consolidated through purchases of the desirable white lands within the checkerboarded Indian area.

Now the bill directs that the Secretary of the Interior shall determine what areas require to be consolidated, shall draw, if you like, the outside boundaries of the areas tentatively to be consolidated and then he shall proceed to push that consolidation through exchange or purchase in some instances. Or consolidation might be procured through the areas that are going to be bought as submarginal lands by the Government, and which can be turned over to the Indians for their use.

Next the act recognizes that something must be done to stop the subdivision of Indian lands through heirship, that kind of subdivision down to the point where no piece of land is big enough for economic use. Then there is the question of the Indian heirs' equities and that calls for a change in the system of Indian inheritances. It does not mean that it will deprive the Indian of his vested right, of his exclusive use of his land, but we have this process of each generation splitting it up into parcels, compelling sales to whites.

Mr. PEAVEY. At this point may I ask if it is not true that on the recommendation of the Department this committee has twice in the last few weeks in several cases reported out Indian bills pertaining to individual Indian reservations providing for both consolidation and combination?

Mr. COLLIER. Yes; it is not a new principle; it is one generally approved.

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Mr. WERNER. This Congress could pass no law which would deny any Indian his vested rights?

Mr. COLLIER. No; it could not do it; so there is no need for any Indian to fear something which neither the Department nor Congress has the power to do.

Mr. WERNER. No question of that.

Mr. COLLIER. It is most important for the Indian to know that. I will leave the land question after saying this much more: The bill provides for the exchange of the individual title in a certain parcel of land for an equity of corresponding value in the community property where the land is relinquished to the community; in other words, if we have got, say, 40 acres of grazing land and you relinquished that to the tribe or the community, then you get a right to the use of or to the rental unit of the total community property which is as great as the relation between what you relinquished and the total community property. In addition to that the Indian gets the right to use the land he has always used. His ownership and improvements are guaranteed to him and his right to transmit to his heirs either his equitable share or his exclusive use of the land is safeguarded. I will ask you at this moment only to realize that we want the bill liberally to safeguard all these things that the Indian rightly should have under the act. If it does not we want your help in making it do that.

Mr. ROGERS. The main policy of the bill is to take nothing away from the Indian and to guarantee that he has as much or more than he now has?

Mr. COLLIER. Exactly. The bill could not take anything away; its only reason for existence is to safeguard what he has.

Mr. AYERS. Is this bill a link in the general program of the Interior Department to help out in land matters?

Mr. COLLIER. Yes.

Mr. AYERS. And if the so-called "Taylor bill" now under consideration in the Public Lands Committee should become a law, is it the purpose and intent of the Indian Department to call for this available land and add land to these reservations?

Mr. COLLIER. Where they are needed. They are not needed on every reservation, but only where it is needed.

Mr. AYERS. Then it is being considered?

Mr. COLLIER. I ought to make this clear. It is perfectly evident that there must be a large control of the use of grazing lands to prevent erosion and to secure an effective yield from the rental use. It is still more evident that there must be a constructive handling of the Indian timber. We have got to stop the slaughtering of Indian timber lands, to operate them on a perpetual yield basis and the bill expressly directs that this principle of conservation shall be applied throughout.

Mr. SIEGEL. I do not think there is anything in title 3 of this bill which authorizes the use of public land now, addition of public land to any Indian reservation, and the only method of acquisition of land under this bill is what is specifically provided by exchange and purchase. What the Department's policy will be in the future with regard to the Taylor bill or with regard to the purchase of submarginal land is another question. It may very well be that land may be secured through the national parks.

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Mr. AYERS. That is, we would have an exchange under this general land program?

Mr. SIEGEL. Not as a result of this bill.

Mr. POOLE. The Taylor bill has no connection with this bill?

Mr. COLLIER. No.

Mr. POOLE. This program is entirely apart from it.

Mr. COLLIER. It has this much connection with the Taylor bill, that the Taylor bill is partly occasioned by the breaking up of the public domain through homesteading so that erosion is washing it away. We have an analagous condition on the Indian reservations.

Mr. WERNER. Section 11, title 3, page 32, of the bill. Is there not a grave constitutional question involved in that section? Would it not have the effect of denying the vested rights of the Indians?

Mr. COLLIER. Not in conjunction with the provisos.

Mr. WERNER. Do you think the provisos covers that?

Mr. COLLIER. The several provisos. There would be a constitutional question, certainly. Our lawyers can make that clear. The gist of it is to say this, that when you possess by inheritance within one of these unallotted areas, then the underlying title passes to the community. There remains a whole series of compensations such as I have stated before, a proportionate equity in the whole community property plus the right to the exclusive use of the area. That is inheritable in the future. We want a sharp distinction between the technical matter of where title shall vest and the question of how and by whom the land is used. The constitutional question would be whether Congress has the authority to direct that upon the death of the allottee the underlying title shall vest in the Government or the tribe, compensating the heirs by guaranteeing to them the equivalent of the title, that is, practically the same thing the title would give them. That would be the constitutional question. If Congress should diminish his equity, then there would be no constitutional right, but if Congress has not diminished his equity but is on the contrary increasing his equity, our lawyers think that would be constitutional under a long line of decisions. That, however, is something that the attorneys should speak of and not myself.

Mr. O'MALLEY. Under that provision the Secretary of the Interior has the right to transfer that title to the community or tribe after the death of the original owner?

Mr. COLLIER. With compensating provisions intended to represent the original equity. It is clear that has to be done. The equity must be fully respected.

Mr. O'MALLEY. If that was done its constitutionality might stand, but if it was not done?

Mr. COLLIER. Then you would have a real constitutional question.

Mr. O'MALLEY. Before deciding whether that was done for the tribe or the community, in passing upon this, after the death of the original allottee, the Secretary of the Interior would be the deciding factor?

Mr. COLLIER. In a given case, if it became evident that an unconstitutional act was being performed, you would have what you have now, decision by the courts. That would be also up to the courts as it is now. Right now there are innumberable things which the Secretary can decide within this discretion, which yet might be viola-

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tions of a fundamental constitutional provision. He is always subject to injunction and review on that and he would be here.

I wonder if you will for a moment pass over to the other basic reason for the bill, because the committee will want to analyze its section by section anyhow. The other basic reason for the bill is this and we have to understand it historically. Congress has plenary authority over Indian matters, over the government of the Indians, absolute authority.

Congress through a long series of acts has delegated most of its plenary authority to the Interior Department or the Bureau of Indian Affairs, which as instrumentalities of Congress are clothed with the plenary power, an absolutist power. When we pass out to where the Indians are living, with the innumerable concerns of their domestic life, local self-help, and so forth, under this absolute authority of the Interior Department, subject to its rules and regulations, the Indian has no rights except those which are extended as privileges through rules and regulations and through mere sufferance. That means that you might have at one time a Secretary of the Interior, a Commissioner of Indian Affairs who most earnestly desire to bestow rights upon the Indians and to allow them to organize and allow them to take over their legal affairs in some self-governing scheme, and he would go a certain way with this liberal policy, but his successor would be completely empowered to revoke the entire grant. The Indians know this all too well. There is no Indian tribe whose memory is not filled with the recollection of the constantly fluctuating policies of the successive Commissioners and successive Secretaries of the Interior. Things are always stood on their head by the next administration, and the situation is one under which Indians cannot be expected to go to work in earnest with an effort to build up a stable domestic government. They are dependent upon the whim of the Commissioner. It is fundamentally un-American and fundamentally an impossible situation. Now for years this fact has been recognized inside the Indian Bureau and outside, that the Indian Office should be divested of this absolute control over Indian life.

I am speaking now not of the land but of the other parts of Indian life, and it includes rights that the Indian should be given, the status and the power to go to work in a reliable way so that they can depend upon themselves and build up their self-help, organize their life and not be the pawns of enthusiasm or the wickedness, whatever they are, of the successive administrations.

Let me illustrate and cite a concrete case which shows what can happen anywhere in the Indian country. We have a good example in the Navajos who for long years had been getting along quite well, not greatly interfered with, and had been showing much wisdom in decisions affecting their lives. Among other things the law vested in that tribe the right to say how its oil lands shall be disposed of. None of this property can be alienated without its consent. In January 1923, when it had already become known that there was great oil wealth on the Navajo Reservation, the Secretary of the Interior by one fiat smashed the Navajo tribal government. It ceased to exist. It had gone on over a long time successfully and peacefully. He wiped it out and he dictated a new Navajo tribal council. I will not go through that long record now. What did it result in? He got the

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Navajo tribal council to turn over to him an unlimited power of attorney to represent the tribe and then ensued the scandal of the Rattlesnake oil case, which was alienated for practically a thousand dollars and resold for $3,000,000. That is what happens to the Indians. They are at the mercy of the wisdom or lack of it of the Commissioner of Indian Affairs or the Secretary of the Interior. Any American community that was at the mercy of such things would move out or rise in rebellion. This bill recognizes this situation and would form a suitable framework of Indian rights so that the Indians can go ahead and organize for self-help and take over their own business and get out from under this paternalism which they do not like any more than you gentlemen like it, you Members of Congress.

Paralleling that, let me give you some startling facts. Look at the employment of Indians in the regular Indian Service. For years and years it has been common belief that it was time to get Indians in the Indian Service. I know that it is the policy of the present administration. But what are the facts? In 1900 there were more Indians in the regular Indian Service in proportion to the total number than there are today. The record since 1900 in spite of all our big talk and hundreds of millions of dollars of expenditures on schools is a retrograde one. The have lost ground. Why? Basically because the Indians are required to qualify under the generalized civil service intended for the general population. The Indians cannot qualify although they may be as fit as the successful candidates, yet they are shut out. There are other reasons but that is the authentic one. Incidentally it shuts out many desirable white people from the Indian Service. So we have this bill to enable the Indian to run his own affairs, to help himself, and to give him the mere privilege of getting a chance to do his own work in the employ of the Government.

There have been various ideas as to how this thing might be done. First, we approach it through special bills to meet the problem for a given tribe as in the case of the Klamaths and Menominees. Congress was never willing to interest itself in these special bills because there were 214 tribes, and if Congress has to work out details of a scheme of self-government for each of 214 tribes, Congress will not do it. These special bills require too much consideration and they crystallize the situation in all kinds of impossible ways.

Then we hopped or jumped over to the other extreme and tried to get an omnibus bill introduced 2 years ago called the Indian tribal council bill, which might apply to all the Indians, but in order to make it apply to all we had to leave so much out of it that it did not do anything very much. Still most of the authority remained in the Commissioner of Indian Affairs and still the white folks had the jobs

This act, this bill, in section 1 steers a midway course between an attempt to settle this problem by hundreds of special enactments and the other attempt to handle it by one omnibus charter issued to all the tribes, which omnibus charter will be so small and timid it will not be worth anything or not be worth having. What it does is this: It authorizes and directs the Secretary of the Interior, upon the initiative of Indian tribes, to issue charters to these tribes. The Secretary may go out and stir up a tribe to want a charter. The initiative is through the tribe upon a petition.

The procedure is very carefully set down in the bill. If the Secretary does not want to issue a charter he has to state why he will not

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issue a charter, or what conditions must be met in order to have him issue a charter, and the whole business is transmitted to Congress. The whole tenor of the bill is to compel him to go ahead.

What does he do under these charters? The bill sets down a long series of authorities which he may grant to the Indian group or community or tribe under this charter. The charter becomes effective only after ratification of the tribe. He may do more or he may do less according to the readiness of the tribe to take over responsibility, and the tribe may always come back at him and demand more; if he will not give more, the burden of proof is on him before Congress for not giving more, and the basic purpose is stated in the preamble of the bill so that he is really driven to grant the charters as broadly as he dares.

Further the charter will set up the beginnings of self-government in police matters, let us say, in range control, and other matters. There are other instruments for the transfer of powers. It is provided in section 1 that the Secretary of the Interior, after this bill becomes law, shall set down the descriptions and conditions of the forestry services that are being carried out on the reservations with a view to transferring to the local community the responsibility for such services as fast as the community is willing to take and is capable of assuming. And there is a provision for a system of contracts under which the community would administer Federal funds for its own service and the hiring of its own employees. The thing goes further. It requires the Secretary of the Interior to describe the qualifications for the holding of jobs of all types by Indians, and then any Indian can come forward and qualify under what will be a special Indian civil service. If he qualifies, if he is found fit, then his people, his community, can demand that he be given a position, the position he is fit for as soon as there is a vacancy at that reservation.

We go still further and set up machinery by which an Indian community organized under the bill may declare that it does not want a given white employee any more and may compel his removal from the reservation. You may say that in the aggregate that provision makes it possible for an Indian group to go practically as fast and as far as that group wants to go. Only whenever the Secretary of the Interior relinquishes a power to the group, whenever he turns over the job to the group, it has to be on the basis of conditions publicly stated. He must be in position to defend his action before the Budget and the Appropriations Committee and the Indian committees, so that the Secretary of the Interior is checked on the one hand by the Indians and on the other hand by Congress, and he is not compelled by the law to do any one thing at any one time.

Mr. Werner. That policy is set up as against the present civil-service employment?

Mr. Collier. In part.

Mr. Werner. Is it to be construed that the policy of the Indian Department is to be against the retention of the present civil-service status as it applies here?

Mr. Collier. No, it is against compelling the Indian to qualify under provisions which only the white people can meet. However, we must not blind ourselves to the fact that the effect of this bill if worked out would unquestionably be to replace white employees by

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Indian employees. I do not know how fast, but ultimately it ought to go very far indeed.

Mr. WERNER. That situation does not exist at this time, does it?

Mr. COLLIER. It could not.

Mr. WERNER. The Indian has nothing whatever to say with reference to the retention or dismissal of a civil-service employee at this time?

Mr. COLLIER. Nothing.

Mr. WERNER. And it does not make any difference whether the civil-service employee is competent or incompetent, the Indian has nothing whatever to say.

Mr. COLLIER. Or even non-civil-service employee. The Indian has nothing to say at all anywhere down the line.

Mr. WERNER. In other words, a person employed on any of the several reservations can render highly detrimental service as against the interests of the Indians, and the Indian would not have any voice in the removal of that employee?

Mr. COLLIER. Correct, and if we put ourselves in the position of the Indian we would see how it would outrage us; I, in my town of Mill Valley, or you, in your town, if we had someone from Washington dictating to us about different things, how would we like it? We would not endure it.

Mr. WERNER. Is it a fact that present civil-service requirements or regulations have filled the Indian Service with many people wholly and totally incompetent to carry on the work they are doing?

Mr. COLLIER. I would not agree to that.

Mr. WERNER. How far would you agree with that statement?

Mr. COLLIER. I would not state it that way.

Mr. ROGERS. Taking that question the way Mr. Werner states it, does this tend to make it possible for the Indian to govern himself? He is asking it from the wrong angle.

Mr. COLLIER. I do not want to evade Mr. Werner's question at all. I will come back to this statement that as long as this allotment system prevails that we were discussing earlier, I do not think it makes much difference how efficient or inefficient an employee is. He is going to fail, be he Indian or white. So we have lots of good people whose work is nothing but Dead Sea fruit, because they are working under this allotment system.

Mr. ROGERS. It is the system which is fatal.

Mr. COLLIER. I go further than that and I may be talking heresy. I do not think that the broad horizontal civil-service requirements fit; I do not think they are of a type to meet the peculiar requirements of the Indian Service generally.

Mr. ROGERS. They are not the right test, or the right basis of a test.

Mr. COLLIER. And consequently I think we would have a more efficient lot of people at work if we had not been compelled to submit to civil service in all these details.

Mr. WERNER. Rightly or wrongly, I would not want the impression to be gained because folks were connected with the Indian Service that they are incompetent or dishonest, because I do not believe that is the case. There are many well-informed, able, and conscientious people employed in the Indian Service, but the Indians of the reservations in the State of South Dakota are compelled, to my per-

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sonal knowledge, to tolerate the abuses that are engaged in by employees, and regardless of the character of the complaints they make they are unable by one reason or another to get those employees removed. Now, the civil service has put them there. The civil service in some instances requires that a man be a so-called "degree man." Now, Mr. Commissioner, you have had much experience in Indian affairs. You have devoted a lifetime of effort and understanding to the Indian problems, and it would not be your opinion, would it, that because a man had a degree from a college, that that would fit him to do a particular job on an Indian reservation?

Mr. COLLIER. No.

Mr. WERNER. That is a requirement, is it not, of the civil service, before a man could qualify?

Mr. COLLIER. That disqualifies the Indian every time. I may say, concerning our recent examinations held for superintendents, very few of our own people could qualify under the requirements. I could not have qualified. I could not have passed the examination for superintendent myself, possibly.

Mr. WERNER. That is the system that still prevails and is a bad system.

Mr. COLLIER. It is getting worse all the time, because the standards are being made higher all the time, the requirements.

Mr. WERNER. Does this bill in its provisions, in title 1, permit the Indians to have a voice in the selection of their own employees, men of Indian blood, and will it absolutely permit them to do something with reference to getting rid of an objectionable employee?

Mr. COLLIER. It completely does all of those things.

Mr. WERNER. If this bill passes, the Indians on the Standing Rock Reservation in South Dakota could get rid of objectionable boss farmers or other employees?

Mr. COLLIER. Absolutely.

Mr. WERNER. You think it would?

Mr. COLLIER. Yes; otherwise the whole thing is fraud.

Mr. WERNER. And the Indians would have something to say about the conditions.

Mr. COLLIER. They would; it is they who would say it.

Mr. WERNER. They would not be hampered in that by the Indian Department?

Mr. COLLIER. I do not know that I could guarantee that forever. Certainly the bill goes as far as legislation could go.

Mr. WERNER. Without any regard to partisanship whatever, and without attempting to fix any blame, I merely say this: I have lived in Indian country for more than a quarter of a century and during that time I have observed the Sioux go from a fairly wealthy race to a race of poverty, and the development along that downward course having largely been contributed by worthless, useless employees who have aided and assisted in doing the very thing you speak of as being detrimental to the Indian generally, and to his rights, I ask you if it is going to be possible under this bill for the Indians to have something to say in their local self-government on the subject of dismissal from the service of employees from boss farmers to superintendent, to the end that Indian affairs may be better administered and his assets safeguarded and preserved?

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Mr. COLLIER. Right. May I go on with this for a moment? The intent of the bill goes far beyond what Mr. Werner says, and we have missed its main purpose if we do not go beyond that. It is to do this much, and it is to do more than this. This bill intends that Indian groups shall be able progressively to determine what services shall be rendered on their reservations. It requires, for example, that the Indian Office submit all its financial estimates to the organized Indian community before those estimates go to the Bureau of the Budget. The community sits and holds a hearing upon the Indian Office budget estimates, and its findings are transmitted to the Budget Bureau along with any recommendation from the Interior Department and they are transmitted to Congress coordinately with any recommendations transmitted by the Interior Department.

That provision, if it had been taken in conjunction with the functionalized budget scheme that is now pending in conference between the House and the Senate, would require the expenditures to be acted upon by the reservations for the types of work on the Indian reservation which Congress approved. The Indians could know exactly what is being done with their money. Combined with this scheme of preview by the Indians of next year's estimates, it would go a long way toward placing the tribes not only in control of the employees but in control of the program of service. We go still further and propose that the actual administrative control of all specific services may be transferred to the organized community by contract. I think our problem is going to be in the case of both of the committees of Congress to convince them that we are not going too far and too fast. I think we have got to convince the Congress that section 1 of this bill will not disorganize, will not confuse, the Government's own work. I think we can convince them.

Mr. PEAVEY. Right on that point I will ask you this. All of these remarks, the statement that you have just made, pertain to the chartered community?

Mr. COLLIER. Yes.

Mr. PEAVEY. What is the intention of the bill with respect to revocation? Supposing such a charter is issued to a tribe or a community and that community proves by its own acts that it is not entitled to it, does the Secretary reserve the right to revoke the charter?

Mr. COLLIER. As we have drawn the bill, as we have provided for it, he does not.

Mr. PEAVEY. What would be the practice?

Mr. COLLIER. The charter would be revocable under the present machinery of the bill either by the tribe itself, the tribe to surrender its charter, or Congress could revoke. Under the bill as now drawn it would be incumbent on the Secretary of the Interior, if a tribe should prove to be inefficient, to come before this committee and show cause why the charter ought to be revoked, and that may be going too far.

Mr. DIMOND. You think that is too broad?

Mr. COLLIER. That is our idea. We assume that we can be cautious in issuing the charter, cautious in granting powers under the charter. Later on with the burden of proof he ought to be able to come before the Senate committee and show cause. Why? Be-

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cause otherwise we are still back in the time of absolutism and we cannot give a feeling of security and permanency to the Indians.

Mr. PEAVEY. I notice in the terms of the bill, as I understand it, that it provides that in such case the Government is clearly relieved from any or all financial or other responsibility for the acts of such chartered communities. In the case of the inability to govern themselves, as in the instance I just cited, would it not be right that the Government should retain responsibility for their acts, to perform the acts?

Mr. COLLIER. It would. Let me restate it and see if I grasp your point. The bill contains a statement that the Federal Government shall not be financially liable for the acts of a chartered community. The meaning of that in essence is not quite what you gather. It is a matter that this committee will want to debate. The chartered community could not enter into a contract for which the Government could be held liable. The Government does not take responsibility for such a contract. But the whole statement of the bill is one which makes permanent the Federal guardianship. Now, if the chartered community messes up its job and Congress recalls the charter, then the situation would be just what it would have been before the charter was issued, direct administration by the Secretary of the Interior until such time as a new charter is issued. A chartered community would fall back into the condition of an unchartered community if it failed and could not resume until it was rechartered. But we have adopted the view that annulling of a charter ought to be the function of Congress, not the function of the Secretary of the Interior.

Mr. CHRISTIANSON. Is there a provision in the bill specifically providing that Congress may revoke a charter once issued?

Mr. SIEGEL. Section 8, paragraph (d), title 1, also provides that in the event of the community's failing to comply with stated conditions, the transfer of the service, and so forth, the Secretary or the Commissioner shall make recommendation and report to Congress for appropriate action. The local capacity to perform the service is one thing and the transfer to it is a Federal instrumentality, and the transfer to it under that scheme in section 8 requires them to meet certain conditions and their failure to meet them is cause for resumption of the duties of that service by the Secretary.

Mr. STUBBS. I have had some rumblings on this situation. A great many of the Indians have passed the stage of tribal government and they, perhaps, are opposed to the very things that you are striving for, and I will ask you if, in your opinion, in your work among the Indians and with the Indians you can judge if this is going to be the wish of the great majority of the Indians at this stage?

Mr. COLLIER. As soon as they understand it. They will not if they misunderstand it as many of them are doing, as you describe it.

Mr. STUBBS. That is the thing I want to get clear in my mind.

Mr. COLLIER. I will put it a different way. Take a group of Indians, even if they hold their interests in common no longer and they are as white folks, they are still under the tutelage of the Government which means that they are denied a voice in their own affairs. Such a group, if it wanted to, could apply for a charter, qualify under a charter, and take over the management of its affairs. The form of organization adopted under the charter is entirely wide open. They

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could organize into the most ultra-modern thing in the world, whatever organization they would adopt, and they could organize under whatever form they wanted to. That is one extreme. It will be a means of their taking on all the modern business changes.

At the other extreme you have a tribe still handling its institutions under ancient pre-Columbian practices, speaking its own language, practicing its pre-Columbian religion, a tribe with a complicated internal organization, some of its beliefs secret, like some of the Pueblos, very complicated and hidden and strange, and it is going along all right. Obviously that tribe would not want to organize into the same form that your modernized tribe would organize into, but it might want to take over some of these powers. A Pueblo might have just as much idea of exercising recall of a bureau employee as a white-minded tribe. The Pueblo might have as much ability to put Indians in the jobs or be as capable of scrutinizing the budget figures as they are. That Pueblo could take a charter in a form appropriate to its peculiar make-up. You cannot deal with those two groups, of opposite extremes, on the same basis. That is why the omnibus formula fits nowhere. That is why we must have this flexibility, but a flexibility which is always set in motion upon the initiative of the tribe, not a thing that is forced on the tribe, and it goes up to Congress in its own way for correction or validation or rejection.

Mr. CARTWRIGHT. I hesitate to interrupt you but it has been suggested that we not stay in session later than 5 o'clock, and I would like to have the sentiment of the committee on that. Of course, this today is not a complete hearing. Some of us would like to go to our offices and sign our mail.

Mr. CHAVEZ. I have enjoyed hearing Mr. Collier and I want him to continue some other time. He has given us some very fine information, and I know he will give us some more. He can make a fine statement about this Indian matter, and I think we should have him here again.

Mr. CARTWRIGHT. Let us set a time for the next meeting.

Mr. CHRISTIANSON. I will repeat what my colleague across the table has stated about this presentation. I will say in all seriousness I want the bill amended to permit some of the white folks to organize ourselves into tribes to get away from the paternalism of the Federal Government.

Mr. DIMOND. How soon will these hearings be printed?

Mr. CARTWRIGHT. That can be arranged. They can be printed in parts. For one I would like to have them printed as soon as we could get hold of them so that we can study them.

Mr. COLLIER. There will be a clamor among the Indians for these hearings.

Mr. CARTWRIGHT. Let us not forget to get our next hearing set.

Mr. PEAVEY. To that end I will offer this tentative motion. If I remember aright the Commissioner has stated that he will leave next week to be gone for 2 weeks.

Mr. COLLIER. Tuesday night.

Mr. PEAVEY. I think we should have time to get further enlightenment on this all important bill and I therefore tentatively for the consideration of the committee make a motion that we meet again tomorrow morning at 10 o'clock.

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Mr. AYRES. There are a number of hearings. The Public Lands Committee meets at that time.

Mr. PEAVEY. Then I will make it 10 o'clock Saturday morning.

Mr. CARTWRIGHT. We have permission of the House to meet tomorrow afternoon.

Mr. PEAVEY. Does the gentleman have any information on what the business of the House is going to be tomorrow?

Mr. DIMOND. The agricultural bill will come up tomorrow.

The CHAIRMAN. If that is the case there will be nothing but remarks.

Mr. CARTWRIGHT. How about 3 o'clock tomorrow afternoon?

Mr. CHRISTIANSON. That is all right.

(Thereupon, at 4.55 p.m., the committee adjourned to meet at 3 p.m., Friday, February 23, 1934.)

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READJUSTMENT OF INDIAN AFFAIRS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

PART 2

Printed for the use of the Committee on Indian Affairs

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READJUSTMENT OF INDIAN AFFAIRS

FRIDAY, FEBRUARY 23, 1934

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Washington, D.C.

The committee met in the committee room, Capitol, at 3 p.m., Hon. Edgar Howard (chairman) presiding.

Present: Representatives Howard, Cartwright, Chavez, Rogers, Stubbs, Hill, Werner, Peavey, Gilchrist, Collins, Christianson, Greenway, and Dimond.

The CHAIRMAN. The committee will be in order. We will resume further hearing of H.R. 7902, and in harmony with previous order of the committee, I will ask the Commissioner of Indian Affairs or his representative to further elucidate for the benefit of the committee the provisions of the bill, taking up as he shall so please where he left off at the hearing yesterday.

STATEMENT OF JOHN COLLIER, COMMISSIONER OF INDIAN AFFAIRS

Mr. COLLIER. Mr. Chairman, I shall try to finish this general presentation in a few minutes now. At the time of adjournment the subject before the committee was title 1, dealing with Indian self-government, employment of Indians and the transfer of powers to Indian communities. There is just one item I wish to discuss which relates to the subject of the grant of executive discretion contained in title 1. I tried to make clear yesterday why this grant of discretion was necessary because in no other way can the variety of conditions be met. Flexibility is necessary. I think it is well to remind the committee that executive discretion under existing law is very wide indeed.

It is inordinate in its width. In many ways it is diminished or entirely done away with by this bill. To those inclined to fear the abuse of some of the discretion given in the bill, I say this discretion is only a tithe of the existing discretion which the bill curbs. I think it may be well to place in the record, if I may be allowed, Mr. Chairman, a list of some of the executive discretions that are exercised under existing law by the Indian Office and the Secretary of the Interior.

The CHAIRMAN. And which happily you state may be modified.

Mr. COLLIER. Many of them are qualified or abolished by this bill.

The CHAIRMAN. The matter will be received in the record without objection.

Mr. COLLIER. Merely to illustrate, at present the Department, including the President, may terminate restrictions for most of the

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allotted restricted land at will. They have arbitrary control over the making of wills and determination of heirs. They may destroy a will without even assigning cause. Again the Department controls the choice of attorneys and controls or essentially controls the procedure in litigation through controlling the funds they use; controls their choice initially and may terminate their employment at will, and there is no review. The contracts made by ward Indians are wholly controlled by the Department. They either have no validity or they must be specifically approved by the Secretary of the Interior and this complete control of the function of contract by itself is practically an absolute control over Indian activities and Indian industry and Indian life. The Department now has the authority to arrest Indians and imprison them and fine them at will, irrevocable.

Mr. WERNER. For what?

Mr. COLLIER. For anything.

Mr. WERNER. For misdemeanor?

Mr. COLLIER. For anything.

Mr. WERNER. For a felony.

Mr. COLLIER. For a felony, too. They may go into Federal court on a felony.

Mr. WERNER. You would not want the record to show that the Department has any authority over felonies?

Mr. COLLIER. There is no restriction in law over the initial subject in the Indian court.

Mr. SIEGEL. There are ten specified crimes for which they are entitled to be tried in Federal court.

Mr. COLLIER. But they may also be tried for anything in the Indian court of Indian offenses. There is no limit on what those courts may do and there is no proscription as to how they shall do it.

Mr. WERNER. Do I understand there is a limit on punishment? There certainly is, is there not?

Mr. COLLIER. I suppose you may say there is a rule of reason.

Mr. WERNER. Suppose that an Indian committed murder on the reservation. The Indian court would have no jurisdiction over that Indian?

Mr. COLLIER. Murder would inevitably go into the Federal court. I think there are eight or nine crimes over which the Federal court has jurisdiction. Of course, in a murder case it would be taken into the Federal court, but there are borderline cases like rape, arson and larceny that might be disposed of in the Indian court. Anyhow, these courts can exercise jurisdiction over the political activities of the Indians. There is no restriction and no appeal except to the Secretary of the Interior.

Mr. WERNER. Is that court existing in South Dakota?

Mr. COLLIER. Yes. It is curbed by this bill. Under existing law the Department has the authority—I do not say it is using it, but it could use the authority, the statute gives the Department authority—to prevent the going of the Indians from place to place. to prevent them from assembling, carrying messages and agitating. We have discretion, in other words, over their political thought and political activities. The Department appoints the licensed traders engaged in trading with the Indians and it may be as arbitrary as it desires.

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Mr. PEAVEY. May I suggest right there that the Department not only has the authority to banish and exclude from the reservations members of tribes but has done it in the past.

Mr. COLLIER. And may apply the same right to exclude investigators or welfare agents of civic bodies who want to to on there to help the Indians. The Department has a virtually plenary control over licensing in a great many particulars. It makes rules and regulations and, beyond the rules and regulations, in its discretion it either grants or does not grant leases.

Mr. WERNER. There have been considerable abuses in reference to licensing traders on the reservations?

Mr. COLLIER. I suspect there have been at times.

Mr. WERNER. Is it not a fact that a lot of unrest has been fomented on the reservation due in many instances to the activities of the licensed trader?

Mr. COLLIER. Correct.

Mr. WERNER. It is the policy of the Department now to eliminate abuses that have been practiced in the past, that have grown up around the system of licensed traders?

Mr. COLLIER. I may say that within existing law the Department is now beginning a reconsideration of the whole Indian trading system and the system of licenses. We are doing it through an investigator the Department of Agriculture supplied to us.

Mr. WERNER. Speaking particularly with reference to the reservation in my State, I believe it would be safe to say that at least half of the difficulties that have been encountered, in the attempt to govern the Indians, has been due to the activities of licensed traders.

Mr. PEAVEY. Mr. Commissioner, just what is contemplated as to the effect of the passage of this bill on the trade situation?

Mr. SIEGEL. One of the powers which the Indian charter may grant under section 4 of title I is the power to regulate commerce, which would mean the power to initiate regulation would be given to the Indians. The Secretary is directed to supervise the exercise of that power and must approve the regulations they may issue, but the power of initiation would be with them.

Mr. PEAVEY. In a very casual reading of the bill there is a provision that has for its purpose the encouragement of cooperatives within these tribal reservations.

Mr. COLLIER. This bill would lay the foundation if it was deemed desirable to displace the trader altogether. Where a group wanted to run its own cooperative system on the productive and distributive side, the Indians could do so under this bill. The bill will contain, when amended, a provision to encourage them to do it.

Mr. WERNER. The Department now has power under existing law to regulate trading.

Mr. COLLIER. Yes.

Mr. WERNER. Is it contemplated as the policy of the present administration to improve the character of trading?

Mr. COLLIER. If this bill does not pass we shall nevertheless go forward and revamp our rules and regulations governing licensed traders. We will give particular consideration to the question whether in some places we have not so large a number of traders that no one of them can live. We have that to consider and also the other obligation of the Secretary, that as long as we have the

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Indians dependent upon competition among traders it is up to us to see that these is real competition.

Mr. WERNER. Under the system of traders' licenses and the licensing practice as it is in vogue in my State, due to the fact that the Indians vote and are fully qualified as citizens in our State in all respects save the respect of handling their own affairs, it can readily be observed that the licensed trader at a very small cost can influence the Indian in his activities and does do it, and that is the reason why the present system is bad. In view of the fact that the present system protects and has protected the trader—because they are still there, the bad traders as well as the good traders—the good trader is sinned against because he will not stoop to things that the bad trader will in his aims and efforts.

Mr. COLLIER. That may be under lax administration.

Mr. WERNER. I have one more thought and that is this, that purchase orders are issued, are they not, against the funds belonging to the Indians?

Mr. COLLIER. Yes.

Mr. WERNER. These purchase orders state that certain commodities or articles shall be purchased. Is there any way of knowing that those articles are purchased?

Mr. COLLIER. Yes. There is a way of knowing that the articles are purchased. There is no way of insuring that the Indian may not pay more than he ought to pay for them.

Mr. WERNER. Suppose an investigation would show that purchase orders were issued against the credit of the Indians and those purchase orders were for such articles as sewing machines, and that it was disclosed that there were no sewing machines in the Indian's home, that the Indian was given groceries, cash and items not listed on the purchase order would you say that system was a bad system?

Mr. COLLIER. That would show maladministration or possibly corruption. That would be one thing if you could find the facts.

Mr. WERNER. I think those facts could be readily found if some way was devised of getting an unbiased investigation.

Mr. COLLIER. Anybody is capable of finding those facts and innumerable other facts as the Indian community is properly organized. It ought to be in the main its own investigator and it should be given the power to act upon what it finds out.

Mr. WERNER. Those facts can be developed in the field by any unbiased investigator.

Mr. COLLIER. They could and largely they would be developed by the Indians themselves if they were properly organized and if they had the money to do their own investigating.

Mr. WERNER. Many of these full blood Indians are unable to read and cannot therefore determine what articles the purchase orders authorize be purchased.

Mr. COLLIER. I find that even an illiterate Indian knows a lot generally.

Mr. WERNER. He does things in his own way.

Mr. COLLIER. If he is being swindled he probably knows it. He may not be able to produce evidence that would stand up in court, but then he can hire someone to produce that evidence for him.

Mr. WERNER. The commissioner understands that it is very difficult for anyone to enter complaint and have that evidence

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treated lightly, or through manipulation have it so distorted as to render it useless. Then he usually finds himself at the mercy of a merciless number of officials who have control over the administration of his affairs and penalizes him for his criticism of the Indian official. I hope legislation can be passed which will place responsibility firmly upon the shoulders of the individuals charged with the duty of administering Indian Affairs and which will alleviate that condition and give the Indian the justice that he has been demanding for so long and has not enjoyed.

(Mr. Collier submitted the following:)

MEMORANDUM

Illustrative of the broad discretionary powers conferred by Congress on administrative officers of the Government may be mentioned:

1. The power conferred on the President by section 5 of the act of February 8, 1887 (24 Stat. 388) and the act of June 21, 1906 (34 Stat. 326), "in his discretion" to extend the period of trust or restrictions against alienation on lands allotted to any Indian, except members of the Five Civilized Tribes and the Osages in Oklahoma.

2. The power, and exclusive jurisdiction, conferred on the Secretary of the Interior by section 1 of the act of June 25, 1910 (36 Stat. 855) to determine the heirs of deceased Indians (except the Five Civilized Tribes and the Osages, where such power had previously been conferred on the local courts), including the power vested in the Secretary of the Interior by the terms of that act, in his discretion, to remove the restrictions against alienation of lands allotted to the Indians.

3. The power and discretion vested in the Secretary of the Interior to lease lands allotted to the Indians for oil, gas, and other mineral purposes, virtually under such rules and regulations as he may prescribe and not otherwise. See:

(*a*) Section 2, act of May 29, 1908 (35 Stat. 312) as to the Five Civilized Tribes in Oklahoma.

(*b*) Section 3, act of January 28, 1906 (34 Stat. 539–543). (As to the Osages in Oklahoma, see also *United States* v. *Lamotte*, 254 U.S. 575–76–77.)

(*c*) Section 26, act of March 3, 1921 (41 Stat. 1225–1248), as to the Quapaws in Oklahoma; also see *Whitebird* v. *Eagle Pitcher Lead Co.* (28 Fed. 2d. 200; affirmed 40 Fed. 2d. 479).

4. The power conferred upon the Secretary of the Interior by the act of August 1, 1914 (38 Stat. 583) to fix the operation and maintenance charges on Indian irrigation projects and the infinitely broader authority conferred on that officer by the act of July 1, 1932 (47 Stat. 564) to adjust or eliminate reimbursable charges of the United States against any individual Indian or tribe of Indians.

Control the attorneys and litigation.

Entire initiative with respect to expenditure of Indian trust funds.

Control over all contracts made by ward Indians.

Authority to arrest, fine, and imprison Indians.

Other illustrations could be cited, if needed. Aside from these specific instances of expressed statutory authority conferred on administrative officers of the Government, attention may also well be invited to section 2, title 25, of the U.S. Code, which reads:

Duties of Commissioner.—The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

Also section 261, U.S. Code, title 25, which provides:

Power to appoint traders with Indians.—The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules and regulations as he may deem just and proper specifying the kind and quantity of goods and the prices at which such goods shall be sold to the Indians. (Italics added.)

The CHAIRMAN. Proceed.

Mr. COLLIER. May I point out, Mr. Chairman, following up this matter of traders, that one of the principal reasons why the Indians are at the mercy of the traders is the fact that they have no credit

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and no access to credit. It means that the trader has to carry the Indian, often carries him in very large amounts. This cannot help but result in a sort of peonage of the Indian. It will result in that even if the trader does not want it to. The credit section we are drafting with the help of the various credit agencies of the Government will be ready in a day or two and will be an integral part of the bill. It will be a part of title I.

The CHAIRMAN. If that is not yet presented let us pass it over.

Mr. COLLIER. Before departing from this matter of extreme discretion of necessity I yesterday dwelt upon the fact that the Department has absolute discretionary powers over all organized expressions of the Indians. Their tribal councils exist by its sufferance and have no authority except as that authority is granted by the Department. I will touch upon one more aspect of that question. I mentioned that the Department has the discretion to remove restrictions from Indian property. In 1917 there was revealed what can happen under that discretion when the Department adopted the policy of thrusting fee patents on Indians all over the country. In thousands of cases the result was equivalent to confiscation of property. We never have corrected the results of that action, which was entirely within the discretion of the Secretary, unreviewable by the courts.

The Indians were helpless. I dwell upon this point because I want to drive home that this bill has for one of its main objects the curbing of this discretion, that it seeks wherever discretion is left with the Secretary of the Interior to provide an effective review of his discretion. Discritionary power must be left in an administrative office, but it ought not to be an unreviewable discretion.

This statement may lead us to a brief mention of title 4, which is the title dealing with the Court of Indian Affairs. I may say that title 4, which sets up a new Federal court, probably cannot be entirely disposed of by the Indian Committees. It concerns the Judiciary Committee as well as the Indian Committee, and it concerns the Department of Justice as well as the Indian Office. It is, I may informally state, acceptable to the Department of Justice but has not been laid before the Judiciary Committees. We are hoping that some way can be devised so that it can be laid before the Judiciary Committees, whether separately or in a joint session with this committee.

The CHAIRMAN. I will state my purpose to try to arrange a joint session of the Judiciary Committee with our committee relative to this problem, if it may be done. I do not know that it can be, but I will consult the chairman of that committee and if it can be done it will be done.

Mr. COLLIER. Take this Court of Indian Affairs. First, let us dwell for a moment on the communities which are dealt with in title 1, organized Indian communities which may set up their own community courts and law-enforcement systems and promulgate their own code of ordinances. The functions of the present very peculiar courts of Indian offenses are transferred to the community courts which are required to observe various precautions that amount to due process of law.

That is all in title 1. Those are the community courts. But to this new court proposed in title 4, the Court of Indian Affairs, judges

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are appointed by the President subject to confirmation in the usual way. This court is given jurisdiction in major matters, civil and criminal. To that court is transferred the original and in most cases the exclusive jurisdiction over all Indian matters which normally come before the Federal district court. But the jurisdiction reaches further than that of the Federal district court over Indian matters at present. In this Court of Indian Affairs there is vested the probate work, the probate power now exercised by the Indian Office. The new court becomes the agency for determining heirs. It is a court of record, and there are appeals exactly as in other courts. That is in section 7, page 40.

Mr. WERNER. Would six judges be sufficient to handle the work that you propose to put upon them?

Mr. COLLIER. It is proposed that they be not required to sit as a body. They may subdivide the work. I expect that this would be ample with the necessary help that they would have to have in the minutiae of probate work.

Mr. WERNER. How extensive is the probate power now?

Mr. COLLIER. I can answer that best by saying the expenditures are around $70,000 a year for probating estates.

Mr. WERNER. It is very complicated.

Mr. COLLIER. Very complicated. Of course, it will become less complicated as the allotment system becomes revised, but that would not be now but hereafter. It is complicated and we are behind in our work.

Another feature of our work is that the heirship case is never closed. At any time we may reopen it and reverse ourselves. Here a case would be res adjudicata as in a court of chancery on probate matters.

Mr. WERNER. What was the object in following a different procedure in the appointment of judges than in the appointment of regular judges for life? Here it is proposed to appoint judges for a term. Do you not believe that a life tenure for judges would be better than a fixed tenure?

Mr. COLLIER. I have no opinion on that except the layman's opinion that the life tenure has been very bad for Federal judges. It has been bad for them in my judgment. That is my personal view. I do not know what people who are wise on these matters would say. This is not an elective office.

Mr. WERNER. I understand.

Mr. COLLIER. The terms are long.

Mr. GILCHRIST. You mean to say it was bad for the judges?

Mr. COLLIER. I am speaking purely as an individual. It is my impression that a good many of the judges in the Federal district courts become very arbitrary indeed. In any event I would say this, that at the start, even if it were placed on life terms, I suggest that it would be unwise to start off in that manner until the thing is tried out, until the type of man who can do this peculiar work becomes better known.

Mr. WERNER. Of course, a judge is only an interpreter of the law. He is not presumed to be an administrative official. He is presumed to interpret and give application to the law as it is written. He is not presumed to make laws. If he is a qualified lawyer and interprets the law as it is written he qualifies as a good jurist. That is what he is presumed to do. Judges who attempt to write the law

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and give it a different interpretation than written are the ones who make the trouble.

Mr. COLLIER. I think the expounding of this section could be left to the solicitor's men who drew it. I would give one general reason why a Court of Indian Affairs is desirable. The Federal courts frequently are situated at points remote from Indian reservations. The Federal district attorneys quite generally are reluctant to handle Indian cases. It is quite usual for the courts themselves to be impatient with the Indian cases and the district courts are overburdened anyway. But the Indian law is a complex and a decidedly peculiar body of law, particularly when you take Indian law reaching down into the field of property and human relations. The reasons for creating an Indian court are partly reasons of geographical convenience and partly growing out of the inevitable lack of interest of the average district attorneys and average district judges in Indian litigation. They are generally not interested in them and are prone to be impatient of them unless large principles are at stake which does not happen frequently.

The CHAIRMAN. Will you let me suggest, Mr. Commissioner, in view of the fact that you have stated and that I am trying to bring about something of the kind, that this particular division of the law ought to be discussed jointly between the Judiciary Committee and our committee. Perhaps we had better pass this over until that can be done. There is no use going over it twice.

Mr. COLLIER. I am sure you are right and moreover it can be better expounded by the lawyers, but I will point out before leaving it that this court is simply a court of review over administrative action of the Secretary of the Interior, which is now unreviewable.

Now section 2, which has not been mentioned yet, deals with education for the Indians.

Mr. STUBBS. Before you leave section 1, Mr. Commissioner, you stated yesterday that in this question of self or tribal government, as soon as they understood it you thought it would be satisfactory?

Mr. COLLIER. Yes.

Mr. STUBBS. Is it your purpose and plan to attempt to educate them along that line and to help them to understand it?

Mr. COLLIER. Yes. There are two reasons why I think they will find it satisfactory. In the first place they will realize that they can have the kind of self-government they want; in the second place they will see that the self-government part of the bill is entirely optional with them. They need not have any of it if they do not want to. If they want to stay as they are, they can.

Mr. STUBBS. What I am getting at, Mr. Commissioner, is that you will take this instruction and information to them. You are interested in the Indians. You will assume the task to see to it that they do understand it thoroughly.

Mr. COLLIER. And that is why I am going out on this very arduous trip right now to meet with delegations all over the country. It is very difficult to go at this time, but it is our definite intention that technical and complicated as this bill is, it shall be submitted to a referendum of the Indians.

The CHAIRMAN. Right there, Mr. Commissioner and gentlemen of the committee, I would like to see any member of this committee who feels that he could afford to make such a trip go, and that he could

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render very valuable service to our committee and to our country with reference to this legislation, and if he could find his way clear to go with the Commissioner to some of these regional meetings of the Indians, it would be very desirable. There ought to be some plan provided to enable the Commissioner to carry along with him some Members of the House and Senate, but there is no provision of law under the terms of which that can be done, and if any of us shall go we will have to go at our own expense. If any of us shall feel that he could do that, I am quite sure the Commissioner will be glad to have us go with him.

Mr. COLLIER. It would be extremely helpful.

Mr. WERNER. The House is in session now. I think the Indian Committee, dealing with Indian problems, should go into the field and see and learn from personal observation and personal investigation the conditions under which the Indian exists in his own home. It is a niggardly policy on the part of the Congress not to provide the money for such investigations as we are discussing now, but this policy was primarily brought about by the newspapers which directed publicity to such trips as joy-riding trips and junkets, when they well should be termed trips for the purpose of securing informative information on which to base intelligent action. If we saw some of the conditions that exist among the Indian people we, as individual citizens and as Members of Congress, would not tolerate them to continue if it were possible to correct them by individual act. The Congress of the United States ought to provide a sufficient amount of money to have a subcommittee of this committee go with the Commissioner and his assistants to find out what the attitude of the Indian is. Then we could determine what action should be taken with reference to this and other legislation. We have 220 bands of Indians and each one of them, almost every one of them, presents a different problem.

The CHAIRMAN. I will say to the gentleman that the Commissioner has been desirous of having some members of this committee along with him, but he finds no authority of law anywhere to provide for the expense of such participation, and the only way that could be done would be special action in the House or the Senate, and that is pretty slow, pretty uncertain, and the pilgrimage must be made within a few days now, so I am very much afraid there is no show for us unless some of us shall volunteer to go at our own expense.

Mr. COLLIER. Or unless the Department of Commerce will supply the committee with airplanes. They have a number of them.

Mr. CHAVEZ. I do not believe any member of the committee will be able to go with the Commissioner. I just wanted to inquire of the Commissioner if it is his intention, when he contacts tribes or any set of Indians, to have hearings that will be reduced to writing and be available to the committee?

Mr. COLLIER. A record will be made of all, and a full record.

Mr. ROGERS. In line with that you will get the reaction of the Indians on your measure. What would be the attitude of the Department if you find that the Indians in general are opposed, which you do not anticipate, of course.

Mr. COLLIER. It might happen.

Mr. ROGERS. Suppose you find that that was so, what would be the attitude?

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Mr. COLLIER. If we should get strong enough opposition then it is up to us to wait until we can persuade the Indian.

Mr. ROGERS. You would have to amend the measure.

Mr. COLLIER. Or waive it until they could be brought around or until they could produce something better.

Mr. PEAVEY. On this referendum trip that you are to take to get the counsel and the opinion and advice of the Indians, does the Department of the Interior contemplate in any way at the same time some other action to get an expression from the white people who originated the allotment system, to get their views as to what their attitude will be?

Mr. ROGERS. What business is it of theirs if it is good for the Indians?

Mr. COLLIER. I think we could leave the lessees and the bankers and other interests among the white people to speak for themselves.

Mr. PEAVEY. What I had in mind was that maybe the Department and the Commissioner would be willing to take a little of the fire off this committee by getting the ammunition direct rather than letting it come to Congress.

Mr. COLLIER. If I may for the moment speak to this title of special education for the Indians, page 22, I may say that it is a brief section which both directs the Department to provide a certain kind of training and furnishes the authorization to serve as a foundation for budget estimates for such training for the Indian. The training contemplated by the title primarily is a training to enable Indians to hold positions in their own services, forestry, teaching, nursing, administration, and so on.

The Commissioner is also directed to introduce into the schools where Indians are taught generally practical subjects that will educate the Indians to understand their affairs. These courses will deal with the peculiarities of the Indians' status as wards, with their economic, legal, and other problems, with their history and the things that will make them proud to be Indians. One might say that probably all of this authority is already vested in the Commissioner of Indian Affairs. Maybe it is, although that is not certain because our appropriations for education are all derived from antecedent authorities and precedents which are very much narrower than the grant of authority given by title 2.

Among other things, title 2 contemplates that individual Indians who show talent and industry shall be financed by the Government in their professional education through scholarships. That is on page 23, paragraph (a). Half of the amount advanced to the Indians shall be repayable to the Government and half shall be a gratuity, but the repayments may be suspended during times of necessary unemployment. An example of what can be done by that is given us by the Filipino experience in forestry. When the United States took over the Philippines, it took over an immense national forest and proceeded to operate it through Americans numbering some 500. The Department of War under Mr. Taft proceeded methodically with the education of the Filipinos in technical forestry. Filipino youths with exceptional talent and ambition were given preliminary practical training right on the ground under white foresters; then they sent them out into the forestry schools of this country and of Europe. The result in about 15 years was to make Americans un-

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necessary in the Philippine forest service. It is now one of the model forest services of the world. I believe the number of its employees is now 562; there are only 2 Americans and the rest are all Filipinos. It shows what can be done by a determined effort to interest the nation population in technical jobs if coupled with an arrangement that gives educational opportunity to talented young people.

We have had no reason for believing that a great deal cannot be done here along similar lines. We know that from our experience with the emergency reforestation camps run for the Indians. I think you will be interested to know how it has worked out. We have endeavored to find the Indians who could do the supervisory work to hold the top jobs. We only got started in July and today I am able to say that more than 50 percent of the top jobs, the supervisory jobs in the Indian emergency service, are held by Indians. That happened after only 7 months; every month the percentage of Indians has risen as the percentage of whites fell. What do we mean by top jobs? These camps are doing a great variety of technical work, everything in the domain of forestry, the prevention of forest fires, replanting, the control of plant diseases, the eradication of infested timber, soil conservation, and every type of erosion-control work. A month ago the Carnegie Institute presented a remarkable series of pictures here from Washington showing the destruction of soil in Arizona which is going on at a calamitous rate. That series wound up with some photographs of model operations for the control of soil erosion and some very remarkable check dams of various types showing high technical inventiveness. Nothing was said as to where these were. I did not know, so I asked the Carnegie demonstrator who said they were from the Mexican Springs erosion-control area. Out there on this part of the Navajo country 400 Indians are doing all of the work on soil-erosion control. It is a demonstration area. There are 2 white men and 400 Indians; some of the planning and all of the construction of these complicated works have been carried out by the Navajo Indians.

Mr. WERNER. Four hundred Indians assembled from all parts of the country?

Mr. COLLIER. No; they are Navajo Indians.

Some 3 months ago, in order to try out the next stage, we took a limited number of these camps and made them over into what we called leader training camps. We selected individuals who had distinguished themselves all over the country and brought them together in several training camps which are really schools in leadership. We drew largely on the Department of Agriculture, to some extent on our technical bureaus and from State schools of agriculture for our teaching personnel. This was loaned, contributed. The men work part of the day, and part of the day they study the problems arising out of their work, covering practically the whole range of forestry, range management, soil-erosion control, and animal husbandry. The Indians rushed into these camps and filled them to the limit. It is too soon to say what the full results will be, but these four camps now are remarkably brilliant schools. They compare well with many technical schools. The Indians in those leader-training camps are absorbing much technical knowledge. Many of those young men should be able to go into the forestry schools, into agricultural colleges. We have not now any means of enabling them to go on.

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There must be some provision whereby the Government can assist them to go on because practically none of them have any capital, and this title provides for that sort of aid. You can see how that ties into the whole scheme of self-government and facilitates turning over the Indian Service to the Indians. There must be an educational achievement in any plan of that kind. This clause ties into title 3, dealing with land, building up lands used by the Indians. Successful stock farming and the efficient use of farm lands and forests depend upon giving the Indians at least as good an educational chance as our white boys and girls get.

Mr. WERNER. Are the sums of money stated in this bill sufficient to carry on?

Mr. COLLIER. They are not sufficient in the long run, but they would be sufficient for the first year when the thing is getting under way. We have desired to keep down these appropriations to the very modest figure in this bill, not deceptively modest, but no more than we would really want in the first year, in the light of the economy situation. The land title appropriates $2,000,000 a year to be used in part for buying land within the areas to be consolidated. That is a fairly generous appropriation. You will find that there is a $500,000 authorization to help get the chartered Indian communities to organize and to assist them to finance their administration initially.

(Discussion off the record.)

The CHAIRMAN. I sincerely trust that hereafter when you shall have such a valuable statement to make as to the Indians and white folks in our country in respect to the ability of the Indian to make progress if we give him a chance, you will not ask that your explanation remain off the record. I really believe the statement you recently made off the record ought to be carried to the eye of every American student of Indian affairs.

Mr. COLLIER. The off-the-record part made comparisons that might be deemed invidious to the white C.C.C. camps.

The CHAIRMAN. It was not very invidious; it was happy in my eye.

Mr. COLLIER. We are part of the same organization.

Mr. ROGERS. We are all brothers in fraternity.

Mr. CHAVEZ. I think Congress ought to pass legislation to educate the whites.

Mr. PEAVEY. The bill provides for selection of Indian young men to receive higher education, that they shall be selected by the Secretary of the Interior.

Mr. COLLIER. Or his agents.

Mr. PEAVEY. I suggest that the Department give consideration in that connection to the selection of these men, say, for example, under a system similar to that which the Members of Congress use for applicants to West Point and Annapolis. I haev two thoughts in mind in bringing that to your attention, and one is not only to give the Indian a fair opportunity and that the selection should be made on the basis of a competitive examination or otherwise, but I have this in mind, that this automatically will enlist the interest and the knowledge and support of Members of Congress of those districts in which the Indians are located.

Mr. COLLIER. That is a most important idea.

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Mr. WERNER. It would give the Members of Congress in districts largely populated by Indians more trouble than they now have, would it not?

Mr. ROGERS. I think it would have a tendency to make politicians out of the Indians. The scheme would be to attempt to select the biggest politician, and I do not think it would be a good thing. They would be as bad as the whites soon.

Mr. PEAVEY. I do not think the men appointed to West Point or Annapolis are at all political or inclined to be political minded. I have never encountered it. They come from various sections and are not interested in politics. I think it would provide a choice and get the best applicants and enlist interest and enthusiasm on the part of Members of Congress from those districts.

Mr. COLLIER. I think there are a lot of people who would be interested and there is much value in that idea. You would find Members of Congress would be very attentive to the human side of it.

Mr. ROGERS. I do not think it is a good idea.

Mr. WERNER. Of course the Indians reside in a small number of congressional districts. Would every Member of Congress be given the power of appointing them?

Mr. PEAVEY. Where they have Indian reservations, Indian population in their districts, where such selections are made.

Mr. WERNER. And the number would be in accordance with the Indian population in the district.

Mr. PEAVEY. No, it would be more in line with the amount of money appropriated by Congress with which to educate them. The amount of money in this bill, $50,000 to cover the cost of appointment and training at West Point and Annapolis, would only provide for 10.

Mr. ROGERS. I think it would become political.

Mr. COLLIER. Concluding my general statement, I will touch on the general question raised from time to time concerning the increased expenditure of Federal money implied in this bill. In the long run the policy established by this bill will reduce Federal expenditures, although not immediately. Let us leave out the new extraordinary expenditures the bill would authorize and look at what it would save. Let us look at the allotment system and the futile waste, the fruitless annual endless expenditures it causes. Every one of these allotments under trust is dealt with as a separate parcel of real estate to be sold or rented; the Indian Bureau is the rental and the collecting agent. Every allotment, every fraction of an allotment passing through probate proceedings must be handled separately. In some parcels of land there will be 2 or 10 or 100 individuals having an equity. The handling of all that is again a part of the job of these real estate agents of the Indian Bureau.

Imagine the cost of running a real-estate office doing the renting, sale, and collecting on several hundred thousand scattered parcels of land every year. Our present system of accounting is not such as to enable us to give you an exact statement of how much it is costing. We would be able to give you that exact statement under the new Budget that is being considered now in Congress, a budget which would authorize and require us to show our expenditures by reservations and by the type of work at each reservation. Then we could tell you exactly. We know that the cost is in the neighborhood of $2,000,000 a year for these unproductive real-estate operations which,

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as I explained yesterday, are not saving the land. They are not keeping it from being lost to the Indians. Not immediately, but ultimately, that money would all be saved.

How can I convince you of that? I think I can best convince you in the absence of the exact allocation of the Budget by comparing the cost of administration in the present tribal area with the cost in the present allotted area. You will find that it runs a great deal higher in the allotted areas. The difference is exclusively in this real-estate operation and all these embalming operations that we carry out, in which the Indian is embalmed, but we do not succeed in embalming the land because it moves away from the Indian.

I will summarize that we anticipate a saving of $1,000,000 or in excess of that, ultimately in the neighborhood of $2,000,000 a year in administration cost, by reducing these futile, expensive real-estate transactions to a minimum as this bill becomes operative.

We are continuing to do things for and to the Indians which normally the Indians would be doing for and to themselves. The whole tradition of the Indian Service has been to decide that something ought to be done for the Indian and then go and do it through a paid employee. That is why our personnel has rolled up and rolled up until it is now about 6,000 regular employees. It is not as many as it was a year ago. We have about 560 employees fewer than we had a year ago but we have still about 6,000. For how many Indians? The number of Indians that the Bureau deals with would not exceed 225,000 at this time. That is a lot of whole-time employees to take care of the affairs of 225,000 people.

We believe that under the operation of the self-government features of this bill with an energetic administrator, many of the things that the Government is now doing through paid employees would pass over into the individual communities to be done the way they are done in all the white rural communities, by cooperative voluntary effort.

Furthermore, and at first what I am going to say may cause an adverse reaction: I believe that when the local functions of the Indian Bureau, the paid jobs of the Indian Bureau, are taken over by the Indian communities, the Indian communities in a great many cases will be able to find very able and willing workers who will be glad to work for less money than we are paying our white workers. This is not saying that they will be doing less valuable work. They will be doing very much more productive work than we are doing, and we believe that the Indian communities in control of the reservation will show that they can execute the business more economically to the Government than the Indian Bureau is doing. You will get increased volume of service with that decrease in cost. Of course that is speculative. I will not anticipate.

The CHAIRMAN. With a decreased cost?

Mr. COLLIER. With a decrease in the cost. In any event I believe that we would save probably as much year by year as is required by the operations of this proposed act. That drifts across to the main question of whether the land acquisition scheme is going to be vastly expensive. We cannot answer that absolutely now. Our information is too imperfect. But I will call your attention to this, that the mechanisms for consolidating the land at present laid down in the bill are exchange and purchase. The purchase is intended to take place within the areas awaiting designation for consolidation and

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would be a purchase of the interspersed white lands or such part of them as are needed to get the land into an effective consolidated condition. Exchange can accomplish a great deal because the whites in those checkerboarded areas are as much deviled as the Indians, and our experience in Arizona and New Mexico has proved that.

In the main the consolidation of lands in the Navajo reservation is being made not through purchase, but through exchange. Millions of acres are being exchanged to the mutual benefit of the whites and Indians by voluntary surrender, swapping under the Arizona law. Then I would add that the Government in any event now is committed to the purchase of large areas of what are called submarginal land. They are to be acquired not for the Indians, but for different and sufficient reasons. There is nothing to prevent the Government from rendering that land accessible to Indians, giving them permanent tenure on part of that land, any kind of arrangement that may be satisfactory to the Government. On that vast area of land to be taken over by the Government we expect to be able to trade rather generously in many cases. Again the land need of the Indians is not a universal land need. Take Arizona. Arizona is one of the big Indian States. There are exceptions, but generally speaking, the land holdings of the Arizona Indians today are probably enough. The problem in Arizona is not adding land to the existing holdings, but using the land more efficiently and using it in a way to stop the destruction of the soil, of cutting the timber in such a way as to have a perpetual yield.

I do not say that some land acquisition is not necessary in Arizona, but it is negligible, and it is not in any way involved in this bill because it is incidental to rounding out the Navajo boundaries. That is covered by other bills, the Navajo boundary bills, which are independent of this measure.

Mr. Chavez. Right there, how could you, under this bill, section 7, add additional land either in Arizona or in other States?

Mr. Collier. Without further authority from Congress?

Mr. Chavez. No. Section 7, pages 28 and 29, at the bottom of page 28.

Mr. Collier. Section 7 is an authorization to the Secretary of the Interior to buy land with appropriated money. If that money is appropriated with no strings tied to it by Congress, then he could buy it anywhere. We do not know what strings would be tied on in the present process. He could buy land under that language anywhere unless the appropriation directed that he spend the money in definite localities. Of course he would first buy land in areas where the whites are settled, the Dakotas, Minnesota, Wisconsin, and Oklahoma. There are two pueblos in New Mexico which must have more land, Zia and Tesuque. Tesuque is in a pathetic condition. They have to get this land or they will not endure, but it will be a negligible amount because they are tiny indeed. We cannot guarantee that the need will not be greater, but we point out that the obtaining of money must be a year-by-year battle before Congress. Congress in passing this act does not commit the Government to a vast expenditure. Should a vast expenditure prove to be necessary, the Department and the Indians will have to come to Congress and

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get the money. No commitment is contained in this bill beyond the indefinite authorization of $2,000,000 a year for land purchases.

Mr. ROGERS. In line with what you said that it would be possible to save in these allotted areas a million dollars or more each year, I am interested in having for the record at this point your reaction to this. The bill provides what may be done, but are you satisfied that under an administration possibly that was not very sympathetic with this law, that it would be mandatory on the Department to carry out the provisions of the law, or would the law be more or less discretionary?

Mr. COLLIER. It is hard to make even the land section mandatory except in that it is a clear declaration of the purpose by Congress and a direction to the executive.

Mr. ROGERS. But would it be possible for the Indian Department or the Interior Department to defeat the very purpose of the law by inaction?

Mr. COLLIER. Surely. It would be an abuse of discretion.

Mr. SIEGEL. I will answer briefly Mr. Rogers' suggestion. I think the purchase of land and the determinations of areas which are to be consolidated is a question of discretion which the Secretary may very well abuse, but under section 11, title 3, it is contemplated that all the land must ultimately and necessarily pass to the tribe or community in which the land is allotted or to the community in the territorial limits of which the land is located, provided that the orders for consolidation have been previously determined, and we expect that the order for consolidation pursuant to section 6, title 3, can be determined within 1 year. We are reasonably confident that the present administration is not hostile to the purposes of the bill.

Mr. ROGERS. I am not referring to the present administration, but to future administrations.

Mr. SIEGEL. So that ultimately the purpose of consolidating this land into Indian ownership is bound to be accomplished, and as I understand it, the lands for grazing purposes are now in large measure sufficient to be used for economic purposes in cooperation with the whites and the Indians. At any rate if the process of community ownership were started under section 11, it would be practically compulsory in order to make the program effective, compulsory for the Secretary to go ahead, so I think the answer to the Congressman's question is that the bill is in large measure compulsory so far as the land feature is concerned.

Mr. ROGERS. And the other thing, too, of granting to the Indian the power to govern himself when they find that they are able to do so.

Mr. COLLIER. Is that discretionary?

Mr. ROGERS. Is that discretionary or mandatory?

Mr. SIEGEL. It is discretionary, but in this way: The Secretary when confronted with a petition from a tribe has either to grant a charter or show reasons why not and under what conditions he will do it. The appeal then lies to Congress. We might try to mandamus him for it, but I think it is mandatory as it is.

Mr. ROGERS. I think there might be objection to the bill on that score, if the Department of Indian Affairs was not in sympathy with the measure.

Mr. COLLIER. It could slow it down.

Mr. ROGERS. And make it ineffective.

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Mr. COLLIER. Nobody can escape the fact that administration can defeat any law, I do not care what it is.

Mr. WERNER. This is a Department rather than an administration bill, is it not?

Mr. COLLIER. Yes; speaking formally it is an administration bill.

Mr. WERNER. As it is before us, it is an administration bill?

Mr. COLLIER. As far as the committee has been informed.

Mr. POOLE. I will make a statement in that connection. The Secretary informed me a short time before I came down here that this had been called to the attention of the President and in the next 24 hours you would receive a letter showing that it had his endorsement.

Mr. COLLIER. I have that endorsement in my pocket, but I was not free to use it.

Mr. WERNER. That statement was made the other day.

Mrs. GREENWAY. I hope you will bear with me in that my service on your committee has only just begun and my ignorance will be evident by the question which I will ask. Underlying all of this policy of acquisition and endeavor to present service to the Indian and increased expenditures in behalf of the Indian, is there an aggressive policy or any policy whatever to the end that the Indian may be encouraged to accept his share of the biggest responsibility that we have, that of citizenship?

Mr. COLLIER. Decidedly yes, I would say.

Mrs. GREENWAY. To what extent will this educational program on behalf of the Indians be accompanied with any responsibility on the part of the Indian to become a citizen and to use the education that he is to receive as an earning capacity?

Mr. ROGERS. I was impressed a while ago with the statement you were making that you are taking for granted that we are going to educate these Indians for citizenship, and then with the land policy we are taking it for granted that they will always remain on the land and be farmers.

Mr. COLLIER. Not all of them.

Mr. ROGERS. In line with what Mrs. Greenway has said, some of them may want to do something else, as other citizens do.

Mr. COLLIER. We are not taking it for granted at all that they will all remain on the land. We are saying those who want to remain on the land should be enabled to remain and should be helped to produce on the land, but in no event do we assume that they will all remain on the land or within the Indian community. Let me see if I can answer Mrs. Greenway in a more direct way. Under this plan we would have Indian groups. After all they are in groups now. We would have them organized practically into local subdivisions of government, with executive assistance, but they would be the usual geographical areas. They would gradually learn to administer their own affairs and conduct their own courts. Law-and-order enforcement would be regulated and controlled by the community. We are providing that they can take over different Indian Bureau jobs and perform them themselves. We are likewise providing this rather interesting authority: The local Indian community organized under this bill may enter into cooperative contractual relations with other local subdivisions of government, with the State College of Agriculture, or the State board of health, or anything else that can help the

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Indian community, thus making continuous progress in the exercise of citizenship.

The Indian citizenship now falls short in three ways, I would say. First, in the allotted areas, not in Arizona, except with the Pimas, but in the allotted areas the control over the Indian property is completely in somebody else. He has not the right of contract. That in itself largely inhibits the normal function of citizenship. In the second place, he has no control over any of the public services being performed in that area. They are all conducted from Washington. Hence he falls terribly short of achieving citizenship.

Those are the two main shortcomings, added to the fact that he is so much at the mercy of the bureaucracy that even the exercise of his franchise is not free. He is a peon and he has to take orders. He is not in position to exercise free judgment even in the States where he votes. He does not vote in Arizona and New Mexico. I think he should, but he does not.

Mr. WERNER. If you are going to give the Indian citizenship, will that permit him to assume the full rights of citizenship?

Mr. COLLIER. Eminently yes. There is only one element in the Indian situation that would continue to be peculiar. That is, for the time being, at least as far as any of this legislation contemplates, he would be free from local taxation. He pays indirect taxes like the rest of us.

Mrs. GREENWAY. What does that mean?

Mr. COLLIER. On real-estate taxes the Indian lands are tax exempt. That is the only peculiarity. Indian lands are not taxable.

Mr. WERNER. Personal property may be taxed, and is taxable in many States now, is it not?

Mr. COLLIER. The Indian pays all the indirect taxes reflected in the cost of living.

Mr. WERNER. His property is not taxable.

Mr. COLLIER. No.

Mr. WERNER. He enjoys all the rights of citizenship, but does not participate in any of the direct burdens under the proposed legislation?

Mr. COLLIER. I think under this plan they participate in all of the burdens except taxation.

Mr. CARTWRIGHT. Is it not largely a matter of restricted and nonrestricted Indians?

Mr. COLLIER. Yes.

Mr. WERNER. As I understand this, you are attempting to do two things. Through your educational policy you are attempting to assimilate the Indians into the races that now predominate in this country, having Indians assume the full burden and responsibility of citizenship. That is what you are trying to do with your policy of education. On the other hand, with your land policy, it seems to me that you are trying to segregate the Indian and isolate him and make it impossible for him ever to become an assimilated part of the citizenship of our country.

Mr. COLLIER. It would not work out that way, any more than with these new subsistence-home colonies which are going to be created. We can take those very interesting rural communities maintained by the Mormons in different parts of the West as an example. They are very much a part of the citizenship, but they have a lot of advantages

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through cooperative living. I do not say that colony-life segregates them socially or economically.

Mr. WERNER. The Mormon is a citizen.

Mr. COLLIER. The Indian is a citizen.

Mr. WERNER. Certainly he is, but he has no control over his affairs.

Mr. COLLIER. He will get some control under this bill.

Mr. WERNER. This will still hold him within the power of a bureaucracy.

Mr. COLLIER. The guardianship of the Indian is definitely ended by this plan.

Mr. WERNER. A man cannot maintain the right of citizenship and still be subject to guardianship. He remains a ward nevertheless.

Mr. COLLIER. The guardianship will not be what it is now, something that takes away from him his initiative, his self-respect, his power, his liberty and self-support, but this will be something in which he will be urged to accept liberty and acquire the habit of self-support.

Mrs. GREENWAY. I think we face a fundamental problem here. As I understand it, the purpose of this bill is to liberalize the guardianship in such a way that it will develop the Indians into a reasonable and happy picture, but its outline does not really stop there. We are going into a new practice in advance, in forwarding the purposes of civilization and educating the Indian to take his part along with the rest of the world and we seem to get to a certain point. What I am asking is, when he has been educated and has the experience of liberty and self-government as outlined in this, is the thought going to be that we are encouraging him to step over and become a citizen and assume the responsibility as well as the luxury of education? Are we trying to build a picture by which the guardianship ultimately will be eliminated or are we simply building a perfection as far as we can, to undo the wrongs we have done in the past, but let them still continue the guardianship?

Mr. COLLIER. I will answer that very carefully because I am speaking for the record and it might be misunderstood from the record. I suspect what I am going to say will be misunderstood no matter how careful I am.

Mr. GREENWAY. Maybe I should not have asked the question in meeting.

Mr. COLLIER. I would first say this: It is fundamental that if the ultimate policy was going to be that of liquidating the guardianship, if we were going to have that policy, then that would be the way to move in that direction. This would be the way to abandon Federal guardianship without destroying the Indians.

Mrs. GREENWAY. You have almost answered the question.

Mr. COLLIER. The guardianship in this is simply not guardianship at all.

Mrs. GREENWAY. But is there the established policy among those who are working with and for the Indians all the time to build into an absorption into citizenship in the United States the future generations of Indians?

Mr. COLLIER. I would answer that by saying it is entirely a matter of personal equation what different people think about that. I will go on from what I said, that this would be the means if the policy

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were to terminate the guardianship—this would be the conservative and humane way of doing it.

Mr. CHRISTIANSON. Could we clarify this question by distinguishing between two classes of guardianship which the law recognizes, guardianship of the person and guardianship of the estate? Is not the guardianship the Government is exercising here more in the nature of the estate of the Indian than the person?

Mr. COLLIER. It becomes that under this bill.

Mr. CHRISTIANSON. I think if we bear that distinction in mind, it might help us. Ordinarily when a guardianship is established over an incompetent, established over his estate, that guardianship terminates whenever the incompetent becomes competent to manage his own affairs, and is resumed if he becomes incompetent again, but I presume that the policy of the Government in this instance is to assist the Indian until he develops full competency and then terminate the guardianship.

Mr. COLLIER. I think that is a very helpful statement.

Mr. WERNER. We have today thousands of Indians who are fully competent to handle their affairs, but still are under the guardianship of the Government. Is this bill going to stop that and go beyond the boundaries and give the Indian the hopes held out by the human race since it became civilized, give him his full freedom, full liberty, and the full exercise of all rights?

Mr. COLLIER. It is my personal view that the guardianship of the Government is going to last a long time. It is a thing very profoundly rooted in our political and legal history. It goes a long way back. The Indian has been treated through the centuries as a dependent nation, and as being entitled because of supposedly peculiar conditions to special aid from the Government. I would expect that as the times go on into the years and the generations, there would be groups of Indians who would probably continue to be very peculiar and different and would probably continue to be of peculiar interest and concern to the Government. I would expect that to be the case with some of the Pueblos, for example. Perhaps there are others. Unquestionably with other groups the tendency would be to rise to the full stature of ability and personal responsibility.

We probably will want to start instituting local taxation and local assessments for their own uses within the community. They will discover how small an element in the cost of living is the real estate tax as many of these groups gradually move of their own volition out toward the white community and merge into it, cutting them off from the advantage of their cooperative organization. The future is not uniform. They will move out and stay in.

I will give one more fact which is quite significant.

Down in Mexico those new Indian communities that have been forming since 1910 have held their land very much as it is contemplated the Indian shall do under this plan, and their local self-governing communities are proving to be very successful. They have been able to take over all civic and economic functions of their collective lives. Furthermore, the more progressive Indian members move out into the broad life of Mexico. Ejido graduates hold all kinds of important positions in the Mexican state, professional and governmental. They contribute their training and culture to the general life of Mexico. Here is a fact which is quite startling when told at

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home. I made careful inquiries of the people who know the tax situation in Mexico and I am assured by such men as Frank Tannenbaum and others that the ejidos or Indian communities pay larger taxes on an acreage or supply basis than the other people do. They pay bigger taxes in comparison with their area than the big haciendas do and they do not suffer from it. They have not been endowed and they have been given little help except the right to organize in the modern way for the continued and effective use of the land. They have all kinds of power and have entered into modern cooperative arrangements. But they are not worrying about taxes. It never occurs to them to object to paying taxes. I am not saying how soon or if ever the American Indian will be in that position, but I am pointing out that in old Mexico the ejida, the self-governing community, has fitted the Indian into the life of the country. The benefits conferred by their community system have been so great as to lift the Indians out of their dependency . All has happened in 25 years. I should say that the far future is what none of us may predict, as it is like the question of the Navajos or the Pimas surviving—we do not know.

Mrs. GREENWAY. Then we are really taking no positive stand as to the policy about citizenship, bona fide citizenship, its earning capacity and its responsibility on the children of the Indians that are still to be born?

Mr. COLLIER. We are taking a stand regarding everything but the one question of paying local taxes. We are weighing that question and we are waiting the time on that as far as we are able to see ahead, continuing the tax immunity of Indian lands.

Mrs. GREENWAY. That means support through other taxation of the Indians, by appropriations?

Mr. COLLIER. Support from Federal sources insofar as roads and schools are concerned.

Mr. PEAVEY. To get this subject immediately before us, do I understand from your statement then that this bill is not broad enough in its scope as to the issuance of charters to permit an Indian community to show its competency and ability to govern itself and take over town or county government?

Mr. COLLIER. It can do all of that. They could levy local taxes if they wanted to.

Mr. PEAVEY. Would not that automatically terminate their guardianship?

Mr. COLLIER. Except in this sense, there would be this reserved power of the Federal Government. They would be an instrumentality of the Federal Government for the time being. The Government would have to assume this responsibility and the Government would be holding their land under Federal protection and their lands would remain immune from taxes.

Mr. PEAVEY. How can that be? Supposing a chartered community should take over the right of self-government in a Government town. They cannot take over that right in most States unless they have the power to tax.

Mr. COLLIER. They could do anything since the authority of Congress, as far as that is concerned, is plenary. Congress could extend the power to organize without giving the power to assess. Congress could give the communities power to tax its members.

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That could be confined to these Federal instrumentalities under the authority of Congress.

Mr. WERNER. This bill gives them power to assess, but does not give them power to obligate the Government.

Mr. COLLIER. No.

Mr. WERNER. If they had the power to assess and thus incur obligations, without any liability against the Government, they could repudiate the obligation and who would pay it? The Government certainly would not.

Mr. COLLIER. Not by the present language. The Government is not responsible for contracts of Indian communities.

Mr. WERNER. The Indian being the ward of the Government, he could not be sued? No judgment therefore could be entered against him.

Mr. COLLIER. You would be out of luck so far as levying on his real estate is concerned.

Mr. WERNER. That obligation would be repudiated by its own force because there would not be anything back of it to sustain it.

Mr. COLLIER. The obligations you are talking about are contractual obligations with outside elements reaching outside of the community.

Mr. WERNER. In other words, that provision would be without force or effect by reason of the restrictions that are surrounding it.

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

Mr. WERNER. Supposing I was going to borrow $100 from you and I was a resident of this community and I was borrowing it for the community, the first thing you would do if you were a prudent man with your money is to ascertain what security I could give, in order that you might be able to assure yourself of its repayment.

Mr. COLLIER. Your Indian individual would be like the Federal Government in that respect. The Government agrees with a white school district to pay tuition for Indian children. Suppose we did not make good with the school district on tuition? The district is out of luck so far as the law is concerned. It could not sue the Government.

Mr. WERNER. They would come to Congress with a bill.

Mr. COLLIER. They could go to Congress about these communities. Their remedy would be a relief bill. They could not sue the Government.

Mr. WERNER. A contract entered into with a school district is a binding contract as against the United States.

Mr. COLLIER. You would find it difficult to enforce it as a contract. You would not work it that way. You would come here with a relief bill and on the equities get relief.

Mr. ROGERS. The only remedy would be to get a bill through here?

Mr. WERNER. That is exactly the reason for the Indians being in their present condition. The Government of the United States has not made good its promise, made by treaties, with the American Indians. The Indian treaties have been a fraud on the American Indian.

Mr. COLLIER. What has been said brings out clearly one aspect of Mrs. Greenway's remark, that as long as the property of the Indian community cannot be touched, to that extent its owner falls short of being able to assume the ordinary burdens of citizenship. That is

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true now. It will be true then. This bill contains in it nothing that permits or, I would say, implies a termination of those immunities. It is an effort to get the Indian within this tutelage to a position where he can stand on his own feet and support himself, and can take on more and more of the responsibility I have in mind. It is conservative.

Mr. PEAVEY. What would be necessary to this bill, if anything, to bring about the complete emancipation of the Indians? If, for instance, under one of these charters provided in this bill an Indian community demonstrated its ability to govern itself as a local town or county in one of the several States, and after having made that demonstration it then goes to Congress or the Department and asks that all of its land holdings and titles and interest in these land holdings be turned over to them, would it not then become solely an entity of the State?

Mr. COLLIER. That would be a stage beyond the present scope of this bill. When that time came, the community could come to Congress and ask for a quitclaim deed, for a final settlement with the United States, and for termination of the guardianship. But this bill does not do that. Out of this bill, as I said before, there would in the course of time arise a group of Indians who would come to Congress and ask for a quitclaim deed. That would be for Congress to consider when it arose and this bill does not even imply what Congress would do. The bill contemplates that the Federal Government will reassert and renew its guardianship under the proposed charters of those Indians who are now called nonwards. The Indians who have lost all of their lands and all of their property through the allotment system, who have been plucked clean, these Indians are now denied Government aid because they have been plucked clean. There are 100,000 of them. In the Five Civilized Tribes there are 72,000 who are denied Government aid and they are the greatest sufferers of all. This bill permits the purchase of land for these Indians and the organizing of those Indians into communities. The communities when organized will be authorized to take advantage of anything that the Government is doing for any Indians. That definitely is a reversal of policy.

Mr. WERNER. How many Indians in the Sioux Tribe are in the same category?

Mr. COLLIER. We have not received the figures as yet. Maybe next week I can tell you. Of the approximately 52,000 Sioux Indians, 7,000 are in this class.

Mr. CARTWRIGHT. Your statement with reference to the Five Civilized Tribes is especially interesting to me because there are 21,000 in my district.

Mr. CHRISTIANSON. Does not a lot of our difficulty and confusion arise from the fact that we do not distinguish very clearly between the two kinds of guardianship—the guardianship of property and the guardianship of individuals? Here the Government is exercising guardianship not over these Indians as individuals but as nations. Obviously within these nations that are under guardianship, there are some individuals making faster progress than others and some of them that are undoubtedly capable of taking care of their affairs and handling them just as well as any white man. What are you going to do for these individuals, hold them all in guardianship until the

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last individual has been brought up to the condition where he may take care of his own affairs, or are you going to effect distribution before all members have reached that stage? If you do, you withdraw protection of the guardianship from those who need it. If you wait until the last Indian has been brought to the situation where he can compete, we will say, with a lot of designing white men, then you have a condition where you are depriving many individuals of the Indian nation of the opportunity which they should have to compete. In the one instance you are discriminating against those who are making progress. In the other instance you are discriminating against those who still need protection. Now, is not that at the very heart of the problem which we are considering today?

Mr. COLLIER. Yes.

Mr. CARTWRIGHT. At this point I will say that 11 counties in my district, of the county officials in each county from 1 to 3 of them are Indians. Some of them are full-blood Indians and they are not restricted. They pay taxes the same as other people and where they have developed to that extent the Government turns them loose.

Mr. CHRISTIANSON. If you turn those people loose they hold equities in these common properties. Presumably they would like to realize something on those equities.

Mr. CARTWEIGHT. That is true.

Mr. CHRISTIANSON. If you do it on the division or sale of this property it disrupts all your whole communal system that you are seeking to establish. I can see the virtue of this thing. Under this bill I assume conditions will remain in status quo. Of course, we must not make that assumption because that would take the Indian back to a condition of permanent subordination.

Mr. COLLIER. Is it not clear that some individuals will want to be in this community and some will not? We cannot very well make any other assumption than that.

Mr. CHRISTIANSON. You must make some provision for those who want to leave this community.

Mr. COLLIER. The provision is here that an individual who desires to leave his community is entitled to compensation for his equity in that community.

Mr. CHRISTIANSON. Then what provision do you make for the raising of money with which to pay them off?

Mr. COLLIER. There must be various community sources of revenue. It might be timber; it might be any of the materials which the Indian district possesses. It might be grazing revenue or revenue from the cattle business that the tribe is engaged in. Any of these things might be used to pay off a member who wants to go off.

Mr. CHRISTIANSON. Will not the natural result be the placing of mortgages upon the joint property to pay off those who want to go off, that will check the economic enterprise before it gets started?

Mr. COLLIER. It will not have to be done that way. In practice that would always be a matter of negotiation between the Indian who wants to go out and those whose equities would be increased by letting him go out. It is a matter of trading. Obviously we cannot have any scheme that would require the community's property to be liquidated at the moment a given member wants to go out. You cannot have that. We have to leave that to negotiation. You may have a situation where he might want to go out and still keep his equity.

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That is what we have now, but we ought to provide means whereby an Indian who definitely desires to sunder his connection and move out and be one of the great world can do that, and if there be assets in liquid form he can draw his equity in cash. It will be to the advantage of those who remain to let him to it because their income will rise. His demand upon the community revenue will have passed. The share of each one who remains will increase in value. It is perfectly evident that any plan has to provide for those who remain and those who will want to go out. Some of the property is of a kind that can be advantageously liquidated and some will not be capable of being liquidated wisely. You will have to leave it largely to negotiation.

Mr. CHRISTIANSON. I think it will be a sad mistake to oversimplify this difficulty.

Mr. COLLIER. It would be.

Mr. CHRISTIANSON. In the years I practiced law I ran across instances in the community where a farmer considered himself wealthy with a quarter section worth $50,000, with seven or eight children. Obviously the 8 children and their families could not live on the farm, but 1 or 2 of the children would pay off the rest and have to give a mortgage to do it. I found in almost every instance of that kind the estate to have soon gone insolvent and the holders of the mortgage have acquired the property and the heirs are stripped. I think we would be up against that difficulty here, that the Indians one by one would demand emancipation and want their share of the per capita estate and you would have to make some provision. You would have to put a mortgage on their property to pay them off.

Mr. COLLIER. Is not the condition you are describing the present condition and inherent in the problem?

Mr. CHRISTIANSON. It is inherent. How are we going to get away from it?

Mr. COLLIER. Your Indian who quits the home and goes off is assured of his per capita payment.

Mr. WERNER. He leaves everything behind him when he goes away from the communal home and separates himself from it. What does this law give him in the way of rights?

Mr. COLLIER. In the event of a permanent separation?

Mr. WERNER. Yes; and what does it give him in the way of the right to do his own business?

Mr. COLLIER. It says that he may surrender his certificate of membership or equity in exchange for compensation.

Mr. WERNER. Does this give him a certificate of citizenship; to conduct his affairs the same as you and I?

Mr. COLLIER. He would then pass into the competent group.

Mr. WERNER. I do not believe we understand each other.

Mr. COLLIER. Let us try to because if we do not the outside world will not.

Mr. WERNER. An Indian now leaves the reservation and comes into the city and engages in a gainful endeavor, establishes himself in a home, and yet he does not possess that which he values more highly than anything else, liberty, the right to conduct his own business.

Mr. COLLIER. Property on the reservation.

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Mr. WERNER. His rights under the treaty cannot be abrogated. He has inherent rights under the treaty.

Mr. COLLIER. If he has property claims he does not lose that by leaving it.

Mr. WERNER. This law may attempt to abrogate those rights; do what was done in the past, the very thing it ought not do.

Mr. COLLIER. How does it?

Mr. WERNER. It apparently does not now. There are now in force solemn treaties between the Government and the Sioux Indians and the Government does not pretend to maintain those treaties at all. It has treated them like mere scraps of paper.

Mr. COLLIER. It has.

Mr. WERNER. Only because of its force and because it is larger and stronger and has more money, it does not help. When we forced them back from the country they owned we promised them, on the part of this Government, that they would be taken care of. It was agreed to do certain things and many of those things have not been done. The thing I would like this Government to do for Indians is to meet its pledge to them. That is the thing it ought to do and legislation should be passed by Congress authorizing a settlement of every obligation that it has incurred; the keeping of every promise that has been entered into.

Mr. COLLIER. I entirely agree with you, but first I point out that this bill does nothing to alter the treaty. It is another subject entirely. Every contractual right that the Indian has, he keeps. What you are talking about is another subject that is very big, which is that the Government not only has violated its treaties, but the Government has gone on year after year procrastinating to defeat the just claims of the Indian tribes. It takes an Indian from 5 to 15 years to get into court on a claim. He goes into court as a rule under legislation that cripples his claim and prejudges his case against him. We are coming to your committee and Congress with a bill designed to bring all of these Indian claims promptly to judgment, equitable as well as your legal claims, so that they can have their day in court and procure their final determination under these contracts. We have intentionally not put that into this bill for a very practical reason. If the Government gives the Indian a square deal in the matter of his treaties and his contractual claims, the Indian is going to roll up a judgment against the United States of more than a thousand million dollars.

Mr. WERNER. That is right.

Mr. COLLIER. And we are going to go after that, but we do not want to tie that into this bill.

Mr. WERNER. I would like to see that tied to it.

Mr. COLLIER. No. We want to pass this bill.

Mr. CARTWRIGHT. It is now 5 o'clock and time to adjourn according to the agreement.

Mr. DIMOND. Mr. Collier will be back at the next meeting.

Mr. WERNER. I feel sure that the information that such an act is in the making indicates that we are working toward that end.

Mr. COLLIER. We are committed to it. It is of tremendous importance, but I would not want to submerge this bill with that other one.

Mr. WERNER. Will that bill soon be here for our consideration?

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Mr. Collier. It will be in for your consideration during this session, but I do not think there is a chance for passing it at this session.

Mr. Chavez. Could you bring it in before you reduced this claim to judgment if you do?

Mr. Collier. The Indian ought to be entitled to a day in court and to his judgment, but whether Congress will vote all the money here or hereafter is another question. Heretofore the Government has been dodging the claims, procrastinating with them so as not to get a judgment against it. We think that is wrong. The Indian is entitled to his judgment. When Congress will pay the judgment is another subject. I would anticipate that we probably cannot pass that bill at this session. That will be the big fighting issue in the next session.

Mr. Werner. I will say that for about 14 years the campaigns in my State have been conducted among the Indians on the promise that if a certain candidate was elected to Congress he would bring about the immediate payment of the Black Hills Sioux claim. I am not in that position. I did not promise the Indian that I was going to do that. But I think these claims should be adjudicated. We should not procrastinate. We should make the money available to the Indians while they are still living and not wait until they die off and then say we are sorry.

Mr. Cartwright. I think we ought to decide on the next meeting and have as many meetings as possible before Mr. Collier leaves on his trip.

Mr. Werner. I would just as soon work tomorrow afternoon or night.

Mr. Cartwright. Could we meet tomorrow afternoon or should we meet Monday morning.

Mr. Werner. Let us meet Monday at 1.30.

(Thereupon, at 5 p.m. the committee adjourned to meet at 1.30 p.m. Monday, Feb. 26, 1934.)

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READJUSTMENT OF INDIAN AFFAIRS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

PART 3

Printed for the use of the Committee on Indian Affairs

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READJUSTMENT OF INDIAN AFFAIRS

MONDAY, FEBRUARY, 26, 1934

House of Representatives,
Committee on Indian Affairs,
Washington, D.C.

The committee met in the committee room, Capitol, at 1:30 p.m., Hon. Edgar Howard (chairman) presiding.

Present: Representatives Howard, Cartwright, Chavez, Rogers, O'Malley, Stubbs, Hill, Murdock, Werner, Peavey, De Priest, Gilchrist, Collins, Greenway, and Dimond.

The Chairman. The committee will be in order.

Mr. O'Malley. During the course of the hearing on the first day of this particular bill, H.R. 7902, there was a discussion brought up concerning the problem of the Papago Indians. For the sake of having the printed committee report in logical order, I would like to move that that part of the material relating to the Papagos be withheld by the clerk until we reach that part of the discussion dealing with their problem and that it be included in that section of the report.

The Chairman. I think without objection that can be arranged.

Mr. O'Malley. In other words, the testimony in the hearing on the particular bill we have under discussion is broken up with a series of remarks on the particular problem of the Papago Indians.

The Chairman. Without objection the official report will be so arranged.

Mr. Hill. I suggest we go on with Commissioner Collier's statement without interruption by questions or long speeches. I want to hear what he has to say about the bill and when we get to reading the bill through section by section it will be all right to have questions.

The Chairman. I think the suggestion is timely and I feel that the members should withhold any general argument while we are getting the slant of the Commissioner in behalf of the legislation.

Mr. Hill. In that way I feel we get a better picture of the whole thing by letting him go on to explain the bill without being interrupted by questions.

The Chairman. I think most of us have been pretty faithful to that view of the situation and I hope we all will hereafter. Mr. O'Malley, will you be kind enough to take the chair?

Mr. O'Malley. Very well. I think the Commissioner would like to take up where he left off, and if it is satisfactory with the other members of the committee the Commissioner will proceed.

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STATEMENT OF JOHN COLLIER, COMMISSIONER OF INDIAN AFFAIRS—Resumed

Mr. COLLIER. My suggestion, Mr. Chairman, would be that the only way to get down to the real details is to take up the bill section by section now. I do not know what the wishes of the committee would be.

Mr. O'MALLEY. The Commissioner suggests that we take up the bill section by section. What is the pleasure of the committee?

Mr. PEAVEY. I have no objection. I think we ought to have a fairly representative committee here when we start to read the bill section by section so that some of the members later will not feel that they have not had an opportunity to discuss it.

Mr. COLLIER. Then I am sure that there are particular points that the members of the committee are not satisfied about.

Mr. PEAVEY. It is just for explanation that you are going to take the bill up, not for correction or amendment?

Mr. COLLIER. I assume that is it.

Mr. DIMOND. May I ask one general question first? Mr. Commissioner, can you tell me how far if at all this bill will apply to the Indians in Alaska?

Mr. COLLIER. You will find at the beginning of the first line of the first page—"it is hereby declared to be the policy of Congress to grant to those Indians living under Federal tutelage and control the freedom to organize for the purpose of local self-government." You can tell us whether the Alaska Indians live under Federal tutelage.

Mr. DIMOND. It is not so easy to answer.

Mr. GILCHRIST. Federal tutelage and control is what it says.

Mr. COLLIER. I should think it ought to be made definite one way or the other.

Mr. DIMOND. I see there are very few limitations. There are no reservation Indians in Alaska in the ordinary sense of the term and this bill is designed mainly to apply to Indians who are now or lately have been on reservations, as I understand. Is that correct?

Mr. COLLIER. Yes, except where voluntary colonies are formed and you might have that in Alaska.

Mr. DIMOND. So far as I can see there is a desire on the part of the Indians of Alaska as rapidly as possible to become part of the general political organization of the country, and in fact, a good many of them have so become, and except that their lands are not taxed they enjoy pretty much the status of their white neighbors.

Mr. COLLIER. We are hoping to present today a proposed amendment instituting a credit system for the Indians. Today the Alaska Indian has no access to a credit system.

Mr. DIMOND. I presume that is one of the things they lack.

Mr. COLLIER. The bill sets up a policy of acquiring land for the Indians that need it and will use it and appropriates funds to be used in acquiring the land. Should that apply to the Alaska Indians?

Mr. DIMOND. In a few rare cases it would. Of course, the agricultural lands occupied by the Indians, occupied by the Alaska Indians, are very small. They particularly prefer land along the coast with fishing rights. In northwest Alaska that is taken care of by the introduction of reindeer by Dr. Shelton Jackson, and they have multiplied until there are about 750,000, and the communities are assisted by

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their grazing rights up there in handling the reindeer, and that takes care of them. It would seem to me offhand, if I may be permitted to express an opinion, that it would be risky to include the Alaska Indians in this bill because quite a number of the provisions would not apply to them and I am not certain that they would be satisfied with others of the provisions.

Mr. COLLIER. Section 1, of course, is a purely permissive section. Are there groups in Alaska that would like to take advantage of any part of title 1 dealing with home rule and employment of Indians in the Indian Service, and so forth?

Mr. DIMOND. A good many of those Indians have that.

Mr. COLLIER. Are there not many groups in Alaska that would like that?

Mr. DIMOND. I have already sent as far as I can copies of this to the Indian associations and leaders in Alaska, and asked for their views on it.

Mr. COLLIER. Inasmuch as it is only permissive and there might be groups who would want to use it up there, why not give them a chance? That is true of title 2, education, broadening the educational facilities. They surely want that.

Mr. DIMOND. They want all the education they can get.

Mr. COLLIER. I should think that titles 1 and 2 could be made applicable without hesitation.

Mr. PEAVEY. On that score I will ask you, Mr. Commissioner, are there any classes of people that might be called Indians, that could be termed Indians under the provisions of this bill, in any other territory of the United States?

Mr. COLLIER. Outside of the territorial limits?

Mr. PEAVEY. Outside of the 48 States?

Mr. COLLIER. No.

Mr. PEAVEY. Would there be any objection on the part of the Department to direct inclusion of Alaska?

Mr. COLLIER. No. The principal cause that has held us back from including Alaska in titles 1 and 2 lies in this, that the jurisdiction over Indians up there is a scattered jurisdiction. It has never been lodged in the Indian Office, and in the passing of a declared policy by Congress this would quite definitely extend the function of the Indian Office to Alaska, not only in health but in other matters. Nevertheless there does not seem to be any reason why the permissive features should not be made accessible to them.

Mr. PEAVEY. What I have particularly in mind, and I imagine, perhaps, their representative has, is that if Alaska is included in the direct provisions of this bill, would that involve the Indian Office in its administration of Indian affairs on this very troublesome question of the fishing up there?

Mr. COLLIER. It would; and it would almost inevitably imply that the Indian Office ought to go into the reindeer situation. It would imply an extension of the Indian Office functions and a transfer to the Indian Office of some functions. We have been hesitating chiefly because we do not want to raise that question now.

Mr. DIMOND. I believe the Indian Office should have supervision of the reindeer of Alaska so far as they are under the control of the Indians.

Mr. COLLIER. It has not got it now.

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Mr. DIMOND. I realize that.

Mr. COLLIER. Personally, I cannot see anything but good to come from title 1 and title 2 where they can be used; I do not see why Indian groups in Alaska should not be permitted to use them.

Mr. DIMOND. I thank you very much.

Mr. COLLIER. But, on the land, my judgment would be not to let that apply without further investigation; nor to the courts. Titles 3 and 4 I should say "no"; titles 1 and 2, "yes."

There is a general point I meant to make the other day in part answer to one of Mrs. Greenway's questions. I will make it now because it is of general application. The existing law forbids the Executive, prohibits him from withdrawing public domain and adding it to Indian reservations without the consent of Congress. Public domain may not be annexed to an Indian reservation without the express consent of Congress. Prior to 1918 the President had the power to create Executive-order reservations, permanent reservations, and title vested in the Indians. In 1918 Congress withdrew that power from the President. This bill does not go back of that act of 1918 as it stands. It does not convey to the President the power of withdrawing public domain to the Indian reservation.

Mr. DIMOND. This act does not?

Mr. COLLIER. It does not. This would have to come to Congress as it is now. That is an important point for many Western States.

Mr. ROGERS. Mrs. Greenway asked the question the other day. She is unavoidably detained but will be here later in the afternoon.

Mr. COLLIER. Where a title explains itself I will simply refer to it. Section 1 is a declaration of policy, to grant freedom to organize to the Indians to the end that civil liberty, political responsibility, and economic independence shall be achieved among the Indian people of the United States. Further it provides for cooperation by the Federal Government with the States to organize Indian communities for Indian welfare. Line 6, page 2:

> It is further declared to be the policy of Congress that those functions of government now exercised over Indian reservations by the Federal Government through the Department of the Interior and the Office of Indian Affairs shall be gradually relinquished and transferred to the Indians of such reservations, duly organized for municipal and other purposes, as the ability of such Indians to administer the institutions and functions of representative government shall be demonstrated, and that those powers of control over Indian funds and assets—

that means the tribal funds of the Indians—

> shall be terminated.

Mr. CHAVEZ. Shall be terminated—of course, that is up to the Secretary.

Mr. COLLIER. That is carried over into a very detailed provision. It might be this declaration of policy might enter into the construction of the statute by the court and negative the intent of Congress.

> That those powers of control over Indian funds and assets now vested in officials of the Federal Government shall be terminated or transferred to the duly constituted governments of local Indian communities as the capacity of the Indians concerned, to manage their own economic affairs prudently and effectively, shall be demonstrated.

And further, "to assist in the development of Indian capacities for self-government."

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Mr. O'MALLEY. Here is what I would like to know. It says:

It is hereby declared that these functions of government now exercised over Indian reservations shall be gradually relinquished to the Indian?

What, broadly, are all those functions?

Mr. COLLIER. That is understood by crossing over to the specifications in section 4. Might I say in advance of coming to that section, that it specifies powers which may be given to the chartered communities. I take it that the intent there is to say that this very wide range of discretion which we took note of at the last hearing, the discretionary power now vested in the Secretary of the Interior, shall gradually be transferred to the Indian community—all that range of discretion, except insofar as that same discretion is restored to Congress.

Section 4 (beginning on p. 6, line 6) indicates the kind of powers with which the Indian community would be endowed or could be endowed. It is understood that any or all of these things might be done by the chartered community, and the community might first add one of them or two of them or more of them, and then relinquish or Congress might take away from this community the power to do one or more of them. In the first place, the charter may empower the community to organize and act as a Federal municipal corporation, to establish a form of local government, adopt and amend a constitutional program, enact ordinances and regulations and any other functions customarily exercised by local governments, town governments. Section 4 (b):

To elect or appoint officers, agents, and employees, to define the qualifications for office, to fix the salaries of officials to be paid by the community, to prescribe the qualifications of voters, to define the conditions of membership within the community, and to provide for the adoption of new members.

This is subject to the provisions of section 8, which relate to the transfer of functions to a community, setting down the conditions under which a function may be transferred, may be, and in some cases must be transferred. That will be examined when I come to cite subsection (c):

To regulate the use and disposition of property by members of the community; to protect and conserve the property, wild life, and natural resources of the community; to cultivate and encourage arts, crafts, and culture; to administer charity; and to protect the health, morals, and general welfare of the members of the community.

This particular feature would come under the municipal corporation.

(d) To establish courts for the enforcement and administration of ordinances of the community, which courts shall have exclusive jurisdiction over all offenses of, and controversies between, members of the chartered community, under the ordinances of such community, and jurisdiction exclusive or nonexclusive over all other cases arising under the ordinances of the community, and shall have power to render and enforce judgments, criminal and civil, legal and equitable, and to punish violations of local ordinances by fine not exceeding $500, or, in the alternative, by imprisonment for a period not exceeding six months: *Provided*, That no person shall be punished for any offense for which prosecution has been begun in any other court of competent jurisdiction.

At this point there is no provision for appeal, you will find, from the local court. That is a matter we are desirous of laying before the committee. This is practically a magistrate's court, a municipal court. The question is whether an appeal to the Court of Indian Affairs should not be established where the penalties exceed a certain

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amount. A penalty that might be small to a white man might be large to an Indian. We are desirous of raising the question of whether, let us say, where the penalty exceeds $100 or 2 months in jail, appeal may lie.

STATEMENT OF F. L. COHEN, ASSISTANT SOLICITOR

Mr. COHEN. May I call attention to the connection between the local court and the special court of Indian affairs? The court of Indian affairs has general power to review decisions of the local court wherever a person not a member of the Indian community is involved in the dispute. That is to say, if a person not a member of the community enters the community and commits any misdemeanor he may be tried by the community court, but the Federal court has the power to remove that case to the Federal court or to review the case. Now, the question that is raised is whether, in addition to this broad power of review which the Federal court exercises over all cases in which nonmembers of the community are involved, they should also have the power of review in those cases where only members of the community are involved. There is one further sphere of review. Not only where persons not members of the community are involved but where important crimes are involved, the Federal court has jurisdiction, and also over cases in which the validity of some charter provision becomes a question at issue, or the validity of some law dealing with chartered communities. In other words, the Federal court has general power of review over all cases in the local court except minor cases between members of the community where the fine and imprisonment is less than a fixed amount.

Mr. COLLIER. It is a question of whether you should also have authority in those minor matters where the penalties are beyond a certain amount.

Mr. PEAVEY. Is there any reason why such power of review should not be granted except the possible cluttering of the higher courts with minor cases and a possible encouragement of litiginous tendencies.

Mr. COLLIER. As I say, this Indian court will touch on questions of matters of vital importance to the Indian and the community. A penalty of $200 to many of them is a big penalty.

Mr. PEAVEY. This provides a fine of $500.

Mr. COLLIER. That is the maximum penalty. This court is given the power to fine that much and imprison them that long, as stated in the section. It is my judgment that there should be an appeal but not from everything, say, from $100 up and 2 months.

Mr. PEAVEY. What would be the effect of conviction under this clause carrying a jail sentence of 3 or 6 months as to the right of the person so convicted thereafter to citizenship and holding office, and so forth?

Mr. COLLIER. There is nothing said about disqualifying anyone when he gets convicted in the local court. Nothing is contemplated about that.

Mr. O'MALLEY. Would that court handle the average misdemeanors and police-court cases?

Mr. COLLIER. Yes.

Mr. O'MALLEY. In my State an appeal is possible if the fine exceeds $15 or the term in jail exceeds 10 days. All misdemeanors

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are violations of ordinances. Of course, that does make a lot of appeals which go to the next higher court for review.

Mr. COLLIER. We ought to provide for this local court to compel the Indians as far as we can, to thrash it out among themselves. At present the unappealable verdict rendered by the Indian agent can run for 6 months. It is unappealable except by the Secretary of the Interior.

Mr. WERNER. The idea is to provide for a right of appeal.

Mr. COLLIER. Yes. It is the kind of thing we find in our magistrate courts.

Mr. WERNER. Are you going to give the Indian the same protection under the law as the white man has? He has redress in minor offenses by the right of appeal.

Mr. COLLIER. I do not know that you can take up all traffic violations to the higher courts.

Mr. WERNER. Yes, there is an appeal.

Mr. COLLINS. You can in our State.

Mr. WERNER. One has the right of appeal. It does not make any difference what the question involved is. There is the question of whether or not an appeal is justified but the right is there and that should not be denied. I should like to see the right of appeal recognized.

Mr. PEAVEY. Cannot this provision be made, that where the fine is more than $100 or where the sentence is more than 30 days the right of appeal should be granted, to give these courts practical jurisdiction over misdemeanors in violation of ordinances and all of those petty things but let the defendant have the right of appeal where there is a serious matter involved?

Mr. COLLINS. It strikes me it would be just as much an injustice if the sentence was only 10 days. They should have the right of appeal in any case.

Mr. WERNER. Or even one day.

Mr. COLLINS. One day. The same injustice could be done him.

Mr. WERNER. Suppose you had a court which would make sentences under the limit where no appeal could be maintained?

Mr. COLLIER. Of course these are local courts.

Mr. COLLINS. The cost of the appeal will be an inhibition on taking appeals.

Mr. COLLIER. One concern is an impracticable situation cluttering up the Federal courts with Indian cases.

Mr. WERNER. They should have their inherent right to appeal to a court of last resort. These little courts might become very arbitrary and there would be no appeal from their judgment. That would be czaristic.

Mr. COHEN. May I answer that, in part. The courts have never held that there is an inherent right of appeal under all conditions, but as a matter of fact, even in a Federal district court a very large class of appeals is restricted by the pleasure of the circuit court. That is to say, the circuit court gives permission or withholds it.

Mr. WERNER. But the circuit court cannot determine the right of appeal.

Mr. COHEN. They can deny it.

Mr. WERNER. But you have the right nevertheless and there is a procedure set out which permits an appeal to a higher court.

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Mr. O'MALLEY. I will put forth a suggestion for your consideration. Would it not be possible to withhold the discussion of the legal matters involved until such time as the committee can arrange a discussion with the committee on the Judiciary, and allow the Commissioner to proceed in the discussion of this bill, section by section. That is just a suggestion to the members of the committee.

Mr. COLLINS. I think it is a very meritorious one.

Mr. COLLIER. I raised that point myself because we have been very much concerned about it. The next is subsection (e), line 13, page 7 of the bill, relating to powers that may be granted the chartered community:

> To accept the surrender of the tribal, corporate, or community interests of individual members who desire to abandon the community, and to pay a fair compensation therefor—

The chartered community is empowered to accept the individual's surrender of his interest in the common property and to pay him for it.

Mr. ROGERS. And the community will pay him, not the Government.

Mr. COLLIER. The community will pay him for it. Of course, the direction is in the bill. Subsection (e) continues:

> To act as guardian or to provide for the appointment of guardians for minor and other incompetent members of the community, and to administer tribal and individual funds and properties which may be transferred or entrusted to the community by the Federal Government.

Mr. PEAVEY. Before you leave the first part of that section, I would like to know what the thought of the Commissioner and the authors of this bill was with regard to the property right. The language you have just read is more to declare the policy than to make any effective rule of law. It says that the man owning those rights and property, and so forth, shall be compensated as a matter of policy. Could not the law very well go further and issue some rules of evidence on the indebtedness of the community?

Mr. COLLIER. It would do that. May I explain this? If we go back to section 3, page 4, line 17, we first state that any charter issued shall recognize the right of any member to abandon the community and to receive compensation. That is number one. It recognizes his right. Correlatively with that we have to establish the power of the community to accept or relinquish membership and to continue it. Then we have to go on elsewhere to the right place in the bill and define what shall be considered to be compensation.

Mr. PEAVEY. In that section do you provide for payment of money on evidence of indebtedness?

Mr. COLLIER. There are several provisions in the bill. That is the question that was up the other day that will require consideration by this committee. The Indian can abandon his tribal relation but does not surrender his equity in the tribal assets. Generally there are cases under tribal custom where he does and where he has to be readmitted by action of the governing authorities. We contemplate this. Let us visualize first the fact that the community will have succeeded the tribe and will have taken on the liabilities and assets of the tribe. The member who goes away and who does not decide to relinquish, does not relinquish. The member who goes away and who does desire to relinquish, may relinquish.

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Mr. PEAVEY. I understand that. But what about this member who goes away or is away and who does desire to relinquish? Does the bill provide any means by which he shall be given some certificate of indebtedness, evidence of indebtedness, or anything else to show?

Mr. COLLIER. He would retain his nontransferable certificate of membership. That is page 34, section 12. Every member gets a nontransferable certificate of membership which is a certificate that he has his equity, his claim to the revenue, etc.

Mr. PEAVEY. I have in mind a practical case that perhaps the Commissioner is acquainted with. That is the situation of the Lac du Flambeau Reservation where a great many Indians have moved just out of the territory into the surrounding counties and have settled and some of them have become farmers and some of the Indian women have become wives of farmers. They would not want to go back on this reservation in order to assert their rights but they have been waiting for years to be given their share of land allotments that were due them as members of the tribe, which is being held up due to the legal difficulties between the State of Wisconsin and the Federal Government as to the titles of certain lands there. Now, it would seem as though those people should not have to move back on the reservation to assert their rights and that they ought to be given some evidence of that right in legal form.

Mr. COLLIER. They would, in the shape of this certificate of membership. They have not even got that now.

Mr. PEAVEY. That is true.

Mr. Collier. They would not have the right plus that.

Mr. PEAVEY. Let me call your attention to the operation of it. If you were to do that, then when title to this land is in question between the Federal Government and the State, under the provisions of this bill those Indians still having that equity in the additional agricultural lands, productive lands, and so forth, will automatically take away what these people have been waiting for under our allotment system under their tribal rights.

Mr. COLLIER. If they are members of the tribe they would take over in the first place an interest in the title to the tribal property equal to the proportion between the land they have an interest in and the total value. As far as the right to the exclusive beneficial use and the right to have this use pass to their heirs and the right to the rental value and of the things that would come under the existing practice, there is this provision.

Mr. PEAVEY. Even though it has not been allotted?

Mr. COLLIER. They are entitled to so much. We are not discussing facts, but an illustrative case. Probably that is the way it would operate. Of course, we are in difficulty here. I will put the problem to you this way. An absentee member who stays absent all the time is in this position: Here is the tribal property which is built up, if at all, through the labor of those who are there. Should an absentee member participate equally with those who by living there are creating an increment of value? That is the problem. Really what one ought to say is this: Even if the absentees are entitled to their share of the unearned increment, even if it is a little unfair to those who remain and create the increment, the equity of the absentees should be recognized. I do not know how we can hope to

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have a strictly equitable division without elaborating our definition hopelessly.

Mr. PEAVEY. At least, if the nonresident members did not receive anything in the way of rental or income or dividends or interest or anything else, that would to a large extent affect the unearned increment.

Mr. COLLIER. They would have to receive the income of the tribal land.

Mr. PEAVEY. Why?

Mr. COLLIER. By virtue of being members of the corporation.

Mr. PEAVEY. You do not anticipate that these Indian communities are going to be declaring dividends?

Mr. COLLIER. Exactly; they do now.

Mr. PEAVEY. In a situation like that?

Mr. COLLIER. Look at the existing situation, for instance, on the Klamath Reservation.

Mr. PEAVEY. They have a large territory.

Mr. COLLIER. They are declaring dividends. The dividends would go to those who hold their certificate of membership. Congress might decide to say that those having certificates of membership must go without their dividends during the period of absence, although that is not provided in this bill. This bill does not make participation in the tribal equity dependent upon residence. It could not, universally speaking, because there are a whole lot of equities that the nonresident Indians do not possess, which have to be developed.

Mr. O'MALLEY. Don't you think this bill should make participation in whatever dividends the tribe might have conditioned on a share in the work that makes these dividends possible?

Mr. COLLIER. No; I do not, because there are certain other conditions. If the community could buy out with cash, that would simplify things a whole lot, but as a rule the community may not be able to buy their interest out as it will not have the wherewithal.

Mr. O'MALLEY. There is a provision in the bill providing an annual fund of $2,000,000 for land purchases. Why could not that money be used, first, to retire this nonresident ownership interest in tribal land rather than to purchase from people outside, and thereby accomplish a dual purpose?

Mr. COLLIER. It can, but in practice we are confronted with the acute necessity of getting lands for Indians who have no individual land. That is the most urgent thing of all.

Mr. O'MALLEY. How would you pay for the land you could get? Could not that be provided for in conjunction with the charters for these particular tribes that were able to do it?

Mr. COLLIER. That could be done.

Mr. O'MALLEY. If that could be provided for by the bill, there would be discretion in the issuance of charters?

Mr. COLLIER. That is possible within the act.

Mr. COLLINS. I will call your attention to the language of section 4, at the top of page 10, the last proviso—

and subject further to such provision for the apportionment of such assets among nonmembers of the community having vested rights therein, as may be precribed by the charter.

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That is, wherever possible, nonresidents of the tribe who do not enter into the community dealings but have vested interests in the tribe will receive some constitutional compensation for those vested interests and thereafter will be completely divorced from the tribe, which will settle the complications that might otherwise arise. That is dependent upon the community having enough money to settle with them.

Mr. PEAVEY. This says nonmember but does not specify nonmember, but nonresident.

Mr. COLLINS. It is provided by the charter in the first place to Indians residing in the community, and to such other Indians as may desire to become members. Your nonresident cannot be compelled to become a member of the community.

Mr. COLLIER. He may become a member.

Mr. COLLINS. If he is a member of the same tribe and lives on the reservation and the charter shall so provide.

Mr. COLLIER. The charter does not create that vested right. That is an existing fact. Either he has to be bought out or he must continue to hold his right to a share in the dividends.

Mr. O'MALLEY. Getting back to my original question, could not the charter provide that a nonresident could not share in the so-called "dividends" of the community?

Mr. COLLIER. Compelling them to take their earnings?

Mr. O'MALLEY. Could not the charter provide that?

Mr. COLLIER. Let us see what the effect of that would be. If the charter provided that one could get the dividends only by becoming a resident and at the same time there were not the means of buying out this individual, then he would be deprived of his property if he stayed away. We do not want to force him back against his will, but we cannot deprive him of his property without compensation.

Mr. O'MALLEY. Supposing that the particular community had the funds by which to pay the nonresident, could not the charter or could not this act provide the discretion in the issuance of the charter to provide in certain tribes that these nonresidents could not get dividends, but if the tribe had funds enough that could be provided directly, because there you meet the constitutional provision by which he gets compensated.

Mr. PEAVEY. If such a provision as that goes in the law it is obvious, it seems to me, that every such tribe will avail themselves of that provision and you might as well have it in the law because men's self-interest, human rights and and self-interest will cause every single Indian community that is organized to put such a provision in their charter because it means just that much more to them.

Mr. COLLIER. But they have to produce capital to get that much more to themselves. They can only get the rights of nonresidents by paying to get rid of him.

Mr. PEAVEY. Immediately in cash?

Mr. COLLIER. Either that or by installments.

Mr. PEAVEY. Could not the Federal Government assume some responsibility at some future time for the payment of these interests of the nonresident members of the tribe if under the terms of the bill the right and title or interest to the tribal land and property of the man who remained away from the reservation becomes available for the use of the community and the members on the reservation, so that

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he would have some definite assurance given him by the Federal Government 10 years or 20 years hence, or something of that kind, and if the local community does not exercise that privilege given it under the charter, that the Federal Government shall purchase it and become the lawful owner?

Mr. COLLIER. If we could possibly get that by Congress, we would be all for it.

Mr. PEAVEY. It seems to me that otherwise we are taking something away from these Indians by an act of Congress without giving them any legal right of appeal.

Mr. COLLIER. No. It is the essence of our policy that we will not take the right of appeal away from them, convenient as it might be.

Mr. PEAVEY. If he is not to get the benefit of the dividends, the interest or any other benefits, he might as well be deprived of his property if he is not to receive any benefit from it.

Mr. COLLIER. He has all the advantage of a member of the community. He may elect to use the land for subsistence farming and general production.

Mr. PEAVEY. He will live upon it.

Mr. COLLIER. What is he going to do if he goes off the land? He does not want to go out and live on it in order to get the benefit of the production, yet the yield of the land is being eaten by the people, instead of the land being rented and the rent being distributed among them.

Mr. PEAVEY. That is the exact situation.

Mr. COLLIER. That would happen in some cases.

Mr. ROGERS. Under the provisions of the bill what would happen?

Mr. COLLIER. I am trying to see where that does lead us. It would seem to lead in this direction. We do not know whether it is possible to satisfy the Indian group in those cases where a money yield is impossible. In such cases the only way to take care of the nonresident, since he no longer can sell or rent his land, would be for the Federal Government to buy him out, because under this hypothetical case, which would be real in many instances, your group would be possessed of no means with which to buy him out. They would be subsistence farmers, and the thing would have to be met in two ways, either the Federal Government buy him out and make the community give up that equity or the Federal Government would lend the money to the community which in turn would buy him out. That land would then be one of these reimbursable things that hover in the background and are never collected. That would not be so terrible because we have $50,000,000 of them that no one will ever collect.

Mr. O'MALLEY. In fact, they could pay the rental.

Mr. COLLIER. That is an alternative. The community could pay to itself rental which rental would be distributed as dividends. That is feasible. But how would the community get the money to pay the rental in this imaginary case for these subsistence farming units? There would be too many.

Mr. O'MALLEY. This then would present a clear-cut issue as to whether or not those who are not performing any share in the subsistence unit could share in any of the results of the dividends of any subsistence farmings.

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Mr. COLLIER. It does raise that question in one approach. But in the other approach here the body of land could be leased, and if it were leased there would be a yield which could be distributed and each nonresident get his share. Our imaginary condition is that the Indians will retain their equity; not loan it, but use it, for there is just enough land upon which to get along. If they are going to have any cash, they will get it by working out as many of them do now. You cannot dodge the fact that your nonmember, your nonresident, is deprived of some rental money. He could probably never assert a constitutional right effectively, but there is an obligation to be met. How to meet it, I cannot say except by the Government buying him out or paying the rent that he would get. That would be fair, to pay his share of the rental value. You could appraise the land for rental purposes. Suppose that there are 10 percent of the community who do not live there. They are entitled to 10 percent of the rental value for the use of the land and you might pension him on that basis. Then he would be contented and be very happy.

Mr. ROGERS. We might all move that way.

Mr. COLLIER. I do not see any escape from the fact that the nonresident will, like other owners of land, get something he has not paid for and is not working for That is true of all nonresident owners of land.

Mr. GILCHRIST. There is no legal difficulty in saying to an heir, for example, 8 or 10 heirs, and 1 heir does not live on the land and 9 of them do—there is no legal difficulty in the way, and no constitutional right, either, that the one who absents himself has. You can say to the nine that they can live there without compensation to the owner.

Mr. COLLIER. Yes.

Mr. GILCHRIST. That principle ought to obtain here, but now when you sell the old homestead, of course, you cannot take away the right of that one to participate in a participation suit or anything of the kind.

Mr. COLLIER. Not only that, but he is entitled to his share of the land.

Mr. GILCHRIST. I do not see why he must share in the rental if he cares to leave, but there is no constitutional or legal reason that would prevent him.

Mr. COLLIER. That is what our lawyers have told us.

Mr. PEAVEY. To illustrate the point involved in the bill, I refer you to the exact situation involving these very points on the Lac du Flambeau Reservation. I am not familiar with all the history with regard to allotment of land on this reservation, but I do know that 18 or 20 years ago most of the members of the tribe were allotted and given 80 acres of land, for some reason or other, largely due to the fact that the title to each section 36 and 16 was involved in legal controversy with the State as State swamp land, timberland, and so forth, the Government at that time was not able to make this allotment. So we have the situation today where those several dozen Indians who are full members of this tribe have not received their land. Some of them are on the reservation and some of them—those I have been in contact with—are merged into the white man's life in the adjoining counties, but they have just the same right as any other members of the tribe.

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Mr. COLLIER. The swamp lands that have been recaptured?

Mr. PEAVEY. They have been waiting all these years for their allotments and they have not been made. Now we pass this act, and it seems to me they are simply going to deprive them of something they feel belongs to them and have been waiting 20 years for.

Mr. COLLIER. They have a right to the soil, to a piece of land which has not been given to them because the title is clouded, but in the long run the Government gets the title cleared. They would have their right under this clause as they would without it. The only difference is that they would get an equity, a share of the community property, instead of their actual land.

Mr. PEAVEY. That is a disadvantage under the bill. The Lac du Flambeau Indians have an advantage, as they undoubtedly are well advanced to organize under the provisions of this bill. There never would be any allotment. The different communities would receive the interest on the tribal fund.

Mr. COLLIER. Assuming that there were 1,000 Indians, and 500 of them are living on the reservation, there is nothing in this bill which would authorize the Secretary to give to those 500 Indians all the land; in fact, the bill specifically provides that he must make a proportionate division of the estate between the 500 Indians that are on the reservation and the other 500 that stay off. He cannot, of course, give half of the actual land to those that live away from the land reservation and create absentee landlords. The practical solution would be to buy up the land with funds authorized for the purchase of Indian or white land and give it to the community, then give the absentees reasonable compensation in money. That is the solution which this act specifically provides for.

Mr. PEAVEY. Provided that the Indians have the money to pay for it.

Mr. COLLIER. Regardless of whether the Indians have the money. Money is provided whereby the Secretary can purchase Indian land and give it to the Indian tribe or community. He can purchase Indian land as well as white, as long as they are undertaking to consolidate the community holdings. If the absentee Indian owns land in the middle of the reservation that is obviously essential for the consolidation of tribal holdings, the Secretary can purchase this land outright out of the $2,000,000 provided, pay the absentee Indian, and turn over the land to the community.

Mr. PEAVEY. That was my original suggestion when I asked the question if that would be the policy to use this $2,000,000 provided in the bill for the purpose of buying out these nonresident Indians first, and the answer was that that would deprive the Indian of his land and that they would buy the land outside first.

Mr. COLLIER. There is a huge ambiguity in this question of the nonresident. It is rather complicated. There is no difficulty in buying land for a community. We shall want, however, to be able to buy out the individual who may want later to leave the community. That matter should be defined in the charter. The charter which is accepted by the community and approved by the Secretary should lay down specific conditions under which a person may leave the community and say how the compensation is to be paid.

Mr. ROGERS. If anything like that is to be general it ought to be in the bill.

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Mr. COLLIER. It is in the bill.

Mr. ROGERS. And provide for direct settlement and payment if any one wants to leave. Is that in there?

Mr. COHEN. We do not provide in the bill how a member of the community who wants to leave shall receive that money. The reason we do not provide for that in the bill is that there are so many different situations on the different reservations that we cannot have a uniform procedure. There are some reservations in the southwest, where as the Commissioner suggested, at present a member who leaves has no right to any equities. If he abandons the land, he may not return except with the permission of the tribe; in other words, he does not have his full right to his equity, so that we would want to make a different provision or a different charter to take care of that. The one thing essential is that some provision shall be made in the charter for compensation. If the Indian does not like it, he does not approve of the charter.

Mr. ROGERS. Would that do him any good if he did not approve it as an individual member?

Mr. COLLIER. Practically.

Mr. COHEN. If he is a nonresident he does have a general equity; if he is a resident he is in the same position with all the Indians who are accepting the charter. All the Indians are in the same boat. But anyone who at some future time wants to leave should have some provision that should he leave there will be some compensation.

Mr. O'MALLEY. I understand the Commissioner will leave very soon to make an official trip and it was my thought that we should have him discuss the entire bill now without interruption so far as possible.

Mr. WERNER. It is now about 3 o'clock and I presume most of the members have a lot of work to do. Is it the idea to go through with this discussion after the Commissioner leaves or take it up again when he comes back?

Mr. COLLIER. I do not think there is a chance to finish it.

Mr. WERNER. If you are going to thoroughly discuss this bill it looks to me as though you would not be able to do it in a few days. I would like to see a full committee attending, if possible, as this is very important legislation.

Mr. COLLIER. You will find again and again that the committee will come back to the identical point. Gradually, as the bill goes on, everyone will find that these questions we are discussing now will come up again a dozen different times.

Mr. WERNER. As you hold your conferences in the field you will be able to bring back new ideas; you may want to discard some of the provisions in this draft.

Mr. COLLIER. I will proceed further and bring back some clarifying thoughts.

Mr. O'MALLEY. Of course, when the bill is ready for amendment that will provide a detailed discussion practically for every line.

Mr. WERNER. On the floor of the House?

Mr. O'MALLEY. No; here in the committee.

Mr. PEAVEY. I suggest the Commissioner proceed.

Mr. COLLIER. My only feeling is that you will get further ahead by leaving these things for discussion as they come up.

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Mr. PEAVEY. I have not been asking these questions, as the Commissioner understands, from any standpoint of opposition.

Mr. COLLIER. Back on page 7, paragraph (f) it reads:

> To operate, maintain, and equip any public improvement and, as a Federal agency, to condemn and take title to any lands or properties, in its own name, when necessary for any of the purposes authorized by charter, and to levy assessments for community purposes, or to require the performance of labor on community projects, in lieu of assessments.

To operate, maintain, and equip public improvements—they can build roads, community housing, schools, as an agency of the Federal Government. And as an agency of the Federal Government, they may condemn and take title to any lands or properties necessary for purposes authorized by the charter. All for the purposes as herein stated down through the section lettered (j) on page 9.

Mr. GILCHRIST. This does not refer to any public land. It does not cover any lands which are other than communal land, does it?

Mr. COLLIER. This is to authorize a community to enter into a building program.

Mr. GILCHRIST. Suppose you wanted to put up public improvements in the nature of special improvements to the land, which would involve ordinarily special assessments like a drainage district or reclamation district. Of course, you cannot do that in this bill except as it involved unquestionably land which is communal land. There is no provision for private land.

Mr. COLLIER. To the extent that the State laws permit, the Indian community, as any other Federal agency, might condemn private land. That is not a power which the Constitution grants, but the State laws do permit a Federal agency to acquire land for building purposes and so forth. It might be necessary for the Indian community to acquire land outside the community for purposes of reservoirs which the community would operate. In that case this section would apply outside the community. The primary purpose, of course, is to apply it inside the community, as the community may take over land owned by individual members of the community.

Mr. WERNER. Supposing the land is owned by some one other than Indians, that would still grant the right to condemn it.

Mr. COLLIER. When the State laws permitted condemnation by a Federal agency, to the extent of that purpose it allows condemnation.

Mr. WERNER. Most States only permit condemnation proceedings to be instituted for certain specific uses.

Mr. COLLIER. And that would be the extent of this.

Mr. COHEN. This could not possibly override any State law.

Mrs. GREENWAY. May I ask if the Government decides to buy a piece of land that was easily buyable, and suppose the Indian owned 360 acres more or less with some very likely oil wells on it, would that be thrown into this community group?

Mr. COLLIER. Privately owned land or oil wells?

Mrs. GREENWAY. Under the present system then?

Mr. COLLIER. Now owned by the individual?

Mrs. GREENWAY. Now owned by the individual. Suppose an Indian owned a piece of land that he has been living on all along and an oil well was either there now or developed, how would he be treated in relation to this community property picture?

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Mr. COLLIER. If he relinquished his allotment that had oil on it, he would have to be compensated for the value of that property.

Mrs. GREENWAY. Including maybe a great oil picture.

Mr. COLLIER. The community cannot take that without compensating him for the value.

Mrs. GREENWAY. Now in the meantime suppose it was a matter of many millions of dollars, where would he stand if he had lived on that allotment or had his little home there and oil was discovered there, would he be allowed to sell that to a good oil company or would the community control it?

Mr. COLLIER. As long as the community was not consolidated it would be just like it is, and if the time came when you had it consolidated into a community, then the Indian who has it is entitled to its value, to a proportionate share. In other words, if his land would bear a ratio of 1 to 3 in relation to the whole value of the community property, he would be entitled to a corresponding share of the revenue.

Mrs. GREENWAY. When you say that the land would be thrown into this community picture, what are the conditions that govern that?

Mr. COLLIER. There are various conditions. He might relinquish it voluntarily in exchange for whatever he considered to be adequate compensation. It might be bought by the Federal Government and put into this land. The Secretary of the Interior; this is, allotted land you are speaking of?

Mrs. GREENWAY. Yes.

Mr. COLLIER. The Secretary of the Interior would be empowered to consolidate, in which event the Indian would have to be compensated for its value.

Mrs. GREENWAY. What is the method of compensation as to the value of that land?

Mr. COLLIER. The method of compensation would have to be one that would stand up in the courts. It might be arbitration, or appraisal. No one way is set down. For example, some of you may recollect the great furore aroused by the so-called "Indian omnibus bill of 1923" of Secretary Fall. That provided that the Secretary of the Interior could go out and appraise the Indian land and buy it up at his own figure, and then he could proceed to pay the Indian the value he decreed. It placed under the Secretary of the Interior what could be a right simply to confiscate. Even had that bill passed, it would have been knocked out on constitutional grounds. If Fall had gotten that bill through and tried to apply it the way we expected him to, he would have been enjoined. Nothing of that kind can happen here.

Mrs. GREENWAY. If it was left to the Indian who now owned the land under the allotment plan to put it into that community, if they desired to sell it independently on the outside, could they do it?

Mr. COLLIER. Not in all cases. If the land was marked for consolidation under the charter, then the Secretary could take it and operate it and fix compensation. Otherwise you would have a condition of areas that are intended to be operated as communities for grazing and farming, but are broken up by parcels of land just because of a hold-up by an individual.

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Mr. WERNER. In that case the individual would have no discretion as to whether or not the land was covered into the community?

Mr. COLLIER. Not in the consolidated area. The Secretary by the act as now drawn is empowered to consolidate all lands, but he cannot confiscate it.

Mr. WERNER. You confiscate it to the extent that the board of arbitration would fix the value which might be a value he would not consider.

Mr. COLLIER. Not a board of arbitration. It would be up to the courts to say what constituted a fair value.

Mr. WERNER. It would still be a board of arbitration as it would fix the value. It would arbitrate the value.

Mr. COLLIER. In some way the value of the holding would be fixed.

Mr. WERNER. The court would be a board of arbitration.

Mr. COLLIER. The court would be a board of arbitration.

Mr. WERNER. Mr. Indian would have to accept that as a final settlement even though he considered the land more valuable to him than the court would determine was the fair value.

Mr. COLLIER. Exactly as when you are taking a road.

Mr. CHAVEZ. May I make a suggestion that you state to Mrs. Greenway what you stated about the public domain?

Mr. COLLIER. The act of 1918 forbids the President to take public domain and annex it to an Indian reservation. Only Congress can do that. This bill does not change that law. That remains.

Mrs. GREENWAY. Then if certain Indian lands are to be increased it would take independent, separate legislation to do it.

Mr. COLLIER. Exactly as now.

Mrs. GREENWAY. This bill does not add an acre to anything.

Mr. COLLIER. It grants money to purchase but does not take anything out of the public domain. The existing laws controlling transfer of public domain are left unaltered.

Mr. GREENWAY. Would you be able to achieve the object of this bill if more land was not acquired?

Mr. COLLIER. It is perfectly clear that more land must be acquired and it has to be obtained through purchase by Congress hereafter as now. What disposition would be made of this submarginal land that the Government is buying, we cannot say because that is all in the future. We would hope that some of those lands would be given the Indian or the use of them would be given the Indians. This bill does not alter existing law with respect to the disposition of the public domain in any particular.

On page 8, paragraph (g) it reads—

> To acquire, manage, and dispose of property, subject to applicable laws restricting the alienation of Indian lands and the dissipation of Indian resources, to make contracts, to issue nontransferable certificates of membership, to declare and pay out dividends, to adopt and use a corporate seal which shall be judicially noticed in all Federal courts, to sue and be sued in its own name, to employ counsel and to pay counsel fees not in excess of limits to be fixed by charter provision, to have succession until its membership may become extinct, and to exercise any other privileges which may be granted to membership or business corporations.

There are a number of things in there. The making of contracts is not subject to the Secretary of the Interior. Employment of counsel is not subject to the Secretary of the Interior as now. Within the limits set by the charter those are three functions which the com-

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munity performs, and the Secretary of the Interior has nothing to do with it. They are very important.

The making of the contracts and so forth is subject to the restrictions against the alienation of Indian property.

Now we come to subsection (h) of section 4, which is very fundamental. Mr. Siegel points out that while I stated that the making of contracts may to some extent be subject to the approval of the Secretary, he yet points out that the Secretary could insert restrictive conditions, but that is different from passing on the contract.

Subsection (h) provides—

to compel the transfer from the community for inefficiency in office or other cause, of any employee of the Federal Indian Service locally assigned——

Mr. WERNER. That seems to say that the Indians in any community, if a superintendent there acted arbitrarily or was not functioning in their interests according to their own designs, that they could remove him.

Mr. COLLIER. That is right. The section continues [reading]:

to regulate trade and intercourse between members of the community and nonmembers.

And then comes an item that may perhaps need discussion, which has to do with the exclusion from the territory and the community of gamblers, bootleggers, prostitutes, and other undesirable persons, with the approval of the Secretary of the Interior, for the general welfare of the community. The phraseology there is—

and to exclude from the territory of the community, with the approval of the Secretary of the Interior, nonmembers whose presence endangers the health, security, or welfare of the community——

Mr. WERNER. That is vesting those rights in the community members?

Mr. COLLIER. Yes; that is to take care of the various kinds of bad people who get in among them, such as prostitutes, bootleggers, and other people of that type.

Mr. WERNER. Suppose I should go down among the Indians in my State and endeavor to carry on a certain type of campaign, they could exclude me, could they not?

The CHAIRMAN. They could if the Secretary of the Interior joined with them.

Mr. COLLIER. I do not think actually that they could; because of the specific condition that would have to be met of freedom of assemblage, protection of the rights of the minorities. Those could not be waived by the Secretary of the Interior. In other words, the rule of reason would apply. [Reading:]

Provided, however, That nothing in this section or in this act shall be construed to forbid the service in the territory of any Indian community of any civil or criminal process of any court having jurisdiction over any person found therein.

As an example, take this matter of the exclusion of undesirables. That occurs all over the country at the present time, but here the Indian agent has unlimited power to exclude, and the Indians have no say, and there is no recovery.

Under the existing law, the Commissioner has unlimited power to exclude anybody from any Indian reservation. Under existing law, the Secretary of the Interior or the Commissioner of Indian Affairs could exclude anybody, and the Indians would have no recourse.

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Mr. Werner. Under the existing law?

Mr. Collier. Yes; under the existing law we have that power.

Mr. Werner. But what would be the constitutional rights?

Mr. Collier. There are none.

Mr. Werner. Would that apply to the immunity of a Member of Congress?

Mr. Collier. We have had repeated cases where this power of exclusion has been used, and used against reputable, and even famous people, and they have never succeeded in overriding it. I believe it was on the Crow Reservation in 1908—wasn't that the year, Mr. Roberts—the Indian Rights Association tried to go in and help the Indians. They gave them 1 hour to get out. That was carried to Washington and they made a big case out of it, but they never got anywhere. Then there was the case of Smith and Brosius. There is pending before this committee a repeal bill that wipes all those things out. That question has never been determined in the courts. It is my impression, subject to correction, that there was an identical case in one of the Kansas tribes, which was taken to the courts.

Mr. Werner. I was wondering if that was not where an attempt was made to effect changes on reservations in regard to limiting the power of the Commissioner and others in Indian Service?

Mr. Collier. That is to apply against persons who are attempting to arouse the Indians against the Government and the like. All that language is used in these old laws.

Mr. Werner. What I am getting at is, under present-day practice it would not be possible to exclude a man from the reservation?

Mr. Collier. I do not know; there are the statutes.

The Acting Chairman. There was a bill introduced, H.R. 7600, now before the committee, which repeals those sections of the Revised Code which give the Commissioner and the Federal officers the power to exclude people. I believe the sections in the code mentioned are known as "the espionage act", is not that correct?

Mr. Collier. That is correct.

Mr. Werner. The only thing I should say is that such laws should be repealed and authority along such lines limited, to avoid any abuses.

Mr. Collier. During all these years these laws have been used. Most people submit to them. They have been used against the Indians and also the whites. [Reading:]

(i) To exercise any other power now or hereafter delegated to the Office of Indian Affairs, or any officials thereof, to contract with Governmental bodies of State or Nation for the reception or performance of public services, and to act in general as a Federal Agency in the administration of Indian affairs, upon the condition, however, that the United States shall not be liable for any act done, suffered to be done, or omitted to be done by a chartered Indian community.

The United States Government should not be sued for a breach of contract by an Indian community.

The Acting Chairman. Mr. Commissioner, will that stand in the laws?

Mr. Collier. I would like our attorneys to speak.

The Acting Chairman. How can the United States waive or refuse to be responsible, having issued a charter?

Mr. Cohen. That means that it would be a chartered community and it could be sued. However, you cannot get execution against the

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United States, neither can you get execution against the lands, but you can create a debt against the community and thereafter the community will have to pay that debt before they pay a dividend.

Mr. CHAVEZ. How will they enforce it?

Mr. COHEN. The only way to enforce a debt against a community, is to levy an execution on a particular tract of land.

Mr. ROGERS. You could levy taxes and make them pay it.

Mr. WERNER. There would be no power to levy taxes.

Mr. COHEN. However, there is a power to levy an assessment on the community.

Mr. CHAVEZ. But you levy assessments for a particular purpose.

Mr. COHEN. It certainly is within the jurisdiction of a community to pay its just debts.

Mr. CHAVEZ. Can't you go into court on mandamus on it? There has been a lot of resentment in the minds of white people who live adjacent to many Indian reservations against the allotment policy which causes Indians to lose their lands. Consequently they have become an economic and public liability on the communities near which they live. It seems to me that the operation and one of the prime purposes of this bill was to in some manner alleviate that condition. Now you come along with a provision which specifically relieves the Government from any liability from this, and it seems to me as far as the local communities are concerned, that collectively they will be considered as individuals—whereas now you turn an individual Indian loose by allotment and you make him a burden upon the adjoining counties and towns and so forth—now you are going to do it for the community, and you are intending to relieve the Federal Government of all liability and responsibility for any act growing out of it.

Mr. COHEN. Are you referring to the act with regard to individuals? One of the functions of the community will be to administer charity for the benefit of the community and to the extent that is fixed in the charter.

Mr. CHAVEZ. What I have particular reference to is the definite powers granted so that these communities can make contracts and enter into the building of ditches and roads and whatever may grow out of their relations with towns and counties and so on, and the specific clause relieving the Government from any liability as a result of that. It seems to me you are doing collectively through these Indian communities what you did by individuals when you give them their allotment.

Mr. COHEN. Is not that precisely what any corporation involves? It involves a restriction placed upon the liability of the assets of the corporation. If you charter a Federal corporation and it enters into contracts, the liability is limited by the assets of the corporation. This charter in effect creates a Federal corporation, and anyone making loans far in excess of the assets would be doing it at his own risk.

Mr. PEAVEY. That may be all right in a commercial transaction, but not in a governmental transaction. These towns enter into the question of the various needs of the community of which they are a part, and I do not see any factual reason why the Federal Government should be absolved from responsibility.

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Mr. CHAVEZ. Mr. Cohen, this is what I have in mind also, in my State—that is, New Mexico—the Indians enter into a contract with the city of Gallup to take care of 50 or 100 Navajo boys and educate them in the schools. Now, what would the city of Gallup have if the Federal Government was not responsible?

Mr. COLLIER. What recourse would they have now?

Mr. CHAVEZ. They have none now.

Mr. COLLIER. Wouldn't they have exactly that recourse under this arrangement?

Mr. CHAVEZ. Except that you say that the Government would not be responsible.

Mr. COHEN. You can question it any time, and pass a new law.

Mr. COLLIER. If you want to create a liability under the law, they do not have it now.

Mr. WERNER. Under the arrangement now, they make the contract with the Commissioner.

Mr. COLLIER. Yes.

Mr. WERNER. And when that contract is made, the obligation is definite, and there is actually no prohibition against the collection of the amount of that contract——

Mr. COLLIER. None, except that you could not go into court and collect it.

The ACTING CHAIRMAN. Mr. Commissioner, if there is no limit upon the ability of the community to make contracts, you may have a community in the hands of a few who may have no regard for the welfare of the community and make contracts right and left far beyond their possibility to pay. In the end most people who contract with them may have no recourse against the community.

Mr. COLLIER. Correct.

The ACTING CHAIRMAN. There is no limitation.

Mr. COLLIER. This clause can do no more than serve notice that the contracting ability of the community is a limited contracting ability, so that the people without competent legal advice will not make reckless contracts, thinking the Government is standing behind it.

The ACTING CHAIRMAN. There is no limitation.

Mr. COHEN. There is a limitation in section 5, which provides adequate safeguards for the resources. In other words, there will be a limit placed on the respective communities beyond which they cannot go, as, for example, $1,000 or $2,000, and beyond that they cannot contract without the approval of the Secretary of the Interior.

The ACTING CHAIRMAN. In municipal corporations there are some limitations provided by State charters. There is some limitation in my State as to the contractability of any municipality up to a certain amount of the assessed valuation.

Mr. COLLIER. In this case, a community would be chartered, and that charter would provide outside debt limits. Whenever it desired to make obligations, the outside parties could examine the charter and see how far it extends and its scope, and if they had contracted for things which the charter did not permit the outside parties would be out of luck. Likewise, if they contracted outside of the amounts set forth, they would have to come to the Secretary of the Interior for his O.K.

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Mr. WERNER. Would it not be possible for the Government to have a positive prohibition in the charter against incurring any excess obligations? In the State of Nebraska a constitutional provision prevents that State from incurring bonded indebtedness. They pay as they go. Our State removed that provision from the constitution, threw down the bars, and as a consequence we have a debt that is staggering. Would it not be well to have a prohibition in this bill preventing bonded indebtedness?

Mr. COLLIER. It would paralyze them, because they could not make purchases and they could not even make short-term contracts which could be carried out.

Mr. WERNER. Why?

Mr. COLLIER. It would be almost impossible for them to make short-term contracts under such conditions.

Mr. WERNER. Mr. Commissioner, if you permitted them to use the money on hand, maybe that would paralyze them temporarily, but that would save paralysis later on.

Mr. SIEGEL. Those conditions are not really analogous; they were adopted for the protection of the taxpayers of the State. The obligation of an Indian is not an enforceable one, and the problem is that of protecting the outsiders. This act does not take away any security that they had before. Possibly you could amend this act slightly to provide that a certain percentage of the community annual income should be subject to execution. It is plain it would have to be limited to income, because you should not jeopardize the Indian capital assets. The whole purpose of the bill is to prevent that.

Mr. WERNER. You are interested in protecting the community in this set-up?

Mr. SIEGAL. Yes; but the provisions you cite contained in the State constitution are not analagous. Any burden assumed by Indians are not enforceable against them even if you wanted to protect the outsider. It is suggested that a certain percentage of the annual income of the community might be subject to execution. Otherwise income realized from restricted property is similarly restricted. You can change that situation if you think that the principal set-up is unsatisfactory. This act certainly does not restrict the opportunity for execution and enforcement that you had before and this act does not change in any way any moral obligation the Government may have to enable creditors of Indians to obtain satisfaction of their claims.

Mr. COLLIER. In the long run the Indian community borrowing money must meet its obligation. It depends upon its good will, and a community which defaulted once on a contract legally made within the charter would be without credit.

Mr. ROGERS. We have a lot of that today. There is no reason to be unduly alarmed about that. We have that today in many cities and counties throughout the country.

Mr. COLLIER. Yes.

Mr. PEAVEY. Mr. Commissioner, is not this true, that with this statement in the law it would be extremely difficult for any individual town, county, or State to recover against the Federal Government for any delinquency growing out of these charter communities? Is not that true?

Mr. COLLIER. I think that is not true.

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Mr. PEAVEY. I think it would be very difficult for anybody to recover as against the Federal Government. Now, for that reason, it seems to me it should not be put in here, but leave it open. No one knows how this law is to operate or how serious consequences may develop with regard to civil communities and local subdivisions of the Government. So, why not leave that provision out of the law, leave it practically as it stands today and then, if any serious injury is done to any community or town their only redress would be to make it known to Congress.

Mr. SIEGEL. We certainly do not want a provision in this act which could in any way be construed so that the United States could be sued on account of the default of any community. It seems to me we should leave the situation as it stands now, that is, leave Congress with the power it now has to give redress, and do that by removing the restrictions that exist in the act.

Mr. COLLIER. You prefer to have the present language in the act and have it remain status quo.

Mr. WERNER. But this language would make it more difficult to secure favorable action on a just claim when it came before Congress. The first thing that would happen is a lot of these people down here would pick up this law and say, "Have you read section (i)?" And then they would read it and it is quite probable that would finish any attempt to pass any bill in the face of the present provision.

Mr. COLLIER. You refer to a condition that might arise if someone came in with a relief bill.

Mr. ROGERS. Why not explain it in the committee's report that the act is not intended to have that effect?

Mr. WERNER. No; the committee reports are "lost" in the files, and this is just another legal problem.

Mr. COLLIER. It seems to me the committee grasps this very clearly.

Mr. MURDOCK. As I see the situation, how will you collect in case of default? What redress will you have? Will it be by taxation or assessment, and under the law would a mandamus lie to compel the community to levy a tax, the same as the Government? I do not think that has been answered.

The ACTING CHAIRMAN. Suppose the charter does not specify any contractual relation and fails to mention it—that was my thought on the matter.

Mr. MURDOCK. Then the charter would not satisfy the intention of this bill.

Mr. WERNER. No injunctive proceedings could be allowed for the collection of any obligation incurred.

Mr. ROGERS. It is not authorized by this act.

Mr. WERNER. That point is brought up by the question of a remedy the city of Gallup, may have under certain conditions stated by the gentleman from New Mexico?

Mr. MURDOCK. Suppose this section were left out, would it improve the status at all?

Mr. COLLIER. It should not be enforceable in the Court of Claims. Now, could we not change it to "upon the condition, however, that judgment against the Indian community shall not, or may not, be enforceable against the United States, but in the Court of Claims"?

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Would not that give the protection to the United States while leaving the door wide open for relief?

The ACTING CHAIRMAN. But, Mr. Commissioner, if I understand the attorney correctly, contractual relations other than the theoretical Indian community can have their contracts enforced in the Court of Claims. That would give this particular Federal agency a position that other agencies do not have before the Court of Claims.

Mr. COLLIER. You would in effect waive your right of prosecution—it would have that effect. But suppose you have a contract with the city of Gallup and we do not come across with the money, what happens then?

Mr. ROGERS. You would be subject to suit.

Mr. COLLIER. I have never heard of it being done.

The Acting CHAIRMAN. You would be subject to suit in the Court of Claims.

Mr. ROGERS. You would be subject to suit in the Court of Claims under the law.

Mr. COLLIER. There may be situations where we have made contracts and as a result of conditions beyond our control have not been able to carry out our part of the contract.

Mr. ROGERS. You may have a justifiable defense.

Mr. WERNER. Does the court set up in this bill supersede the Court of Claims?

Mr. COLLIER. No.

Mr. ROGERS. Why not let that section ride?

Mr. COLLIER. "The United States shall not be subject to suit for any act"—would not that cover your point?

Mr. PEAVEY. That would be satisfactory to me. On that point, Mr. Siegal, let me ask you another question. Suppose one of these Indian communities should construct a reservoir and water-power development, and that several were being built, and were in course of construction at this time. Not being a lawyer, I am not concerned with the legal aspects, but, suppose that that chartered community constructs this dam and power development, and either through their own inability to see that it was properly constructed, through weather conditions or climatic conditions beyond their control, whichever it was, the dam would go out and cause tremendous damage to the white people living below the dam.

Mr. SIEGAL. A municipal corporation is ordinarily liable for torts committed in its business capacity. This community, being an agency of the United States, may enjoy the immunity of the United States from suit for torts, from damages caused by torts. It probably might require a special statute. I should think that might be the case. Assuming that it was liable as a municipal corporation, however, the act prohibits involuntary alienation by execution. It says there is no way of enforcing judgment, which is the situation which prevails today.

Mr. PEAVEY. I am not concerned with the legal aspects, but with the right to come here to Congress and ask for relief.

Mr. SIEGAL. There is nothing which prevents anybody from presenting the facts to Congress and getting an appropriation from Congress. This is designed to eliminate any legal liability. This provides that the United States shall not be subject to suit for any act, and then you could come to Congress and get a special act passed

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granting relief. This is merely designed to remove liability of the United States, and the granting of relief would be up to Congress. That is up to Congress. This act is not designed to remove the power of Congress, but to remove the power of the Secretary of the Interior and of the Commissioner of Indian Affairs.

Mr. PEAVEY. But it removes the liability of Congress. Now, let me ask you a question. Is there any valid objection to an additional clause specifying that nothing in this act is in any way abridging the rights of anyone injured?

Mr. COLLIER. No.

Mr. PEAVEY. To come to Congress for redress. I think that would clarify it as far as Congress is concerned.

Mr. SIEGAL. Would that satisfy you, Mr. Werner?

Mr. WERNER. It is Mr. Peavey's objection.

Mr. DIAMOND. I was wondering if there should not be incorporated in the act some statement providing that no Indian community shall incur any indebtedness beyond its ordinary income for the coming year, otherwise they may go into debt indiscriminately. The way this bill is written no Indian community will be able to incur $1 of debt. Nobody would trust them or contract with them. That is the way the bill is drawn at the present time.

Mr. PEAVEY. Why do they contract with them?

Mr. COLLIER. Because they can come to Congress and have so come to get their money.

Mr. PEAVEY. Is there any change of heart on the part of Congress?

Mr. COLLIER. No; and I realize what these gentlemen say.

Mr. PEAVEY. What you say is for the protection of the outsider. It might be dealt with in a limited fashion by permitting them to be subject to execution on a limited percentage of their income.

Mr. DIMOND. But I am thinking more of the community income rather than the income of the members.

Mr. COLLIER. I suggest that it would be well to put in some provision which would make a portion of their income liable under their charter.

Mr. SIEGAL. I think that would be fair.

Mr. DEPRIEST. Would it not be a good thing to refer it back to the Department and have them rewrite it?

Mr. SIEGAL. Is anyone here raising a particular amendment?

The ACTING CHAIRMAN. I think it can be taken care of in the bill when the bill is read for amendment.

Mr. COLLIER. We think the conception is clear that the Government should not be liable for suit.

Mr. DE PRIEST. Yes; I think the right to petition Congress for relief should not be abridged. If a part of their income remains liable, as Mr. Dimond suggested, what would be the effect of that?

Mr. COLLIER. In the case where a chartered Indian community enters into a contract, incurs a debt, the question that would immediately arise would be what kind of security can it offer. It cannot offer its real property, its capital assets, and the United States cannot be legally made liable for that debt. We could make some part of the current income of the community liable for the debt. I cannot see the unfairness of it. They should not incur debts if they do not want to pay, and I cannot see any unfairness in allowing their income to be taxed when they incur a debt.

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Mr. DIAMOND. Mr. Commissioner, don't you think you should have some limitation of it?

Mr. COLLIER. I should think there should be some percentage.

Mr. DE PRIEST. It would have to be somewhat small because they have their schools and other local services to take care of.

Mr. MURDOCK. Mr. Commissioner, is it not true that your municipal corporations are all subject to execution? If they are subject to writs of mandamus to compel the levy of a tax to pay the judgment, it seems to me that an exemption in a case of this kind would be very dangerous.

Mr. DE PRIEST. There is no question about it, but it should be taken care of if we feel it necessary by giving the person or corporation that contracts with the Indian community the power to force the levy of an assessment by way of taxation rather than giving the right of execution against them.

Mr. ROGERS. How would you enforce the tax if there was no income?

Mr. MURDOCK. What good would your execution be if there was no income? I do not like the idea of the execution.

Mr. COLLIER. What is the difference in allowing an execution on their income and collecting taxes which would have the same result?

Mr. DE PRIEST. You might compel an increase in taxation and have men not pay their taxes, which is the situation today, as everybody knows. They cannot pay. If you levy against them, and their taxes are charged up, then the property would be sold. That is true, is it not?

Mr. PEAVEY. I would suggest that all legal phases of the bill be left until a joint committee meeting is held with the Judiciary Committee, and then we can take up other phases of it.

Mr. COLLIER. There are tribes, however, with income. Take the Navajo tribe. When business was good they had a substantial income from oil which was not dispersed; there are others who have an income from the yield of timber. In those cases where such tribes as corporations under this act enter into and incur a debt or enter into an obligation intending to pay, it would only require a modest part of their income to take care of their obligations.

Mr. DE PRIEST. I will ask you a question. Is there anything to prevent outside interests from owning property in these communities?

Mr. COLLIER. No.

Mr. DE PRIEST. Is there anything which will prevent outside interests from owning homes in these incorporated villages?

Mr. SIEGAL. There is nothing to permit them to own Indian property. They may live in the same area.

Mr. DE PRIEST. Will they be allowed to throw taxes on the people who own property?

Mr. COLLIER. They have no suffrage rights in the community and no property rights except what they may rent from the Indians.

The ACTING CHAIRMAN. Mr. Peavey suggests that any member who wishes to present any amendment should write out the amendment and hand it to the stenographer. In the meantime we could permit the Commissioner to go along through the bill and we could bring up these things as we came to them.

Mr. DE PRIEST. Mr. Chairman, would it not be well to take up these amendments——

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The ACTING CHAIRMAN (interposing). It is contemplated that the chairman arrange a meeting with the Judiciary on the legal questions and discuss with them the best way of doing it.

Mr. WERNER. Mr. Chairman, did we not agree to have a joint meeting with the Judiciary Committee on title 4 of the act with reference to courts and not on these legal questions?

Mr. COLLIER. The Department will of course submit these amendments. That is one of the several points on which we were not clear and seek light from the committee. I think we have light on this particular point. There were several points on which we were not clear. We embodied the language in the act so that I could bring it up and have your consideration.

The ACTING CHAIRMAN. There is nothing to prevent any member of the committee from making a motion asking the Commissioner to submit a substitute section for any section, or perhaps there may be some sections which various members of the committee wish to take up when we discuss the bill section by section again.

Mr. DE PRIEST. It does appear that we should ask for a substitute. It should be clarified because it is not clear to anybody, but something might be done which would hurt them, and that we should avoid if possible.

Mr. ROGERS. Not criticizing anything you have said, but some of them have been concerned about outside interests. I think we had better be sure that the Indian is protected, because that is what we are passing the bill for. The outside interests will protect themselves. We want to protect the Indians.

Mr. CHAVEZ. I do not think there is anything unreasonable, as far as I am concerned, for me to try to protect the school authorities in the city of Gallup, N.Mex., to see that they get their money.

Mr. COLLIER. I do not think so. I know over at Winslow, Holbrook, and Flagstaff, Ariz., where the Navajo boys go to school, they have that problem.

Mr. ROGERS. Mr. Commissioner, if this bill were adopted, it would not give those school districts any less protection than they now have?

Mr. COLLIER. No.

The ACTING CHAIRMAN. I think it is the consensus of opinion of the members of the committee that the Commissioner submit a revised subsection (i) of section 4 along the line of the discussion that has transpired here in the committee.

Mr. COLLIER. Subsection (j) is as follows [reading:]

> To exercise any other powers not inconsistent with the Constitution and laws of the United States, which may be necessary or incidental to the execution of the powers above enumerated.
>
> An Indian community chartered under this act shall be recognized as successor to any existing political powers heretofore exercised over the members of such community by any tibal or other native political organizations comprised within the said community——

Mr. WERNER. What does that mean?

Mr. COLLIER. The community, which is a tribe, succeeds to the authority that the tribe has. It succeeds to whatever power the tribe has. As it is at present the United States will recognize the law of the tribe as governing the members of that organization. The community would have all the powers that have been held by the tribal organization. [Reading:]

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Not withheld by such tribal or other native political organization, and shall, subject to the terms of the said charter, further be recognized as successor to all right, interest, and title to all funds, property, choses in action, and claims against the United States heretofore held by the tribes or other native political organization.

It is necessary to make clear what that means. It is very vital to certain southwest tribes, for example, the Pueblos, where there are men who by inheritance or by special training occupy the position that we would call the priest—they have authority as a result of ancient custom and tradition; they are extremely important in the life of the community and they know the wants of the community. No Pueblo would go in as a charter community if it had to go in at the violation of its ancient system. Without their priests, they would not agree to become a charter community.

Mr. WERNER. But this section only deals with a very limited number.

Mr. COLLIER. Yes. It is a very limited number, but it is very vital. Without this clause they would reject the bill. Subject to that limitation the charter community succeeds to the authority of the tribe. [Reading:]

To all right, interest, and title to all funds, property, choses in action, and claims against the United States heretofore held by the tribes or other native political organizations.

At that point we are proposing to insert before the word "right", in line 23, the word "liabilities" or have it read "all liabilities, interest, and right." And the next line will require an explanation. In the first line on page 10 there are the words "or to a proportionate share thereof." That language "or to a proportionate share thereof" grows out of the fact that a community frequently will be organized in an area smaller than that of a tribe, and its members will be fewer than the members of the tribe. For instance, many branches, of the Sioux Tribe are concerned at the present time in certain suits now pending before the Court of Claims, hoping for very large recoveries.

It is practically certain that the aggregate Sioux tribe would not become a charter community. There are various Sioux communities and each of them would succeed to its proportionate share of the total equity. I think that is fairly clear. I imagine there is nothing debatable in the section.

Mr. COLLIER (reading):

Comprised within the community, or to a proportionate share thereof, except as such succession may be limited by the charter, subject to existing provisions of law with respect to the maintenance of suits against the United States, and subject further to such provision for the apportionment of such assets among nonmembers of the community having vested rights therein, as may be prescribed by the charter.

Mr. SIEGAL. In line 7 the word "vested" should be changed to "valid" right, for the reason that there are no vested rights in such a community property.

Mr. COLLIER. That exhausts the lists of authorities that can be granted to a community, and we pass on now to section 5, to new subject matter which is important to the Indians. [Reading:]

SEC. 5. When any Indian community shall have been chartered, it shall be the duty of the Commissioner of Indian Affairs to cause regular reports concerning their respective functions to be made to the constituted authorities of the community, to advise and consult with such authorities on problems of local adminis

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tration and Federal policy, and to allow such authorities free access to the records and files of the local agency.

That merely establishes an obligation to report fully to the Indian community. [Reading:]

Any Indian community shall have the power to compel the transfer from the community of any persons employed in the administration of Indian affairs within the territorial limits of the community other than persons appointed by the community: *Provided, however,* That the Commissioner of Indian Affairs may prescribe such conditions for the exercise of this power as will assure to employees of the Indian Service a reasonable security of tenure and opportunity to demonstrate their capacities over a stated period of time, and an opportunity to hear and answer complaints and charges.

In other words, the removal of employees is made subject to procedure which the Secretary of the Interior is to set up. This defines the power. The previous one said he could have the power.

Mr. CHAVEZ. This merely authorizes the Secretary of the Interior to grant this power that this section is intended to give every Indian community and the mandatory word "shall" is used.

Mr. COLLIER. That is a detail of the amendment which is mandatory. It is not subject to the discretion of the Secretary.

Mr. WERNER. In paragraph 8 it is quite plain.

Mr. COLLIER. That is one of the powers that may be given under the charter, but in section 10 it says whether or not the charter gives it, the Indians shall have that power.

Mr. CHAVEZ. I think under section 8 no exception is made for persons appointed by the communities. I am not sure that they differ. Why not leave that section, beginning with line 15, out, and make section 5, which is mandatory, exclusive?

Mr. COLLIER. That is the charter power and this is general.

Mr. CHAVEZ. This is a grant of power.

Mr. COLLIER. Even if there is overlapping let us leave it and be sure.

Mr. CHAVEZ. The question is whether or not the community can have any responsibility with regard to its own appointees, and the question was raised as to whether they should not be given some independent discretion rather than compel the transfer of their own appointee to some other community which did not appoint them and which does not want them. If these persons appointed to the Federal service were regarded as appointees or employees of the Federal service, I think that they would be.

Mr. COLLIER. In other words, those Indians who qualify and are able to take the position, being qualified, should be admitted to the general Indian Service.

Mr. CHAVEZ. They might very well be granted the power. I think the thought with respect to these is that they should have some responsibility and they should not be allowed to voice their own, but perhaps should be given independent authority and discretion subject to the approval of the community.

Mr. WERNER. This would permit them to be sent some other place.

Mr. CHAVEZ. This refers to persons appointed other than by the community. That reservation is not included in the section appearing on page 8. I raise a question of possible contradiction.

The ACTING CHAIRMAN. Mr. Commissioner, why should persons appointed by the Commissioner be excepted from this power of removal?

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Mr. COLLIER. It comes from the charter; and they/are not excepted, and I think that language is simply superfluous—harmless and superfluous. It is thoroughly intended that they shall remove their own people. The rest, with respect to the employees of the Indian Bureau, they may compel their transfer out of that community. I should think that the charter should clearly define the relations of the Indian community to its own employees.

Mr. ROGERS. Would this language appear in every charter?

Mr. COLLIER. No.

Mr. ROGERS. It would not necessarily be in every charter.

Mr. COLLIER. No; but if it were not included on page 10 the community would have that right.

Mr. ROGERS. You think then that persons appointed by the community——

Mr. COLLIER. The persons appointed by the community, may be removed by the community as well.

Mr. ROGERS. I see, but they could not transfer them.

Mr. COLLIER. That language is superfluous, but it does no harm. It might serve to clarify. [Reading:]

SEC. 6. The Secretary shall prepare annual estimates of expenditures for the administration of Indian affairs, including expenditures for functions and services administered by an Indian community, pursuant to the authority conferred by section 8 of this title. It shall be the duty of the Secretary to transmit to the authorized representative of an Indian community any estimates and justifications thereof for expenditures to be made in whole or in part within the territorial limits of the community. Any recommendation of the authorized representatives of the community, including the approval or rejection of any item in whole or in part, or the recommendation of any other expenditure, shall be transmitted by the Secretary to the Bureau of the Budget and to the Congress concurrently with the submission of the estimates of the Secretary.

That is plain, and that is important from the standpoint of the Indians. At the present the Indians have not been consulted about expenditures at the reservation. As a rule they do not know anything about proposed expenditures until long after the appropriation bill has been passed. This will go a long way toward establishing home-rule. Obviously, no one would object to it. I might agree that the ability of the Indian Office thoroughly to carry into effect this mandate would be somewhat dependent upon the adoption of a simplified budget by Congress, and that is a matter which has been in controversy in both Houses. We are seeking a mandate from Congress which would require the Indian Office to account for all expenditures by reservations and by functions at each reservation. That is sought independently of this bill. If that plan should be accomplished then this section would be much easier to be put in operation than under the existing budgeting arrangement, because now Congress appropriates largely by lump-sum methods which flow over the Indian country and nobody knows what a given dollar is intended to do.

Mr. ROGERS. If this bill is adopted, would it be possible for the Indians to review the budget in advance?

Commissioner COLLIER. In advance.

Mr. ROGERS. And they would have the power to make suggested changes in that budget?

Commissioner COLLIER. Yes.

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Mr. ROGERS. And the power of final adoption before the budget?

Commissioner COLLIER. Yes. Any recommendation that would be made would come alongside any departmental recommendation to the budget and the Congress.

Mr. WERNER. The alternate bill would give you the right to do as you please. In other words, it would give you the power to ask for, say, a million dollars without any strings as to how it should be spent.

Commissioner COLLIER. No; the opposite is true. That is what we do now. The alternated budget plan would require us to split our proposed expenditures so that each reservation account would show exactly how much Congress appropriates for each function on that reservation. Now it is done in an essentially blind fashion.

Mr. WERNER. The alternate budget would be one duly itemized; and the money in it would be expended for each item set out and no other.

Commissioner COLLIER. Yes.

Mr. WERNER. I would be in favor of this.

Commissioner COLLIER. That is what we have been fighting for.

Mr. DE PRIEST. That should be a vast improvement.

Commissioner COLLIER. Yes; but the House did not see it that way. The House knocked it out and did not concur with the Senate. We have to seek legislation directing us to come to Congress next year with an old and a new budget, the old unscientific budget and the scientific budget.

Mr. ROGERS. Would it be proper to say that the House did not favor it at all?

Commissioner COLLIER. Yes; in a parliamentary sense the House rejected it.

Mr. WERNER. Was the House informed that that was the purpose of the alternate budget?

Commissioner COLLIER. Of course, the matter never was fought on the floor of the House at all. The Committee on Appropriations was informed and there were hearings on the Senate side. It has been going on for more than a year now.

Diverting the present Indian appropriation bill is a curious thing. It contains about 460 appropriations. In addition to that it contains many lump-sum appropriations about equal in amount, appropriations for education totaling about $4,000,000, a lump sum for health, and so forth.

We have a conglomerate of about 460 items and of these lump sums running into about seven million dollars. These items, I may say, are in hardly any case all the money being appropriated for the purpose in question. You will sometimes find a given piece of work appropriated for in 10 different parts of the Budget. You think you are dealing with the appropriation for that reservation, for the work on those reservations, and you learn you are fooled, because there are 10 other appropriations for the same thing. We are proposing to substitute for that an arrangement whereby the expenditures of a current year will be accounted for so that each reservation will know the total expenditures and for what they go, whether for doctors, nurses, farmers, or upkeep of buildings. Then we are proposing that we be required next year to submit the next appropriation on the basis of that segregated accounting. We then propose that Congress

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accept the Budget as submitted or amend it. Those amendments incorporated in the appropriation act will be the appropriation law; then we will be bound by the details we have submitted, and a given reservation will be entitled to the money we said it was going to get.

Mr. WERNER. Is the law going to include those specific items or will it just specify the sum?

Commissioner COLLIER. The law would include the estimate of the Indian Office as to exactly how much we shall spend on each thing at each place by adopting the budget. In other words, the budget would come before Congress and Congress would amend the budget in any particular. It might say that we shall not spend $240,000 on the Rosebud Reservation; we shall spend only $120,000, and the deduction shall be taken out of this and this and this. Each year thereafter there will come a showing as to what was done with the money by reservation and functions. And the Congress would direct us to do that way or differently next year. It forces a practical accounting system and enables each Indian to know just what is being done with the money; it would enable Congress to amend effectively, so that a Congressman would not just get something; he would get what he was after. The Indian Office could run rings around Congress under the present budget.

Mr. O'MALLEY. There is no opportunity to amend an appropriation bill in the present state of affairs.

Commissioner COLLIER. I am aware of that. The House Committee on Appropriations did not see it that way, as I have said. I may add that we have the whole Administration back of this attempt to improve. We have the President, the Comptroller General, and everybody else concerned, except the House.

Continuing, at line 18, page 11:

> The Secretary shall also transmit to the authorized representatives of an Indian community a copy of any bill, or amendment of a bill, for the benefit of Indians, authorizing, in whole or in part, the appropriation or expenditure, within the territorial limits of such community, of any funds from the Federal Treasury for which the Secretary of the Interior has submitted no estimates, and the Secretary shall transmit their written recommendations to the Congress.

In other words, any authorizing legislation as well as any appropriation shall be submitted.

Continuing, on page 12, line 1:

> The Secretary shall also transmit to the authorized representatives of an Indian community a description of any project involving the expenditure, in whole or in part, of any funds appropriated for the general welfare within the territorial limits of the community.

This refers to public works expenditures, and so forth.

Line 6, page 12:

> No expenditure hereafter authorized or appropriated for by Congress shall be charged against any such Indian community as a reimbursable debt, unless such appropriation and expenditure have been recommended or approved by such Indian community through its duly constituted authorities; and any funds of the community deposited in the United States Treasury shall be expended only by the bonded disbursing agent of such community.

Mr. MURDOCK. Going back to page 11, Mr. Commissioner, beginning in line 18, it provides that—

> The Secretary shall also transmit to the authorized representatives of an Indian community a copy of any bill, or amendment of a bill, for the benefit of Indians * * *.

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I am wondering whether that language is not a little dangerous.

Commissioner COLLIER. That is the polite language. It is assuming that all legislation is for the benefit of the Indians.

Mr. MURDOCK. Any bill having to do with Indians, I think it should be.

Commissioner COLLIER. That is what it means.

Mr. MURDOCK. I think we should have that in there. Many bills might not be for the benefit of the Indians.

Mr. O'MALLEY. Does that mean a departmental bill or what?

Commissioner COLLIER. It means any bill or bills. It will be necessary to get enough prints of every bill and it will be incumbent upon the Indian Office to ship the bills out as soon as they are ready.

Mr. WERNER. Who would bear the expense of that?

Commissioner COLLIER. The Federal Government.

Mr. PEAVEY. Does that mean that the Department would furnish all Indians with any bills, or other proposal affecting them, or only those Indians chartered under the provisions of this bill?

Commissioner COLLIER. This relates to chartered communities only. It does not go farther than that.

Mr. MURDOCK. Mr. Commissioner, could you not well strike out "for the benefit of" and insert in lieu thereof the words "pertaining to"?

Mr. SIEGEL. The language was there used in contradistinction to language in the next paragraph, in order to distinguish appropriations made as guardians of the Indians and those made for general welfare. I do not think we should necessarily have to submit bills which might only remotely affect the Indians.

Mr. MURDOCK. Suppose a bill were introduced and instead of being for the benefit of the Indians it was for their injury?

Mr. COLLIER. Why not say "on behalf of the Indians"? Or a bill "pertaining to Indians" would be all right, as has been suggested.

Mr. MURDOCK. They are entitled to know what bills are being introduced and passed pertaining to Indians.

Mr. COLLIER. Yes.

I shall now pass to page 18, section 13, where we desire to submit a lengthy amendment. The amendment is new matter and deals with credit facilities for Indians. Following line 12, page 18, is the place.

Mr. O'MALLEY. Is that in addition to section 12?

Commissioner COLLIER. We did not have this section pertaining to credit, because we were seeking advice of other departments of the Government. Our proposal says:

SEC. 13. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a revolving fund of $5,000,000 for making loans to chartered Indian communities, or their members, for any of the purposes specified in section 14 of this title, and to defray the expenses of administration of such loans, and there is further authorized to be appropriated from time to time such amounts as the Congress may determine to be necessary for the effective administration of the credit system established by this act. The Secretary is authorized and directed to determine the credit needs of any chartered community, including its members, to apportion such funds to any chartered community as may be required to meet such needs, and from time to time to increase or diminish such funds. In making such apportionment the Secretary shall give preference to Indian communities which will agree to contribute community funds, in substantial amounts, to be used for the credit purposes authorized by this act and to absorb a proportionate share of losses from bad loans: *Provided, however*, That this section shall not be construed to limit the authority

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of the Secretary to apportion funds to chartered communities which do not possess sufficient funds to make contributions.

SEC. 14. The Secretary of the Interior may make loans to chartered communities, or their members, to promote the economic development of such communities and their members; to clear, improve, and develop lands for agriculture or for other productive purposes; to purchase the rights and equities of allottees or heirs in trust patented lands; to construct houses, barns, fences, and other permanent improvements required for the productive use of Indian lands; to purchase seed, farm equipment, livestock, fertilizer, and other materials and equipment for productive land use; to provide operating funds for agriculture and other productive use of land or natural resources; to purchase sawmill, logging, or other equipment for community development of natural resources; to establish cooperative stores and marketing associations; to construct public works; and for other like purposes.

The Secretary shall require satisfactory proof of the financial and personal responsibility of any individual, association, or community applying for a loan and of the ability of such individual, association, or community to put the proceeds of such loan to beneficial use; shall require a duly executed contract specifying the methods of amortizing such loan from future individual, association, or community moneys, assets, crops, or products of land or industry or other income; and shall prescribe the forms of liens on real or personal property of the individual, association, or community which he may require as security for any loan.

Commissioner COLLIER. This new section is fundamental; and it hardly requires argument.

Mr. DE PRIEST. In requiring $500,000,000 to be used for that purpose, is there any specified rate of interest, so that we may know what will be done?

Commissioner COLLIER. It is not interest-bearing. It is a revolving fund and the repayment will go into the revolving fund.

Mr. PEAVEY. I think the gentlemen inadvertently specified somewhere near the amount that should appropriately be the sum, rather than the amount named. He said $500,000,000, and the bill provides for only $5,000,000.

Commissioner COLLIER. If we take the total credit now extended to Indians it works out about $1.55 a year per capita. That is the financial credit they have for all stock and farming, operations, for education, and everything else. Possibly the thing that has more to do with forcing the Indians to let their lands go to whites than anything else is the denial of credit. That has gone on year after year. It has been pointed out at intervals and yet nobody pays any attention. The Senate Indian investigating committee last year brought out a very impressive report, insisting that unless a credit system could be created, we must make up our mind that lots of Indian land will be leased to whites. I am sure this section will be a desirable one for the Indians.

Mr. O'MALLEY. A copy of the suggested amendment has been filed with the reporter, and it will appear in the record.

Mr. PEAVEY. I think the amendment is a very good, wholesome one. It is not only wholesome, but it is necessary for this legislation, if it is to be at all successful in operation. However, it seems to me that the amount suggested is so small as to contemplate that only a very few Indians will be able to avail themselves of this provision of the law. If any considerable number of independents or tribes do avail themselves of this, it seems to me that the $5,000,000 is wholly inadequate.

Commissioner COLLIER. That is unquestionably so, but that is for only 1 year. We would not have to get a new authorizing act.

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Mr. PEAVEY. You would have to justify that before the Committee on Appropriations.

Commissioner COLLIER. Yes. Of course, we should like to have more. As stated, we would not have to get a new authorizing act.

Mr. DE PRIEST. There is an authorization, but not the necessary money.

Mr. PEAVEY. The money would be used, according to this bill, only as the Secretary was called upon for these loans?

Commissioner COLLIER. We should like to have that figure raised.

Mr. PEAVEY. The effect of the amendment is to require participation on the part of every Indian or chartered community?

Commissioner COLLIER. It would enable the Secretary in making such apportionment to give preference to Indian communities which will agree to contribute community funds.

Mr. PEAVEY. And where they do not participate they have to give security?

Commissioner COLLIER. Yes.

Mr. PEAVEY. It seems to me that it would be advisable to raise that amount.

Commissioner COLLIER. It is very modest.

Mr. DE PRIEST. Would not $10,000,000 do more good?

Commissioner COLLIER. It would do more good and it would not be too much. What we are trying to do is to avoid objections. The main thing is to get the machinery set up and the principle established.

Mr. DE PRIEST. I think it should read $10,000,000 instead of $5,000,000.

Mr. O'MALLEY. The bill is not yet being read for amendments.

Commissioner COLLIER. I merely wanted to get that proposed amendment into the record, and therefore I jumped to where we are in the hearing.

Mr. O'MALLEY. The committee has been in session about 3 hours and your chairman would like to know the pleasure of the committee in connection with continuing the hearing this afternoon. In other words, at what time would the committee like to adjourn.

Commissioner COLLIER. The Senate Committee starts its hearing tomorrow morning at 10 o'clock on this bill. I could probably arrange to be with you tomorrow afternoon.

Mr. O'MALLEY. What is the pleasure of the committee.

Mr. PEAVEY. I move that we adjourn, to meet tomorrow afternoon at 2 o'clock for further consideration of this bill.

Mr. ROGERS. I second the motion.

(The motion carried unanimously.)

Mr. O'MALLEY. The committee will now adjourn, to meet at 2 p.m. tomorrow, when the Commissioner will be with us again in connection with this bill.

(Thereupon at 4:40 p.m. the committee adjourned, to meet at 2 p.m. tomorrow, Tuesday, Feb. 27, 1934.)

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READJUSTMENT OF INDIAN AFFAIRS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

PART 4

Printed for the use of the Committee on Indian Affairs

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READJUSTMENT OF INDIAN AFFAIRS

TUESDAY, FEBRUARY 27, 1934

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
Washington, D.C.

The committee met in the committee room, Capitol, at 2 p.m., Hon. Edgar Howard (chairman), presiding.

Present: Representatives Howard (chairman), Cartwright, Rogers, O'Malley, Stubbs, Hill, Peavey, De Priest, Collins, and Christianson.

The CHAIRMAN. We will resume from the point where the Commissioner left off yesterday at the adjournment.

STATEMENT OF JOHN COLLIER, COMMISSIONER OF INDIAN AFFAIRS—Resumed

The CHAIRMAN. It was stated that we should have about 5,000 copies of the hearings for the War Department and ourselves, as individual members of this committee, to send to our people, but I discovered that it was impossible to get in excess of 1,000 copies of the hearings, without a special resolution.

I have drafted such a resolution and I filed it this morning, and, of course, it will be referred to the Committee on Printing, and I am quite sure I will be able to get it through, calling for a print of 5,000 copies of the hearing. I do not know for sure, but I am quite confident that it will be permitted, and then we will have an abundance of copies.

Mr. Commissioner, if you will please be kind enough to proceed.

Mr. COLLIER. Mr. Chairman, the title under consideration now is title III, beginning on page 25 of the bill.

Before taking up this matter, there is one preliminary statement that I would like to make with considerable care.

In earlier meetings of the committee it has been pointed out that through the allotment system, through the operations of allotments, there have been various rights which may be called vested or they may be called valid; at least, they are property rights in individuals to specified parcels of land.

We have repeatedly stated that such property rights of individuals are respected by the bill; that they must be under the Constitution; and that insofar as they are not adequately respected by the bill, we want the bill changed in order that it may not be in violation of the due process clause of the Constitution.

I think it may be well for the record to point out that a "vested right" in property is not necessarily, in fact, it never is, an absolute right to do anything with the property. Every time the Government extends its control over business with a view to keeping the channels

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of competition open, to control over production or any other interference, property rights have to be readjusted. Of course, a perfect example would be the operations under a code. You cannot reorganize any large system of business or land ownership without readjusting something. That readjustment must be within the Constitution.

In the case of these lands, it must be within the constitutional guarantees. Valid or vested individual rights must be protected.

Another thing to be pointed out is this: That while the allotment system has created rights, valid, and in some cases vested, those rights are enjoyed under a very rigid governmental supervision now. The allottee, for example, may not sell his land; he may not hypothecate his land. He may not even assert a right to a continuance of tax-exemption, because the Secretary of the Interior may declare him competent at any time, may fee patent his land to him and, at a stroke of the pen take away from him his tax exemptions that he has been enjoying.

Therefore, while the rights of Indians to allotted land held under trust are valid or vested, as the case may be, they are very definitely limited and subject not only to Congress, but, under existing laws, subject to an unlimited amount of administrative interference.

I dwell on this because it will become apparent in the analysis of these sections that there will arise cases—they will not be numerous or typical—but there will arise cases where under the operation of the proposed language an allottee would find himself required to make some adjustment, not merely enabled to make it, but required to make it.

If that adjustment can be demonstrated to be not only necessary for the common good but of advantage to him, of advantage to his property, then there is no confiscation and there is no disturbance of any valid or vested rights.

It will be exceptional, but there will arise cases where individual allottees under the operation of this language will be required to do things which they would not want to do.

If we may now proceed with the sections: Title III, section 1 is a declaration of policy. It says:

> It is hereby declared to be the policy of Congress to undertake a constructive program of Indian land use and economic development, in order to establish a permanent basis of self-support for Indians living under Federal tutelage; to reassert the obligations of guardinaship where such obligations have been improvidently relaxed; to encourage the effective utilization of Indian lands and resources by Indian tribes, cooperative associations, and chartered communities; to safeguard Indian lands against alienation from Indian ownership and against physical deterioration; and to provide land needed for landless Indians and for the consolidation of Indian landholdings in suitable economic units.

Section 2 modifies all existing law in that it states:

> Hereafter no tribal or other land of any Indian reservation or community created or set apart by treaty or agreement with the Indians, act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

It stops allotment in severalty. That is, it stops allotment in severalty, as under the allotment acts, general and special. It would not stop assignment. It would not stop all kinds of arrangements insuring individual landholding. They are contemplated under this bill, but it would stop allotment in severalty, with the conveyance of a title to an individual.

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SEC. 3. The Secretary of the Interior is authorized to withdraw from disposal the remaining surplus lands of any Indian reservation heretofore opened or authorized to be opened, to sale, settlement, entry, or other form of disposal by presidential proclamation, or under any of the public land laws of the United States.

In referring to the authority of the Secretary of the Interior "to withdraw from disposal the remaining surplus lands of any Indian reservation heretofore opened or authorized to be opened, to sale, settlement, entry, or other form of disposal", the section relates to the surplus and ceded lands which temporarily are withdrawn from further entry.

Section 3 continues:

Any land so withdrawn shall have the status of tribal or other community lands of the tribe, reservation or community within whose territorial limits they are located.

This relates not to public domain but to the so-called surplus public lands ceded or taken by allotment and being held at the disposal of the Government to be turned over to whites in behalf of the Indians.

Continuing section 3 reads:

Provided, however, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this act.

The final part of section 3 reads:

The Secretary of the Interior shall determine what lands—

Of these ceded lands—

lying outside of areas classified for consolidation under Indian ownership pursuant to section 6 of this title, are not needed by the Indians, and such lands shall be reopened to sale, settlement, entry, or other lawful form of disposal in accordance with existing law.

Mr. ROGERS. Mr. Commissioner, these lands which the Indians own will be outside these areas?

Mr. COLLIER. Yes, sir. It means this: There is a large number of cases where, under treaty, Indians have ceded lands which are to be disposed of for the benefit of the Indians by the Government. Often those lands have been awaiting disposal for a generation or longer. Nobody wants them. Again, under the operation of the allotment system, special areas are designated as surplus lands, and instead of being allotted, are held for disposal to whites.

This bill would prevent any more disposal of those lands, until a reexamination of the land is made. Then only the land that the Indians do not need can be so alienated to whites.

Mr. ROGERS. But, Mr. Commissioner, the Secretary of the Interior would be the judge?

Mr. COLLIER. Yes, sir; he would be the judge as to whether the tribe does or does not need the land.

That could be qualified in various ways, of course. He could be the judge along with the concurrence of the tribe. He could be required to recommend to Congress, and not have final discretion.

SEC. 4. The existing periods of trust placed upon Indian allotments and unalloted tribal lands and any restriction of alienation thereof, are hereby extended and continued until otherwise directed by Congress.

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The trust period is continued in all cases until Congress shall direct otherwise. Section 4 continues:

The authority of the Secretary of the Interior to issue to Indians patents in fee or certificates of competency or otherwise to remove the restrictions on lands allotted to individual Indians under any law or treaty is hereby revoked.

Congress takes back that power, takes it away from the Secretary. I may say that that particular power has been abused with terrible results in years gone by. Section 4 continues:

No lands or other capital assets owned by an Indian community, or any interest therein, shall be voluntarily or involuntarily alienated: *Provided, however,* That the community may grant the use of the surface of, or any mining privileges in, any land to a nonmember. by lease or revocable permit for a period not to exceed one year, or with the approval of the Secretary, for a longer period, and may, with the approval of the Secretary, sell or contract to sell to a nonmember any standing timber, or dispose of any capital improvements, owned by the community.

I shall have some new wording to suggest there, but I will first explain the section as it stands.

At present all leases are subject to the approval of the Secretary of the Interior. This language would give to the Indian community an independent power to lease, for a term of not more than 1 year, and would give it the initiative in all leasing, but would require the approval of the Secretary for a lease of longer duration.

Mr. STUBBS. Mr. Commissioner, I see a weakness there, seemingly. It says:

That the community may grant the use of the surface of, or any mining privileges in—

for a period not to exceed 1 year.

It seems to me that if the community, after a mining company had gone in and made a great investment, for some reason would want to revoke that lease for a period of 1 year, it would work a hardship upon the mining company.

Mr. COLLIER. It would; but, of course, the mining company would not go in on those conditions. The mining company would insist on a 5-year lease, which would require the authority of the Secretary of the Interior.

Mr. ROGERS. By the terms of the bill he could get that?

Mr. COLLIER. Yes, sir; but that could be corrected by inserting on line 4, page 27, after "one year", the following language: "Nor without the approval of the Secretary to be renewed." We would not want a condition where the tribe would lease it a year, lease it another year, and then lease it still another year, thereby completely evading the restrictions which are intended to govern. In other words, it is an unrenewable lease of 1 year, or a lease which, if renewed, requires the approval of the Secretary of the Interior.

The CHAIRMAN. Mr. Commissioner, let me suggest right here that we could save a great deal of time when we come to the consideration of this bill, if your Office—and I say this to the members, to be considered after reading this over—if your Office will be kind enough to present in writing the amendments which you may desire, and have them here so that we will not have to stop and write them out while we are considering the bill.

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

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The CHAIRMAN. But I suggest to my colleagues on the committee, that while we are reading the bill, if any of us shall discover an amendment which we would like to offer, that we had better mark our copy and then have our amendment here typewritten, so that we won't have to stop any of our general consideration of the bill for amendments, because this is quite a lengthy bill, my colleagues, and it will probably keep our noses to the grindstone for quite a while, when we get into it.

Mr. COLLIER. I just mention in passing that we are going to suggest that the outside limit of a lease, even when approved by the Secretary, shall be 5 years.

Section 5 says:

No sale, devise, gift, or other transfer of Indian lands held under any trust patent or otherwise restricted, whether in the name of the allottee or his heirs, shall be made or approved: *Provided, however,* That such lands may, with the approval of the Secretary, be sold, devised, or otherwise transferred to the Indian tribe from whose lands the allotment was made or the chartered community within whose territorial limits they are located: *And provided further,* That the Secretary of the Interior may authorize exchanges or lands of equal value—

Mr. HILL. Should not that be "of" instead "or"?

Mr. COLLIER. Yes, sir.

* * * may authorize exchanges of lands of equal value whenever such exchange is in his judgment necessary for or compatible with the proper consolidation of Indian lands classified for the purpose pursuant to the authority of section 6 of this title.

The beginning of this section—

No sale, devise, gift, or other transfer of Indian lands held under any trust patent or otherwise restricted—

would allow a sale of Indian land by allottees only to the tribe or to the community. That is clear.

The second proviso:

And provided further, That the Secretary of the Interior may authorize exchanges of lands of equal value whenever such exchange is in his judgment necessary for or compatible with the proper consolidation of Indian lands * * * .

He may permit an Indian to surrender a piece of land and get another piece of land of equal value, more available for use.

The CHAIRMAN. Contiguous to his own holdings?

Mr. COLLIER. Contiguous to his own holdings. It is merely an authorization of exchange, as a means toward consolidation.

Mr. KENNEDY. Mr. Collier, might it not be advisable sometimes to exchange a piece of land not of equal value?

Mr. COLLIER. It would not be safe to depart from the valuation principle there. Area could be no criterion. All exchanges under existing law require that we adhere to the valuation principle.

Mr. SIEGEL. The difficulty otherwise might be that a transfer would be allowed which would continue for the life of the transferee and might, through use of such a device, continue the allotment system indefinitely.

Mr. COLLIER. Section 6:

The Secretary of the Interior is authorized and directed—

this section is quite important—

is authorized and directed to classify areas of land allotted in whole or in part—

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that is tribal or allotted—

now under restricted Indian ownership which are reasonably capable of consolidation into suitable units for grazing, forest management, or other economic purposes, and to proclaim the exclusion from such areas of any lands not to be included therein. In order to bring about an orderly and sound acquisition and consolidation of lands and to promote the effective use of Indian resources and the development of Indian economic capacities, the Secretary is hereby authorized and directed to make economic and physical investigation and classification of the existing Indian lands, of intermingled and adjacent non-Indian lands and of other lands that may be required for landless Indian groups or individuals; to make necessary maps and surveys; to investigate Indian aptitudes and needs in the agricultural and industrial arts, in political and social affairs and in education, and to make such other investigations as may be needed to secure the most effective utilization of existing Indian resources and the most economic acquisition of additional lands.

In carrying out the provisions he is then authorized to use other Federal departments, as well as the Interior Department.

The main substantive feature in section 6 is that the Secretary is directed to mark the areas to be consolidated.

That is important because it is only within those areas that he has certain powers, later to be explained in the bill. Those certain powers are not universal but are limited to those lands marked for consolidation, which would be much less than the land now allotted.

SEC. 7. The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to acquire, through purchase, relinquishment—

That means voluntary relinquishment—

gift, exchange, or assignment, lands or surface rights to lands, within or outside of existing reservations—

That is lands and their minerals or just the surface rights—

including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians for whom reservation or other land is not now available and who can make beneficial use thereof, and for the purpose of blocking out and consolidating areas classified for the purpose pursuant to the authority of section 6 of this title.

The Secretary is authorized, in the case of trust or other restricted lands or lands to which fee patents have hitherto been issued to Indians and which are unencumbered, to accept voluntary relinquishments of, and to cancel the patent or patents or any other instrument removing restrictions from the land.

There is hereby authorized to be appropriated, for the acquisition of such lands and for expenses incident thereto, including appraisals and the investigations provided for in section 6 of this act, a sum not to exceed $2,000,000 for any one fiscal year. The unexpended balances of appropriations made for any one year pursuant to this act shall remain available until expended.

The Secretary of the Interior is hereby authorized to accept voluntary relinquishments from any Indian allottee or Indian homestead entryman, or from his heirs, of all rights in and to any land included in any Indian public domain allotment, homestead, or application therefor, which has been heretofore or may hereafter be made, where such land lies within the exterior boundaries of any Indian reservation or area heretofore or hereafter set apart and reserved for the use and benefit of any Indian tribe or band; and the Secretary of the Interior is hereby authorized and empowered to cancel any patent which may have been issued conveying such land, or any interest therein, to any Indian allottee or Indian homestead entryman.

That is a feature of local interest. There are some places where, in the first instance, there have been allotments made to individual Indians on public domain. At a later time, through Executive order, as a rule, or through act of Congress, the whole of the surrounding public domain has been made into a reservation for the trible. He is permitted to relinquish his allotment to the tribe.

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Mr. KENNEDY. Do you think that last arrangement is constitutional, Mr. Collier?

Mr. COLLIER. It is only an authorization to make a surrender.

Mr. SIEGEL. That provision is purely voluntary.

Mr. KENNEDY. It does not say that. It says—

The Secretary of the Interior is hereby authorized and empowered to cancel any patent which may have been issued.

And so forth.

The CHAIRMAN. I will ask you gentlemen outside the committee if you will be kind enough to announce your name for the benefit of the reporter, whenever you care to propound a question, please.

Mr. KENNEDY. R. L. Kennedy, Indian Rights Association.

Mr. SIEGEL. The first part of that reads that he is authorized to accept voluntary relinquishments. If there is any doubt as to the cancelation, I think it should read: "with the consent of the Indian." That would be satisfactory, Mr. Collier?

Mr. COLLIER. Yes, sir. We assumed that was all carried under the preceding language of the paragraph. It is intended to be a voluntary matter entirely.

Beginning on line 11, page 30, section 7 reads:

Title to any land acquired pursuant to the provisions of this section shall be taken in the name of the United States in trust for the Indian tribe or community for whom the land is acquired, but title may be transferred by the Secretary to such community under the conditions set forth in this act.

In this the community acts as an instrumentality of the Federal Government.

Section 8: Any Indian tribe or chartered Indian community is authorized to purchase or otherwise acquire any interest of any member of nonmember in land within its territorial limits, and may expend any tribal or community funds, whether or not held in the Treasury of the United States, for this purpose, whenever, in the opinion of the Secretary of the Interior, the acquisition is necessary for the proper consolidation of Indian lands.

That is merely an authorization for use of tribal funds by the tribe, to buy the land needed for consolidation, whether from a member or nonmember.

The Secretary of the Interior is authorized to transfer to an Indian tribe or community, and to accept on behalf of the tribe or community, any member's interest in restricted farming, grazing, or timberlands, and shall issue a nontransferable certificate in exchange, evidencing a proportionate interest in tribal or community lands of similar quality, if in his opinion such transfer is necessary for the proper consolidation of Indian lands.

I call your attention to that. We have now passed on into a grant of authority to the Secretary to act without a petition from an allottee.

Provided, however, That any Indian making beneficial use of such transferred lands shall be entitled to continue the occupancy and use of such lands—

That is, lands where the title has gone back to the tribe—

and to any improvements thereon—

As an alternative—

or to receive adequate compensation for such improvements, subject to the provisions of section 14 of the title. For the purpose of this section "proportionate interest" shall be construed to mean a right to use or to receive the income from an equivalent amount of tribal or community land of similar quality or to receive the money value of any lawful disposition of the interest transferred if such right of use is not exercised.

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Mr. O'MALLEY. Mr. Commissioner, I notice in the first part of this paragraph, authority is given to the community, or rather to the Secretary of the Interior to transfer to a community restricted farming, grazing, or timberlands.

Mr. COLLIER. Yes, sir.

Mr. O'MALLEY. But it says nothing about the improvements thereon until you get down to where the provision is included that any Indian can continue the occupancy and use of not only such lands as are mentioned in lines 3 and 4, but also the improvements thereon. Would that mean that the transfer would be of the land and the improvements would still belong to the Indian?

Mr. COLLIER. He may continue to use the improvements or may be compensated for them in the event that they are transferred too.

I may say that this is the most difficult paragraph in the bill. It will require the most analysis in relation of every part to the other parts.

Mr. O'MALLEY. Of course, if he is compensated for improvements, it is taken for granted that he has transferred them.

Mr. COLLIER. Yes, sir.

Mr. O'MALLEY. But the language in line 4 does not provide for the transfer of improvements.

Mr. SIEGAL. I should say that it is legally included, because any fixed improvement on the land is included as a part of the land, and that would mean that the Secretary of the Interior would have transferred them. If he did transfer them, he could either give compensation or continued use.

Mr. O'MALLEY. How about a house?

Mr. SIEGEL. The house would be transferred with the land and the right to use it would descend, as the section later provides, or else they would receive compensation for it. The Secretary, however, need not transfer. He has the power to, but need not do so.

Mr. O'MALLEY. Here he does not need to transfer the improvements. He might transfer the land, but there is no authority to transfer the improvements.

Mr. SIEGEL. I think there is an authority, because any fixed improvement on the land is a part of the land technically.

Mr. COLLIER. May I suggest that we look at the remaining language, which will somewhat reflect back on this.

The CHAIRMAN. I think the remaining language will clarify the situation as suggested by Mr. O'Malley, as I remember from reading it. Let us see if it will not.

Mr. COLLIER (reading):

For the purpose of this section "proportionate interest" shall be construed to mean a right to use or to receive the income from an equivalent amount of tribal or community land of similar quality or to receive the money value of any lawful disposition of the interest transferred if such right of use is not exercised. A member's proportionate interest may descend to the heirs of such member but not to any nonmember, and his right of use of transferred land, if exercised, may similarly descend to the heirs of such member.

The Secretary of the Interior may sell and convey to an Indian, to an Indian tribe—

There is a repetition, "to an Indian", should go out—

The Secretary of the Interior may sell and convey to an Indian tribe or community, any restricted lands inherited by any member, whenever, in his opinion, the sale is necessary for the proper consolidation of Indian lands.

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At present he may sell it to the whites. He could not sell under this provision:

The time and mode of payment of the purchase price of any lands authorized to be sold or purchased under this section shall be governed by the agreement between the parties, but insofar as practicable the purchase price shall be paid in annual installments equal to the estimated actual proceeds realizable from any lawful disposition of the land, and the vendor, if a member, may accept any right of use in tribal or community lands as satisfaction of the purchase price in whole or in part

Mr. ROGERS. It says, "shall be governed by the agreement between the parties". Is the Indian owning the land one of the parties?

Mr. COLLIER. The Indian owning the land is one of the parties.

Mr. ROGERS. It said that by agreement of the tribe and the Secretary of the Interior those lands could be sold or transferred without an agreement.

Mr. COLLIER. He is certainly a party.

Mr. ROGERS. Suppose he does not agree, and the reading of the preceding language says that this land may be sold upon agreement between the Secretary and the tribe.

Mr. SIEGEL. He is usually a party but is not necessarily a party. The Secretary is authorized in the preceding paragraphs to transfer, with or without consent, and here also, as well, with or without consent.

Mr. COLLIER. This relates to the mode of payment of the purchase price.

Mr. SIEGEL. The Indian might be included and might not.

Mr. ROGERS. He might be excluded?

Mr. SIEGEL. Yes, sir. The thought of that paragraph is that the terms of payment should be so arranged that the community would be enabled to purchase. In other words, they would purchase out of what the Indian is now entitled to, the use or rental.

Mr. O'MALLEY. Is there any reason why this particular section should not specify that the party whose lands are to be transferred shall be a party to this agreement?

Mr. SIEGEL. There is a reason. One of the reasons of making a transfer or sale compulsory, in some instances, is that there may be a party who will hold out. Those lands which are an integral part are necessary for the purpose of consolidating the lands. However, the section carefully guarantees the equivalent in exchange.

Mr. COLLIER. May I suggest why I think in practice we should not leave it wide open? You will find a great many cases where land has a small rental value and no sale value. The community would be able to pay an installment price. It would not be able to pay cash down, either through the tribal funds or the available appropriations.

The individual Indian who did not want to have his land consolidated could, by insisting upon a cash price, block the entire transaction. Yet he should really not be entitled to do that because it is not proper, because his land could not be sold at all and because it is not probable his land would have any value beyond a low rental value.

Mr. O'MALLEY. Would it be a general case? It is an obstacle which would appear generally, is it?

Mr. COLLIER. No, sir; it would not be a general case, but it might be a rather important case, in a given, local situation.

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Mr. ROGERS. Mr. Commissioner, could we not say that this means the Secretary of the Interior and the tribe, and that it might include the individual in it, but not necessarily so?

Mr. COLLIER. It almost always would.

Mr. ROGERS. He could be excluded?

Mr. COLLIER. Yes, sir.

May I say, departing somewhat from the technical language, and in explanation of it, that what we have to deal with here is a question of the compensation which could be made. The compensation might be any variety of things. Very often when an allotment was taken and title put back into the community, the payment would not be in money at all. It would be in a preferential right to use land, equivalent land.

Mr. ROGERS. Or use what he had?

Mr. COLLIER. Or equivalent land, but it often would be equivalent land.

Mr. ROGERS. In most cases he chooses to do that?

Mr. COLLIER. Take a family, for example, whose allotments are now scattered. It wants to get its holdings together. It would pool its preferential rights into one area.

Mr. ROGERS. I think it is a good thing where you permit him to use the same land.

Mr. COLLIER. Again there would be cases where there is a realizable, regular tribal income available to be paid in dividends under this bill or per capita under the old scheme. The individual might prefer to surrender his land in exchange for increased dividends, for a larger amount of annual income. We have got to allow for all those things. In other words, he may want to use that land or other land, or he may want to use that land plus more land lying beyond. He may want cash. He may prefer, even if the cash were available, to have it paid in installments, as we do in a spendthrift trust. We have to allow for all those varieties of compensation.

In assuring that due compensation is provided, of course, we are relying in the first instance on proper administration by the Secretary of the Interior. The tribe has an ultimate recourse to the courts in the event of abuse of discretion.

Mr. ROGERS. Mr. Commissioner, this is getting ahead, but I notice it refers to a separation under section 14. Could not we conceive of a case like this, where an Indian belonged to one tribe and they were trying to consolidate, and he chose to remain living with the other tribe, instead of exchange for land in the tribe in which he naturally belongs.

Mr. COLLIER. Yes, sir.

Mr. ROGERS. Under section 14, with the limitation, you say the land will be divided up equally between the members. Could not you conceive of a case where he might have part of his lands taken away, if he wanted to remain on his own land? Say he had 160 acres and only 80 acres could be assigned to each Indian.

Mr. COLLIER. In that case his right to an equivalent land would be protected.

Mr. ROGERS. But he would have to move in order to get it in that case, would he not, because this language here says subject to the provisions of section 14 of this title?

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Mr. COLLIER. Let us read section 14.

Mr. ROGERS. Yes, sir.

Mr. COLLIER (reading):

> Section 14: The Secretary of the Interior is authorized and directed to classify and divide the lands owned or controlled by an Indian tribe or community into economic units suitable for farming, grazing, forestry, and other purposes, and may lease or permit the use of, and may regulate the use and management of, such lands whenever in his opinion necessary to promote and preserve their economic use.

Section 14 merely means that where, for example, land should be blocked for grazing, he shall designate that it shall be blocked for grazing.

Mr. ROGERS. It does not mean it shall be divided into units?

Mr. COLLIER. That does not mean individual units at all, but classifying the land for its most effective use.

Here is a fact which is easily lost sight of: Here we are dealing with agricultural land within the consolidated area. Often there would be no need for any change at all in the status quo. Your agricultural land may be perfectly effective for use by that individual.

You might even get along without absorbing the title, except that then you would run into the problem of subdivision, as you go down through the heirship phase.

Practically the agricultural readjustments under this would be meager. There would be extensive readjustments of the control of grazing areas and timber areas, where you would block and operate a unit of 1,000 acres or less, whereas now you have to lease scattered areas of 20 or 30 acres.

We do not know whether the language in section 8 has yet by any means been perfected. We are hoping that the Committee will devote much thought to it in order that it shall be clear and shall accomplish the desired aims.

I think the aims are easier to secure agreement on, if we can only find language which will securely accomplish those aims.

I may add that this section is the one which may be expected to require a great deal of explaining to the Indians.

Mr. ROGERS. They will be vitally interested in this.

Mr. COLLIER. Yes, sir. They are very right in demanding that they be shown because they recall that the Re-allotment Act was presented to them as something which would do a certain thing and it did something else. No doubt the people who told them that thought it was going to do something else.

> SEC. 9. The Secretary of the Interior shall assign the use of tribal or community lands to any member according to the right or interest of such member for a period not to exceed the life of the assignee and shall make rules and regulations governing such assignments.

Equal uses of land are not contemplated.

> The Secretary of the Interior may in addition assign to any such member the right of exclusive occupancy of any community lands for farming or domestic purposes in proper economic units: *Provided*, That any Indian making beneficial use of land shall be entitled to preference in the assignment of the use of such land and to any improvements thereon or to adequate compensation for such improvements.

In a sense part of section 9 duplicates section 8, but it is an attempt to rivet home this guarantee of the property right being protected.

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Now, reading from page 33:

All rights of exclusive occupancy of, and all physical improvements lawfully erected on, tribal or community lands, shall descend according to rules of descent and distribution to be prescribed by the Secretary of the Interior.

Mr. O'MALLEY. Mr. Commissioner, what do you assume that the rules of descent and distribution shall be in connection with this section? There is already an established form of rules?

Mr. COLLIER. A great many of them.

Mr. O'MALLEY. Rules of descent? Is it assumed that those rules will be necessarily what they are today?

Mr. COLLIER. Not exactly. Generally the thing follows State law, but in other cases it does not follow State law, but just tribal custom. We have varying conditions. Undoubtedly, the main factor of novelty which would be contained in such rules or any probate law—which I will speak of later—would be this, that something must be done to prevent the subdivision of holdings down to such a point that they cannot be used any more. That is the thing which must be guarded against.

Mr. O'MALLEY. Your Department undoubtedly has in mind some uniform rule to prescribe if this act were enacted.

Mr. COLLIER. It would not be uniform. I am inclined to think that for the time being, at least in the areas where tribal customs govern, those peculiarities should be followed because they are used to them, except in cases where they may lead to this excessive fragmentation of lands.

Mr. O'MALLEY. It is being followed now in the question affecting the allotted lands?

Mr. COLLIER. The main point is just this: That the State laws might compel the physical subdivision down to impossible points. You might have to substitute, for example, some scheme of primogeniture, so that a family must designate which of its members shall operate the area.

I may say at this point that the language of the bill now places on the Secretary of the Interior the task of formulating these rules and regulations. His action is final. I am sure that the committee will want to consider whether they want it that way or whether it will want him to recommend to Congress in that regard.

Mr. O'MALLEY. We face that problem in connection with some of these enrollment propositions.

Mr. COLLIER. Yes, sir.

Mr. O'MALLEY. There seems to be no uniform way in which you could decide these rules in connection with bills that are before the subcommittee.

Mr. COLLIER. Of course, that is another thing. At least in the matter of heirship, I have an idea that the committee is going to insist on bringing that control into Congress in some way, and not leave it discretionary with the Secretary.

Mr. ROGERS. Now, Mr. Commissioner, I notice that the Secretary may assign for individual use lands for farming or domestic purposes. Then he may prescribe rules whereby this assignment will descend.

Mr. COLLIER. Yes, sir.

Mr. ROGERS. But there is nothing here that would make it possible for the Secretary of the Interior, after he had assigned an individual certain lands, to take that land away during the life of that individual.

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Mr. COLLIER. If an individual has no preferential right in the first instance, and gets an assignment of land to use it and abandons the use, then the proper thing is to give it to somebody who will use it.

Mr. ROGERS. But the language does not say that.

Mr. COLLIER. That would be under the rules and regulations governing such assignments?

Mr. ROGERS. Yes, sir.

Mr. COLLIER. It would seem clear to me, in connection with such land, that after you had once taken care of the vested rights, then the residual land should go to those who use it. For instance, a man creates improvements on land and then ceases to use the land; he would be entitled to those improvements.

Mr. ROGERS. In other words, under these rules and regulations, there could be included in there provision for the Secretary of the Interior to reclaim this, to assign it to someone else?

Mr. COLLIER. That could be made direct instead of leaving it optional.

Mr. ROGERS. That would be in the rules and regulations?

Mr. COLLIER. That would be in the rules and regulations.

Mr. ROGERS. Thank you.

Mr. COLLIER (reading):

I am going over this in a hurry because I know the committee is going to dwell on it a long time—

Section 10—

Wherever the Secretary shall find that existing State laws governing the determination of heirs, so far as made applicable to any restricted Indian lands by Congressional enactment, are not adapted to Indian needs and circumstances, he may promulgate independent rules governing such determination, including such rules as may be necessary to prevent any subdivision of rights to lands or improvements thereon which is likely to impair their beneficial use.

The Secretary may delegate to a chartered Indian community the authority conferred by this section.

That is, to make its own rules of descent.

Mr. O'MALLEY. It would seem to me, Mr. Commissioner, that section 10 should logically be a part of section 9.

Mr. COLLIER. It could be.

Mr. O'MALLEY. Or vice versa. At least, the last paragraph of section 9 deals with about the same thing that section 10 deals with.

Mr. COLLIER. Section 10 might well be moved up to line 3.

We have here the option, that the Secretary may make the rules about descent, or the tribe, with his consent, may make them.

Mr. DE PRIEST. That is in chartered communities?

Mr. COLLIER. Yes, sir; that is in chartered communities. I raise the question as to whether the Indians or Congress are going to want that discretion to be left with the Secretary, whether they may not want to direct him to report to Congress for you to act on the heirship laws and enact appropriate legislation.

SEC. 11. On and after the effective date of the passage of this act, and beginning with the death of the person presently entitled, all right, interest, and title in restricted allotted lands, but not including any proportionate interest acquired pursuant to section 8 of this title or any improvements lawfully erected, shall pass to the chartered community within whose territorial limits such lands are located or, if no community has been chartered, to the tribe from whose lands the allotment was made: *Provided, however,* That individuals who would be otherwise entitled, save for the provisions of this section, shall acquire a contingent interest in such lands, and title to any such land shall vest in such individuals when and only when the Secretary shall determine that such lands lie outside

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any area classified for consolidation pursuant to section 6: *And provided further*, That prior to such determination the individuals otherwise entitled shall enjoy the use and income realized from any lawful disposition of such lands.

That will not be clear enough, but if you will allow me to go on, we will come back to it.

Mr. O'MALLEY. Mr. Commissioner, again the question of improvements comes up. This section 11 would pass to the tribal community all the land but not the improvements, according to the language in line 20.

Mr. COLLIER. Before coming to that, do you want to make clear this rather obscure language about "individuals otherwise entitled"?

Mr. O'MALLEY. All right.

Mr. COLLIER. I am going to ask Mr. Siegel to expand on that.

Mr. SIEGEL. This section is designed to provide that after the death of the person who is now regarded as the present owner of any lands, whether it be regarding allotments or lands which have passed into heirship status shall descend to the tribe or community, whichever is prescribed herein, but it is specifically provided that this should happen only if the land is within an area which is classified for consolidation.

In other words, we are not concerned with lands which, because they lie outside such an area cannot be consolidated into economic units.

We realize, however, that the determination will not be made for some time, and, therefore, we reserve the power to pass such land to the tribe or community in the event that the Secretary shall determine that such lands do lie within such areas, even after the death of some persons presently entitled, such death occurring after the passage of this act.

Any person who would acquire the land under the present laws of heirship, as modified perhaps by section 10, described herein as persons otherwise entitled to acquire, have only a contingent interest until that determination. I doubt if that language is entirely clear, where it says, "shall enjoy the use and income realized from any lawful disposition of such lands." I think it should read, "acquire and enjoy" until such determination.

It is further provided, "That prior to such determination the individuals shall be entitled to the use of the land and the income therefrom." Perhaps it should be income accruing, because some of it may not have been realized, but accrued during that period.

Shall I go on?

Mr. COLLIER. I wanted to make that clear first. Let us dwell on that for just a moment. A very substantial part of the Indian allotted land would not be within areas marked for consolidation. I think it is safe to say in the case of Oklahoma, for example, that on the remaining Indian allotted lands nine tenths would not be within areas marked for consolidation.

Mr. ROGERS. Mr. Commissioner, by "marked for consolidation", do you mean specifically to lay the boundary?

Mr. SIEGEL. Section 6 provides that.

Mr. COLLIER. Because in Oklahoma, as you gentlemen know, the land is so scattered. In the main in Oklahoma, it is going to be a matter of getting new lands for colonization. This proposal as to the descent of the title to the community applies only within the consolidated area. Hence, that confusing language.

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Now, on the question of improvements: The improvements descend or, if taken, are compensated for, and the compensation descends.

Mr. O'MALLEY. To the heirs?

Mr. COLLIER. Yes, sir.

Mr. O'MALLEY. The lands do not, but the improvements do?

Mr. COLLIER. The underlying title goes to the tribe. Let us begin on line 10 (p. 34):

The Secretary shall issue to the individuals otherwise entitled—

That is, those Indians who might later be brought within a consolidated area, if they have not yet—

a nontransferable certificate evidencing a descendible interest in tribal or community lands of similar quality in the proportion which the acreage of the farming, grazing, or the timber lands, whichever, passing to the tribe or community at any time, bears to the total tribal or community acreage of farming, grazing, or timber lands: *Provided, however*, That such persons shall enjoy a preference in the assignment of lands passing to the tribe or community in accordance with the provisions of this section.

No will purporting to make any other disposition of such lands shall be approved.

This carries down into heirship the same attempt to guarantee the individual property rights applied in the first instance to the land of living Indians. They get the preferential right or they get the equivalent in value.

No will will have any validity which contravenes these provisions. Here again I am confident, in a measure, that the ideas will have unanimous approval but the problem is to get legislation which unquestionably accomplishes the result sought.

SEC. 12. The Secretary of the Interior is authorized and directed to issue to each member of an Indian tribe or community which owns or controls lands allotted in whole or in part a nontransferable certificate evidencing the member's right to an equal interest in all tribal or community assets, including the right to make beneficial use of a proportionate share thereof: *Provided, however*, That in the administration of sections 8, 9, 10, and 11 of this title, members so entitled may be given the right to actual beneficial use of more than their proportionate shares of such tribal or community lands and resources: *And provided further*, That in the administration of sections 8, 9, 10, and 11 of this title, appropriate deductions may be made from the undivided interest of any member proportionate in value to any special interest acquired or inherited by such member, in exchange for property passing, transferred, or sold, to a tribe or community, or any restricted lands retained in severalty by such member.

The effect of that is this: Every member of the community, in the matter of what his equity is to be, takes a point of departure from a sort of norm. If he surrendered land to the tribe without compensation, he arrives above the norm and has a higher equity in the land, in its earnings or the use of it. If, on the other hand, he sells the land to the community and takes the cash, then, obviously, his equity in the land should be less.

The Indian who voluntarily surrenders his land gets paid in an increased equity, in the right to use more land, the right to more income. Whereas, the Indian who has to be bought out, while still a member of the community, would not have as large an equity as the Indian who contributed something, turned in real property to the community.

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Mr. KENNEDY. In connection with that, on page 32, lines 17, 18, and 19 state:

The Secretary of the Interior may in addition assign to any such member the right of exclusive occupancy of any community lands for farming or domestic purposes in proper economic units.

In this section 9 there is no equal distribution, but it reserves it to the discretion of the Secretary of the Interior as to the extent of the land allotted to each Indian.

It is not a question of having disposed of his land and thereby no longer having an interest in it, but gives to the Secretary of the Interior a discretion to allot a larger or smaller amount, in his judgment.

Mr. COLLIER. Subject to these preferential rights, subject to all of the preferential rights prescribed by relinquishment.

You have got to have flexibility. If the Secretary has to go out and by purchase acquire large new areas of land, or get them in some other way, he is going to be guided by readiness to use the land. He is going to assign land to those who want to live on it and work it. But in all those cases, subject to these conditions, you will observe that the individual who surrendered the land acquires a correspondingly greater equity in preferential use.

Ordinarily, the appropriation regarding the use of areas would not be done by the Secretary at all but by the chartered community.

Mr. SIEGEL. Mr. Kennedy, is it your opinion that this section does not protect their interests, which are especially affected by reason of transfer and inheritance under sections 8 and 11?

Mr. KENNEDY. Not exactly. It seems to me it gives discretion to the Secretary of the Interior to allot to any Indian a larger proportion than the others are entitled to.

Mr. SIEGEL. Sections 8 and 11 assure each individual who has transferred and whose land has descended to the community, a proportionate interest. Section 12 refers only to the equal interest which any member of the tribe might get as a member subject to these preferential rights. And the assignment made by the Secretary, within the limits marked by that extent of interest there, you find in sections 8, 11 and 12. That is, every individual may have two or three interests. He has an interest which he may acquire by reason of transfer or by reason of the fact that the property has descended to the community or tribe, which is proportionate to what he had before.

In addition to that, he has a right to participate equally in any other tribal lands with all other members.

Then the extent of that interest is all defined, and within this interest the Secretary makes his finding.

Section 12 does provide that with regard to the equal right which everybody has as a member, that an additional right may be given to those who make beneficial use. It includes the object which the Commissioner just stated, and it includes another object which might be added, which is:

We recognize that one of the advantages of private ownership is the provision of an incentive to use and development, and, as a substitute of the incentive provided by private ownership, it is herein provided that a person who uses land rather than depending on the income from it may get more than an equivalent interest as a member.

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Section 12 in no way qualifies the right of an individual in the property which he has acquired by reason of transfer either to the community or descent to the community. It is merely with regard to the interest which he has as a member in any other land.

Probably section 12 should read that, "each individual" and "evidencing the member's right", as a member, "to an equal rate as a member."

Mr. COLLIER. May I indicate, Mr. Kennedy—and I think it will enlighten us all—how it is practically going to be done?

In a case where consolidation is decreed; where exchanges have been made before any new land is added; where there is only enough land for the use of those who have land now, what would be the situation of those having the basic equity? They would not have any land. The preferential rights of those whose lands made up the proposed area would cover the whole area of land presently possessed. The only way that those members who did not have any land could get any land would be through the acquisition of new land by purchase.

This is a point that has been obscure, particularly to the Indians.

Mr. KENNEDY. In that connection I call your attention to page 26, line 10, the last paragraph of that section, to the effect that:

> The Secretary of the Interior shall determine what lands, lying outside of areas classified for consolidation under Indian ownership pursuant to section 6 of this title, are not needed by the Indians, and such lands shall be reopened to sale, settlement, entry, or other lawful form of disposal in accordance with existing law.

Mr. SIEGEL. Where is that?

Mr. KENNEDY. The last paragraph of section 3 on page 26. Now, if land lies outside of the area classified for consolidation, what becomes of that Indian's right?

Mr. COLLIER. This is not allotted land but relates to surplus or ceded lands, which is totally another matter. It merely says that when the secretary determines that a given piece of surplus or ceded land is not going to be needed by the Indians, then it can be sold under existing law for the benefit of the Indians.

Mr. KENNEDY. It does not refer to allotments?

Mr. COLLIER. No, sir. I would like to dwell on that point for a moment and get it into the record: Various Indian tribes have sent in either protests or queries. They want to know, "Is this bill going to work so that the land, now allotted to Indians, will be taken and divided up with the Indians who have not got any land." They say that is confiscation. Naturally it would be. These somewhat complicated provisions may not be the best language. Their intent is to establish that the land which allottees have been thrifty or lucky enough to have kept shall not be taken and divided among other Indians. An organization is formed of all of those entitled to be members of the community, and then if new land is acquired, the new land passes equally to all the members.

The individual who has surrendered land to make up the original nucleus of community land has a preferential right to hold that land, take other land of equal availability and value, and, in addition, he has his share of the new land as a member of the community.

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In effect, the allotted Indian, whose land goes into the community, keeps what he has got and gets the additional amount represented by his share in the new land as a member.

That point is the hardest one to make clear, at least by correspondence, to Indian groups.

Mr. ROGERS. Mr. Commissioner, is it not going to be just a little hard to make the Indian understand exactly what all of his rights are? That is going to be a very great problem, is it not?

Mr. COLLIER. It is hard.

Mr. ROGERS. Even after the bill passes, he may choose something which, if he fully understood, he would not have chosen, but would have chosen something else.

Mr. COLLIER. We have to depend on his being wise and well advised, and, above all, getting competent local people under these chartering arrangements who will explain the local charters to their members.

Mr. ROGERS. His choice is going to be very important, and once he makes his choice——

Mr. COLLIER. His choice might be remade.

Mr. ROGERS. It might not.

Mr. COLLIER. He cannot surrender that which is inalienable, his right to a proportionate interest.

Mr. ROGERS. He could not make a rechoice, provided he made a choice and took land at another place, as an example.

Mr. COLLIER. Suppose an Indian decided on this body of community land; he did not want to keep what he got, but surrendered his preferential rights and asserted it over there.

Mr. ROGERS. Yes, sir.

Mr. COLLIER. Of course, he might make a mistake.

Mr. ROGERS. But he could not correct it.

Mr. COLLIER. He could correct it by negotiation with the community. There is no end of swapping in the community. We have a perfect illustration in the Pueblo grants today, which are held in common, but in which every district is individually owned.

Mr. ROGERS. What is the situation there?

Mr. COLLIER. Your Pueblo Indian born today is just in the position of the newer member of the community. Most of the Indians do differently, but the Pueblos always try to have common land which can be allotted to the new member or which a boy can always go out and get. If he cannot, and there is no common ground, he has to do something for somebody else that gets him a piece of ground.

It often goes back and forth continuously within a community, but it cannot pass between an Indian and an outsider.

I never saw a case where a Pueblo Indian did not have exact knowledge of what his rights were. They get used to it. As soon as they have stability they will find out. There will be blunders made in the beginning.

Mr. ROGERS. Mr. Commissioner, would there be anything to hinder a smart Indian under this arrangement from, in the course of time, accumulating a good many tracts of land from his brothers?

Mr. COLLIER. I think there would be. This may be looked upon adversely, too, but the proportionate interest is there. A man has got more because he surrendered something. The equal interest is there.

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Mr. ROGERS. Yes, sir.
Mr. COLLIER. But the acquisition of land otherwise depends on beneficial use.
Mr. ROGERS. If he could not use it all beneficially, he could not accumulate a number of tracts?
Mr. COLLIER. He could not accumulate a lot of land under this unless his tribal council and the Secretary of the Interior are asleep on the job. Sometimes they are asleep on the job. There are cases in the Pueblo area where that has been done through the Government, but it is upset after a while.
Mr. KENNEDY. I do not want to interrupt, but, as I stated, it seems to me that the Secretary of the Interior is given a considerable discretion in this matter, because in section 9 it says: "The Secretary of the Interior shall assign the use of tribal or community lands to any member according to the right or interest of such member * * *", and then it says: "The Secretary of the Interior may in addition assign to any such member the right of exclusive occupancy * * *."
That is a very wide discretion.
Mr. COLLIER. Those are the two things. He shall award any member what his preferential rights entitle him to.
Mr. KENNEDY. That is very true.
Mr. COLLIER. That he shall. He may from the new lands and the surplus lands assign to any member the right of exclusive occupancy for farming or domestic purposes in proper economic units.
Mr. KENNEDY. Is that limited to new lands?
Mr. SIEGEL. I think Mr. Kennedy may have noted a weakness in the drafting. You are saying that the right or interest should qualify all interests assigned. That right or interest is defined by sections 8, 11, and 12; section 8 with regard to transferred property, section 11 with regard to property descending to the community, and section 12 with regard to remaining lands in which he only has an interest.
Sections 8, 11, and 12 considered together give every individual Indian exactly what he has now, that is, his same individual interest in all land which has been allotted, and an equal interest as a member in all lands which have not been allotted, including lands which will be purchased.
Mr. KENNEDY. That comes in the first sentence of section 9?
Mr. SIEGEL. I think you are perfectly right in saying that the phrase "According to the right or interest of such member" should qualify not only assignments but the assignment of an exclusive right of occupancy. That was intended to cover everything.
Mr. COLLIER. Is that clear now?
Mr. KENNEDY. It does not seem to me to be so worded.
Mr. SIEGEL. I think you are right. It should be redrafted.
Mr. COLLIER. It should be reworded. The word "may" is the thing that is wrong. It should be "shall", subject to the conditions in the specified sections. That would be controlling then.
Mr. PEAVEY. Mr. Commissioner, the passage of an act of this kind, that so greatly and far-reachingly seeks to settle and fix the rights and ownership and limitations and restrictions, and so forth, and so forth, of all individual and tribal Indian ownership, will that in effect act

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as an estoppel on the final decision for all time on the part of Congress from the change of tribal rules and the right of members to participate?

Mr. COLLIER. No, sir, not in any way.

Mr. PEAVEY. Not in any way.

Mr. COLLIER. We keep away from that piece of hot iron in this bill. If this bill settled those rights we would never pass it, because the contention would be so acute. It may be that we ought to cover it in this bill, but we left it out because we do not want to make the bill a football of the enrollment groups. We are hoping that your subcommittee of this committee will settle that for us.

Mr. ROGERS. What is the qualification—three fourths?

Mr. COLLIER. That has to do only with the voting right in order to decide whether a community wants a charter.

Mr. ROGERS. What would be the qualification?

Mr. COLLIER. The same qualifications that make a man a member now. We would follow the existing conditions in a given place. Those who are enrolled——

Mr. DE PRIEST. Members by blood?

Mr. COLLIER. It is so varying. Everything has been done about enrolling at different places. Some enrolled folks are without a drop of Indian blood.

Mr. DE PRIEST. They are supposed to have.

Mr. COLLIER. No, sir; just intermarried or admitted through act of Congress or act of the tribes, and there is no blood rule or any other formula. That is the trouble. That is why enrollment bills must be handled carefully so that they will not be a precedent for the next one coming along.

Since that question is so involved and controversial, we left it out of this bill.

Mr. DE PRIEST. May I ask one question not on this bill? Have the different societies who are friends of the Indians in the West read over this bill?

Mr. COLLIER. We are getting this bill out generally. Thousands of copies have gone out to all Indian groups to begin with.

Mr. DE PRIEST. They have somebody here to protect the interests of that association?

Mr. COLLIER. Yes, sir; several organizations right here in Washington, the Indian Rights Association, represented by Mr. Kennedy; Indian Defense Association, General Federation of Women's Clubs, National Association on Indian Affairs.

Mr. DE PRIEST. They have gone into this matter further than the members of the committee, the new members particularly, and I think they ought to have a copy of the bill to study it.

Mr. COLLIER. They have been studying it and they are now ready to testify, I am quite sure.

This came out when you were not present, Mr. De Priest. It is now being put up to the Indians for referendum. Congresses of all Indians in the different parts of the country are being called. The plains tribes are meeting, beginning Friday.

Mr. DE PRIEST. They will be guided by what the Indian welfare groups say about it?

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Mr. COLLIER. They are studying it hard and are on record favoring the general principles of the bill, but not committed to any detail of the bill.

Section 11 has been disposed of. Now, referring to section 13 on page 35:

Each certificate issued pursuant to the authority of any section of this title shall be issued in triplicate.

That is, certificate of membership—

one copy of which the Secretary of the Interior shall retain in a register to be kept for the purpose and the others of which he shall forward to the tribe or chartered Indian community. The said tribe or community shall deliver to the Indian in whose favor it is issued one of such certificates so forwarded and shall cause the other to be copied into a register of the tribe or community to be provided for the purpose, and shall file the same.

It further states:

The Secretary may delegate to a chartered community the authority conferred by this section and may countersign certificates of interest issued by such community to its members.

That means that each individual Indian would know exactly what his rights were.

SEC. 14. The Secretary of the Interior is authorized and directed to classify and divide the lands owned or controlled by an Indian tribe or community into economic units suitable for farming, grazing, forestry, and other purposes, and may lease or permit the use of, and may regulate the use and management of, such lands whenever in his opinion necessary to promote and preserve economic use. The Secretary may delegate to a chartered Indian community the authority conferred by this section.

The object of this section is simply to get the lands blocked so that they can be economically used.

SEC. 15. The Secretary of the Interior is authorized and directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, and like purposes. The Secretary may delegate to a chartered Indian community the authority conferred by tihs section.

All the authorities mentioned in section 15 are already being assumed by the Department and are presumptively legal, section 15 makes those authorities definite.

The declaration that sustained yield shall be practiced in the forests is very important. It is a direction.

In the case of the Menominee Tribe, Congress made a direction of that kind. It was not followed by the Department. Much of their timber was devastated, and, as a result, they have a claim against the Government, an assertable and collectible claim, that they were protected by a specific direction from Congress that the timber should be operated on a perpetual yield basis. The other tribes are entitled to a similar protection.

SEC. 16. The Secretary of the Interior is authorized to proclaim new Indian reservations on lands purchased for the purposes enumerated in this act, or to add such lands to the jurisdiction of existing reservations. Such lands, so long as title to them is held by the United States or by an Indian tribe or community, shall not be subject to taxation, but the United States shall assume all governmental obligations of the State or county in which such lands are situated with

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respect to the maintenance of roads across such lands, the furnishing of educational and other public facilities to persons residing thereon and the execution of proper measures for the control of fires, floods and erosion, and the protection of the public health and order in such lands, and the Secretary of the Interior may enter into agreements with authorities of any State or subdivision thereof in which such lands are situated for the performance of any or all of the foregoing functions by such State or subdivision or any agencies or employees thereof authorized by the law of the State to enter into such agreements, and for the payment of the expenses of such functions where appropriations therefor shall be made by Congress.

No taxation of any of these lands, old or new, is permitted. The Government assumes the upkeep of the lands, and the services upon them. Naturally, a State is not going to do the work unless there is a tax.

Mr. ROGERS. Mr. Commissioner, there is nothing in this which would keep the Secretary of the Interior, provided he wanted to do so, from spending all or nearly all the money which is provided here for the purchase of new lands in a given area.

Mr. COLLIER. No, sir.

Mr. ROGERS. In other words, there would be nothing that would guarantee that any of that money would have to be spent in any given State, regardless of how many Indians were in that State.

Mr. COLLIER. He is directed here simply to ascertain the needs and proceed to buy the land.

Mr. ROGERS. Mr. Commissioner, not criticizing at all, but we have had quite a little experience with appropriations that are not earmarked, being spent all in one place. I just raise that question.

Mr. COLLIER. May I say what happened?

Mr. ROGERS. Yes, sir.

Mr. COLLIER. This is an authorization of an appropriation. It would be budgeted, duly budgeted.

Mr. ROGERS. And when the appropriation is made, it could be earmarked, if necessary?

Mr. COLLIER. And, in fact, it would be ear-marked, if we get this reformed budget, Congress would have to know in advance where the moneys were going to be spent, because even under the existing appropriation system you could put on any limitations you wanted to.

Mr. ROGERS. But as the system is now, it would more likely not be put on unless you get the budget system of which you speak.

Mr. COLLIER. You can always put a rider onto any appropriation bill, directing anything. That would make it necessary, automatically. We would have to let you know in advance where the money was going to be spent, and you could change it if you wish, and so forth.

Mr. PEAVEY. The gentleman, of course, is referring to the action of the Senate and not the House when he talks about rider amendments.

Mr. COLLIER. The alternate budget has now been knocked out. That measure was reported by the Senate Indian Affairs Committee today.

SEC. 17. Nothing contained in this title shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or to be established hereafter.

That merely means that in some parts of the public domain some Indians have taken up homesteads of their own, or have been granted

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homestead allotments, and they are let alone. They are scattered Indians away out beyond the limits of any reservation.

Mr. KENNEDY. Their holdings might not consist of allotments of homesteads, necessarily?

Mr. SIEGEL. What do you have specific reference to, Mr. Kennedy? Do you have any particular kind of interest in mind?

Mr. KENNEDY. I have none. It occurred to me that some Indians might have other kinds of property outside the reservations. I met one in Philadelphia the other day. I think he owns some property there. It seems to me that there are other properties belonging to Indians.

Mr. COLLIER. That is not under Government trust. This relates to the homesteading of public domain, where the Indian goes out and takes up a piece of public domain and it is then held in trust for him, under the control of the Government; and where that allotment is away off from anybody else there is no reason why it should become involved in this act.

Mr KENNEDY. I appreciate that.

Mr. SIEGEL. Unrestricted property is not included in anything here. The surrender of fee patented land may be accepted voluntarily. It is included in another section of the bill.

Mr. COLLIER (reading):

SEC. 18. Whenever used in this title the phrase "a member of an Indian tribe" shall include any descendant of a member permanently residing within an existing Indian reservation.

The descendants of members continue to be members. I may say that in the new communities, where new communities are created for Indians who are scattered and are now landless, the bill does introduce the Indian blood rule.

SEC. 19. Whenever used in this title the phrase "lands owned or controlled by an Indian tribe or community" shall include all interest in land of any of its members.

SEC. 20. The provisions of this Act shall not be construed to prevent the removal of restrictions on taxable lands of members of the Five Civilized Tribes nor operate to effect any change in the present laws and procedure relating to the guardianship of minor and incompetent members of the Osage and Five Civilized Tribes, but in all other respects shall apply to such Indians.

That is the self-governing features in the purchase of land.

SEC. 21. None of the provisions of this Act, except the provisions of title II, relating to Indian education, shall apply to the Indians of New York State.

They do not want it and their condition is entirely peculiar. That is the end of the land section of the bill.

Mr. CARTWRIGHT. My. Commissioner, you are talking about these properties. You have established a colony near Wilburton, Okla., in my district. How was that done and who did you put on—what Indians?

Mr. COLLIER. That is the Choctaws, as I recollect.

Mr. CARTWRIGHT. Yes sir; that is the Choctaws.

Mr. COLLIER. That is a little piece of tribal land they had. Homeless Choctaws just went and took it up with our help and went to live on it.

Mr. PEAVEY. Mr. Commissioner, I wish to make some observations with respect to the Court of Indian Affairs, when this bill comes up. While I do not intend to take up any of the legal phases with

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respect to this special Indian court, I would like at this time to ask you this question: Does that court in the manner set up in this bill, have jurisdiction of the solution and settlement of all Indian claims?

Mr. COLLIER. Claims against the Government?

Mr. PEAVEY. Claims against the Government by tribes and so forth, such as this committee has contemplated at times past.

Mr. COLLIER. No. As I explained the other day, Indian claims are something else again. We shall submit a bill providing for the prompt and complete settlement of these innumerable claims, through a special claims body that would, under the proposal, be created by Congress; but those claims do not go to this Court of Indian Affairs. This court has jurisdiction over civil and criminal matters affecting the Indians outside of the jurisdiction of the local courts.

Mr. YELLOWTAIL of the Crow Indians. I have in mind the condition on the Crow Reservation, referring to a provision further back in the bill, where you provide for boundaries of the different Indian communities. I visualize my own condition in Montana, where our lands are interspersed with other lands, now belonging to the whites, and we are now sandwiched and dovetailed in with the sold pieces of inherited land, and where the white population in the reservation is twice that of the Indian population. Those lands owned by the whites are confined to the most valuable tracts in the reservation, to the river-bottom lands and the best agricultural lands; and those tracts were made many years ago to the matured Indians, who selected the best lands.

Now, then, when we define the exterior boundaries, in the desire to create Indian communities, we run amuck of this condition of valuable dead inherited lands that have been sold; and it is necessarily so because we have a divided population and we have a State law operating as to the right of ingress on those lands owned by the white population; and right now it is a difficult proposition, so far as law and order is concerned.

Now, then, we define the boundary of an Indian community and we proceed to purchase and buy out those white tracts. Immediately we run into this fellow, Mr. Hinrichs, that wants $40 an acre for his lands that he has irrigated by his own efforts, and he wants $45 for his grazing lands. In one tract, the Shurzy tract, there is 4,000 acres of land. We run into a tremendous lot of lands like that, and the owner says he has made his home on that land and he does not want to sell it. How are you going to circumvent that? We run into Bob Nepher, and he won't sell, and he says, "No; I am located here; I do not want to sell. Everything I have saved is invested in that land, and it is my home and I am going to keep it." What is to be our procedure under that condition? I was just wondering when we run against that condition what we can do. We are going to run against it in every community established. I was just wondering, under those circumstances, how we are going to operate.

Mr. COLLIER. It is a real problem, and, before going further, may I say this: I have a perfect example of it right now in the Pueblos, where white holdings are interspersed in the Pueblo lands, right close up to the villages sometimes. Congress awarded compensation to the Indians. Now the Indians are going back and negotiating for the purchase of the land they want and they are facing the very

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thing you have described, and the prices demanded are generally rather stiff.

Mr. YELLOWTAIL. That is the way we have found it.

These people are a highly developed community. We have established high schools, and this month a bill was introduced to provide for more money for schools for the Indian children. We have highly developed communities and we have these community schools dotted all over the reservation and we have many highly developed communities in which we have schools and in which the lands that have been sold are confined to the very choice tracts, interspersed every now and then about the Indian allotments. There is a real, living example.

Mr. COLLIER. As to the first question that your statement raises: I think your Crow Reservation illustrates it better than any other. It is difficult to see how it can be solved unless there could be given to the Indian community the power of condemnation to acquire the land necessary for consolidation. It raises that question. That power would go to the Pueblos under the Pueblo relief bill. It is given in this bill, insofar as State laws permit condemnation, but there we may be up against the limit. We cannot go beyond what the State laws permit.

Mr. YELLOWTAIL. They will not be adequate, because the landowners will have sufficient evidence to show that their lands are worth more than they were in normal times.

There is one more feature, and then I am through. This whole new scheme is predicated upon the thought that the Indians will probably be more or less unanimous in their efforts to put this over, but they will not, because they are divided into groups that will not agree. For instance, the Indians on the Crow Reservation are divided into factions by many things.

First of all, the Indians on the Crow Reservation are divided into numerous factions on account of religious beliefs, and those factions will not agree to live on equality in a community. We have the Catholics, which are a faction to themselves, urged by the Catholic priests not to recognize the beliefs of others, and they sometimes even refuse to associate with the others on account of religious differences. We have the Baptists, in there with their churches, and they are another faction because of the Baptist belief. And we have the Four Square Gospel from Los Angeles, with their creed. And we have the Native American Church, with their creed. And we have other denominations coming in there. On top of that, we have the Republican Party and the Democratic Party, that factionalize the Indians because of their belief in different political creeds; and those operate to make the Indians always factionalized.

On top of that, we have the various superintendents that come on the Crow Reservation and create small factions that are stubborn and that will never submit to majority rule. They go off to one side and will not agree with the others and say that everybody else is wrong.

We have all of these influences in the background, and we form a community selected from one faction more than another.

Now, later on, those factional feelings come up, and everybody gets stubborn, and the community fails, and those that have patents want to give up their allotments and they come to the General Land Office and receive scrip and say: "I will turn in so many acres for

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this man and for his wife and children, and they have 6,000 acres of land in the community, and he is entitled to reasonable returns for all of them, which is 30 cents an acre for the grazing land; he has 240 acres of alfalfa, which is worth so much." And then the thing blows up, due to these factional feelings that no legislation can quiet down. One of these men will say "Mr. Collier, I would like to have my patent back and get out of this crowd." What is the result there?

I just want to leave that thought on the practical situation.

Mr. COLLIER. You are saying that the Crow Indians are eminently human?

Mr. YELLOWTAIL. Yes, sir.

Mr. COLLIER. But I may come back, Mr. Yellowtail? Those are simply difficulties inherent in life, as it were. But what you have raised is something else than the question, which I do not think we ought to allude to. Picture the condition. Let us take the Crow Reservation and say that it does organize a community, gets a charter, an area is marked out for consolidation, and you start getting the land. There will be 10 years in which there will be a large number of white settlements in there. Now, what about this Court of Indian Affairs? Is it going to have jurisdiction over these white settlements?

Mr. YELLOWTAIL. That is another subject I was not familiar with.

Mr. COLLIER. I do not want to get away from that, because it is a real problem.

Mr. YELLOWTAIL. Yes; it is a real problem.

Mr. COLLIER. By the language of this bill, as drawn, those white settlements within the Indian community would be subject to the Federal Court of Indian Affairs?

Mr. DE PRIEST. They ought to be.

Mr. COLLIER. We think they ought to be, but a lot of them are going to kick like steers when you try to subject them to that court.

Mr. DE PRIEST. They ought to be. That court will be headed by Indians appointed by the President, I assume.

Mr. COLLIER. But there is going to be protest from the white settlers.

Mr. DE PRIEST. They will be courts headed by Indians, and there will be a lot of rules and regulations.

Mr. PEAVEY. Could not that protest have been anticipated when the bill was introduced, because, after the allotment system has done all the things that we know it has done to the Indians, when we reverse that system and attempt to work justice for the Indians, it is bound to bring that white opposition from the people that have been taking advantage of the Indians and that opposition will come down upon the Congress. It will come particularly from the lessees of Indian lands. One of the great advantages of Indian lands is that they have been exempt from taxation and most of that advantage has been passed on to the lessees, and the lessees will be a solid phalanx against anything that would enable the Indians to use their own land. This scheme of capitalizing the Indians will throw terror into the lessees. They won't show themselves so much in this. They will work through emissaries and local newspapers.

Mr. DE PRIEST. In consolidating these districts, this money will be furnished by the Federal Government. Since it is the Federal

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Government furnishing the money, don't the Government have the right to buy that land and turn it over to the Indians?

Mr. COLLIER. It has not condemnation power.

Mr. DE PRIEST. The Government has not condemnation power to condemn anything? The Indian reservation would not have it, undoubtedly, but the Government would have that right.

Mr. COLLIER. I am wondering whether the Government would have that right as applied to the white lessees. I am a layman and I do not know exactly what the law would be.

Mr. DE PRIEST. There is a lawyer with you there. What do you say about it?

Mr. SIEGEL. I do not know. I always had the impression that it had.

Mr. DE PRIEST. You need not worry about the Federal Government having the right. What about the Indian court having the right?

Mr. SIEGEL. We have given the community all the right of eminent domain that the Federal Government has, if they can constitutionally exercise it. It would seem to be a question whether taking public land from a white man in order to give it to another person, who is an Indian, would be constitutional. It is a question of taking the land from one person and giving it to another.

Mr. DE PRIEST. I think, the Indian being a public charge, it would be a public purpose.

Mr. SIEGEL. I do not know about that.

Mr. DE PRIEST. I am not a lawyer, but common sense would teach me that.

Mr. COLLIER. Of course, if that is attempted, it will be tested out through the courts.

Mr. DE PRIEST. If the Government is going to the expense of doing it, it ought not to put it up to the Indian village to do it. You ought to profit by the experience you have had on that Pueblo proposition.

Mr. COLLIER. The Indians would get more land if it could be condemned.

Mr. DE PRIEST. I think this committee ought to ask you to look into that proposition and bring a report back.

Mr. SIEGEL. We will look into it.

Mr. CARTWRIGHT. I wanted to ask you this, just for the record. In the case of Indians in States where there are little or no reservations, and the only chance to take advantage of this measure would be that part that provides that the Government may purchase land and make reservations for the Indians, as is the case in Oklahoma, there would be very little chance of participation?

Mr. COLLIER. Yes.

Mr. DE PRIEST. There is $2,000,000 a year for that?

Mr. COLLIER. $2,000,000 a year.

Mr. DE PRIEST. That $2,000,000 is provided for the purchase of land. Any part of this might be available for any State that has Indians, where there are little or no reservations.

Mr. COLLIER. It is not enough to purchase a great amount of land.

Mr. DE PRIEST. It would only purchase 200 farms of 160 acres, at $10,000 per farm. It is not enough, but it is a start.

Mr. COLLIER. When the showing is made of what can be done, Congress may raise that figure.

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The CHAIRMAN. Mr. Commissioner, I would suggest that you instruct your attorneys to carefully investigate this problem of the right of eminent domain, so that we may be prepared to consider that.

Mr. COLLIER. We will ask the Solicitor of the Interior Department to brief that question.

The CHAIRMAN. Before we have the bill up?

Mr. COLLIER. We will do that.

Mr. PEAVEY. Mr. Commissioner, it is true, that while the statement of Mr. Yellow Tail to the committee shows many of the obstacles and problems to be overcome in the settlement of these various Indian situations under the terms of this bill, it also presents a very hopeful phase of it in the fact that everything that he has presented to this committee is what is typical of the ordinary white community; and we are expecting and trying by this bill to raise the Indian people up to the level of the white communities in their affairs.

Mr. DE PRIEST. It shows the problems they have, and especially the religious question.

The CHAIRMAN. Well, is there any other business to come before us?

Mr. DE PRIEST. I move we stand adjourned.

Mr. PEAVEY. Do I understand now that the Commissioner leaves tonight, to be gone for 2 or 3 weeks?

Mr. COLLIER. I will be gone for 3 weeks. I am going to the plains area, the Navajo country, and to Oklahoma and other points.

Mr. PEAVEY. I move you at this time that the committee adjourn to the call of the chairman, when the Commissioner has returned and is ready to make a report.

The CHAIRMAN. I call to the attention of the members of the committee and others concerned that the transcript of all the testimony so far taken will be here until noon tomorrow. Those of you who want to read or correct and revise your testimony or your interruptions or your argument may be privileged to do so, but we would like to have this ready for the printer by noon tomorrow.

Mr. ROGERS. I will second the motion and would like to amend it, that the committee adjourn subject to the call of the chairman.

The CHAIRMAN. It will be subject to the call of the chairman.

Do not forget that we have a regular meeting tomorrow morning at 10:30, our regular committee meeting. We have quite a number of bills for consideration tomorrow.

It is moved and seconded that the committee shall now adjourn, subject to the call of the chairman. The motion is carried.

(Thereupon, at 3:50 p.m., the committee adjourned subject to the call of the chairman.)

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READJUSTMENT OF INDIAN AFFAIRS

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HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

PART 5

Printed for the use of the Committee on Indian Affairs

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House of Representatives

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READJUSTMENT OF INDIAN AFFAIRS

THURSDAY, MARCH 5, 1934

House of Representatives,
Committee on Indian Affairs,
Washington, D.C.

The committee met in its committee room in the Capitol at 10:30 a.m., Hon. Edgar Howard (chairman) presiding.

Present: Messrs. Dickstein, Rogers, O'Malley, Werner, Peavey, De Priest, and Collins.

The Chairman. The committee will come to order. I will state for the benefit of the members and those present who desire to appear before the committee this morning, that the committee has entered an order that this hearing today shall be for the benefit solely of such persons as may desire to appear in opposition to the pending bill, H.R. 7902.

Are there any persons here who desire to be heard in opposition to the bill, and who claim to represent any tribe or any division of Indian people, if so we will hear them, provided they shall present credentials showing authority to speak for the Indians.

Does anybody desire to be heard this morning?

Mr. Mitke. I represent the Tucson Chamber of Commerce of Tucson, Ariz., and would like to present the side of this bill which affects the citizens of Arizona as well as the Indians, we think.

The Chairman. Are you opposed to the bill?

Mr. Mitke. There are many features of the bill which would affect adversely the rights of the people of Arizona, and would also hurt the rights of the Indians to some extent, that I can bring out.

The Chairman. The Chair, you understand, must protect the integrity of the committee, and the committee has assigned this day for hearing only those who are opposed to the bill.

Mr. Mitke. I am opposed to it.

The Chairman. Are you opposed to the entire bill, and do you desire to go on record in your own behalf and in behalf of the Chamber of Commerce as opposing this measure and all of it?

Mr. Mitke. I would say the larger part of it, I think.

The Chairman. Then you are not opposed to the bill. Is there anybody who desires to be heard now in opposition to the bill?

Mrs. Smith. Mr. Chairman, may I read my objections, I have mine in writing, and would like to read them.

The Chairman. If you will present your credentials showing you are authorized to speak for these people, you may be heard.

Mrs. Smith. We came on our own accord and we are not exactly authorized, but our Indians are having trouble at home.

The Chairman. You are not authorized, you say?

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Mrs. SMITH. No, not exactly, still our people are supporting us at home.

The CHAIRMAN. Are you opposed to the whole bill?

Mrs. SMITH. Not all of it.

The CHAIRMAN. This meeting is for those who are opposed to the bill. Undoubtedly there will be opportunity later, when we come to read the bill for amendment, for every person in the country, speaking through his authorized representative in Congress, to offer amendments to the bill, or offer protests against any portion of it. But, today, as I have tried to make it plain, by the order of the Committee, the hearing shall be for those who are opposed to the bill. If you are opposed to the bill you may be heard as an individual.

Mrs. SMITH. I actually am opposed to the bill, and a good many of our members are.

The CHAIRMAN. Do those whom you represent oppose the bill?

Mrs. SMITH. Yes, they do.

The CHAIRMAN. They oppose the bill in its entirety?

Mrs. SMITH. Yes.

The CHAIRMAN. Then you may be heard completely, even though you do not have credentials, and you may be heard for 5 minutes in opposition to the bill.

(Thereupon Mrs. Lizzie Wirth Smith, of Poplar, Mont., read a statement before the committee, which by direction is not made a part of this transcript of the hearing.)

Mr. O'MALLEY. Mr. Chairman, I move that the lady be permitted to file with the stenographer the statement she has just read, and that the copy of the statement may be deemed a part of the hearing.

The CHAIRMAN. She was authorized to appear momentarily in her individual behalf, not having presented any credentials to warrant her to speak to the committee as a representative of the tribe.

Mr. O'MALLEY. I understand that is her own statement.

The CHAIRMAN. It is her own statement so far, and if she shall present credentials showing that she has a right to speak for the tribe her statement would go in the record on behalf of the tribe.

Now Mrs. Smith, we will hold your statement here in abeyance until you shall have presented credentials showing that you have a right to speak for the tribe. If you do, then the statement you have made will go in the record; and otherwise it will not. I want to make that plain.

Mr. O'MALLEY. I think we should have it in the record.

Mr. PEAVEY. As a matter of committee procedure, do I understand the statements of all of the witnesses who appear here in this behalf, either for or against the bill, as individuals or as representatives of some tribe, are all going to be put in the record?

The CHAIRMAN. Not necessarily, but the statement presented was a protest from her tribe, and of course that ought to be in the record if she shows proper credentials.

Mr. PEAVEY. I have no objection to the statement of this lady or any other witness being put in the record. I am not responsible for the expenses of the administration, but I am considering the responsibility of the committee members when we want to digest this record. It seems to me that the printed record that is going to be distributed over the country ought to be very carefully gone over, so that when the committee members attempt to digest the hearings for the purpose

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of rewriting the bill, we will not have a lot of extraneous stuff to wade through in order to find out what we want.

Mr. O'MALLEY. I feel that any enrolled Indian who wants to make a statement either for or against the bill ought to be permitted to do so, and it ought to be in the record, so that we can at least have the other side of it from the Indians themselves.

The CHAIRMAN. That is the view of the chairman also, and you will recall the Chair told the lady to speak in her own name until she could present credentials showing that she spoke for the tribe.

Mr. O'MALLEY. I don't want the statement to go in as the statement of the tribe, but I would like to see it in as her own statement.

The CHAIRMAN. If the lady will show us she has the credentials to represent her tribe the statement will be published; otherwise it will not.

Mr. ROGERS. I appreciate what Mr. Peavey has said; I think he is right, that we will have such a long record we will not be able to read it. But, since we have not made up our own minds as to the bill, I would like to have both sides, and would appreciate hearing any objections anybody has to the bill, even though it does not go in the record.

The CHAIRMAN. Does anybody else desire to be heard in opposition to the bill?

Remember, all of you present, this meeting is called for the purpose of hearing only those who are opposed to the bill. Does anybody desire to be heard in opposition to the bill?

Mr. BLAINE. I would like to make a few statements about the bill.

The CHAIRMAN. What is your name?

Mr. BLAINE. My name is Peter Blaine, of Arizona. I am a member of the Papago Tribe. I would like to make a few statements in regard to this bill. We did not know anything about this bill at the time it came out.

The CHAIRMAN. Just a moment please, are you opposed to the bill?

Mr. BLAINE. Well, that is what I want to find out, because my tribe did not know anything about it, and doesn't know anything about it yet.

The CHAIRMAN. But this is not the day for them.

Mr. PEAVEY. Has the gentleman seen a copy of the bill?

Mr. BLAINE. We have had a copy, but not in time to read it over.

The CHAIRMAN. You will have opportunity to be heard. This meeting is for the purpose of hearing only those who are opposed to the bill, and there will be other opportunities to be heard. Are you opposed to the bill?

Mr. BLAINE. I think my tribe will oppose that bill.

The CHAIRMAN. Not what you think, but are you opposed to the bill?

Mr. BLAINE. Yes.

The CHAIRMAN. You can speak now in your own name.

Mr. BLAINE. I would like to ask, Mr. Chairman and the Committee on Indian Affairs, whether we could have a little more time to study this bill. It is a long bill and it seems pretty hard for the tribe to understand, and we would like to have a little more time to study it through, to find the different things in there, whether it would be something of benefit to the tribe on our reservation.

Right now our tribe is up to where they cannot find their way out from the reservation.

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Of course I mentioned before our tribe does not know anything about the bill until up to the time when we were sent here and got in Washington, and then we found out about the new bill.

Of course we have been trying to have all of the hearings from our Indian Commissioner John Collier, so we intend to get as much as we could out of our commissioner about explaining the bill, but it seems like it is going to be hard for us to have all of the tribe to come and hear what they have to say about it, because they are scattered all over the country, and it is pretty rough roads where they are. So, I think it will be some time before we can get all of the Indians together and explain the bill to them as far as we would like.

We would like to find out whether this bill includes anything about our reservation taking the minerals, or whether this bill covers the minerals.

We appreciate what is being done by the Government in relief work on the reservations but after this money is gone we will be in the same fix as before, with nowhere to find work. We would like to have something done to our reservation to know that we have work coming on after this money is spent.

This bill is a bill that has been worked over for some months, and we ought to at least have some time to study the bill and find the things in there we think would work against the tribe. We did not know anything about it until the time we learned about it here in Washington.

Of course we have got a hearing right close to our place in Phoenix, which I was called to attend, the 15th of next month.

The CHAIRMAN. It is the 15th of this month.

Mr. BLAINE. Yes; I guess it is, and I will be there too, to hear from the men who explain the bill. Mr. Collier has been explaining the bill, but he isn't half through with the bill yet.

I would say my suggestion is that we have a little more time on the bill before it comes into action, because it is pretty hard for us to understand, and it seems to me like there are some gentlemen in the committee that don't even understand all of it yet.

Mr. COLLINS. Not many of us do understand it, I think.

Mr. BLAINE. That is what I want to understand. Take in our tribe we are not educated, and most of the old people in the tribe do not understand English, and it is hard for us to have interpreted all of the big words in the bill, and we have got to have time to study it. We want to find out what the meaning is, and find out what it means to the tribe I represent.

I have read that as much as I could, and I want to ask concerning the mineral land on the reservation. We have sent our petition here calling for an investigation of certain things going on in the reservation, and it seems to me like with all of the attorney contracts on the reservation, it has scared everybody in my tribe from the reservation, so that they are afraid of anything that comes up on the reservation, including what you have been hearing about a certain attorney who has been appointed by only four people of the reservation, who signed a contract without authority of the rest of the people on the reservation. We don't know where we are at, and we want to find out about this.

Mr. DICKSTEIN. What is the trouble down there.

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Mr. BLAINE. We have an attorney who claims 25,000 acres of land right in the heart of the reservation.

Mr. DICKSTEIN. How does he make that claim?

Mr. BLAINE. Just four or five of our tribe signed a contract for 5 years, which contract is to expire April 4th, and we would like to find out how this contract was signed. In the first place the ones that signed it do not represent the majority of the tribe from the reservation. After we got to work looking into that we found we had to pay $57,000 to $60,000 for 25,000 acres of land on the reservation.

That seems like we were misled by some white men on the reservation, and that is what we came here to find out. When we came here then we ran into this bill, and we did not know anything about it on the reservation.

We have been calling for an investigation to see whether this lawyer has any right to claim that much land. That is one thing my people are frightened about; they are very scared about this man, from what he is saying to the various tribes on the reservation. He does not represent even one third of the tribes. There are 60 villages and he claims to represent 15 villages, and where are the other 45 villages? At the time this contract was signed by these few men we did not know how it was signed, and we are calling for an investigation, and we would like to have you people in Washington give us something.

Mr. DICKSTEIN. Would that investigation be made here or would the committee have to go out there?

Mr. BLAINE. It wants to be made on our reservation or here, either way. Of course right now we have to attend another meeting in Phoenix where we would like to have some information about this bill. It is up to you people.

Mr. ROGERS. I don't think there is any hurry about the bill. You will have plenty of time.

Mr. BLAINE. That is all right, and I would like to bring this back to the people as far as we have heard during this meeting, and when we have the meeting at Phoenix on the bill, we think we would like to get something out of this man who comes down to explain it, more clearly than what the bill reads. It is pretty hard for us to read it and understand it.

The CHAIRMAN. You explain to your people this bill will come before the full committee and will be read for amendment and you will have a member on the committee from Arizona, a very able member, Mrs. Greenway, and I am quite sure when the bill comes to be read, she will not permit anything to go into the bill that will be harmful to the Indian people in her State.

You can consult with her, and if you have any particular amendments you would like to have offered, I dare say she would offer them for you. There is going to be no gag rule here, and this bill will be considered for 20 or 30 days yet.

Mr. DE PRIEST. Mr. Chairman, what contract has the gentleman; he seems to think they have been run over in some way, about something.

Mr. DICKSTEIN. Mr. Chairman, has this committee any right to make an investigation along the line such as he indicates?

Mr. DE PRIEST. Mr Chairman, we don't seem to have any witnesses here, and this gentleman sitting here said he would like to give us something about that contract, and I would like to hear it.

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Mr. O'MALLEY. Mr. Chairman, that information was given, I think about a couple of weeks ago, in his statement about the Papago Indians.

Mr. DICKSTEIN. If the Chair thinks this matter ought to be looked into, I don't see why we can't order an investigation right away, and it can be done right away.

THE CHAIRMAN. I understand the Senate is considering an investigation.

Mr. COLLINS. Do I understand, Mr. Chairman, the Senate is investigating this very thing?

The CHAIRMAN. I have been given to understand the Senate has taken it up.

Mr. DE PRIEST. Since we are not busy, I would like to hear from this gentleman.

Mr. PEAVEY. Mr. Chairman, I would like to say a word or two on committee procedure. It does seem to me the committee is going to a lot of expense and cluttering up the record so that not even the members of the committee will read this thing when it is finished.

I have no intention of cutting off any legitimate person or tribe from an expression on this bill, but we are considering H.R. 7902, a bill for the purpose of giving these Indians self-government and recognition of the Indian. It does seem to me the testimony taken should be confined to that bill, and should be confined to witnesses who are competent to speak, and who have credentials if they speak for anybody else, and if there is any individual who wants to speak, he should first present himself to a member of the committee and let that member hear what he has to say and decide whether it should be taken before the committee.

Mr. DICKSTEIN. I don't agree with you at all. I might suggest this bill contains about 48 pages, and I venture to say some lawyers would have difficulty going through this with an accurate mind. But I do not think while we are sitting in this committee listening to this bill, we should have to sit here and listen to a man make a charge which he says looks to him like a lot of graft. There has been a lot of that going on. Nevertheless, it seems to me the Chair has the power to appoint a committee, and let this be investigated, and if there is any merit to this man's contention, I would recommend to the Chair that he has the power to go into this investigation without a resolution of Congress.

Mr. DE PRIEST. It could be excluded from this record if we want to do that.

Mr. DICKSTEIN. The Chair can expunge that part of the testimony from the record if he desires, but I think it should be preserved. It is important to know something is wrong, and I do not think any man would come up in Congress before this committee or any committee, and make a charge against somebody without merit.

The CHAIRMAN. Mr. Dickstein, we were not to hear today from any witnesses except those persons who were opposed to the bill. We permitted the young man there to speak about matters not in the bill at all, but as you know, he does not clearly understand the situation here, so we permitted him to proceed.

Mr. DICKSTEIN. I understand that, but if you want to keep the record clear here, I would expunge that portion of the testimony in answer to the questions I asked about some lands taken away without

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authority, and let the stenographer put it into a separate record for the use of the committee.

The CHAIRMAN. The chairman in trying to carry out the order of the committee will not permit anything to go in the record today except from those who are opposed to the bill and who speak to the bill. These extraneous matters and arguments that are brought in now, should be brought in at another time.

I want to ask again, is there any person present who desires to speak in opposition to the bill?

Mr. BONNIN. My name is R. T. Bonnin, and I am a member of the Sioux Indians of South Dakota, and I would like to speak.

The CHAIRMAN. Are you speaking now in your own personal capacity, or as the representative of any tribe of Indians?

Mr. BONNIN. I am speaking in my personal capacity, Mr. Chairman. I do not feel quite prepared to go at any length against this bill, but I would like to say——

The CHAIRMAN. Pardon me, are you opposed to the bill?

Mr. BONNIN. Yes, in parts.

The CHAIRMAN. No, are you opposed to the bill?

Mr. BONNIN. Naturally, being opposed in part, I want to be considered as opposed to it.

The CHAIRMAN. This meeting today, you understand, is for the hearing of those who are opposed to the bill. There will be other days of hearing when different features of the bill will be taken up. The Chair wants to carry out the order of the committee, and the committee has ordered that the hearing today will be only to hear from those who are opposed to the bill.

The gentleman is opposed to the bill, and you may now proceed.

Mr. BONNIN. The point on which I rose to ask a question is this—if I sit here today before the committee and not make any statement, and at some future date rose to object to some feature of the bill, I do not want to be confronted by the chairman telling me why did you not object on the day when it was being heard before.

The CHAIRMAN. The Chair is not going to deal in any technicalities of that kind, so I ask you the simple question, are you opposed to the bill?

Mr. BONNIN. I think I was fair in saying I was opposed to it in part. This is a bill that deals with almost every phase of human life for Indians.

The CHAIRMAN. That is not a fair answer to the question. You will have opportunity to be heard at some future date, but the committee has made an order and the Chair must be fair to the committee.

Mr. BONNIN. If I can be heard at some future day, I would not care to be heard today.

The CHAIRMAN. The commitee says it will hear anybody who wants to speak in opposition to the bill.

Mr. DE PRIEST. I am going to move you, Mr. Chairman, that this gentleman sitting here be heard off the record.

The CHAIRMAN. What is his name.

Mr. DE PRIEST. Mr. Charles Mitke, the gentleman who has referred to the Indian contract.

Mr. O'MALLEY. Mr. Chairman, I object to that.

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Mr. DE PRIEST. This is a motion and you cannot object to a motion.

Mr. DICKSTEIN. I second the motion.

The CHAIRMAN. Mr. Charles Mitke will be heard off the record, with reference to the contract the witness mentioned some time ago.

Mr. PEAVEY. Before you put that question, Mr. Chairman, we heard Mr. Mitke the other day on this matter, and I wonder if this is anything new he has to present, or the same thing he has presented before.

Mr. DE PRIEST. The gentleman told me before he got a chance to finish he was cut off. I do not know about it because I was not present.

Mr. DICKSTEIN. The testimony he gave the other day is not available—or was it taken down in shorthand?

Mr. O'MALLEY. For your information, the statement Mr. Mitke gave us a few days ago was typewritten and is in the record. It has not been printed yet, because we have not come to that discussion.

Mr. DICKSTEIN. Since we have an hour more to work, what objection would there be to hearing this gentleman?

The CHAIRMAN. This committee can do anything it wants to, by unanimous consent.

Mr. DE PRIEST. Do you mean to say this committee can not by motion hear a witness?

The CHAIRMAN. Can we by motion set aside the previous action of the committee?

Mr. DICKSTEIN. Mr. Chairman, we are not setting anything aside. We are through with this hearing so far as it goes today, there is no further opposition to the bill. Mr. De Priest moves that we hear a witness dealing with a phase of the Indian situation, which, if true, is something this committee ought to take notice of. What objection could there be to listening, if the man has something material that we should hear?

Mr. O'MALLEY. Mr. Chairman, for the purpose of the record, Mr. Dickstein has pointed out there is no further opposition to the bill. There is no opposition to the bill apparent, except the two persons who testified this morning.

Mr. DICKSTEIN. Have we any other witnesses to tesitfy?

Mr. O'MALLEY. I do not know.

Mr. DE PREIST. If there is no further witness to be heard this morning, then let us take up the witness who wants to make a statement.

The CHAIRMAN. I think we had better vote on the motion which has been offered and seconded, to permit Mr. Mitke to be heard with reference to this charge which has been made by the Indian representing the Papago tribe. Those in favor of the motion make it known by saying "aye".

(Vote of ayes given.)

The CHAIRMAN. Those opposed to the motion make it known by saying "no".

(Votes of noes given.)

Mr. DICKSTEIN. That seems to be sufficient, but I ask for the roll call.

Mr. WERNER. If the roll call is to be taken, since I was not here before, I would like to ask what the question is.

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The CHAIRMAN. For the information of the gentleman, I will say that the committee ordered that this day's hearing should be devoted exclusively to those who were opposed to the bill. We have heard from a couple of persons who said they were opposed to the bill, and now we have again asked if there was any person who desired to be heard upon their statement they were opposed to the bill. There were none.

Now Mr. De Priest moves that this gentleman, Mr. Mitke, be permitted to give the committee some information regarding the charge made by the Papago Indian about some alleged crookedness on the reservation.

Mr. WERNER. That has nothing to do with this bill?

The CHAIRMAN. No; it is separate and distinct.

Mr. WERNER. Is it the consensus of opinion that this statement should be taken by the reporter?

Mr. COLLINS. No; it is off the record.

Mr. ROGERS. I would like to ask, is this new information, or the as we had before. If it is the same thing I am against it. If it is new I am willing to hear it.

Mr. O'MALLEY. Mr. Chairman, will you permit Mr. Mitke to state whether it is something in addition to what we have heard from him?

Mr. DICKSTEIN. There are some here who have not had the opportunity of reading what the gentlemen had to say before. He said he was stopped before he had finished what he wanted to say, and if he has something new, why not listen to him?

The CHAIRMAN. The Chair takes it this is entirely informal and off the record, and if the committee wants to go into it that is the business of the committee, unless someone else wants to be heard. We will call the roll on Mr. De Priest's motion. Those in favor of the motion please say aye, those opposed no.

Mr. DICKSTEIN. Aye.

Mr. ROGERS. No.

Mr. O'MALLEY. No.

Mr. WERNER. Aye.

Mr. PEAVEY. No.

Mr. DE PRIEST. Aye.

Mr. COLLINS. Aye.

The CHAIRMAN. The vote is aye 4, no 3, and the motion prevails. Mr. Mitke, you may proceed with your statement.

(Thereupon, Mr. Charles Mitke made a statement before the committee, which by direction was not taken down by the committee stenographer.)

The CHAIRMAN. This matter will eventually have to go to the Judiciary Committee, and I am going to ask the Chairman of the Committee on the Judiciary to arrange if he can a joint hearing of his committee and my committee, for a discussion of this one particular phase of the bill.

The object of the committee has been accomplished and is there anything else we can take up? What do the members of the committee want to say about another hearing on this bill?

Mr. COLLINS. Mr. Chairman, unless there are other witnesses in opposition to the bill as an entirety, I deem it wise to await the return of the Commissioner, unless in the meantime the Chair should decide to meet with the Judiciary.

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Mr. O'MALLEY. It is going to be difficult to get a meeting with the Committee on Judiciary and if we do get that meeting, wouldn't it be the best thing to get the meeting on all of the phases of the bill and particularly the setting up of this court, and that is what we would like to hear from the committee on.

The CHAIRMAN. I will do my part with the Chairman on Judiciary, I don't know whether we can get such a meeting with them or not, but I think it ought to be held and I will ask for it.

Mr. DICKSTEIN. I understand there are people here from California and different sections of the country who would like to have an opportunity to be heard, and when will we adjourn to, and when will they be given an opportunity to be heard?

The CHAIRMAN. The Chair is not able to answer that question. I am just carrying out the orders of the committee.

Mr. DICKSTEIN. Why haven't the witnesses a right to testify against any particular portion of the bill?

The CHAIRMAN. They have, except for the order of the committee that this meeting today was for the specific purpose of hearing those opposed to the bill.

Mr. DICKSTEIN. I see the point.

Mr. O'MALLEY. Mr. Chairman, it is very difficult, as I can see from the statements of some of the witnesses who are here, to come in and say they are opposed to the bill. I know it would be hard for me to do that, yet when this bill came to the floor, if I were opposed to one section I would be opposed to the whole bill, so, why should we not hear these witnesses?

The CHAIRMAN. That is correct, but that is not for today.

Mr. DE PRIEST. I move we adjourn until tomorrow at 10 o'clock to hear these witnesses.

Mr. COLLINS. What is the purpose of that, to take up complaints against any part of this bill?

Mr. DE PRIEST. Yes.

Mr. O'MALLEY. I second the motion.

Mr. DICKSTEIN. I cannot be here tomorrow.

Mr. O'MALLEY. Mr. De Priest, would you amend your motion and restate it, that anybody who wants to appear in opposition to any provision of the bill may be heard?

Mr. DICKSTEIN. With all of the highest respect to my colleagues, I have never heard of a motion passed confining witnesses to opposition to the whole bill, but that seems to have been the motion passed.

Mr. O'MALLEY. That was not my understanding of the purpose of the meeting. I thought anybody opposed to the bill could be heard, and would not be confied to opposition to the whole question.

The CHAIRMAN. Will you state your motion again?

Mr. DE PRIEST. The motion is that we have a meeting next Monday at 10 o'clock to let any party objecting to any part of the bill be heard.

Mr. O'MALLEY. I second the motion.

The CHAIRMAN. Those in favor of the motion make it known by saying aye, those opposed, no. [Vote taken.] The motion is carried, and that will be the order of the committee. Now gentlemen, with respect to having the official reporter here?

Mr. ROGERS. I wonder if we will be able to get everything printed that may be included in that.

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The CHAIRMAN. I don't know, we have had good success so far.

Mr. DEPRIEST. I move we have the official reporter.

Mr. O'MALLEY. I second the motion.

The CHAIRMAN. All in favor of the motion please say aye, those opposed no. [Vote taken.] By unanimous consent the reporter will be here.

It is further moved, seconded that the refusal to publish all of the matters which may be presented shall be left to the discretion of the Chair. All in favor of the motion please indicate by saying aye, those opposed, no. [Vote taken.] The motion is carried and that is the order of the committee.

The hearing is recessed until Monday, March 12, 1934, at 10 a.m.

(The committee thereupon adjourned until Monday, Mar. 12, 1934, at 10 a.m.)

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READJUSTMENT OF INDIAN AFFAIRS

THURSDAY, MARCH 12, 1934

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met in the committee room at the Capitol at 10 a.m., Hon. Edgar Howard, chairman, presiding.

Present: Messrs. Howard (chairman), Chavez, Rogers, Stubbs, Hill, and Peavey.

The CHAIRMAN. Pursuant to a previous order by the committee, the hearings on H.R. 7902 will be continued this morning for the purpose of receiving any statements any persons may desire to present for or against the provisions of the bill. Is there any person who desires to be heard this morning in opposition to the bill? The request has been made by our colleague, Mr. Disney, of Oklahoma, that we may be pleased to hear some of his constituents, but I do not see them present.

Mr. PEAVEY. If there is no one present to appear in opposition to the bill, I suggest that we hear the Solicitor from the Department of the Interior, who is present.

The CHAIRMAN. The chairman understands that the committee gave an expression at the last meeting requesting that the Solicitor's Office be represented here, with especial reference to the Papago problem, but we will hold that in abeyance if there is anybody who desires to be heard in opposition to the bill.

STATEMENT OF THOMAS L. SLOAN, OF NEBRASKA

Mr. SLOAN. I wish to be heard in opposition to the bill, Mr. Chairman.

The CHAIRMAN. Where is your residence?

Mr. SLOAN. Nebraska.

The CHAIRMAN. Whom do you represent?

Mr. SLOAN. I am here in my individual capacity, although I have letters from a number of Indians asking me to look after their interests and to present their views in part.

The CHAIRMAN. How much time do you think you will need this morning, Mr. Sloan?

Mr. SLOAN. I will be ready to quit at any time you desire; I do not think I will need more than 20 minutes, if that much.

The CHAIRMAN. You may proceed and you will be allotted 20 minutes.

Mr. SLOAN. I wish to say, Mr. Chairman, and gentlemen of the committee, that my own Omaha Tribe of Indians in the State of

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Nebraska are in a condition which, if it continues to exist for a period of 5 years or more, will be absolutely without homes, lands, or anything upon which to exist. I think the same conditions apply, not so severely, to the Winnebagos, and probably to the Santees, which are the three with which I am concerned. I am sure that the Yankton Sioux of South Dakota and that the Rosebud and Pine Ridge are in a deplorable condition and that they need help and reconstruction of every kind to enable them to improve their condition.

The bill has in it a number of things which, it seems to me, are a great part of the troubles that the Indians have experienced in the past. In section 1 are a great many repetitions of authority granted to the Secretary of the Interior, authorizing him to make rules and regulations and exercise discretion. The trouble with the actual administration of affairs is that the Secretary himself does not exercise those authorities; they are exercised by superintendents who are not in sympathy with the Indian, who have no interest in their development, or in the welfare and development of the country which they occupy. I have met one Secretary of the Interior who was ready to exercise that discretion and took some time to do it, and that was the Hon. John Barton Payne. I had quite a number of decisions respecting heirship matters, where he immediately exercised his general knowledge and experience and applied his discretion, as Secretary of the Interior, in having decisions properly promulgated and announced and put into effect. The present Secretary of the Interior is overburdened with more work and duties than he can perform, and, consequently, the exercise of that discretion which should be exercised, a judicial discretion, or at least, a quasi-judicial discretion, which should be established; he does not have time to give attention to it, and the diversity of opinions that range back and any forth through the Department are not creditable, to say the least, to either the Indian Bureau nor to the Secretary of the Interior either.

The one great trouble, to my mind, in respect to that is this: The discretion that is granted to the Secretary of the Interior is final; there is no opportunity for review, and none at all for a judicial review. I notice that the Radio Commission, in their affairs, parties who are interested or intervenors, may appeal to the Court of Appeals of the District of Columbia, and they may have a judicial review, and that recently the Court of Appeals for the District reversed the Commission, and on appeal to the Supreme Court, the Supreme Court sustained the Commission. I mention that particularly because a review is something the Indians do not have in respect of their property, and there has been recently a decision by the Court of Appeals of the District of Columbia, which makes that proposition plain. Therefore, I have an extract from that decision which will only take 3 or 4 minutes to read, and I would like to read it. This is from the decision in the case of Red Hawk against Wilbur, Secretary of the Interior, reported in 39 Fed 2nd, page 294. The court says:

> It is contended by counsel for plaintiff, that the Secretary, in the threatened distribution, was proceeding in violation of the laws of descent of the State of South Dakota, where the lands in question are situated. We think it unnecessary to enter into any discussion of either the facts or the law relative to this case, since the statute vests the Secretary with power to determine the heirs and provides that his decision thereon shall be final and conclusive. The nature of the exercise of such power by an officer of the Government was defined in the early case of *Bartlett* v. *Kane* (16 Howard, 263) as follows: "It is a general principle that when

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power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are binding and valid as to the subject matter. The only question which can arise between an individual claiming a right under the acts done, and the public, or any person denying their validity are power in the officer and fraud in the party; all other questions are settled by the decision made, or the act done by the tribunal or officer, whether executive, legislative, judicial, or special, unless an appeal is provided for, or other revision by some appellate or supervisory tribunal is prescribed by law."

In this case the question involved the descent of property, and particularly the construction of that part of the law of descent which provided that a relative of the half blood shall inherit equally with those of the full blood, in the same degree; I had a similar case a number of years ago before the Department and my contention was determined against me, but within 3 months thereafter, the Secretary of the Interior on another case identically the same, found and held the other way, and since then there are different holdings, so there are decisions on both sides of that case. Those on one or the other side must be illegal or unreasonable construction of the law, and they are being applied, there being no supervisory or revising power; the Secretary's decision stands in that way.

I have had cases in which, if I could have had a fair and reasonable consideration of the law and of the facts, by a person competent and willing to exercise judicial discretion, my clients would have received at least a just determination of their claims, and after the law as it exists now that is impossible, as I have called to your attention in this case.

Mr. PEAVEY. Will the gentleman yield to a question?

Mr. SLOAN. Certainly.

Mr. PEAVEY. Would not the passage of H.R. 7902 give you the legal remedy that you are complaining about, in the provision of the bill which sets up courts especially to try all Indian matters?

Mr. SLOAN. Would the courts provided for do that?

Mr. PEAVEY. Yes.

Mr. SLOAN. That is the point. Taking section 15, the part in reference to the courts, page 444 and 445; I think it is section 15; it provides that the final judgment of the court of Indian affairs shall be subject to review on questions of law in the Circuit Court of Appeals of the circuit in which such judgment is rendered. That limits the review simply to questions of law and, as I understood from both the Commissioner of Indian Affairs and the Assistant Commissioner, the creation of this court was an attempt to create courts like the district courts of the United States, and in equity cases, and those where equitable remedies may be had, the regular procedure on appeal from the district court to the Court of Appeals and to the Supreme Court ought to be allowed Indians in reference to property rights the same as allowed to all other people in the United States. The fact is, at this time, that the only person in the United States, its original inhabitant, is the only man who cannot have a final determination of his property rights in reference to his lands and his inheritance or the money that comes from the Government. That seems to me and has seemed to me a most unfair and rather outrageous procedure which is applied to a people who are in need of that perhaps more than any other.

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On the next page, there is this provision:

The said circuit court of appeals shall have the power to affirm, or, if the judgment of the court of Indian affairs is not in accordance with law, to modify or reverse the judgment of that court.

Now, while that is not as strong language as that which precedes that, and to which I object, it still creates an inclination along that order, and I think that if that part was stricken out, and instead of it there be substituted the language from the statute which provides for the jurisdiction of district courts and appeals therefrom by law making it:

The circuit court of appeals shall have appellate jurisdiction to review by appeal final decisions of the court of Indian affairs in all cases except where a direct review may be had to the Supreme Court of the United States under section 345 of the United States Code annotated.

In reference to that preceding question, if the four words on line 23, in section 15, page 44, were stricken out, it would leave the jurisdiction of the court broader "on questions of law."

Mr. PEAVEY. I think the gentleman must be reading from the Senate bill.

Mr. SLOAN. No; this is the House bill, page 44, section 15, line 23.

The CHAIRMAN. You may proceed.

Mr. SLOAN. I might give an illustration of a case: An old Indian woman made a will; she employed an attorney and went with him to the Indian agency. The will was written under the direction of the Indian agent; it was read in his presence and interpreted and was signed in his presence, and in addition thereto an affidavit was made of the reasons why she had selected someone other than her next of kin to be the beneficiaries of her will. That was made in accordance with one of the rules and regulations of the Secretary of the Interior. The witnesses were two Indians whom she had selected, a young man and a young woman, both speaking English and the Indian languages, who were able to read and write, and who were somewhat familiar with business. She died and a hearing was had by the examiner as to that will. The record shows that only one of the subscribing witnesses was questioned at all and he was only questioned as to a very small part of the knowledge or information he had. He disclosed the facts I have stated in reference to when and how the will was executed. The rules and regulations require that at least two subscribing witnesses must be used in making a will, and that rule requires that their testimony must be obtained, if they are living, or by affidavits, if they are at any great distance away, so as to make the record complete. No attempt of that kind was made by the examiner, but he went to the trouble of securing all the subscribing witnesses to obsolete wills that had been superseded by the later one, on which of those were obsolete. Now, then, with all of that evidence before the Indian Office in the Department, they twice considered that record and held against the will, and finally, upon a third attempt, the decision was reversed.

Now, then there is this about it: The same things that are true with reference to the action of the Secretary of the Interior being final in those matters will be true in this court, because if it is left to read as it is printed, in my mind, there will be no review; the court will be a special court; the attorneys who are selected will be appointed by the Secretary of the Interior, and they will be under the same

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influences that the Secretary and his assistants in the Interior Department and the Bureau of Indian Affairs are now, and if there is no opportunity for the Indian to be represented by separate counsel, those who take an interest in their affairs, they are likely to have the same troubles that we are having here at this time.

I therefore wish to suggest to the members of the committee that this section 15 be amended in such a manner that all of the rights of appeal that accrue to other litigants in the courts of the United States may be extended to the Indians in reference to their property, their status and whatever rights they have. It seems to me, that they should be granted every right available to any and every other litigant in the United States courts. I will feel, unless this is done, that this is an unjust and unfair thing not to give to the American Indians, citizens of the United States, that right of review. In speaking of those things to a Member of Congress a short time ago, I said this: "If there was a review available from the action of the Secretary of the Interior, those people who review the decisions and give them consideration in either the Indian Bureau or the Department of the Interior, would exercise more care, and they would show that true discretion they are putting into effect for the Secretary of the Interior, in connection with the laws, rules and principles which they apply to all other people, except to the Indians."

The CHAIRMAN. The time you have requested has expired, and I want to proffer a request to you on behalf of the committee. I have personal knowledge of your own career as an attorney in Indian matters, and I have personal knowledge of your ability and knowledge of the law; on behalf of the committee I am asking you if you will not be kind enough to present to the committee a little brief in which you will suggest amendments, which, if adopted, will make the pending bill a better bill than it is at the present time. I am quite sure the committee will give earnest consideration to such amendments as you may be pleased to offer. I ask this in the hope that by your aid the committee may be enabled to perfect the bill and give, through the bill, to the Indian people that guaranty of better treatment which you have so splendidly urged here. I would thank you if you could present such a brief.

Mr. SLOAN. I thank you very much, Mr. Chairman. I will try and comply with your request.

(NOTE.—Certain matters pertaining to the Papago Indian Reservation and to the Mission Indians of California presented at this point will be included at a later point in the hearing, together with other matters pertaining to the same subjects.)

The CHAIRMAN. What does the committee wish to do about further meetings and further hearings?

Mr. CHAVEZ. Are there any more parties who have requested time in opposition to the bill?

The CHAIRMAN. No requests have been filed; Mr. Disney has requested time for Mr. Thompson, who represents a certain tribe of Indians.

Mr. ROGERS. Is Mr. Thompson for or against the bill?

Mr. THOMPSON. I am in opposition to the bill being extended to the Quapaw Tribe; I am not against the bill generally; I appear for that tribe.

The CHAIRMAN. What are the wishes of the committee concerning another meeting?

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Mr. CHAVEZ. We have a regular meeting on Wednesday; we agreed that we would not take up consideration of H.R. 7902 at our regular meetings.

Mr. PEAVEY. Mr. Fahey was here, and we did not reach him and those other gentlemen, and I move at this time, to get the sense of the committee, that we meet again tomorrow at 10 o'clock to take up further consideration of those opposed to the bill.

Mr. ROGERS. Mr. Fahey is not opposed to the bill. Let us not allow him so much time as the solicitor took.

The CHAIRMAN. That will not occur again.

Mr. THOMPSON. I think I can present the questions for the Quapaw Tribe in an hour, or I will try to cut it down, if necessary.

Mr. ROGERS. We do not have but an hour and a half.

Mr. THOMPSON. I am here, having come 1,500 miles, and I would like to know when it will be convenient for the committee to hear me.

Mr. PEAVEY. I move that they be given 30 minutes apiece and that we hear Mr. Fahey and this gentleman here.

Mr. ROGERS. I second the motion.

(The question was submitted by the chairman, who announced that the motion had carried.)

The CHAIRMAN. Numerous matters in writing have been filed with the chairman, touching more than one subject in this bill. By consent of the committee, I would like to have all of those matters, or such of them as we deem meritorious, by which I mean those giving any light on the subject appended to the record; I would like to have the committee authorize the chairman to have such of them as may be deemed proper presented in our hearings in the form of an appendix to the whole proceedings, after we shall have finished the hearings.

Mr. PEAVEY. I think that would be very fine and I will make a motion to that effect.

Mr. ROGERS. I second the motion.

The CHAIRMAN. It has been moved and seconded that all of the matters in writing which have been heretofore filed, or which hereafter may be filed, by any person interested in this bill, and which the committee or the chairman for the committee shall deem of value, shall be presented in the record at the close of the hearings in the form of an appendix to the hearings proper.

Mr. PEAVEY. I move that the motion be amended and that the matter be left to the discretion of the Chair, as to the material to be included.

Mr. CHAVEZ. And to authorize him to act.

The CHAIRMAN. Without objection, that amendment will be incorporated in the motion.

Mr. ROGERS. Let us vote on the motion.

(The Chair thereupon submitted the question to the committee and announced that the motion had carried.)

The CHAIRMAN. May I say to the gentlemen who have been granted time for tomorrow that we would like them to appear promptly? The committee will give respectful hearing to each of you, and if we have any further time at our disposal, we will listen to any others who may desire to be heard. The committee will now adjourn until 10 o'clock tomorrow morning.

(Thereupon, at 12 noon the committee adjourned until tomorrow, Mar. 13, 1934, at 10 a.m.)

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READJUSTMENT OF INDIAN AFFAIRS

THURSDAY, MARCH 13, 1934

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met in the committee room at the Capitol at 10 a.m., Hon. Edgar Howard (chairman) presiding.

Present: Messrs. Howard (chairman), Hill, Rogers, Lee, Peavey, Collins, and Christianson.

STATEMENT OF VERN E. THOMPSON, JOPLIN, MO.

The CHAIRMAN. The committee will come to order, for resumption of the hearings upon H.R. 7902, and, in harmony with the order of the committee as announced yesterday, the gentleman from Oklahoma, Mr. Thompson, will now be heard. Mr. Thompson, will you please give your name and address to the reporter, and also present any credentials which you may have as to the persons or organizations for whom you shall be speaking.

Mr. THOMPSON. My name is Vern E. Thompson; my residence is Joplin, Mo., and I appear on behalf of the Quapaw Tribe of Indians, located in the northeast corner of the State of Oklahoma, and I present as my credentials a resolution adopted by the Quapaw Tribal Council, in conjunction with a meeting of various members of the tribe held at Miami, Okla., on Saturday last, March 10, 1934.

(The resolution referred to is as follows:)

RESOLUTION OF THE QUAPAW TRIBAL COUNCIL

It having just come to the attention of the tribal council that a bill known as the "Collier bill," same being Senate bill no. 2755, H.R. 7902, providing for the incorporation of Indian communities, is to be heard before the House Indian Affairs Committee on next Monday; and the tribal council, having carefully considered said bill and being opposed to the extension of the terms thereof to the Quapaw Tribe, for and on behalf of the Quapaw Tribe of Indians and for said Quapaw Indian Tribal Council, have instructed and authorized Judge Vern. E. Thompson, of Joplin, Mo., for and on behalf of said tribe and council, to express to the members of the Indian Affairs Committee in Washington the reasons of their opposition to said bill being extended to their tribe, and do hereby authorize said Vern. E. Thompson to represent them before said House Indian Affairs Committee.

Victor Griffin, the chief of said tribe, being at the time seriously ill of pneumonia, the tribal council was called by Alec Beaver, second chief.

Dated at Miami, Okla., this 10th day of March 1934.

ALEC G. BEAVER,
Second Chief.
PAUL GOODEAGLE,
LEVI GOODEAGLE,
ARTHUR BUFFALO,
Councilmen.

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I hereby certify that the above and foregoing is a true copy of the resolution adopted at the meeting of the tribal council of the Quapaw Tribe, held at Miami on this date, and that the names of the second chief and councilmen were signed thereto in my presence, and that the signatures to same are genuine.

GRACE W. DICK,
Secretary of the Quapaw Tribal Council.

The CHAIRMAN. Notwithstanding the limited number of our committee membership present this morning, I do not wish you to be annoyed by that fact, because your entire address here will be reported by the official reporter, and printed for distribution among the members, and considered in further connection with hearings on the bill, when we shall reach the amendment stage.

Mr. THOMPSON. Yes; I understand.

I wish to say at the outset that it is not the desire of the Quapaw Tribe to criticize the good faith or the efficacy of the bill under consideration, House bill 7902, as affecting the reservation Indians or other tribes not situated as the Quapaw Tribe of Indians are. After the bill has been considered as thoroughly as possible by the tribal council and the members of the tribe, we feel that its provisions should not be made applicable to the Quapaw Tribe. I take it that the committee may not be as well advised as to the legislation affecting this small tribe of Indians as it would be relating to the Five Civilized Tribes and other larger tribes. These Indians are a very small tribe of Indians, probably not more than 700 in number; I am not in a position to give the exact number. They are located in northeastern part of the State of Oklahoma, a part of what is referred to in Indian legislation as the Quapaw Agency.

They were originally from Georgia, and the various acts of Congress and treaties affecting their rights are as follows: The first treaty made with this tribe of Indians was made on August 24, 1818 (7 Stat. L. 176; Capper's Indian Land Laws, vol. 2, p. 160). That was the treaty under which they disposed of the lands that they originally owned, and they were transferred to a country between the Arkansas and the Canadian Rivers in the vicinity of Little Rock, Ark. The pertinent provision of that treaty, affecting the title to their lands, recited—

and said lands shall not be disposed of by the Quapaw Tribe or Nation to any individual whatsoever, or to any State or nation, without the approval of the United States first had and obtained.

The next treaty was made on November 15, 1824 (7 Stat. page 232). Under this treaty the Quapaws ceded additional lands to the United States, and it was provided that the Quapaws would thereafter be concentrated in and combined with the district inhabited by the Caddo Indians.

The third treaty was made on May 18, 1833 (2nd Capper, 395; 7 Stat. at Large, 424.) The preamble of this treaty provided that they cede to the United States all their lands in the territory of Arkansas, and according to which they were to be concentrated and confined in the district inhabited by the Caddo Indians and form a part of said tribe, and that whereas they did remove in accordance with the provisions of said treaty.

It appeared from the further history of this tribe, that their association with the Caddos was not satisfactory and on September 13, 1865 (2 Capper 1050), they were transferred to the present territory which they now occupy, and this particular part of the then Indian

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territory was considered of the cheapest, and was one of the last parts of the Indian territory to be assigned to the Indians.

These Indians were a very provident people; they adopted into their tribe a man by the name of Abrahams a member of some eastern band of Indians, and with their tribal council, they worked out what I believe to be the first allotment ever made by the Indians themselves. They allotted 200 acres to each Indian on the prairie; that land was practically all alike; there was no distinction in quality; it was prairie hay land; they also took 40 acres in the timber. This allotment which the Indians made was submitted to Congress for approval, and it was provided that the Government should patent to the Indians themselves 240 acres, subject to the approval of Congress. The Congress approved those individual patents to these Indians on March 2, 1895, (29 Stat. at Large, 907), and it was provided in this approval that this land would be restricted for a period of 25 years. This 25-year period would have expired in September 1921.

On March 3, 1921, on the application of these Indians, Congress extended that restriction for a further period of 25 years as to certain named Indians. The other Indians not named in this act were released from the effect of the act. The Indians named in this act were classified by a committee sent out from the secretary's office for the purpose of examining individually these Indians, as to their capacity to contract, and to take care of their own business; a report was filed, which was known and referred to as the "Valentine report"; that report states that some of the Indians are fully as capable as the whites; some are capable of making contracts relative to surface rights, and it then reported that there had been discovered in this agency some of the richest lead and zinc mines in the world. As a matter of fact, at one time, this particular agency was producing about 65 percent of the zinc ore mined in the United States. At the present time, they are producing something like 23 or 25 percent, approximately.

A map of this agency, known as the Quapaw Agency, I present to the committee so you can get the picture of the situation of this tribe. The entire map is what is known as Ottawa County, in the northeast section of Oklahoma; this is the county; this is Kansas; the white part of the map is a part of the Five Civilized Tribes known as the Cherokee Tribe; all of the balance of these small tribes are tribes in which the tribal government had practically become extinct, and the Government brought into this agency the Wyandottes, the Ottawas, the Modocs and certain other tribes, and these were all concentrated in what is known as the Quapaw Agency. This marked in red is the Quapaw Agency; the section of the land occupied by the Quapaw Tribe I can indicate to you by a line running here, and then over here; in this area is located the remainder of this small tribe of Indians known as the Quapaws. The part of the map marked in red shows the land that has been sold and is now in the hands of white owners.

I notice that Commissioner Collier critizes the allotment Act, which permitted the selling of property; a good many of the Indians have died off, their tribe is very small; there are probably only four or five of the old original full-blood Indians left. The rest are all the younger generation. That land marked in red has been sold and is now occupied by farmers, with well-developed farms, fine buildings,

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cement highways running through this territory in two or three directions, very fine roads, and it is quite a highly civilized section of the country, bordering as it does on Kansas and Missouri.

That marked with blue shows the location of the allotments of living Indians who would be affected by this act. There remains, in the hands of these living Indians, not in the Quapaw alone, but the whole of the Quapaw Agency, which comprises all of the other small tribes; I have not any authority to speak for the other tribes, but I am assuming it would be impossible under this bill to form what is known as a community, by having all of the governmental facilities and maintenance of schools, and so forth; it would be impracticable if that applied to one little section where so few Indians are still living, and if it should apply at all, it would be possibly contended that it should apply to the Quapaw Agency, but taking the Quapaw Agency, there remains in the Indians 10,432.39 acres. This map is the Quapaw Agency, which comprises all the other small tribes. That marked in yellow shows the allotments of the deceased Indians held by heirs. That is 24,390.81 acres, and in tribal lands scattered in little tracts throughout this agency, the largest part of which is known as Wyandotte School, which has 400 acres; the alienated lands is over 15,000 acres. That is the situation of this particular tribe. I want to make my remarks as brief as I can, because I realize the vast amount of work you have to do.

Mr. PEAVEY. If the lands owned by this tribe, either directly or by its members, or by inheritance, and so forth, are so small in area, and so scattered, as to make it impossible for them, under the terms of the bill, to form a community, what is the objection to the legislation, since the legislation, being voluntary, would not apply to you?

Mr. THOMPSON. As I read the legislation, it would apply in a very serious way, whether or not they adopted the community idea. The bill changes the order of descent. It provides that whether the community agree to it or not, at the expiration of the life of the present allottee it will descend to the tribe and not to the heirs.

In that connection, at the meeting which we held Saturday in Miami—I left Saturday night—the bill was discussed and read to these Indians, and if you were to look the audience over you would think it was a society audience; they were in there with fur coats, and dressed in the height of fashion; a few old timers still had handkerchiefs around their heads. One of the old ladies, when I asked her, "What is your sentiment about the bill?" She said, "They say we fool Indians, but I want you to tell the white men that as soon as they are willing to divide their lands with the bread lines of the whites, we are willing to divide our lands with the bread lines of the Indians that do not belong to our tribes." There are not any pauper Indians, and I say that advisedly, among the Quapaw Tribe. If it were sought to form an area which would include these other tribes, here is the thing they are afraid of; these other tribes, some only had 40 acres and some had only 180 acres and that land is all agricultural land. The bill does not confine the voting upon the question of whether the community will be formed to any tribe, but it may be confined to groups or tribes; what they are afraid of is that there might be a group which would like to divide 240 acres of rich mining land with the others.

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Mr. PEAVEY. Their interest would be represented by the amount of acreage they had?

Mr. THOMPSON. It might be represented by the amount of acreage, but how could it be represented by valuation? I have in mind one particular 200-acre tract which I know has produced $14,000,000 worth of ore, and that is on a 200-acre tract.

Mr. PEAVEY. Mr. Thompson, while you are on the matter of those mines, you speak of their richness, and the valuable ore that is produced. Are those mines still in the actual ownership and possession of the Indians, or have they been leased to the whites?

Mr. THOMPSON. They have been leased; the fee ownership of the richest ore is still in these restricted Indians, named in the act of March 3, 1921.

Mr. PEAVEY. Are the white holders of these leases disturbed about the possible passage of this bill?

Mr. THOMPSON. I do not think they are; I have not heard any complaints from the owners of the leases, for the reason that the leases they have now provide for a good royalty of 10 percent. The oil leases, you will remember, are one eighth; the basis on which these mining leases are made is a fixed royalty of 10 percent, and they may be extended as long as lead and zinc are produced in paying quantities. I do not believe they are concerned; as a matter of fact, I have represented mining companies, and the companies would just as soon deal with the Secretary and have one head, as they would with several. I do not think the mining companies are particularly concerned about this legislation.

I want to show briefly a map of the north part of Ottawa County; where you see the black dots, they represent mines now being operated in that territory, and this is the Quapaw territory, which begins here and runs to here [indicating]; their territory is covered with these mines. Some of these mines are very large; the one company, the Eagle Pitcher Co., has a mill located on fee land, by the way, which is the largest zinc mill in the world. It is a very modern mill and absolutely complete in every detail.

Now, I notice in the discussions before the committee that Mrs. Greenway asked the question as to whether or not if an oil well was developed upon some of this Indian land, how a certificate, in the community proportionately representing the interest of the owner, could be issued; how the voting could be done; what fund there would be to pay for it with. If I construed the reply correctly, it resulted in an oil painting of the oil well, because it developed that there would be no money out of which it could be paid. If these Quapaws were to be compensated for these mines located in this little agency, it would be impossible to evaluate those lands and pay them.

Mr. COLLINS. There is a way of definitely determining the value of the mine, by blocking out the ore, and by taking the ore blocked out and determining the price of the metal.

Mr. THOMPSON. I am glad you asked that question. I notice Mr. Lee is here from our State; and he knows that it is a popular notion that you can block ore in a lead and zinc mine like you can in a coal mine. It is absolutely impossible to block out lead and zinc ore, and I will tell you why. They drill for ore and they put a drill here, and a drill there and a drill there and a drill there, and you might strike ore in all four of those places, but the ore is disseminated in the

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rock; it runs in little veins; you will have a vein here and it pinches out into nothing. It is impossible to tell in advance just what you have; you may have a mine today, and it may not be there tomorrow

Mr. COLLINS. Do I understand there is no continuity of the vein?

Mr. THOMPSON. There is practically no continuity of the vein.

Mr. COLLINS. It occurs in winzes and lenses?

Mr. THOMPSON. Yes; it goes in narrow veins, and then it pinches out.

Mr. COLLINS. There is the strike of the vein, and even in the pinch, there is evidence of the hanging wall?

Mr. THOMPSON. Not necessarily; there are times you run into dead rock, and you have to tunnel through that rock until you find it again. It is impossible to put an estimate on the value of a mine. For illustration, this particular mine I refer to was leased originally for 10 years; it was thought that all of the possible ore could be taken out in 10 years; a renewal was given for another 10 years and it was still operating. There are other mines on which valuable mills have been erected that do not work for 6 months of the year. There are other districts, and one known as "Lincolnville", where there were a great many mills, but the ore is exhausted, and it is a ghost town; there is nothing left; the mills are moved away. It demands a consistent development to determine where the ore is. It is not as certain as oil, and to put an estimate on the value of these mines, if you could put an estimate on them, it would be such a large sum of money that it would not be advisable for any community organization to purchase it.

Mr. COLLINS. Is this complex ore?

Mr. THOMPSON. Yes; the zinc and the lead may be fine; when I say disseminated, I mean shot through the rock; this comes out in chunks as big as your head, and then it goes through a crusher and is crushed into a fine gravel, and then it is run through a process for the purpose of separating the zinc and the lead, and then through a complicated flotation process by which they separate the powdered ore.

Mr. COLLINS. The question I have in mind is if this zinc and lead is complex ore, at the present time there is little value on ore of that kind, and is not that the reason that these places are abandoned?

Mr. THOMPSON. At the present time, this ore is selling around $30 a ton.

Mr. COLLINS. This particular ore?

Mr. THOMPSON. Yes; a good many possibly cannot make any money; we have to close down about 2 weeks per month in order not to over-supply the market.

Mr. COLLINS. I am only asking the questions for the purpose of attempting to find out if it is not possible to determine the value of these ore lands.

Mr. THOMPSON. I am glad to have had you ask those questions because there are different kinds of mining and different kinds of Indian lands.

The CHAIRMAN. I would like to ask one question before I leave. Provided this bill might be so amended as not to affect this tribe for which you speak, will you have any further objection to it?

Mr. THOMPSON. I would not, if the Quapaw Tribe are excluded from the operation of this bill; I would not say that it would not be a very fine piece of legislation for some tribes; I do not know.

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Mr. Hill (presiding). The 30 minutes allotted to you have expired.

Mr. Thompson. May I show the parts of this bill which will gravely affect the tribe?

Mr. Collins. I ask unanimous consent that he be permitted to continue for 5 minutes.

Mr. Rogers. Would it not be better to give them their allotted time? It is hardly right to take time from the other witnesses.

Mr. Hill (presiding). The president of the Mission Tribe of California is here and he was allotted 15 minutes today. Would you feel that you would want the full 15 minutes?

Mr. Castillo. I do not think so; I think I will need about 5 minutes.

Mr. Collins. I move that the gentleman be permitted to have 5 minutes additional time.

Mr. Rogers. I second the motion.

(The question was thereupon submitted by the chairman, who announced that it had carried.)

Mr. Thompson. May I say that most of these Quapaws do not now live upon the reservation. They live in Miami and in the different towns, and in some of the finest homes; they are mixing with the society of the State; they are holding prominent positions in public offices.

Now, the particular parts of the act which I desire hastily to address myself to, line 25, page 4, and lines 1 to 4 on page 5 of the act. This provides that a charter shall likewise prescribe the powers of management or supervision to be exercised by the chartered community over presently restricted real and personal property of individual Indians. The second particular part of the act that we want to object to is the provision for condemnation, subsection f of section 4, lines 21 to 25, page 7. We feel that is a particularly dangerous provision of the bill, so far as this particular tribe is concerned.

The next particular part of the bill that we want to object to is with respect to the Indian community, which starts on line 16 of page 9, and runs over from line 1 to line 8 on page 10. If you were to form this kind of a community in Ottawa County, it being a small county which was organized with the full knowledge of Congress, and it comprises this whole county, you would be destroying a county in the State of Oklahoma.

The next particular thing we desire to object to is the attempt to change the estate in fee, which we content now vests in the Indians, to a life estate.

Lines 16 to 23 on page 26 provide that whether the community accepts this or not, whether it is accepted by the Indian tribe, that upon the death of the allottee, this land will descend to the tribe; there is no danger of this tribe accepting, but whether or not you are attempting to take away the fee title, you are opening up litigation in that country which will be rich pickings for lawyers but not beneficial to the Indians, because there will be interminable litigation.

Lines 10 to 15, page 29, which is a part of section 7, article III, and which I construe as authorizing the Secretary to cancel existing patents; you might say he would not do it, but he has the power to do so.

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There is a proposed change of descent from the heirs to the tribe in lines 16 to 24, page 33, section 11, article III of the act. It is proposed in the act that in case this land was sold and could not be paid for in cash, it would be compensated for out of rentals on an annual basis; this is very objectionable. There are conflicting Oklahoma State laws, which conflict with the proposed community acts, and which would give rise to litigation. The act provides that the Five Civilized Tribes and the Osage Tribe will be exempted from certain provisions of the act. They are the only tribes on the State of Oklahoma, except the Quapaw Tribe, and I think the Quapaw Tribe was left out of that provision accidentally.

Mr. PEAVEY. Will you permit a question right there?

Mr. THOMPSON. Yes, sir.

Mr. PEAVEY. When did the tribe get notice of this bill? When did they take recognition of it?

Mr. THOMPSON. They received a copy of the bill along about Friday.

Mr. PEAVEY. What date?

Mr. THOMPSON. Of last week; that is, they called my attention to it over the phone Friday.

Mr. PEAVEY. Will they, as a tribe, participate in an Indian conference or convention at which the Commissioner will be present?

Mr. THOMPSON. They probably will be present, but they will be opposing this act, undoubtedly. We object to the provisions as being in conflict with the various provisions of the Enabling Act of the State of Oklahoma, giving the right to any tribe in that State to administer its own civil and criminal laws, referred to in lines 5 to 12 of page 7.

We are objecting specifically to any attempt to include in tribal communities the lands, waters, highways, roads, and bridges within the boundaries of an Indian community, as set out in the proposed bill, lines 17 to 25, page 21. We are objecting specifically to the necessity of residence in the Indian reserves, referred to on page 19 of the proposed bill, lines 14 to 22. These Indian people have, in good faith, attempted to do what the Government is asking them to do, amalgamate with the white citizenship; they have done so and today some of the most prominent men of the State of Oklahoma are men of Indian blood; some of the most prominent men in the county seat are men of Indian blood, doctors, lawyers, merchants, and men in other lines of business. These Indians are not reservation Indians; they are Indians who, in good faith, have attempted to adopt the laws and the customs of the white men.

At one time I was county judge in that jurisdiction, and a good many of those Indians came in and wanted to be married under the white man's custom. Today they are Catholics and they are Protestants; they belong to different denominations; they do maintain those old cultural practices that Secretary Collier said should be maintained; they have tribal dances and the historic forms; in the case of a funeral, they go through a dual ceremony; they have the ceremony of the chief painting the Indian's face in the symbolic manner, and at the same time, the priest or the Protestant preacher conducts a ceremony. That only applies to the old ones; the rest have been amalgamated into the society of the State; they are taking a promi-

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nent part in the political affairs of that jurisdiction. To include them in the provisions of a law which might require them to pool their lands, and change their laws of inheritance, and to try to take away from them their fee simple title in this valuable property would be, in our opinion, an injustice.

Mr. CHRISTIANSON. Mr. Chairman, may I ask the gentleman a question?

Mr. HILL (presiding). Certainly.

Mr. CHRISTIANSON. I came in late and I did not get the benefit of your whole argument. I judge that your recommendation is that one particular tribe be excepted from the operation of this law.

Mr. THOMPSON. Yes, sir.

Mr. CHRISTIANSON. What tribe is it?

Mr. THOMPSON. The Quapaw Tribe.

Mr. CHRISTIANSON. Do you know if there are other tribes of Indians in other parts of the United States in whose behalf the same argument could be made?

Mr. THOMPSON. I expect so. In fact, I know that a meeting was held yesterday in Muskogee in which the Five Civilized Tribes were considering the matter.

Mr. CHRISTIANSON. Without expressing any pure conclusion upon the matter, would it not seem wise, instead of amending the bill to eliminate the particular tribe that we have in mind, that we set up some means of ascertaining to what tribes it might be applicable, and to which it might not be applicable, and then proceed to apply the provisions only in those cases where the provisions of the act were applicable?

Mr. THOMPSON. I should think so. I think it would be unfair and inequitable to require this tribe to surrender the land holdings, to change the title from a fee title to a title by occupancy, for the purpose of transferring that land to members of other Indian tribes. If the tribe itself wanted to do it, and it could be done constitutionally, that would be another question; what the Quapaw Tribe is worried about, by virtue of the fact the good Lord has given them something that Congress or no one else intended that they should have, and now that they have it they are being asked to give it back; they were given the rag tag of what was left. It so happened that they found mines there, and now they say that we want them to give the mines up.

(Certain matters pertaining to the Papago Indian Reservation and to the Mission Indians of California presented at this point will be included at a later point in the hearing, together with other matters pertaining to the same subjects.)

Mr. HILL. Does the committee desire to fix another date for a meeting to consider this bill, prior to the return of the Commissioner? We meet regularly tomorrow at 10:30; do we wish to meet to consider this bill on Thursday?

Mr. ROGERS. Is anyone else requesting an opportunity to appear before the committee?

Mr. R. T. BONNIN. At one time I arose to speak against the bill, and if at some future time there will be an opportunity to present the views of the minority, I should be glad to do so. I have a number of letters in which people express a desire to be heard.

Mr. HILL. How long a time do you desire?

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Mr. BONNIN. I am unable to state that now. I have had in mind, after Mr. Collier's return, that those with whom he had met would be be writing in and I might then desire an opportunity to present something.

Mr. HILL. Our time for adjournment has arrived.

Mr. AMBROSE J. FAHY. I want to take just one minute to say that Mr. Collier's attitude is to get all the information possible with reference to this bill, both against it and in favor of it. I am classifying the replies received not only from tribes, but from individual Indians.

Mr. HILL. The meeting is adjourned.

(Thereupon, at 12 m., the committee adjourned to meet at the call of the chairman.)

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READJUSTMENT OF INDIAN AFFAIRS

THURSDAY, APRIL 9, 1934

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The Committee met in its committee room in the Capitol at 10 a.m., Hon. Edgar Howard (chairman) presiding.

The CHAIRMAN. This meeting of the committee has been called for the consideration of the administration bill only.

Mr. Thompson, a representative of the Quapaw Tribal Council, desires to be heard on behalf of his clients, and he may have a moment to present some proposed amendments that he will ask to have added to our bill.

STATEMENT OF VERN E. THOMPSON, JOPLIN, MO., REPRESENTING THE QUAPAW TRIBAL COUNCIL

Mr. THOMPSON. Mr. Chairman and gentlemen of the committee, I am appearing today to offer a resolution that was adopted by the Quapaw Tribal Council on March 27, 1934, after Commissioner Collier's explanation of the bill, I will not take the time of the committee to read this entire resolution.

The CHAIRMAN. You may file the resolution for the record.

Mr. THOMPSON. I will do so. It is signed by the various members of the Tribal Council, and, also, by a majority of the restricted Quapaw Indians who were in attendance at that time.

(The resolution referred to is as follows:)

At a tribal meeting of the Quapaw Indian Tribe, held at the home of Alec Beaver in the Quapaw Indian Agency, in Ottawa County, Okla., near the town of Quapaw, on Tuesday, March 27, 1934, the following resolution was adopted and has been approved by the tribal council of the Quapaw Tribe and by the various members of the tribe whose names are affixed thereto.

RESOLUTION

Whereas immediately upon receipt of the bill introduced in Congress, known as the "Wheeler-Howard bill", which is H.R. 7902 and S. 2755 (73d Cong., 2d sess.), the same was read at a tribal meeting of the tribe and was therein thoroughly discussed and was thereafter thoroughly considered by the tribal council of said tribe; and

Whereas it was then the consensus of opinion that the provisions of said bill could not be made applicable to the members and allottees of said tribe, without doing more injury than good to the best interests of the said members and allottees; and

Whereas under the authority and direction of said tribal council Judge Vern. E. Thompson was employed as our attorney to prepare and present to the House Indian Affairs Committee of the United States Congress a request that the Quapaw Tribe be exempted from the provisions of said act, and our said attorney was directed to prepare a brief more fully setting out the grounds why, in our

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opinion, the provisions of said bill would not be applicable to our tribe and to file copies of said brief with the Indian Affairs Committee of the House and of the Senate; and

Whereas since the filing of said protest with the said House committee, the Hon. John Collier, Commissioner of Indian Affairs, on Saturday, March 24, 1934, held a session of an Indian congress at Miami, Okla., which was attended by a large number of our tribe and apparently by all who were interested in said matter, as full and general publicity had been given of the holding of said meeting; and

Whereas at said meeting a series of questions were submitted to the said Commissioner by our counsel for the purpose of further advising us of the probable meaning and effect of said act; and whereas said questions were fully and fairly considered and frank answers made thereto; and

Whereas at said meeting it was publicly stated by the said Commissioner that he did not desire to coerce any tribe into accepting the provisions of said act, but that he did desire them to carefully consider all phases of same, and to then decide as soon as possible as to whether the tribe or the members thereof desired to avail themselves of the provisions thereof; and

Whereas, after fully considering the same and after having listened to the Commissioner's version thereof, we are of the opinion that the provisions of said act may be of great benefit and assistance to certain of our Indian brethren of other tribes, not situated as we are, and for that reason, we would not desire to put ourselves in the position of opposing the passage of said bill and the extension of said proposed law over Indians or Indian tribes which it might benefit, but we are still of the belief and opinion that the provisions of said bill as a whole are not applicable to our situation; and we therefore respectfully request that said bill be amended so as to exempt the Quapaw Tribe and the members thereof from the provisions of said bill, at least insofar as it attempts to change in any way the nature of the title to our individual allotments and the land and interests inherited from original allottees; and to change our inheritable status as now defined by the laws of Oklahoma; and to change existing restrictions and the right of the Secretary, for good cause shown, to remove same; and the right now possessed under existing laws to will or devise our property subject to approval of said will by the Secretary of the Interior as now provided by existing law; and the right to have civil, criminal, and equity actions tried in the courts of the State of Oklahoma and the Federal courts as now provided by existing law, unless any individual member of our tribe should individually elect in writing to come within the provisions of said act so far as he or she is concerned, and that in no event will the provisions of said act extend to and cover the mineral interests of the individual allottee or his heirs, and if such exemptions cannot be worked out satisfactorily, then we desire that said bill be amended so as to specifically exclude the Quapaw Tribe from the provisions and effect of said act.

We further direct our said counsel to take such steps and present such arguments and proposed amendments as shall be necessary to accomplish such purpose; and we authorize and direct our said tribal council to take such other steps as shall appear necessary and proper in carrying out this our desire as herein expressed.

QUAPAW TRIBAL COUNCIL,
By VICTOR GRIFFIN,
Chief.
ALEX BEAVER,
Second Chief.
ARTHUR BUFFALO,
LEVI GOODEAGLE,
PAUL GOODEAGLE,
HENRY E. HOFFMAN,
Councilmen.
GRACE W. DICK,
Secretary.

Agnes I. Hoffman, Miami, Okla.; Helen W. Romick, Miami, Okla.; Pauline Greenback, Quapaw, Okla.; Charles Greenback; Robert A. Whitebird, Jr., by Robert A. Whitebird; Robert A. Whitebird; Mrs. Flora Y. G. (her thumb mark) Whitebird, by Robert A. Whitebird; Melissa Greenback, by Nona Greenback; Helen W. (her thumb mark) Romick; Wattaknokghi Goodeagle, by Levi Goodeagle; Newaker Kempton; Anna (her thumb mark) Slagle, by

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Anges I. Hoffman; Louise W. Jennison; Irvin Wilson; Hazel B. McDunner; Lula G. Stanley; Nora Buffalo Brock; Francis Quapaw Gokey; Mary Lane Redeagle; Anna B. Hallam; Anna Q. McKibben; Marie Goodeagle; S. A. Douthit, Baxter Springs, Kans.; Geneva Hoffman, Jean Ann Hoffman, Charles Felix Hoffman, Henry Edward Hoffman (minors), by Agnes I. Hoffman (mother), Miami, Okla.; Melvin Quapaw; Audrey Quapaw; Annabell Quapaw; Betty Lou Quapaw; Jessie Jean Quapaw; Edward Quapaw; Minnie Griffin, Sidney Griffin, Haze Griffin, Ardina Griffin, Victora Griffin, by Victor Griffin (father, and husband of Minnie); Paul Goodeagle, Jr., by mother, Marie Goodeagle; Anna Xavier Collins, Commerce, Okla., Harry James Collins (minor), by Anna Xavier Collins (his mother); Kenneth Bear, Reberta Hallam (minors), by Anna B. Hallam; Ruth Bear; Tommy Bear, Jr.; Alphonse Greenbaek; Mrs. Leona Peery, Mrs. Loues Quapaw; Flossie Shopp; Ernest Gokey; H. John Henry Gokey; Olen Harrison Gokey; Francis Staye; Isabelle Skye; Leroy Watson; Mrs. (her thumb mark) Harrison; Mary Crawfish; Harry (his thumb mark) Crawfish; Lester Woodard; Alice Gilmore; Thomas Gilmore; Jim Gilmore; Gladys Gilmore; Harry Gilmore; Mary W. Stanley; Willie Buffalo; Lorene La Falier; Woodrow Wilson Greenbaek; Dennis Wilson; Suzanne McKibben; Ruth McKibben; Katie B. Quapaw Beets; Amy G. Carpenter; Minnie (her thumb mark) Clabber; Mollie G. Whitecrow.

Individual adult and resident members.

Mr. THOMPSON. Mr. Chairman, this committee will recall that the Quapaw Tribe asked to be excluded from the provisions of the bill, owing to the peculiar condition which existed in that small reservation, which was practically covered by lead and zinc mining interests. In fact, the entire reservation might be said to be a mineralized reservation. The largest lead and zinc mines in the world are located on these allotments. They are individual alllotments with restrictions against alienation, which originally expired as to the balance of that tribe in 1931. The restrictions were extended upon the more valuable mining lands, which covered the lands primarily of the few full-bloods that were left, or about 65, as I recall. The members of the tribe, after considering the provisions of the bill, which in effect changes their inheritable status after the death of the present holder of any of those estates, and which would change the forum in which their actions would be tried to the Indian court, and would deprive them, as they read the bill, of their right to devise their property by will, subject to the approval of the Secretary of the Interior, as the matter now stands; and after having submitted a series of questions to Commissioner Collier, which, I take it, will be embodied in the record, and after the Commissioner and his assistants had very frankly and carefully answered the questions, had another meeting. A committee was appointed by the tribal council to call another congress, and to notify the full-blood members of the tribe. There were some 40 or 50 out of the 65 restricted Indians present. The other unrestricted Indians ceased to be members of their tribal council upon the making of their allotments and the removal of their restrictions, according to the original allotment act of 1921. After having carefully considered the entire bill, and acting upon the suggestion of the Commissioner that if, after they had carefully considered it, they did not desire to come under the provisions thereof. The Commissioner, as he stated, would be very glad to know if they were so situated that they did not need to participate in the benefits of the

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bill, as there were plenty of other Indians who did need to participate in them, they suggested this amendment. In view of that situation, we are offering this amendment to the act, in order to simplify it:

The Quapaw Indians of the State of Oklahoma, through their duly constituted tribal council, respectfully request the committee to amend section 21 of the Howard-Wheeler bill (H.R. 7902, 73d Cong., 2d sess.), to read as follows:

SEC. 21. None of the provisions of this act, except the provisions of title II, relating to Indian education, shall apply to the Indians of New York State.

That is the way it now reads, and we desire this language added:

or to the Quapaw Indians in the State of Oklahoma.

Now, in the event your committee should not see its way clear to amend section 21 by the inclusion of the Quapaw Indians with the New York Indians, and if, for any reason, it should be deemed dangerous to the bill, I understand that the chairman of the committee has already suggested an amendment under title V, Miscellaneous. I have read that amendment, which provides, in substance, that the provisions of the bill will not become effective unless adopted by a majority of the tribe, at an election duly held. We are very fearful that that amendment would not necessarily protect this group of originally 65 full-blood Indians who elected not to come out from under the protection of the Government and accept their property as unrestricted property, but who desired, and still desire, to have their property restricted, and who are satisfied with the method in which it is now being handled. They are fearful that there might be in the future a vote of a majority of the members of their tribe who had no land and whose restrictions were expired, or whose lands would not be affected by the bill by virtue of the expiration of the restrictions, so that they and their children and families would lose their inheritable status. In order to protect themselves, in the event the committee should not accede to their request to include them with the New York Indians and exclude them from the provisions of the bill, they ask that title V of the bill, if it should be adopted, be amended by the inclusion of the following proviso:

Provided further: That none of the provisions of this act shall in any event change the present status of any allotted Indian as to his person or estate, nor change existing laws in relation thereto including the law as to inheritance, the power to devise his estate by will, or the form for the trial of actions relating to his person or his estate, unless he shall, if an adult, or by his next of kin if a minor, have first consented thereto in writing.

We also submit for the consideration of the committee, in substance, an amendment to this effect that if a majority of the members of the tribe who have disposed of that land find it advantageous to vote for this bill, and to include this valuable land that has been retained by them and placed voluntarily under restrictions, by virtue of which, and by the assistance of the Government, they have been protected in keeping their estates intact—that is to say, if there should be a temptation—and we do not say there would be, and we have no advice or information that there is any such movement on foot, but if there should be—they ask you to adopt this proviso or amendment to title V, to the end that no estate of any Indian can be involved in any uncertainty by the adoption of the act.

It has been suggested by the Commissioner that, of course, it would not be the purpose of the act to deprive anyone of any vested

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property interest that he had without due process of law. We understand that, but we also understand that under the enabling act of the State of Oklahoma it is provided that the exclusive right to legislate with respect to Indian matters was retained by Congress; that heirs have no vested interest in their right of inheritance, and that the law of inheritance may be changed at any time. That is something these people desire to avoid. They think it is unfair for the reason that they were given, as they understood it, the poorest land under the Indian Bureau. At the time it was allotted to them they had no knowledge of any mineral value or of any potential mineral value. The Creator seems to have taken care of them by placing a valuable estate under this land. They see no reason why, with this valuable property, they should be deprived—or that their families or children should be deprived—of this particular estate through inheritance. They see no more reason why they should be deprived than that any white man similarly situated should be deprived of such a right. We believe that if the bill were passed, as it is now written, it would, so far as these mineral estates are concerned, or so far as these mineralized lands are concerned, give rise to an unlimited amount of litigation, something which these parties desire to avoid. They realize the expense of such litigation and the uncertainty that would be involved for their estates.

Now, if you will pardon me but for one more minute, I will have finished my statement:

I have a large map here showing this particular reservation. A question was asked me by one of the committeemen if these estates could be appraised and turned back into the tribal ownership. I tried to explain that this ore was not situated so it could be blocked out like coal, but it lies in unequal or irregular bodies. I have a map of the entire agency here which shows the mineralized sections of this reservation. It shows the ones that have already been largely worked out. The rest of this whole reservation is supposed to be potentially mineral property. As I understand it, the Commissioner does not desire that this act become involved in attempting to cover oil or lead and zinc properties. If any attempt is made to differentiate the surface from the mineral estate, it will also result in confusion for the reason that in the Quapaw Tribe tribal lands are not separated as they are in the Osage Tribe. The entire fee in Quapaw lands, subject to the restrictions, passes to the allottee. As a matter of fact, the surface of most of this land is practically valueless.

The CHAIRMAN. We would like to have that map filed for the information of the committee.

Mr. THOMPSON. I will file it for the committee. The map was prepared by the Geological Survey.

The CHAIRMAN. In justice to you, I would like to ask whether you will leave the presentation of this amendment in the hands of any particular Member of Congress.

Mr. THOMPSON. Yes, sir. I think that the proper Member of Congress to handle it, and I feel that he would be very glad to do it, would be Congressman W. E. Disney, who represents that district in Congress.

The CHAIRMAN. Then we will recognize him for that purpose.

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Mr. THOMPSON. He is not a member of the committee, and I expect it should be represented by someone who is not a member of the committee.

May I state for the purposes of the record that I have sent a copy of the brief of the Quapaw Tribe's position to every member of this committee and have served a copy of it upon Mr. Collier. I did that to save his time and to save the time of the committee.

The CHAIRMAN. I notice that our colleague, Mr. Sinclair, is present, and we will hear what he has to say, but with the understanding that this committee was called today for the consideration of H.R. 7902 only.

Mr. SINCLAIR. I wish to appear on that bill, Mr. Chairman.

The CHAIRMAN. Very well; we will be very glad to hear you.

STATEMENT OF HON. JAMES H. SINCLAIR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA

Mr. SINCLAIR. Mr. Chairman, I wish to endorse the social and economic principles involved in this new bill. I think it is a step forward in the interest of the Indians. I only fear that it has come too late for many of the Indians in the Northwest.

I particularly want to present, not my own views, I might say, but the views of the county commissioners of the county of Rolette, State of North Dakota, with reference to the Turtle Mountain Indians in that county. They, of course, endorse the principles of the bill; but, in the resolutions they adopted, and which I have here, they want to present some slight amendments to the bill which would affect particularly the interest of the Indians there.

The CHAIRMAN. Have they prepared the amendments?

Mr. SINCLAIR. They have not prepared the amendments, but I will prepare them later for the committee, if you will give me the opportunity.

The CHAIRMAN. Then I will ask you to present them.

Mr. SINCLAIR. I will be glad to do that. As a matter of fact, this county has probably upward of 2,000 Indians. It is a small county, and practically every one of those Indians is an indigent. They have to spend anywhere from $15,000 to $20,000 a year to feed and take care of them. It seems to me that it is an imposition on the taxpayers of this county to have to support all of those Indians. I believe that it is the duty and responsibility of the Federal Government.

The CHAIRMAN. You may present your amendments now, but we will not consider them today.

Mr. SINCLAIR. I can give you the substance of them now, if you wish.

The CHAIRMAN. You will be kind enough to prepare and present the amendments either now or at some other time. You will have an opportunity to discuss them when we begin reading the bill for amendments.

Mr. SINCLAIR. That will be perfectly satisfactory.

The CHAIRMAN. We do not intend to do that today.

Mr. SINCLAIR. Then I have nothing further to submit, except these resolutions.

The CHAIRMAN. You may submit them for the record.

(The resolutions referred to are as follows:)

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RESOLUTION

Whereas, there has been introduced in the House and Senate of the United States a bill known as the Howard-Wheeler bill, creating Federal municipal corporations for Indians and Indian reservations, and granting to Indians under Federal tutelage local self-government, and relating to education, Indian lands, and Indian courts; and

Whereas the Turtle Mountain Indian Reservation is located within the county of Rolette in the State of North Dakota, which Indian reservation has enrolled one of the largest Indian population of any reservation in the United States and at the same time has one of the smallest reservations in area in the entire country, and which reservation is wholly inadequate socially and economically, for the Indians enrolled thereon; and

Whereas the Turtle Mountain Indian Reservation consists of two congressional townships, consisting entirely of rough land covered with brush, timber, and stones and wholly unsuited for agriculture or any other economical use by the Indians; and that therefore, the board of county commissioners of Rolette County, N.Dak., are vitally interested in all Indian legislation, not only for the betterment of the Indians residing in this county but also for the welfare of the taxpayers of said Rolette County; and

Whereas approximately one third of the population of Rolette County consists of enrolled Turtle Mountain Indians who reside upon an area comprising less than one twelfth of the area of the county; and

Whereas the taxpayers of Rolette County annually expend in excess of $15,000 for the care and support of aged and indigent and dependent patent-in-fee Indians who have become charges upon the county, and that the problem of caring for aged, dependent, and indigent Indians is a real problem to the administrative officers and the taxpayers of Rolette County; and

Whereas due to the small value of the taxable property within the county of Rolette, the county of Rolette is unable to longer stand the burden of taxation resulting from the care and support of aged, dependent, and indigent Indians residing upon the Turtle Mountain Indian Reservation or within Rolette County; and that therefore, the board of county commissioners have given special study and consideration to the said Howard-Wheeler bill introduced in the Congress of the United States; Therefore be it

Resolved by the board of county commissioners of Rolette County, a municipal corporation of the State of North Dakota, in regular meeting assembled this 15th day of March, A.D. 1934, That we do hereby in general approve the principles set forth in the Howard-Wheeler bill insofar as the Federal Government of the United States thereby assumes full obligation to the Indians in organizing the Indians into communities which shall be Federal municipal corporations, self-governed and not subject to taxation, government, or liability to the State or any subdivision thereof, and placing the full responsibility for the Indians upon the Federal Government of the United States. Be it further

Resolved, That whereas said bill provides that such legislation shall be compulsory upon all Indians within the reservation upon the adoption of the Federal charter by a three-fifths vote, and whereas we have been advised that the Commissioner of Indian Affairs is about to recommend that such compulsory feature of the bill be removed and that the bill shall only apply to all Indians who voluntarily come within the provisions thereof residing upon the reservation; and whereas this board of county commissioners are of the opinion that the bill would be rendered useless and ineffective and that the legislation and benefits sought thereby would be nullified by the removal of such compulsory feature; therefore, this board of county commissioners respectfully recommends that the legislation proposed be compulsory upon and apply to all Indians residing upon and within the reservation when such charter shall have been approved by a three-fifths vote of all Indians upon the reservation, and we further represent that if the benefits of this legislation shall be optional upon the individual Indian, that then and in that event we respectfully ask that the proposed legislation be not enacted by the Congress of the United States. Be it further

Resolved, That whereas said proposed bill provides that any Indian who has become a member of the community or corporation may withdraw therefrom and receive his pro rata share of his equity in the corporation; and whereas this board of county commissioners believes that this feature is a decided weakness in this bill and will eventually destroy the corporation and the benefits sought thereby, that we respectfully recommend that said proposed bill be amended so as to provide that any Indian withdrawing from the reservation or the corporation shall, by such withdrawal, forfeit all his right, title, and interest or equity in the said

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Federal municiapl corporation during his absence from the reservation and until such time as he again sees fit to return to the reservation and become a part of the community, when all of his rights, interests, and equities shall be automatically reinstated from the date of his said return thereto. We believe that if Indians are permitted to withdraw and receive their equity in cash or property, that after the novelty of the new organization has worn off and contests have arisen between various factions of the Indians, that a large number of them will seek to withdraw from the corporation, receive their equities in cash, unwisely dispose of the same and then become paupers upon the American people, and that after they once become a member of the corporation, their rights and interests shall at all times be protected by the corporation and their rights be upon the reservation with the provision that they may personally withdraw from the community, but that during the period of their withdrawal they shall receive no rights or benefits whatever from the corporation, but that such rights and benefits shall be available to them upon their return to the reservation and again becoming members of the community. Be it further

Resolved, That whereas, said proposed legislation provides for a Federal municipal corporation in which the Indians shall have self-government and the territory of which reservation and the people residing upon which reservation shall not be subject to taxation or government by the State, the county, or any particular subdivision thereof; and whereas the reservation or territory of said municipal corporation thereby in fact becomes territory similar to the District of Columbia; and whereas by said act the Indians are given within the territory of such Federal municipal corporation all of the rights and benefits now enjoyed by the citizens of the townships, school districts, counties, and States; and whereas the Indians residing upon the reservation and within said corporation will have no interest whatever in township, county, or State government under the laws of any State; and that whereas said Indians and members of said community would not be denied any of their rights or privileges as American citizens by being denied the right to vote at township, county, and State elections or upon local or State issues; and whereas to permit such Indians to vote at township, school district, county, and State elections would result in giving to them a double franchise and rights not now enjoyed by white people: Therefore it is hereby

Resolved by the Board of County Commissioners of Rolette County, That we respectfully recommend that the said proposed legislation be amended by adding to section 11 of title 1 of said act, a provision to the effect that such Indians becoming members of the chartered community shall only enjoy the elective franchise within the community as provided by this act, together with the right to vote for Members of Congress, United States Senators, and Presidential electors, and that they shall be expressly prohibited from voting at local school district, township, county, or State elections or for any of the officers of any of said subdivisions or upon any bond issue, initiated measure, referred measure or recall election which may be submitted to the qualified electors of such townships, school districts, counties, and States. We respectfully urge that the matter of the elective franchise presented by this resolution is of utmost importance in every county and State in which an Indian reservation is located, and that it would be unjust to permit Indians who are members of the chartered corporate communities to participate in the local county and State governments in which they are not interested, in accordance with the terms of the proposed act, and that unless the elective franchise is limited as herein proposed, we respectfully urge that this act be not enacted by the Congress of the United States: Be it further

Resolved by the board of county commissioners of Rolette County, That we respectfully urge the enactment by Congress of Indian legislation wherein the Government of the United States assumes the entire responsibility of the Indians and by which local counties and States are relieved of their obligations now existing with reference to the care and support of aged, dependent, and indigent Indians and the providing of other governmental activities and obligations upon Indian reservations and in Indian communities, and that in our opinion the Howard-Wheeler bill now pending in Congress will accomplish this purpose and end if the the same be amended to conform with the recommendations of this resolution. We further respectfully state that the three matters hereinbefore mentioned are of imperative importance to the successful and just operation of the principles and policies set forth in said proposed bill. We further respectfully state that the present existing policy of the Government of the United States in dealing with Indians is decidedly unfair and unjust to the counties and local governments within which an Indian reservation may be situated, and that under

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present conditions such Indian reservation within the counties and States place upon such local government, subdivisions, and counties unbearable burdens which should be borne by all of the people of the United States and that justice and equity can only be accomplished in such matter by the Government of the United States assuming the full and complete obligation of the American Indian; that the care, support, maintenance, and government of the American Indian is the obligation of the Government of the United States and not the obligation of the local government and that therefore, the Federal Government should forthwith enact legislation assuming the full obligation therefor. Be it further

Resolved, That a copy of this resolution be forwarded to the Commissioner of Indian Affairs, to the Secretary of the Interior, to the Chairman of the Committee on Indian Affairs in the Senate and in the House of the Congress of the United States, and to the Representatives and Senators in Congress from North Dakota. Be it further

Resolved, That we respectfully ask that this board of county commissioners be advised of hearings upon the Howard-Wheeler bill in the House and the Senate of the United States Congress and that the county of Rolette be given an opportunity to appear at such hearings and present its views upon usch proposed legislation and upon the matters specifically covered by these resolutions.

CERTIFICATE

STATE OF NORTH DAKOTA,
County of Rolette, *ss:*

I, Jas. H. Penny, the duly elected, qualified, and acting county auditor within and for the county of Rolette and State of North Dakota, do hereby certify that the hereto attached resolution is a true and complete copy of a resloution which was introduced, seconded, and carried at a meeting of the board of county commissioners of Rolette County, State of North Dakota, duly held on the 15th day of March, A.D. 1934, and that the hereto attached resolution has been regularly adopted by the board of county commissioners of said Rolette County.

In testimony whereof, We have caused the seal of the county of Rolette, State of North Dakota, to be hereunto affixed.

Witness my hand as county auditor of said Rolette County, N.Dak., this 16th day of March, A.D. 1934.

JAS. H. PENNY,
County Auditor, Rolette County, N.Dak.

Mr. WERNER. Mr. Chairman, I suggest the absence of a quorum.

The CHAIRMAN. Evidently, there is no quorum present. However, this is not an executive meeting, and, therefore, a quorum is not necessary.

Mr. WERNER. I think the rules require that a quorum be present before the committee can transact any business.

The CHAIRMAN. If the gentleman will show me the rule, I will make the decision instantly. If there is any such rule that would prevent the committee from sitting for the purpose of obtaining information, it will be adhered to.

Mr. PEAVEY. Mr. Chairman, as I remember the procedure of the committee, the committee, without the presence of the quorum, may adjourn to meet subject to the call of the chairman. It may not sit without a quorum for the purpose of reporting out legislation, but, as I understand it, the committee may sit for the purpose of receiving information and advice with regard to the consideration of a bill. In all my experience on the committee, I have never heard the question raised that the committee did not have the right to sit for the purpose of holding hearings, where there was no bill to be acted upon.

The CHAIRMAN. If there is any rule forbidding us to sit without a quorum for the purpose of gaining information, the Chair will recognize and observe it, but in the absence of such a rule, we will continue.

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Mr. Hill. It is also true that the people who are interested in this bill should be here at 10 o'clock, or at the time the committee was called to meet.

Mr. Werner. I think this committee operates under the same rules of procedure that govern the House.

The Chairman. If the gentleman will present the rule, we will pass on it.

Mr. Werner. This bill is an important one, and the members of the committee ought to be here when it is under consideration. I should have been here at 10 o'clock, but I was a little late. That is all right, and I answer only for myself, so far as that is concerned. I intend to look further into the rules and attempt to sustain my position. I think that at this hearing a majority of the committee should be present. I think a majority of the committee should be here when questions are raised with regard to the bill, and I protest against any further business being transacted without a quorum. Of course, I may be overruled on that.

The Chairman. The chairman would certainly overrule the point unless the rule is presented for examination by the committee. If there is such a rule, and the gentleman will present it, the chair will instantly decide the point. In the absence of such a rule, we will proceed with the hearing. Of course, we will not proceed with action on any amendments to the bill. We will consider the amendments, but we will not vote on anything.

I am informed that there are some representatives of the Eastern Cherokee Tribe who will be here only for today, and who would like to be heard with reference to the bill.

By what authority do you appear? Do you appear in your personal capacity, or as a representative of the Tribe?

STATEMENT OF JARRETT BLYTHE, CHEROKEE, N.C., REPRESENTING THE EASTERN CHEROKEE INDIANS

Mr. Blythe. I appear here as the chief of the Eastern Cherokees.

The Chairman. Do you have any credentials?

Mr. Blythe. No, sir.

Mr. Collier. He represents the tribal council of the eastern Cherokees, an elective body.

Mr. Blythe. With reference to this bill you have up here, we feel that the Cherokees down in our section of the country have been operating under a plan very similar to the one that is advocated in this bill. We have studied the bill pretty thoroughly, and, as far as we can understand it, we think it is a pretty good bill. We find no fault with it. We approve of it, and want it passed.

The Chairman. Have you anything further to offer?

Mr. Blythe. No, sir.

The Chairman. We thank you for your statement.

We will now hear the Commissioner, Mr. Collier.

STATEMENT OF JOHN COLLIER, COMMISSIONER, BUREAU OF INDIAN AFFAIRS

Mr. Collier. Mr. Chairman, I think it would interest the committee to know a little about these eastern Cherokees and their situation. As you know, the Cherokees lived in that region of the

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country and had quite a high civilization about 100 years ago. They had their written language, their civil government, democratic institutions, schools, orphanages, and so forth. They have been greatly assisted by Christian missionaries. Then, about 1835, their treaties were violated and they were dispossessed. A certain number of them moved out into the Great Smoky Mountains. Soldiers came in and rounded them up. They were corralled, and a great deal of brutality was shown in the treatment of them. Their very houses were burned.

Mr. SINCLAIR. Where were they moved?

Mr. COLLIER. To Kansas, in the first instance. The records show that 20,000 of them were finally corralled, and 4,000 of them died before crossing the Mississippi. As the crowning inequity, the Government made them pay the cost of this operation. The Indians here represented by their descendants were not captured, and for a long time they lived almost like wild animals in the mountains. Gradually they emerged and became a part of the local communities. They worked out, earned money and accumulated a certain amount of substance. They acquired land and, as I recall it, they secured about 200,000 acres of land in one or two counties. Then they decided to pool their titles in a corporation away back yonder, and they were incorporated under the laws of the State of North Carolina. They organized as a body corporate to operate their land and govern their lives. At a later date, about 15 years ago, they were persuaded by the Administration to transfer their titles to the Government. Their title is now in the Federal Government, but they have continued their corporate life and they have held their lands as a body corporate. I might add here that they are in great need of more land. The lands they have are quite insufficient for adequate maintenance. One more illustration of their situation: The lands which they were able to get were scattered; their lands are not in a solid body; some of them are far south of the Tennessee River, in another county. Nevertheless, they were able to hold it as a corporate body.

Their situation illustrates another thing of great interest: They have problems in common with their white neighbors, and just recently they have been able to perfect an arrangement which pools all of the health work of three counties, including the work of these Indians. The county budgets are amalgamated to include their budget, and a special budget is set up by the Public Health Service. Therefore there will be a unified health service, covering three counties, and the Indians will get the benefit of that service without any increased expenditure. They are contributing $4,000 out of $24,000 in the pool. That will serve to illustrate that this corporate scheme of organization does not segregate the Indians, but that it has the opposite tendency.

Mr. PEAVEY. Were these Indians ever associated with the Indians of the Cherokee Nation in Oklahoma?

Mr. COLLIER. They were until they split. They were forced to split, and these people are a remnant of that great tribe. They are an industrious people and pay their own way. They are thrifty and fine Indians.

The CHAIRMAN. I noticed one evidence of thrift in that particular people in that everyone seems to have a Scotch name.

Mr. COLLIER. There are a great many Scotch-Irish people down in that country.

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Mr. SINCLAIR. How many are down there?

Mr. COLLIER. In the area they own, there are about 3,500, as I recall. Some years ago an enrollment scheme was put through which resulted in many nonreservation Indians crowding on their rolls. Some of them had almost no Indian blood. There are about 3,500 Cherokees who own this land.

The CHAIRMAN. If you will pardon the interruption, Mr. Commissioner, there is a matter I would like to take up with the committee at this time: Some time ago, Mr. Commissioner and gentlemen of the committee, I conceived the idea—whether regular, or not, I do not know—that we ought to have a joint meeting between this committee and the House Judiciary Committee for the consideration and study of the legal matters involved in the pending bill. I consulted the chairman of the Judiciary Committee on the subject, and the plan meets his approval. I arranged with him, if it is the pleasure of the two committees, to appoint a subcommittee of our committee to meet with a like subcommittee of the Judiciary Committee for that purpose. I would not presume to appoint such a subcommittee without ascertaining the pleasure of my own committee, but if it meets the approval of the committee, I will appoint such a subcommittee now, and have the Chairman of the Judiciary Committee notified of the action.

(On motion of Mr. Peavey, the chairman appointed a subcommittee of five members, as follows: Mr. Chavez (chairman); Mr. Murdock, and Mr. O'Malley, of the majority, and Mr. Gilchrist and Mr. Collins, of the minority, the minority members being suggested by Mr. Peavey.)

The CHAIRMAN. You may proceed with your statement, Mr. Commissioner.

Mr. COLLIER. At this session we are anxious to put forward the amendments that the Department is going to propose to the bill. We want to put them forward in a block, because they are interlocking amendments. We are very hopeful that it will be possible to obtain a bill-print incorporating the amendments, because it is very hard to make them understandable unless they are presented in conjunction with the bill. In order to facilitate the consideration of the amendments, I have prepared a summary of them, and they are also incorporated in the bill for your convenience.

Before proceeding with a study of the proposed amendments may I ask, Mr. Chairman, as a matter of personal privilege for Secretary Ickes and myself, for permission to make a very brief statement with reference to an article that appeared in the New York Herald Tribune yesterday, concerning this bill, and concerning the administration's work with the Indians? It has a direct bearing on the bill.

The CHAIRMAN. Without objection, the Commissioner may make his personal statement at this time.

Mr. COLLIER. I will not be personal, but I simply want to be allowed to make it very clear that these amendments are not put forward in order to meet any charge that this bill is a Soviet or Moscow production that is being put over on the Indians by the Roosevelt administration. I want to dispose of any idea that any concession is being made to that type of misrepresentation which is being pressed by a systematic propaganda bureau. I will appreciate

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it if I may be permitted to read a statement I desire to have placed in the record.

The CHAIRMAN. You may proceed.

Mr. COLLIER. The center of propaganda against the Wheeler-Howard Indian land and home-rule bill is Muskogee, Okla. The center of propaganda at Muskogee is a comparatively small white group with access to the facilities of the national news associations. The propaganda being sent out from Muskogee does not describe the Wheeler-Howard bill, but is gross and unqualified misrepresentation, and has included the whole-cloth fabrication of statements by me, as Indian Commissioner, which I had not made, and an alleged interview by C. C. Lindquist, a nationally known Indian missionary, which he has repudiated.

Mr. MURDOCK. Mr. Chairman, it occurs to me that the more attention that is paid to newspaper articles like this, or statements of the character made by Dr. Wirt, the more we dignify them. I think the sooner the Administration, the Departments, and especially Congress, adopt the policy of paying absolutely no attention to such foolish statements, the sooner they will stop.

Mr. COLLIER. Mr. Murdock, I agree with that, but there is this distinction: Here they are putting words in my mouth, and accusing me of making statements, which, unless contradicted, will be believed.

Mr. MURDOCK. My only idea about the matter was that when you take up a statement like that made by Dr. Wirt a few weeks ago, and make it the subject of discussion or investigation, you are doing the very thing that he wants you to do.

Mr. WERNER. Do you think this record should contain a statement of denial of an article appearing in some newspaper written by some correspondent?

Mr. COLLIER. I think this statement from Muskogee, appearing three times in a month in the form of fabricated interviews, putting words in my mouth and the mouths of other people which have been broadcasted by the press associations should be repudiated publicly. These statements place us in the position of attempting an inhumane, unconstitutional, and un-American scheme through the Wheeler-Howard bill, and should be denied. These statements go all over the country, and they have undoubtedly prejudiced the minds of numerous people. They have undoubtedly prejudiced the minds of numerous Indians. I am not discussing any editorial comment, but I am discussing only statements of alleged fact put in my mouth and into the mouths of other people; and in view of that, it seems to me worth while to repudiate them.

Mr. O'MALLEY (presiding). You feel that the proper place to repudiate those statements is in the record of this hearing?

Mr. COLLIER. Yes, sir; because the allegations are contained in statements that concern the text of the bill.

Mr. WERNER. If those statements are in writing, then it would be all right for you to make a statement in contradiction of them.

Mr. COLLIER. I would be willing to leave it as a matter for the press release, but I think it is rather germane to the record.

Mr. SINCLAIR. It is put out for the purpose of defeating this bill.

Mr. COLLIER. Yes. I would not concern myself with it if it were an editorial expression, but this garbling of facts is going to be re-

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flected here in the committee through numerous communications from uninformed people.

Mr. WERNER. I have no objection to allow the statement to be made a part of the hearing, but I would like for you to incorporate the article also.

Mr. COLLIER. By all means.

Mr. WERNER. You will incorporate the article in full?

Mr. COLLIER. Yes; I will be glad to do that, because it will serve to pull together these several misrepresentations which are being made deliberately.

Mr. COLLINS. I do not object to it, but I concur with Mr. Murdock in the statement that the way to dignify these misrepresentations of fact is to answer them. If the Commissioner believes that these statements deserve an answer, I think there should be no objection to it, except that it serves to prolong the hearings.

Mr. COLLIER. I will be content to put the statements into the record, without reading.

Mr. O'MALLEY. What is the pleasure of the committee?

Mr. HILL. I move that the Commissioner be permitted to proceed with his statement.

Mr. COLLIER. I do not want to take up your time by reading it, and I will be perfectly satisfied to put them in the record.

Mr. O'MALLEY. Without objection, the articles to which Mr. Collier refers and his reply and that of Secretary Ickes may be incorporated in the record at this point.

(There was no objection, and the matter referred to is as follows:)

[From New York Herald Tribune Apr. 8, 1934]

COMMISSIONER OF INDIAN AFFAIRS URGES TRIBESMEN OF OKLAHOMA TO ACCEPT SOVIET TYPE OF RULE—SEGREGATION AND COMMUNAL OWNERSHIP OF LANDS, HOWEVER, MEET OPPOSITION OF CHIEFS; BILL NOW BEFORE CONGRESS PROVIDES FOR TRIBUNALS FOR REDMEN AND FREES THEM FROM TAXES

(By Ray Kirkland)

Muskogee, Okla.—Indians of the Five Civilized Tribes of eastern Oklahoma are going "Soviet" if plans proposed by John Collier, new Commissioner of Indian Affairs at Washington, go through. Mr. Collier, who recently completed a tour of the Nation's Indian communities in the interest of his Wheeler-Howard bill, made a special trip to Muskogee March 22, to explain his "new deal" to the Five Tribes.

The bill, on which a House committee is now holding hearings, proposes the most drastic change in tribal administration since the Five Tribes were moved west, the Commissioner told tribal leaders here. The bill calls for the establishment of a series of cooperative Indian communities wherein property could not be owned individually but only by the mass, and members of which would be governed by a special Indian court set up to cover all tribes in the United States except those in New York State, which are specifically left out.

Mr. Collier, as Indian Commissioner, would have the right, if the bill became a law, to establish these "soviets" wherever the plan is favored by the tribesmen. Equal shares of the land would be allotted to members, and the Indian Department would have the right to limit the number of cattle and sheep which the tribes could allow to graze on the communal lands, or the number of acres which could be planted to any one crop.

While Mr. Collier has visited all the Indians in the United States, he is particularly anxious to have the Oklahoma Indians adopt the plan. The Commissioner explained that more than two thirds of all the Indians in the country live in Oklahoma, and if they could be colonized the cost to the Government for their upkeep would be greatly reduced.

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BILL EXPLAINED TO TRIBES

Mr. Collier passed 2 days here explaining his bill to leaders of the Five Tribes—the Creeks, Cherokees, Seminoles, Choctaws, and Chickasaws. Speaking in slow, patient tones which were relayed by interpreters, the Commissioner explained that if the bill became a law the Indians of any community would need only to petition the Government for the right to hold an election on the soviet proposal. Then, if the vote is a three-fifths majority or better, the Government would start immediate condemnation proceedings against properties of non-Indian residents of their areas.

Once the "soviet" were started, the tribesmen would be shut off from the rest of the world. The State no longer could tax their lands, and the Government would be forced to set up a new system of roads and schools. Even the Oklahoma State gasoline tax would not apply in these areas.

If an Indian got into trouble he would be tried in the special Indian court instead of by county or State systems of jurisdiction. County government would no longer exist, and the Indians would elect their own officers under regulations set up by the Indian Department.

Mr. Collier did not ask the Indians of eastern Oklahoma to express their opinion on his new idea of subsistence. Indians of western Oklahoma previously had announced that they were skeptical of the proposition, and Mr. Collier knows that leaders of the Indian Confederacy, composed of more than 10,000 members of the Five Tribes area, were not favorable to the proposition.

CHEROKEE CHIEF FAVORABLE

Mr. Collier's principal support at the Muskogee meeting came from John Redbird Smith, chief of the Cherokee and president of the Nighthawk-Kee-too-wah Society of Cherokee Full-bloods, an organization that boasts a membership of more than 6,000 tribesmen scattered throughout eastern Oklahoma. The Kee-too-wahs are composed principally of destitute Indian families of eastern Oklahoma, who for many years have looked toward the Government for their livelihood.

Leading the opposition to the bill were members of the Indian Confederacy, who denounced the Collier bill at a special meeting held before the Commissioner started his campaign here.

Joseph Bruner, of Sapulpa, president of the Confederacy, told the more than 100 delegates to the State convention here March 12 that the Collier plan, if carried out, would segregate them.

Levi Gritts, speaking for the Cherokees, said he had recently returned from Washington, where he had attended one of the Collier Indian meetings, and quoted the Commissioner as saying that something must be done with those "poor, starving tribesmen" of eastern Oklahoma. That was the first time he learned that his countrymen were starving, Gritts told the convention.

Representatives of all of the Five Tribes, as well as the Quapaw and Shawnees who attended the confederate meeting, voted in opposition to the bill. Even Mr. Collier's statement that Congress would appropriate $2,000,000 annually for the purchase of lands for the reservations failed to convince the Indians here of the Government's sincerity.

FUND CALLED INADEQUATE

"His $2,000,000 would amount only to $20 per annum per capita," Charles E. Grounds, spokesman for the Seminoles at the Collier meeting here, said. "At that rate it would take at least 10 years to get money enough to buy each individual of this group 10 acres of land. How many tribesmen could survive this length of time?" Grounds asked.

Grounds asked the Commissioner to prepare for his Seminole tribesmen answer to the following seven questions before his people are asked to vote on the proposition:

"1. During the Senate hearings on the Wheeler-Howard bill you stated that there are 100,000 Indians in the bread line. Your statement would indicate this was true within the Five Tribes, but, assuming that you refer to the entire Indian population of the country, how much per capita per annum would the $2,000,000 which you propose that Congress would appropriate in keeping with the provisions of your bill amount to? I contend that the Commissioner is incorrect and that, if true, his annual appropriation of $2,000,000 may as well not be

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appropriated if the money is for the purpose of meeting the condition which he points out.

"2. How many Indian tribes are there in Oklahoma, and how many of these still own their land in common?

"3. What effects would the repeal of the 1887 Allotment Act have on these tribes? Would it restore the State of Oklahoma to them? Would it restore one single acre of their former lands to any individual Indian or his tribe?

"4. You believe in Indian self-government. How many Indians helped you write this bill?

"5. Your Indian court makes no provision that any of the judges or attorneys shall be of Indian blood. How do you account for this in view of the fact that the court will deal exclusively with Indians and their properties?

"6. Do you believe the Indian competent to hold any of these positions? If so, why did you not provide for them in this bill?

"7. Do you believe that all former Commissioners of Indian Affairs have been fair to the tribesmen? Have you a provision in your bill whereby the Indians may get rid of an undesirable Commissioner?"

REDERAL POLICY REVERSED

It is Mr. Collier's plan to have the judges of the Indian court hold office for terms of 10 years, subject to removal by the President of the United States for any unlawful cause. Briefly, the Collier bill provides for an aboutface in the policy of the Indian Department. For years it has been the aim of this branch of the Government service to teach the tribesmen good citizenship and loyality to their country. Now, Mr. Collier proposes that the Indians shall be restricted in dealings with the whites and returned to reservation life.

Dr. C. C. Lindquist, of Lawrence, Kans., former member of the Board of Indian Commissioners, which was abolished by the Roosevelt administration, is one of the principal antagonists of the proposed system.

"Collier's plan is socialism and communism in the rankest sense", Dr. Lindquist charged during a recent visit to the Indian Office here. He explained that the Collier bill affects the Indians who live on the plains of Oklahoma and other Northern and Southwestern States. The Indians with whom Mr. Collier has passed his life. the Navajos, and Puebloes of Arizona and New Mexico, are not reservation tribesmen but have had their own systems of government for hundreds of years. These Indians, Dr. Lindquist said, have everything to gain and nothing to lose, while the Indians of Oklahoma stand to lose the heritage of a lifetime.

"The point the Indians themselves have brought to my attention", Dr. Lindquist said, "is that this is a complete reversal of policy. The Indians feel that they are being subjected to an experiment of doubtful value and that if it is a failure they will be the losers."

The proposed "new deal" is the fourth such policy drafted for the American Indian by the Federal Government. The first, adopted during Colonial days, was the plan of extermination based on the theory that a dead Indian was the best Indian.

PAUPERIZATION IS FEARED

The second, which Mr. Collier now wants to revive, was the idea of concentration, with which has developed the policy of rations. This has done more to pauperize the American Indian than any other Government work, Dr. Lindquist believes. The third piece of legislation was the introduction of the Allotment Act, which Mr. Collier has already said should be abolished. Dr. Lindquist explained that when the original rolls of the Five Tribes were set up at Muskogee, 101,000 restricted Indians were listed. Today the rolls show fewer than 25,000 such tribesmen, the remaining 75,000 having been assimilated into common citizens of Oklahoma.

The Oklahoma Indians, their leaders say, believe that the Government has already robbed them of every individual right. Where once the chief of the Five Tribes reigned supreme over his domain, where once he held in his hand the power of life and death, of possession and disposition of property, the chiefs of the tribes have today become so unimportant by the assumption of power on the part of the "Great White Father" at Washington that in three of these great tribes the position of chief has been abandoned.

Chilli Fish, one of the leaders of the Seminoles, created a sensation a few years ago by refusing the office of "chief for a day" and denouncing the policies of the

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Indian Department. The two remaining chiefs of the Five Tribes, Douglas H. Johnson, of the Chickasaws, and Ben Dwight, of the Choctaws, afford a contrast. Johnson, the last living elected chieftain of any of the Five Tribes, assumed power in 1900 and has ruled since. He is 78 years old. Contrast, then, the youthful leader of the Choctaws, Ben Dwight, of Durant, a graduate of Stanford and Columbia Universities. Dwight came to the leadership by appointment of President Herbert Hoover in 1931, and represents the modern American Indian just as Johnson typifies the red man of a generation ago.

Mr. Collier's "soviet" idea is a follow-up of the colonization project at Wilburton and McCurtain, Okla., for members of the Choctaw and Chickasaw Tribes. At McCurtain tribesmen are now employed enclosing with barbed wire fence the 3,000 acres of land embraced in that venture.

A. M. Landman, Superintendent of the Five Tribes, said 100 Indian families will be accommodated on each of the two tracts. To each Indian family will be allotted 15 acres of cultivable land and Government farm agents will be employed to teach them to become self-supporting.

At McCurtain many Indians will take over the lands cultivated last year by the whites. White families long have leased these lands, but with the coming of the community project they must move. Community houses to be built there will be 24 by 48 feet, with stone chimneys at each end. One of the buildings in each community will serve as the meeting place where church services and entertainments will be held, with another to serve as the demonstration hall where lectures on agriculture and stock raising will be given.

Statement Submitted by Mr. Collier in Reply to Foregoing Article

The center of propaganda against the Wheeler-Howard Indian land and home-rule bill is Muskogee, Okla.. The center of propaganda at Muskogee is a comparatively small white group with access to the National Press Associations. The propaganda being sent out from Muskogee does not describe the Wheeler-Howard bill, but is gross and unqualified misrepresentation, and has included the whole-cloth fabrication of statements by me, as Indian Commissioner, which I had not made, and an alleged interview by C. C. Linguist, a nationally known Indian missionary, which he has repudiated. These fabrications have been supplied by the local press of Muskogee to one of the large press associations, and thus broadcasted.

The newest of these misrepresentations from Muskogee is printed in the New York Herald-Tribune of yesterday, in 3-column width, signed by A. Ray Kirkland, and captioned "Commissioner of Indian Affairs Urges Tribesmen of Oklahoma to Accept 'Soviet' Type of Rule." The article is a studied attempt, not by editorial comment, but by untrue factual statements, to stigmatize the administration's Indian bill as a "Red" product smuggled across the Atlantic.

The condition of about 150,000 of our Federal Indian wards is forlorn and even desperate. Existing law, which has stripped them of their last acre of land and faithlessly diverted hundreds of millions of their trust funds, likewise has denied them modern educational advantages, has shut them out from access to financial credit, and has withheld from them, individually and as groups, all power to determine their own lives. The legal system of exploitation is complete, and the Indians are helpless to extricate themselves. The identical laws are steadily forcing the remaining Indians, who still possess some land, to surrender the use or the actual title to whites. Grafting and exploiting white interests congregate around the dwindling Indian property and these interests are massed to defeat the administration's present purpose.

That purpose is to extend to Indians the traditional American rights and privileges, including the rights guaranteed in the Constitution but as yet denied to ward Indians, and to furnish landless Indians new land needed for self-support. That purpose likewise is to stop further looting of Indian trust funds and lands by whites.

Muskogee is the center of the Five Civilized Tribes of Oklahoma. Until 25 years ago these tribes, numbering 101,000 members, owned fertile and ample lands and were self-supporting, even prosperous, Today, 72,000 members of these Five Tribes are totally landless. A handful of the remainder are owners in severalty of valuable lands and oil and mineral properties. Disregarding this handful, the members of the Five Civilized Tribes are subsisting on an average annual income of $47 per capita. Of 15,000,000 acres allotted to the Five Tribes 25 years ago, only 1,500,000 remain, and these, under existing law, will soon pass to white ownership. As for the few who still possess wealth, they are fattened

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upon by local white "guardians" appointed by local Oklahoma courts, and the administration is now seeking to abolish these disastrous local "guardians" who, with their associated lawyers and connected banking and real-estate interests, are morally ruining the Indians while fattening on their remnant of property.

The Wheeler-Howard land and home-rule bill, along with another Wheeler-Howard bill directed against the special and intensified exploitations going on against the Five Civilized Tribes, invites fullest debate. We have made an unexampled effort to bring forth criticism, and to find ways, if such ways exist for finding such better methods. But we are met with the determination that the looters shall not be interfered with, that what is left of the Indian property shall not be protected. Such a purpose cannot work through argument based on facts but must employ misrepresentation.

Ray Kirkland's three-column news article in yesterday's New York Herald Tribune serves as an example. He states that I, as Indian Commissioner, at a 2-day meeting with the Indians at Muskogee on March 22 and 23, "explained that if the bill became a law the Indians of any community would need only to petition the Government for the right to hold an election on the Soviet proposal. Then, if the vote is a three-fifths majority or better, the Government would start immediately condemnation proceedings against properties of non-Indian residents of their areas."

The quotation is false and the Wheeler-Howard bill makes no such provision. Nowhere does the bill mention or authorize condemnation proceedings by the Government. If in order to save their lands, Indians make voluntary surrender of their underlying titles to their tribes, they receive, by the terms of the bill, equal use and equal value in the tribal property. Land for landless Indians will be bought by the Government in the open market. If Indians, living within a solid geographical area (some western tribes occupy today millions of contiguous acres, tribally owned and under exclusive Federal jurisdiction) organize as municipal corporations for local self-government, these municipalities are given the same condemnation powers for public use as are enjoyed by similar white municipalities in the States in question.

The article continues: "Once the 'soviet' were started, the tribesmen would be shut off from the rest of the world." And it continues with an example. "At McCurtain (in the Choctaw area of the Five Tribes) tribesmen are now employed enclosing with barbed-wire fence the 3,000 acres of land embraced in that venture." The venture is one of assisting homeless Choctaw Indians to settle on a remnant of tribal land as self-supporting farmers, with a tiny range for their cows and horses, which is being fenced as pastures usually are. The Wheeler-Howard bill proposes the opposite of "shutting off the tribesmen from the rest of the world." But it gives the tribesmen the right to organize, to contract, to determine the uses of their own trust funds, to educate themselves in the best technical and professional schools wherever located, and to shut off the grafters of the world. The grafters on Indians are a very small part of the world and a very small part of the Oklahoma world.

The articles quotes Dr. C. C. Lindquist, of Lawrence, Kans, a member of the former Board of Indian Commissioners, United States. "Collier's plan is socialism and communism in the rankest sense, Dr. Lindquist charged during a recent visit to the Indian Office here." Dr. Lindquist, in a prepared statement, read by him to the Plains Indian Congress a month ago, denounced as an audacious fabrication, made in Muskogee, the statement above attributed to him. The Muskogee incorrigible ignores the denial and again broadcasts the alleged interview.

After my meeting, March 22 and 23, with the Five Tribes at Muskogee, of which every word was stenographically recorded, the local propaganda bureau gave to the Associated Press, as a statement of news fact, the information that I had announced that Oklahoma would be stricken from the provisions of the Wheeler-Howard bill. The Associated Press innocently distributed this dispatch. It was a total falsehood and was subsequently corrected by the Associated Press.

The Ray Kirkland news article in the Herald-Tribune purports to be a description of the Indian congress at Muskogee. Only a reader familiar with the local facts will be able to discover that the meeting actually reported, whether accurately or not, through more than a column of the article, was a meeting held by a small group of politically organized Indians, not a part of the congress and not attended by me at all, and preceding the congress and therefore not competent to act upon the information laid before the congress.

What minds are being aimed at by the propaganda of misrepresentation on this Indian question? First of all, the Indians' own minds. There are scores of

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thousands of Indians who do not read English. The Wheeler-Howard bill is technical legislation and contains 48 pages. Hence, almost any untruth can momentarily be palmed off on many Indians. They are being told that the administration proposes to raid their lands—to seize the remnants still owned by some Indians and give them to the landless Indians. They are being told that the Wheeler-Howard bill proposes to herd them behind barbed-wire fences and keep them as buffaloes.

They are being told (a falsehood which I encountered at Muskogee and at every one of the other Indian congresses) that the bill forbids Christian preachment among the Indians and drives the missionaries off the reservations. They are being told that the bill provides for the seizure of their oil and mineral properties, and that it disfranchises them and excludes them from taking part in the county and State elections and the general local and national life. We were able at the recent Indian congresses to expose many of these misrepresentations, but now that the Indians are swinging as a mass toward support of the Wheeler-Howard bill, the mendacious propaganda is becoming correspondingly intensified.

The other constituency being aimed at in the propaganda is the American public at large. And the method is that of the article here dealt with. By outright fabrication, the Wheeler-Howard bill is presented as a Russian soviet scheme. The misrepresentation is cynical and deliberate. It has no factual basis. If it should succeed the continuing ignoble, yet heartbreaking, spoliation of our Indian wards would go forward to its end. That end would be the transfer to whites of all that is left of the Indian property of Oklahoma, and the somewhat more gradual spoliation and pauperization of more than half of the Indians in the States other than Oklahoma—the Indians allotted under the merciless allotment law which the Wheeler-Howard bill seeks to reform.

Mr. Collier. Before I start with the amendments, I will submit some copies of the minutes of the Plains Congress. This work was done by the Indian boys.

Mr. Collins. They will be available to us?

Mr. Collier. Yes, sir. The others will not be printed, but they will be mimeographed.

I have here five copies of the bill containing the amendments that we are proposing, and, if I may, I will now proceed to a discussion of the amendments. In presenting them, I will make the use of a summary that I have prepared of the suggested amendments.

Perhaps the most important amendment which we are proposing occurs in the second paragraph of section 8 title 3, page 31, beginning at line 6. The original language gave to the Secretary of the Interior authority to transfer the individual allottee's title to a community without the consent of the allottee. Even though the original draft fully safeguarded the substantial rights of the allottees to the exclusive use and occupancy of and to the income from his property, irrespective of the locus of the title, these safeguards were either ignored or deemed insufficient by many of the Indians participating in the discussion of the bill during March. In deference to their desires, the amendment has been drawn, leaving the allottee in possession of the equitable title as well as of the more substantial rights to his property.

Mr. Peavey. Mr. Chairman, I think it is proper at this time that we should have some recognition of what transpired before the present occupant of the chair came in. I am in no way opposed to the consideration of the amendments that the Commissioner is going into, but I do realize the force of the fact that the record shows that the gentleman from South Dakota made the point of no quorum. Of course, there are people present to be heard today, and if the gentleman will withdraw that point of order, I will be glad.

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Mr. O'MALLEY (presiding). As I understand it, we are discussing these amendments, but I do not think they are to be acted on. That is my understanding.

Mr. COLLIER. We are only seeking to present information for your consideration.

Mr. PEAVEY. What I have in mind is this: I do not want the gentleman from South Dakota, or any other member of the committee, to be put in the position of being able to say on the floor of the House that this bill was considered without a quorum, or that the committee acted beyond the rules in the consideration of the legislation. That is the point I am calling to the attention of the committee at this time.

Mr. WERNER. I thought that perhaps the chairman would instruct the clerk to call in some of the absentees. I thought that would be done at the time I raised the point of no quorum. I intend later to examine the rules and to have a conference with the Parliamentarian to determine just when the committee can continue to hold hearings and transact business. The hearings are a part of the business that is transacted. To hold the contrary, I think would be drawing a fine distinction. The hearings are of far-reaching importance. I hold the view that we cannot act intelligently until we are advised, and I shall insist that the record continue to show my objection, or my point of no quorum. Of course, the Chair can overrule it, and I have no feeling in the matter at all. It will not injure me or my feelings a bit, but I am here to represent my constituency to the best of my ability, and I intend to do it.

Mr. O'MALLEY. Of course, the Chair understands that the meeting was for the purpose of holding hearings, and that these matters were not to be passed on by the committee.

Mr. PEAVEY. There is one way that the matter can be settled, and that is to secure the attendance of 2 or 3 more members.

Mr. O'MALLEY. The committee will stand in recess while the clerk notifies absent members.

(The hearing was called to order at 11:22 a.m. by the chairman, the Honorable Edgar Howard, a quorum of members being present.)

The CHAIRMAN. The clerk will please call the roll.

(The roll was called by the clerk.)

The CHAIRMAN. Twelve members are present, more than a quorum, and you may proceed, gentlemen.

Mr. COLLIER. Mr. Chairman, I shall be very rapid in discussing these amendments. I do want to point out that the Indians all over the country are at work on this bill in their tribal conferences; if there were some way to explain the proposed amendments, and to display the text that we are saying should be stricken out, I think under such circumstances the Indians would be heard from in considerable measure. Now, the first amendment I have already described; it is an amendment which makes the transfer of title to an individual allotment wholly voluntary. Now, the second amendment relates to inheritance——

Mr. CHRISTIANSON. By the way, Mr. Commissioner, does it affect the right of eminent domain?

Mr. COLLIER. The right of eminent domain is unaffected by this clause.

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Mr. CHRISTIANSON. Well, then, even though the transfer by an Indian of his rights is purely voluntary, it would be involuntary if it was decided to proceed and acquire land under the right of eminent domain.

Mr. COLLIER. Assuming that you could acquire grazing lands and farm lands under condemnation proceedings, certainly the surrender of a piece of an allotment for a road under condemnation proceedings would be involuntary, as it is now.

Mr. CHRISTIANSON. Yes; but as I understand it, the power of eminent domain under this bill goes further than the acquisition of this property for road building.

Mr. COLLIER. It is not so intended; as I understand it, that depends upon the State laws and the court construction as to whether a given use constitutes a public use.

Mr. CHRISTIANSON. I may be wrong, of course, but it is for that reason that I am asking, merely to clear up in my own mind the purposes of the bill. I would understand the right of eminent domain could be resorted to to acquire land for any of the purposes mentioned in the bill on the theory that anything done under the bill would be for a public purpose.

Mr. COLLIER. If it were so construed, then condemnation could be resorted to in regard to the land of anybody.

Mr. CHRISTIANSON. Yes; but you are quite definite in your opinion that under the bill——

Mr. COLLIER. I am not; the committee requested the Department to prepare the memorandum which is in process, and I do not know how near ready it is.

Mr. PEAVEY. If the Commissioner may permit—I would like to explain to the gentleman from Minnesota that previous to his entry the committee authorized the Chair to appoint, and the chairman did appoint a committee of lawyers from this committee to sit with the committee of the subcommittee of the Judiciary Committee to go over all of these legal questions and I, therefore, suggest to the gentleman from Minnesota that that would be the proper place to raise a question of that kind, and get it more fully considered.

Mr. CHRISTIANSON. Thank you for the information.

Mr. COLLIER. The purpose is to make it voluntary rather than involuntary. The second important amendment makes a basic change, also in response to Indian opinion, in the provisions of the bill governing the inheritance of farm lands. It is found in title III, section 11, on page 34 of the bill, and its effect is as follows—in fact, it starts on page 33, and the whole of section 11 and the whole of section 12 are stricken out and the new language is offered in place thereof. Now, the important effect that the layman would want to know is this: That farm lands would be inheritable; that is, the allotment, or farm-land allotment would be inheritable as long as its inheritance did not require that it be subdivided to such an extent that it could not be used. When the point came that its physical subdivision was impossible, then the heirs would receive the equivalent ownership in guaratnees of community rights. Up to that point an inheritance would be as under existing law. That was not carried over to grazing lands and forest lands. It applies to farm lands.

Mr. THOMPSON. Does that cover mining lands?

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Mr. COLLIER. That is not covered. There is another amendment covering that point. In fact, Mr. Thompson, it is the next amendment that we will consider. In regard to this second amendment, instead of transferring title to the community, the new draft continues the present system of partitioning farm lands among the heirs on the death of the owner. The inheritance of farm lands will continue up to the point when the farm land has to be split into tiny uneconomic units to satisfy the claims of numerous heirs. When that point is reached, and only when it is reached—when partition of the heirship farm land is no longer possible without impairing its beneficial use—then only will title pass to the community or tribe. Under those circumstances the heirs will be compensated by certificates of undivided interests in tribal assets equal in value to the parcel of farm land they would have inherited. And court review is provided by the amendment for those heirs who may question the appraised value of either the land or the certificate. And then at the end there is a proviso that nothing in the act shall be construed to authorize any transfer of any title or right to minerals, including gas and oil, without the consent of the owner. It seems unreasonable to rule out a possible claim between an Indian community and the individual interest. That makes it comprehensive regarding the transfer by a living owner of a title or right.

Mr. O'MALLEY. Mr. Collier, that appears to be a section made for a certain section of the country.

Mr. COLLIER. No, sir; it is made for a great many sections.

Mr. O'MALLEY. To what will it apply?

Mr. COLLIER. I might say that we are primarily concerned with the saving of the surface of the land which can be used for supporting Indians, and the acquiring of new lands that can be used for the support of Indians. We are not concerned with compounding of the inheritance of mineral rights—there is no problem in the administration of mineral ownership.

Mr. O'MALLEY. And yet you bring the transfer to the tribe in regard to timber rights.

Mr. COLLIER. That is different. There is an essential reason for that. Timber rights are entirely different, and there is a different economic problem involved. No such financial problem arises in regard to mineral properties. This bill plans to accomplish all that is desired. There seems to be no practical advantage in requiring the transfer of mineral rights or interfering with existing inheritance laws, and there is an important practical disadvantage in that the Indian who has been lucky to get an allotment that contained oil or minerals may be expected instinctively to resist any tampering with the status quo.

Mr. O'MALLEY. How about the Indian who is lucky enough to get some timber rights?

Mr. COLLIER. There the situation is entirely different. He is concerned with the income from that timber. He cannot take an income from that timber unless it is slaughtered. There is simply no other way to get it from the timber, and if the timber is all cut down, that interferes with the conservation of the property. There is no similar situation that applies as in the case of minerals that we can see.

Mr. O'MALLEY. Although from the tribal standpoint it would be desirable to have the transfer made to the tribe, for these oil and

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mineral rights would quite naturally enhance the ability of the tribe to increase its income.

Mr. COLLIER. Naturally, but this does not prevent the tribe from purchasing from the individual his oil or mineral rights, if he wants to sell. In other words, it was never intended that the bill should deal with the minerals and oil. We told every Indian conference in turn that that was not intended, that that provision was not included in the bill, and that we could see no practical advantage of having it in and a great political disadvantage, at least, in having it in.

The next proposed amendment is found on page 36, and it comes in just above the old section 16, and is new section 15. It provides that (reading):

No disposition of any tribal or community lands or any interest therein or any right of use thereto shall be made without the consent of the tribe or community.

In other words, under existing law, in any one case, the Secretary of the Interior can rent, lease, alienate tribal assets; under this new section that power would be taken away from him and would make all disposal subject to tribal consent. [Reading:]

No disposition of any improved land beneficially used by any individual entitled to the possession thereof by a title, assignment, or tribal custom, or of any interest or right of use in such land, shall be made without the consent of such individual. Nothing herein shall be construed to qualify in any manner the provisions of section 11 or this title.

Almost everywhere we went the Indians raised their voice on that point. It was an old grievance and a proper grievance, we take it, and the Indians wanted that protection.

The Navajos have it in their oil and the Pueblos have it in their land, but the other have not got it.

The amendment proposed by the chairman of the committee is likewise endorsed by the Department, and reads as follows, as we understood the amendment (reading):

TITLE V. MISCELLANEOUS

SECTION 1. The provisions of this act shall not apply to any reservation wherein a majority of the adult resident Indians vote against the application of these provisions in an election duly called by the Secretary of the Interior. It shall be the duty of the Secretary to call such an election to be held within 30 days after the receipt of a verified petition for such an election signed by one fourth of the adult Indian resident within any reservation, provided such petition is presented to the Secretary within 3 months after the passage of this act.

SEC. 2. Nothing in this act shall be construed to impair or prejudice in any way any claim or suit of any Indian tribe against the United States based upon any treaty obligation or other obligation heretofore incurred by the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations specifically authorized by this act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

SEC. 3. The provisions of this act shall not apply to any of the Territories, colonies, or insular possessions of the United States, except that the provisions of titles I and II of this act shall apply to Alaska, and for the purposes of these titles Eskimos and other aboriginal peoples shall be considered Indians.

Now, we hold that the idea put forward by the chairman of the committee is the only satisfactory way to meet the demands of the tribe, for the tribe to take action on a bill that is not precise in its form, and which may be fundamentally altered before it is passed, is not satisfactory. It is indeed unfair to bind the tribe to an accept-

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ance which is not an acceptance of the enacted bill, and similarly we know it is not fair to give a tribe a feeling that unless it comes in and takes this chance on something which it only has a half an understanding of, it is likely to be cut out.

We did not know how to bring that out until the chairman of this committee came forward with this proposal. I think the matter may be well illustrated by the excellent and fair-minded presentation made by the Quapaws this morning. They are not registering against the bill, but they are registering against parts of the bill that are not necessary when the bill is passed, insofar as the Department's suggestions may prevail.

In other cases, tribes have almost instantly endorsed the bill. We know they could not have had time to conduct a technical analysis of the bill, and it seems far fairer to present it to them after the law is passed, and then let them, with a knowledge of the law, take enough time to decide whether they want to be in on it or keep out.

Mr. HILL. Mr. Chairman, may I ask a question? How are these elections going to be called, Mr. Commissioner, and how are they going to be carried on?

Mr. COLLIER. Why, an election by ballot would be called, if it were desired to present the matter in that method; but it is difficult to prescribe for Indians, because we find that Indians in some places will favor a referendum. Again, in other places you must have district elections and hold a regularly called general election. In all cases, however, it would be by ballot.

Mr. HILL. If they would hold the elections as has been the case in California, under such circumstances I would be opposed to that.

Mr. COLLIER. I will have a complete statement in regard to that. I do not think you will be opposed to it when you hear all of the facts.

Mr. HILL. We have the ballots here.

Mr. COLLIER. Yes; and I have a complete statement here. Naturally, what we want is an election duly called under conditions of proper control of balloting. We want the counting of ballots all properly regulated, and of course sufficient time should be given for publication.

Mr. ROGERS. Mr. Commissioner, I take it that since the chairman has prepared the amendment, and you have agreed that it be made part of the bill, that you are anxious that no Indians come under the supervision of this act unless the majority of the Indians desire it.

Mr. COLLIER. That is correct.

Mr. ROGERS. Then may I suggest that the amendment is not properly worded since it reads "a majority of the adult resident Indians vote against the application of these provisions." I think it should read "a majority of the adult resident Indians vote for it."

Mr. COLLIER. May I suggest that that may not be the case if you think it over?

Mr. ROGERS. Mr. Commissioner, it would be impossible to get 100 percent vote, and in a vote of 60 or 70 percent it would be almost impossible to have a majority of the adult members of the tribe vote against the measure.

Mr. COLLIER. It is put up in such a way that you do not have to have an absolute majority of the adult population.

Mr. ROGERS. Mr. Commissioner, you have it the other way. You say there must be "a majority of the adult resident Indians—against."

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Mr. COLLIER. It should read "majority voting at a called election."

Mr. ROGERS. It does not read that way now.

Mr. COLLIER. Then it should be amended. If we required an absolute majority, how many white communities could ever get a charter, and how many presidents of the United States could ever have been elected? The intention here, of course, is quite definite.

Mr. ROGERS. It does not say it.

Mr. COLLIER. Then it should be amended.

Mr. O'MALLEY. Should it then be changed to "a majority of those voting"?

Mr. ROGERS. It says "a majority of the adult resident Indians" of the tribe.

Mr. COLLIER. I should say that is improperly worded.

The Choctaws are doing it right now. They have been, and they are doing it in an elaborate way. They are doing it in a formal manner and their elections are being conducted properly.

Mr. CHRISTIANSON. Do women vote as well as men?

Mr. COLLIER. That is the way it is in the bill.

Mr. CHRISTIANSON. I was wondering what the Indian custom was in that respect.

Mr. COLLIER. The Indian custom in many places is for women not to vote. If the women want to stay away it should read "majority of those who vote."

Mr. WERNER. Mr. Chairman, those of you who have observed voting by Indians know something about conditions under which they vote and how they vote. I do not say they are not intelligent, because I think they are in their own way, very intelligent. But the Indian is a very unsuspecting human being. He believes in the promises made him, especially by those who are in some authority and hold positions of honor and trust.

Mr. CHRISTIANSON. He trusts the white man more than his experience with the white man should justify.

Mr. WERNER. Now, just for example, Mr. Chairman, I opened this book [indicating Minutes of the Plains Congress] at a certain page, and this is the language that the Commissioner used in discussing the bill [reading]:

> If the bill should become twisted into a wrong shape by Congress, if the bill should be made into something else which does not do what we are telling you but does something different, then I think you may be confident that the President will veto the bill.

Now, that is the sort of statement which misleads the Indian. There is no human being today who can tell what this bill is going to do when the bill is reported out of committee, because the bill is in here today and we have these amendments and it will not be the bill, that is, the same bill, when Congress and this committee complete their work on it. In regard to the promises that were made to the Indians in regard to this bill, that is something that no one can tell.

Mr. COLLIER. Mr. Chairman, I suggest that the members read carefully the record in question, and I think it is safe to say that if the bill were not what was intended that it would be vetoed by the President, and I believe that the words I used were correct.

Mr. WERNER. That does not indicate that the Congress has failed as a legislative body to fairly and justly deal with the question.

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Mr. COLLIER. I was asked the question by the Indians, How did I know that the bill would not come out and be the opposite of what was anticipated?

Mr. WERNER. You don't presume that Congress would be unfair to the Indians?

Mr. COLLIER. I make no presumption at all.

Mr. PEAVEY. I will say for the Commissioner that they have been very often.

Mr. COLLIER. All I can say is this, gentlemen; if a bill came out in such a manner as to reduce rather than increase the holdings, violating instead of increasing the constitutional rights of the Indians, that the President would veto it, and that is what I told the Indians. Anyway I cannot see how to put it up to the Indians without putting it up to them and doing it in the established way of holding elections.

Mr. PEAVEY. Mr. Commissioner, before you leave that subject I would like to ask you this: The gentleman from South Dakota has raised the question in regard to elections and how they are carried out. I would like to ask you if the Commissioner, in drafting this provision, had in mind those questions, and how they operate in a practical way, and whether or not it would not be better to require a vote of all of the adult Indians actually affected by the legislation rather than a majority of those who happen to be present at an election.

Mr. ROGERS. The amendment does require a majority of the adult members, but they must vote against it in order to defeat it.

Mr. PEAVEY. But the Commissioner said that was not the intention.

Mr. COLLIER. It was my intention in the amendment that if the bill became law—it has already stirred the Indians profoundly—sufficient time should be given for consideration if there was, and if these were a dissatisfied group, an election should be held and a majority vote at that election would be conclusive.

Mr. PEAVEY. Mr. Commissioner, on that I want to renew my question. Wouldn't it be better, rather than to accept the will expressed by just a majority of those voting at that place of election, to have a fixed percentage of all the Indians affected by the legislation?

Mr. COLLIER. If the percentage were not fixed too high. If it were fixed too high, it would rule out any election.

Mr. PEAVEY. I have in mind a situation where a half a dozen influential people who may be opposed to legislation or may be for it, or may have some purpose either in opposing or supporting it—they will go out and by their control of information and other things hold an election where only 20 or 30 percent of the adult Indians affected by the legislation will participate.

Mr. COLLIER. That might happen in certain localities, but if we try to reverse it and go too high, and require an absolute majority of those eligible to vote, it will be equivalent to destroying the franchise. We fought that point all through the years of initiative and referendum and recall, and the thought was to keep it low enough and get out the vote.

Mr. PEAVEY. Then, can't there be some provision that the adult Indians affected by the legislation could be notified that an election was to be held?

Mr. COLLIER. Yes.

Mr. PEAVEY. And have some official record of that?

Mr. COLLIER. Yes; that can be done.

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Mr. ROGERS. Mr. Commissioner, I took it that it is not your intention that a small percentage of Indians could impose this legislation on any given tribe. I have in mind what Mr. Peavey says about a 20 or 30 percent vote which would impose legislation on a given tribe. I take it the Commissioner does not intend that, and that you will see that the amendment is so worded as to cover that point. I think it should be so stated.

Mr. COLLIER. I think that wording can be fixed up.

I might add that the smallest number of amendments occurs in title IV establishing the Court of Indian Affairs. Only one change has been deemed necessary, a change which allows an appeal from the local Indian community courts from sentences exceeding 60 days or a $200 fine.

There is also the provision in section 3, a new section, which specifically declares that no claim or suit of any Indian tribe against the United States shall be affected by this bill and that no appropriation authorized by this act shall be used as an offset in any such suit.

There is another important proviso which would allow the Indians of Alaska to take advantage of titles I and II, the self-government title, which gives them the opportunity of Indian Service employment and the educational advantages.

Mr. CARTWRIGHT (acting chairman). I wish to call the attention of the committee to the fact that it is now about 3 minutes of 12, and I want to abide by the pleasure of the committee. What do you want to do?

Mr. PEAVEY. Mr. Chairman, before a motion to adjourn is made I would like to suggest a motion at this time that the original printed bill, together with the proposed amendments by the Department, including the amendment offered by the chairman of the committee the other day, be ordered printed for the benefit of all the members of the committee.

(The motion was seconded and carried.)

Mr. COLLIER. Might I take the remaining few minutes of time to discuss one or two other amendments? There is an amendment (sec. VIII, title 1) dealing with the transfer of functions from the Office of Indian Affairs to chartered Indian committees which has been simplified, clarified, and liberalized by giving the Secretary the power to transfer functions or services to a chartered community on his own initiative without having to wait for the community to request such a transfer. This means that the transfer can be made by either side subject to the approval of the other side.

Another amendment has to do with the adoption of charters by Indian communities and the amendment of the charters and makes the point that we have discussed. It has been urged by many Indian groups that we ought to have a certain minimum percentage who must vote for a charter to be adopted, and we have suggested a minimum of two fifths of all eligible adults. If you made it higher, there would be trouble owing to women not voting. There are many tribes in which women will not vote, and those tribes would be unable to get a charter.

There is a long list of other amendments which I will not take the time of the committee to read because they will appear in the printed report. One, for example, relates to the transfer of an Indian as well as of a white Federal employee. Another important amendment is

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one which has to do with the effect of judgments against a chartered community. You will recall that the bill says that the lands are not liable, and since judgment may not be executed, we are proposing that a certain part of the income of the community be liable to attachment, that is, of the annual income.

Mr. PEAVEY. In the reprinting of the proposed bill and the amendments which have just been authorized by the committee, Mr. Commissioner, would you not include the changes offered by the gentleman from Oklahoma and myself?

Mr. COLLIER. Certainly, if I am permitted to do so.

Mr. PEAVEY. And may I ask if you would consider this further proposition in regard to the holding of elections and have incorporated in the law some direct provision with regard to the notification of the electors, so that those known to be favorable or unfavorable to those who are presenting the legislation will be considered and further, it would seem to me that some limitation should be put there, particularly a provision should be adopted that provides that those Indians may express themselves on that question without the knowledge of how they voted being conveyed to those who are holding the elections. One of the most serious objections to Indian elections is that every Indian must disclose to those who are fostering or approving the legislation how they vote, and I think that ought to be stopped.

Mr. COLLIER. Yes, sir.

Mr. CARTWRIGHT (acting chairman). It is now 12 o'clock, and if there is no objection we will adjourn to meet Wednesday morning at 10:30 o'clock.

(Thereupon, at 12 noon, the committee adjourned to meet Wednesday, April 11, 1934, at 10:30 a.m.)

SUMMARY OF SUGGESTED AMENDMENTS, H.R. 7902

Perhaps the most important amendment to H.R. 7902 is the omission of the clause—second paragraph of section 8, title III, page 31, beginning at line 6—which gives the Secretary of the Interior the power to transfer to Indian communities the title to the land of living allottees without their consent. Even though the original draft fully safeguarded the substantial rights of the allottees to the exclusive use and occupancy of and to the income from his property irrespective of the locus of the title, these safeguards were either ignored or deemed insufficient by many of the Indians participating in the discussion of the bill during March. In deference to their desires the amendment has been drawn, leaving the allottee in possession of the equitable title as well as of the more substantial rights in his property.

The second important amendment makes a basic change, also in response to Indian opinion, in the provisions of the bill governing the inheritance of farm lands. Section 11 of the bill has been completely redrafted and clarified. Instead of transferring title to the community, the new draft continues the present system of partitioning farm land among the heirs on the death of the owner. Inheritance of farm lands will continue as at present up to the point when this farm land has to be split into tiny, uneconomic units to satisfy the claims of numerous heirs. When this point is reached, and only when it is reached—when partition of the heirship farm land is no longer possible without impairing its beneficial use—only then will title pass to the community or tribe. Under these circumstances the heirs will be compensated by certificates of undivided interests in tribal assets equal in value to the parcel of farm land they would have inherited. And court review is provided by the amendment for those heirs who may question the appraised value of either the land or the certificate.

The third important amendment suggested by various tribal delegations provides that the individual title to any minerals, including oil and gas, cannot be transferred to the tribe. Through this amendment the objections raised by mem-

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bers of several tribes enjoying mining or oil revenue should be completely removed.

Also at the suggestion from numerous Indians, a new section has been drawn specifically prohibiting the disposition of any community or tribal assets without the consent of the tribe or community. The benefit of this protection against arbitrary dispossession is also extended to the owner of improved land beneficially used.

In order to demonstrate the lack of any desire to force acceptance of this legislation, the chairman of the House committee is proposing, and the Commission is approving, an amendment which gives every Indian tribe the right to exclude itself from all provisions of the bill within 4 months after its passage.

It has been considered prudent, even though such a provision is a work of supererogation to add a new section which specifically declares that no claim or suit of any Indian tribe against the United States shall be affected by this bill, and that no appropriation authorized by this act shall be used as an offset in any such suit.

The smallest number of amendments occurs in title IV establishing the Court of Indian Affairs. Only one change has been deemed necessary, a change which allows an appeal from the local Indian community courts from sentences exceeding 60 days or a $200 fine.

The provision of section 8, title I, of the bill, dealing with the transfer of functions from the Office of Indian Affairs to chartered Indian communities, has been simplified, clarified, and liberalized by giving the Secretary the power to transfer functions or services to a chartered community on his own initiative without having to wait for the community to request such a transter.

Various Indian delegates questioned the wisdom and advisability of allowing decisions on vital matters to be made by a majority of those casting their votes. They pointed out the possibility of having 50 active voters out of a thousand eligible adults bind the entire tribe. To meet this objection an amendment was framed enabling the Secretary to insist on the participation of at least two fifths of the eligible adults in important elections.

More than 30 amendments have been prepared as a result of suggestions emanating from Members of Congress, from Indian welfare agencies, from Indian delegations, and from individual Indians. Among the minor amendments are the following:

The right to seek redress from Congress for an injury done by a chartered Indian community has been specifically affirmed.

An amendment, at the end of section 4, title I, subjects property transferred from a tribe to a community to any liabilities and liens which have not been canceled by the United States.

Another amendment, section 5, title I, empowers an Indian community to compel the transfer of an Indian as well as of a white Federal employee.

One half of the net income of a chartered community is made liable to attachment and execution by an amendment to clause (j), section 12, title I.

In the educational title the amounts for scholarship loans and subsidies have been raised to $200,000 and $50,000 a year.

Special cases are met by two amendments, one of them prohibiting the use of any appropriation authorized by the bill for the purchase of additional land for the Navajos in case the presently pending boundary bills with their appropriation for Navajo land purchases, shall go through.

A second special amendment protects the so-called "Sioux benefits." The application of the act is restricted to the continental United States, except that the benefits of titles I and II are extended to the Alaskan aborigines.

Amendments to Wheeler-Howard Bill—H.R. 7902—S. 2755

The following amendments to the pending Wheeler-Howard bill, in addition to certain typographical corrections and minor changes of language, were recommended by the Interior Department and are incorporated in the "committee print" of the House Committee on Indian Affairs.

TITLE I

Section 4: First paragraph, omit proviso running from the words "suject to the provisions, etc." to the words "to the chartered community."

This proviso is unnecessary because section 8 deals with the same matter and specifically provides for the conditions under which the Secretary must transfer Government service at the request of the community.

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Paragraph (d) insert after the words "not exceeding six months" the phrase "or such lesser maximum penalties as may be fixed by charter."

This amendment will make it clear that the $500, 6 months maximum on punishment by local courts, is intended as an outer limit of jurisdiction which may be further limited by charter if it is not thought wise to entrust so much power to the courts of a given community.

Paragraph (i), substitute for the phrase "shall not be liable" the phrase "shall not be liable to suit" and add to the end of this paragraph the proviso "provided, that nothing in this section shall preclude any person injured by any act or omission of a chartered community from seeking or obtaining appropriate redress from Congress."

This amendment is designed to eliminate certain misconception as to the extent of the immunity of the United States from liability for the acts of a chartered community.

Final paragraph, add at the end of the last paragraph of section 4 the following clause "and subject further to any liabilities, liens, or encumbrances pertaining to such property as are not expressly canceled by the United States."

This amendment provides that liabilities are not wiped out by the mere transfer of property from a tribe to a successor community, but pass with the property to which they pertain unless expressly canceled by the Federal Government under authority of law.

Section 5: Second paragraph, omit the phrase "other than persons appointed by the community."

This amendment would make Indian employees appointed to Federal positions at the instance of a chartered community subject to removal by the community, as other employees are subject to removal.

Section 8: Substitute for the first four paragraphs of section 8 the corresponding four paragraphs in the amended bill.

This amendment is designed to simplify the original language of section 8, and at the same time to fill a gap in its provisions. As originally drafted, section 8 provides that the Secretary "must transfer functions to the community upon a three fourths popular vote" and compliance with stated conditions, but fails to authorize such a transfer in the absence of compulsion.

Sections 13 and 14: New sections added in amended draft.

The amended sections, which set up a revolving loan fund for the use of chartered communities and their members, are intended to make available to Indians the credit facilities which are necessary in order to carry out the policy of developing Indian lands and economic enterprises stated elsewhere in the bill.

Section 15 (formerly section 13): Paragraph (b), substitute for the phrase "persons of Indian descent who are members of any recognized Indian tribe, band, or nation, or are descendants of such members who were, on or about February 1, 1934, actually residing within the present boundaries of any Indian reservation," the following phrase: "persons of Indian descent who are members of any recognized Indian tribe, band, or nation, and all persons who are descendants of such members," etc.

This amendment is designed to clarify the intent of the section that residence upon a reservation is deemed an essential qualification of charter membership in a community only with respect to persons who are not members of any recognized Indian tribe and not possessed of one fourth degree of Indian blood.

Paragraph (e), insert at the end of paragraph the following phrase: "and may declare void any such vote in which less than two fifths of those eligible vote."

This amendment is designed to permit the Secretary to disregard a vote for the ratification of a charter, and to permit the community to void a vote for new charter powers, where less than two fifths of the eligible adults take the trouble to vote. The section is made permissive rather than self-executing, since special circumstances may arise, such as the unwillingness of women to invoke their legal rights of suffrage, which will make it extremely difficult to secure a vote by two fifths of the eligible adults.

Paragraph (j), insert at end of paragraph, the following phrase: "but one half of the net income of a chartered community in any year shall be subject to attachment and execution under any judgment rendered against the community, for any debt or default of the said community, by a court of competent jurisdiction."

This amendment is designed to offer creditors of a community some direct redress upon default, without too seriously interfering with the economic status of the community as a government agency.

Paragraph (l), insert after word "reservation", the phrase: "including any Pueblo grant."

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This amendment is designed to eliminate possible doubts as to the reservation status of Pueblo grants.

Paragraph (o), insert after paragraph (n), the following paragraph:

"(o) The term 'Office of Indian Affairs' as used in this act shall be construed to include any functions of the Secretary of the Interior, the Commissioner of Indian Affairs, or subordinate officials, relating to Indian affairs."

This definition is added to preclude any legal question as to the natural meaning of the term "Office of Indian Affairs."

TITLE II

Section 1: Substitute for the figure "$50,000" line 17, page 23, the figures "$200,000", and for the figures "$15,000", line 1, page 24, the figures "$50,000."

This amendment is designed to make the appropriations for special education commensurate with the tremendous interest that has been shown by younger Indians in this aspect of the legislation

TITLE III

Section 1: Insert, prior to first sentence of section, the following: "The process of allotment and inheritance of allotments of restricted Indian lands has caused the subdivision of such lands into units which are not capable of effective economic use. The difficulty and expense of administering such lands has led to the sale or leasing of such lands to non-Indians. The issuance of fee patents to Indians has resulted in the alienation of large areas of the Indian lands."

This statement of the facts upon which the policy of Congress declared in this section is based will be of assistance in the interpretation of this section and succeeding sections of title III.

Section 3: Omit second paragraph, page 26.

This paragraph, designed to permit the Secretary to reopen the entry lands withdrawn under the preceding paragraph, has been subject to widespread misinterpretation, and to the objection that it gives discretionary power to the Secretary to withdraw lands over which the community or tribe is exercising control. The paragraph is unnecessary for the purposes of this title.

Section 4: Second paragraph, add words "water rights" after word "lands".

These words are added to give specific protection against alienation of water rights of an Indian community.

Same paragraph, omit words "or any interest therein" and omit words from "grant the use", etc., to "and may".

The omitted words deal with matters that are more explicitly dealt with in sections 14 and 15, as amended. Their retention would be undesirable, as affording a possible basis for construing this section as interfering with the right of an Indian to transfer possessory interests in land in accordance with tribal custom or community ordinance.

Section 5: Add word "allotted" after words "other transfer of".

This amendment is designed to clarify the purpose of this section, which is to restrict individual transfer of allotted lands, and has no application to unallotted lands, dealt with separately in section 4.

Add, after words "they are located", the phrase "or devised to any member thereof".

This amendment is designed to guarantee the right of Indians to devise property to descendants or other members of a tribe or community, subject to the approval of the Secretary where such approval is required by existing law.

Omit words "classified for the purpose, pursuant to the authority of section 6 of this title", at end of paragraph.

These words are omitted because of changes made in section 6.

Section 6: Omit first sentence.

The omitted provision, dealing with the classification of lands for consolidation, is substantially incorporated in the first paragraph of section 11, as amended.

Section 7: Second paragraph, add, after phrase "not to exceed $2,000,000 for any one fiscal year", the proviso dealing with Navajo lands included in the amended draft.

The addition of this proviso is recommended in view of the fact that the proposed Navajo boundary extension, to which it refers, would render the acquisition of other lands by the Navajo unnecessary.

Section 8: First paragraph, insert, after the words "otherwise acquire", the phrase "with the consent of the owner".

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This amendment will clarify the original intent of this paragraph.

First paragraph, add at end of first paragraph the following sentence: "An Indian tribe or community may issue, in exchange for land transferred to it by any member, a certificate evidencing an undivided interest in tribal or community lands or other assets."

This amendment is designed to give specific authorization for the voluntary transfer of land in exchange for an undivided interest in tribal or community lands or other assets.

Second paragraph, omit the second paragraph of section 8.

The omitted paragraph of the bill as originally drafted would permit the Secretary to transfer individual restricted property to an Indian tribe or community, under prescribed conditions of compensation, without the consent of the original owner. In view of the opposition of many Indians to this provision, it is deemed desirable to omit it entirely, although it is believed that most of this opposition is founded on a failure to appreciate the significance of the compensation provisions.

Insert the heading "Sec. 9.", before third paragraph of original section 8.

The recommended renumbering is deemed conducive to clarity.

Fourth paragraph. Omit words after "between the parties".

In view of the voluntary nature of the transaction referred to, the language submitted is deemed inappropriate.

Section 9: Omit this section entirely.

The substance of this section is dealt with elsewhere in the act, and particularly in sections 8, 12, and 15, as amended.

Section 11: Substitute for this section the section found in the amended bill under the same number.

The recommended amendment of section 11 is designed to permit the descent and partition of lands other than grazing and timber lands wherever such physical partition is possible without serious impairment of the value of the land. It further provides that the interest in tribal or community assets, guaranteed to heirs or devisees of land which cannot be partitioned, including all grazing and timber lands, shall be equivalent in value to any parcels of land that might be inherited but for the provisions of this section, and that the right to such an equivalent shall be protected by judicial review.

Section 12: Substitute for section 12 the section found in the amended bill under the same number.

The recommended amendment is designed to clarify the purpose of section 12, as originally drafted, so as to indicate more clearly the relation between special interests and general membership interests and to give express authorization for the grant to minors of less than a full membership interest.

Section 14: Substitute for phrase "authorized and directed to classify by devise" the phrase "authorized to classify".

These changes make classification permissive, rather than mandatory, and thus eliminate a requirement which may not be applicable to some reservations, as for instance, the Pueblos, where the purpose of this section has been achieved by the Indian tribes themselves in accordance with ancient custom.

Omit words "and divide".

These words are omitted because they are superfluous and have given rise to the mistaken interpretation that this section authorizes transfer of ownership, which is not the case.

Section 15: Omit the heading "Sec. 15", making the following paragraph a part of section 14 and add the new section 15 found in the amended bill.

This additional section is designed to safeguard the rights of Indian tribes, communities, and individuals by requiring consent for the leasing or other legal disposition of Indian lands.

Section 17: Insert after the word "title" the phrase "except the provisions of section 4".

This amendment provides that Indian allotments and homesteads outside of reservations shall have the benefit of section 4, extending the period of trust.

Section 21: Omit this section.

Section 21, exempting New York Indians, is deemed unnecessary and inadvisable in view of the general provision, incorporated in the recommended section 1 of title V, granting to all Indians the opportunity of exclusion from the provisions of this act.

Add new section 21, relating to Sioux benefits, found in amended bill.

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The added section is designed to insure that Sioux benefits shall continue to be paid, although no future allotments are made to the same extent and amount as would have been possible in the absence of the pending legislation.

Section 22: New section added in amended bill.

The added section 22 specifically exempts rights to minerals from the operation of any provision of the act which might be construed to permit transfer without the consent of the owner. The addition of this section is recommended in view of the difficulty of measuring the compensation which must be paid for such rights and in view of the fact that mineral lands may be operated in small units.

TITLE IV

Section 6: Add, at end of this section, the clause "and in all other cases in which the judgment of the community court is one of imprisonment exceeding 60 days or fine exceeding $200."

This change will permit an appeal from the court of a local community to a court of Indian affairs in all cases specifically, as well as in the other cases enumerated in sction 3 and section 6.

Section 18: Omit the phrase "not to exceed seven each".

This amendment is designed to eliminate a restriction upon the number of marshals, which may be unworkable.

TITLE V

Title 5 represents an addition to the original draft containing three sections.

Section 1 is offered by Chairman Howard, of the House Committee on Indian Affairs, and is acceptable to the Office of Indian Affairs.

Section 1 provides that the act shall not apply to any reservation, after the passage of the act, which chooses to exempt itself from the provisions of the act. It is believed that if there should be any Indian groups so situated that the application of the act may not be advantageous to them, they should have an opportunity, after due consideration, to vote for exemption from the provisions of the act.

Section 2 specifically provides that no treaty rights or other obligations shall be impaired by any provision of the act and that moneys spent by reason of the act shall not be considered offsets in future Indian litigations. The addition of this section is recommended for the purpose of clarifying the general intent of this legislation, which has been interpreted by certain Indians as somehow prejudicing treaty rights and obligations.

Section 3 provides that the Wheeler-Howard bill shall not extend outside of the United States, except that certain provisions may be applied to the natives of Alaska.

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READJUSTMENT OF INDIAN AFFAIRS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

PART 6

Printed for the use of the Committee on Indian Affairs

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READJUSTMENT OF INDIAN AFFAIRS

TUESDAY, MAY 1, 1934

House of Representatives,
Committee on Indian Affairs,
Washington, D.C.

The Committee met in its committee room, Capitol, at 10 a.m., Hon. Edgar Howard (chairman) presiding.

Present: Representatives Howard, Cartwright, Rogers, O'Malley, Hill, Murdock, Werner, Lee, Peavey, and Greenway.

The Chairman. Before we begin our regular hearing the chairman would suggest that the reporter insert in the record at this point the statements pertaining to the Papago Indian Reservation in Arizona taken before the committee at the hearings held February 22, 1934 (see p. 14), March 12 (see p. 155), and March 13 (see p. 165), but not printed in the proceedings of those dates.

The statements referred to is here printed in full as follows:

PAPAGO INDIAN RESERVATION IN ARIZONA

(WITHHELD FROM PAGE 14 OF THE HEARING OF FEB. 22, 1934)

The Chairman. The committee will be in order. The order of business today is that we are considering what is known as the "general Department administration bill", and we also made an order that before we took that up we would grant 5 or 6 minutes to the representatives of certain Indian interests, I think the Papago Tribe. Are the representatives of these interests here? I will say for the information of anyone who has not been here that we will consider nothing other than the Department bill H.R. 7902, and first we will hear briefly from these Indian representatives of the Papago Indians to whom I have referred. Do you boys have any credentials from the tribal council?

Mr. Mitke. No; I do not think so.

The Chairman. Do you have a governing body down there that could give you authority?

Mr. Mitke. Yes.

The Chairman. If you do not have authority from that governing body you have petitions from the individual members of your tribe?

Mr. Mitke. And different villages.

The Chairman. The quickest way is to let you be heard now, if you will give your names to the stenographer.

Mr. Mitke. These two Indians are Peter Blaine and Leon Pancho, of the Papagos.

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STATEMENT OF PETER BLAINE, OF THE PAPAGO INDIAN TRIBE, ARIZ.

The CHAIRMAN. Do you want Mr. Mitke to speak for you?

Mr. BLAINE. No, I will speak for myself.

Mr. STUBBS. I think it is unfair to these boys to have them heard at a time when only two or three members of the committee are here. They are calling the roll and if you will wait a few minutes there will be other members here.

The CHAIRMAN. This meeting was called by special request of the boys to give them a chance to be heard so that they could go home. They said they are here at their own expense.

Mr. STUBBS. I understand.

The CHAIRMAN. Their statements will be reported in full by our reporter and will be in the minutes. Every member will have an opportunity to read them.

Mr. STUBBS. The members will come over here as fast as they answer the roll call in the House. They are calling the roll now, as you know.

The CHAIRMAN. I answered the roll call some 20 minutes ago. I think everyone has had about time to answer it. Mr. Peavey is here.

Mr. PEAVEY. Let me call the gentleman's attention to the experience of our committee in matters of this kind. When we have protracted committee meetings for the consideration of a certain bill it is rarely ever possible even to get a quorum here. Members, as the gentleman knows, are so much tied up with things on the floor and in their offices and so forth that it is rarely ever that we have more than 4 or 5 or 6 members here at these protracted meetings.

Mr. STUBBS. Of course I am a new member, but I see no object or real purpose in having a meeting with only two members outside of the chairman present. You are an older member here.

Mr. PEAVEY. I think the chairman's idea is to give these two witnesses a chance to be heard now and make their statements which go into the record and then the committee has a chance to get that information when they come to consider the bill.

Mr. STUBBS. I am not objecting to carrying out the wishes of the chairman. I just made that suggestion.

The CHAIRMAN. The chairman will be very glad to grant even the suggestion of a fellow member of the committee if he has any assurance that any of the other members will be here. Several of them spoke to me and said they could not be here because of other committee assignments. In view of the fact that we have a stenographer here and that the record will be taken down for the benefit of the members of the committee, I think we ought to give those boys a chance to be heard and let them go home. They have a credential here which is addressed to Commissioner Collier, evidently a copy, with about 400 signatures typewritten, the same being a protest to the Secretary of the Interior and the Commissioner of Indian Affairs, requesting cancelation of a contract held by Messrs. Slemp and Graves and urging reopening of the reservation of the Papagos so that white miners might return and reopen the mines.

Mr. BLAINE. I have not got very long to speak but I will try to bring out some points. The fact is that the Indians have been holding meetings out on the reservation not influenced by any one.

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The Indians have been wanting to get this attorney contract and the withdrawal order of October 28, 1932, canceled. The fact is there was raised some money to send us here and also the withdrawal order of October 28 should be canceled so the white man would go on the reservation and reopen the mines so that will give our tribe the work that it had in past years.

Of course, we know that the Government is spending some money on the reservation on this work that has been going on there, but after this work is done we will be in the same fix as before, nowhere to find work.

This would mean a great help for my people out on the reservation as they were doing before, working on different things at the mines out there, where we had a town to send our beef to and sell it and our farm crops to the miners.

We have been sending these petitions here to Washington and did not get any answer. Our people only got this bill here the day before we left and our people feel that if you gave us more time to study this new bill that came up, there would be something in this new bill that the people would want to have changed. It is hard right now to get the Indians together as the mines are closed and they are scattered from one place to another.

The CHAIRMAN. It is not the purpose of the committee to take any vote on this bill until, anyhow, in the middle of March, when all of the Indians shall have had opportunity to study the bill and report their views on it.

Mr. BLAINE. How much time will that give us to have a study on the reservation?

The CHAIRMAN. Until about the middle of March.

Mr. BLAINE. As it is, it is hard to get these people to understand this. A lot of our tribe do not talk English and I think it will take a little time to have them understand what this bill means to them and the way they are scattered throughout the country it is hard to call a meeting at a certain place.

The CHAIRMAN. Moreover the Department will hold a meeting down in your country some place there where the representatives of every tribe will have opportunity to appear and discuss matters referred to in the general bill and the committee here will take no action until after these regional meetings shall be held, one of which will be held down in your Arizona or New Mexico country so that your people will have opportunity to be heard.

Mr. BLAINE. That will be a little better to give the Indians more time to study the bill because we have something in there that is hard for our people to understand in this bill and it seems to me if you give us more time to study it we will find out things about it.

The CHAIRMAN. You will have plenty of opportunity at your regional meeting down there, Mr. Blaine, you and the other representatives of your tribe, to be heard there, and your information there given will be carried back here to the committee and you may be sure that it will be duly considered. I understand now that the Commissioner and your tribe are not very far apart with reference to this legislation. I think you can get together and effect a happy compromise that will be in harmony with the wishes of the tribe, but nothing can be done here today; we are not voting on the bill and nothing will be done until the Indians have been heard from.

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Mr. Blaine. That is the way I feel about bringing this up to the people and explaining to them what it is and it seemed to us we would like to understand the reason for the bill, so I guess a little time would be enough for the people to think this over and find out about the different things that are in there.

The Chairman. My understanding is that the Commissioner will either be down among your people or will have some representative there to talk it over and to receive every suggestion you may desire to present with reference to the legislation.

Mr. Blaine. We will be glad to have our Indian Commissioner down there so our people will know who he is and will meet him and we will be very glad to have him down there any time he comes.

The Chairman. We will send him down.

Mr. Blaine. But the main things are that we would like to have these points brought out in an investigation about this withdrawal order and the attorney's contract.

The Chairman. That will be a matter very largely for the Commissioner to decide personally with you and I am quite sure that there will be no trouble about it. He tells me that you are already in agreement and your interests will be safeguarded to the best ability of this committee.

Mr. Blaine. As I told you in the first place, my people raised a little money to send us here and I am here trying to find out something that we cannot get on our reservation from our superintendent and these people did the best they could to get us here and we are short of money and all that, but at the same time we are trying to do the best we can with what little money we have and trying to bring back to the people this information and as I mentioned about our Commissioner coming down there we will be glad to have him and to hear what they will have to say about it and we will hear what he has to tell us.

The Chairman. I feel justified in telling you to go back to your home people and tell them that if they will make their desires fully known to the Commissioner this committee will try to work out a bill so that their interests will be safeguarded. That is the best we can tell you now. We are not going to do any voting here now or have any discussion of the bill today. There will be more discussion of it after you shall have finished.

Mr. Blaine. Thanks very much. Leon Pancho is also here.

The Chairman. Do you wish to be heard?

Mr. Pancho. No.

STATEMENT OF CHARLES A. MITKE, CONSULTING MINING ENGINEER, PHOENIX, ARIZ.

Mr. Mitke. There is just one point brought out in the bill and I have that here on one page that I can submit for the record.

The Chairman. Read it.

Mr. Mitke. Under Section 3, title III (pp. 25–6–7) of these bills, the Papago withdrawal order of October 28, 1932, would be made permanent, and title to the unlocated mineral lands vested in the Papago Tribe. The tribe would be permitted to issue "revocable" leases for 1 year at a time.

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This would be a direct violation of the agreement with the State of Arizona; and the Executive order of February 1, 1917, and absolutely put an end to all further location and entry of mining claims on the reservation.

Section 4 (f) page 7, of H.R. 7902 would confer authority on the tribe to condemn and take title to the existing mining properties on the reservation, under the pretext that such action was necessary for the purposes of a proposed charter.

This is threat of straight confiscation of private property. It would not only confiscate privately owned properties on the Papago Reservation, but privately owned properties on any Indian reservation in Arizona.

It is contended that these two sections of the bill would be of definite assistance to the Hunter-Martin-Slemp-Graves group, who are the different interests that are in on this thing, as they would vest title to both mineral, and nonmineral lands in the Papago Tribe—one of the aims of the Slemp-Graves contract. It was to aid these attorneys in securing this title from Congress that the temporary withdrawal order was issued. This bill also grants power to the Indians "to sue and be sued", which is another thing the Hunter-Martin people strove to secure from the Courts.

These are the very things against which the Governor of the State of Arizona; the State legislature; the State Land Commission; and 10 of the leading chambers of commerce of the State, have protested to the Department of the Interior.

STATEMENT BY CHARLES A. MITKE, CONSULTING MINING ENGINEER, PHOENIX, ARIZ.

GENTLEMEN: I wish briefly to discuss the effect House bill 7902 and Senate bill 2755 will have on Indian reservations in Arizona, particularly the Papago Indian Reservation in southern Arizona.

You see here a map of the State of Arizona.

I wish to call your attention to the tract of land enclosed within this black line. This tract is bounded by the Colorado River; the Gila River; the Santa Cruz Valley; and the Mexican Border. It contains 16,000,000 acres (25,000 square miles) and has within its boundaries, at least seven incorporated towns, nearly 100,000 acres of irrigated farm land, worth approximately $100 an acre; mining properties valued at from $50,000,000 to $75,000,000 and much cattle and grazing land. At a rough estimate, the value of the entire 16,000,000 acres, with its cities, improvements, railroads, mines, etc. is $200,000,000.

Inside this area are also reservations for the Papago Indians, who number about 2,500 adults and the same number of children.

For the past 20 years a group of California promoters, known as the "Hunter-Martin" group, have been attempting to secure title to the whole of these 16,000,000 acres. They are working under the pretext of helping the Papago Indians, saying that these Indians were given a grant of these lands by the Spanish crown, long before the United States purchased them from Mexico in 1853. (Gadsden Purchase.)

However, these promotoers are not disinterested people anxious to help the Papagos. They have secured from illiterate Papagos, unable to sign their names, deeds, granting them a one-half interest in the entire 16,000,000 acres, and an option over the remaining one-half. The consideration given in return for these deeds was a promise to attempt to prove Indian title to the lands. (See docket 3049, Probate Records of Maricopa County, Ariz.; and docket 20491, Probate Records of Los Angeles County, Los Angeles, Calif.; and docket, Equity, 33201, Supreme Court of the District of Columbia.)

In 1914 the Hunter-Martin people filed suit against the Department of the Interior and General Land Office to prove Indian title to the 16,000,000 acres, using as a test case, that particular Indian deed covering 720 square miles of land in the Santa Rosa Valley, west of Tucson, Ariz. They financed their litigation by selling rights which were to be placed on the lands, "if and when

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Indian title was established". Over $100,000 was raised in this manner. (See above court records.)

The Department of the Interior, General Land Office, and Indian Bureau fought against this attempt to establish Indian title to these lands, and proved to the satisfaction of the courts that the Indians had no title, as contemplated under article VI of the Gadsden Treaty of 1853, by which the United States acquired these lands from Mexico. The Papago Indians also protested against this attempt to take away their lands, and petitioned the courts, asking that the case be dismissed, which was done in 1927, with a victory for the Interior Department.

Charles H. Burke, as Indian Commissioner, from about 1921 to 1930, assisted the Department of the Interior in fighting this case for nearly 7 years. In 1928, Mr. Burke was threatened with a Federal indictment in Oklahoma, involving maladministration of approximately $1,000,000 of Indian funds, and only escaped, due to the intervention of powerful Republican politicians. (See Congressional Record, vol. 72, p. 2496, pt. 3, 71st Cong., 2d sess., Jan. 28, 1930.)

President Hoover removed Mr. Burke from office for maladministration of Indian Affairs, and demoted the Assistant Commissioner, Mr. Merrit.

Just before his removal from office, for some unexplained reason, Commissioner Burke authorized the Hon. C. Bascom Slemp, Washington attorney (said to be interested in oil in Oklahoma), to reopen the question of a claimed title for the Papago Indians to lands in southern Arizona, by approving a contract, making him "tribal attorney" for the Papagos, to present their so-called "claims" to Congress.

In other words, Commissioner Burke authorized Mr. Slemp and his two associates, Attorney C. C. Calhoun, of Washington, D. C., and Attorney Eugene L. Graves, of Los Angeles, Calif., to "pick up the trail" as it were, where the Hunter-Martin group temporarily dropped it, and endeavor to secure from Congress, the title which the Hunter-Martin people failed to secure from the courts.

Under his contract, Mr. Slemp is to receive a contingent fee of "up to 10 percent" of "any funds or property" he may secure for the Papagos. If he secures Indian title to 2,305,272 acres, he would be entitled to "up to 10 percent" of this area, or its money equivalent; if he succeeds in establishing Indian title to 16,000,000 acres, he would be entitled to "up to 10 percent" of this enormous area, or its equivalent money value.

At present, an attempt is being made to secure a fee-simple title, antedating 1853, for the Papagos, to 2,305,272 acres of the main Papago Reservation, which title, if secured, the people of southern Arizona believe is to be used as a test case in opening the legal avenue toward securing the entire 16,000,000 acres, of which the smaller area is a part.

Before the Hunter-Martin people can validate their deeds from the Papagos, they must secure a fee-simple title for these Indians antedating acquisition of these lands by the United States in 1853, and thus prove (as they claim) that the Papago Indians "were and are free agents, legally qualified to make contracts and dispose of their holdings as to them may seem right and proper", and not wards of the Government, maintained upon lands set aside as Indian reservations. (See Docket, Equity, 33,201, previously mentioned.)

Scattered, at intervals, throughout the 2,305,272 acres comprising the reservation, are a number of privately owned mining properties, some held by patent, and others by location and entry, which have produced, off and on, for over 50 years. Before a fee-simple title can be secured to the entire reservation, it is necessary for the attorneys to devise some means of acquiring these mining properties which are owned by white people.

The agreement between the Interior Department and the State of Arizona at the time the reservation was created (1917) was that the Indians should be given the use and occupancy of the nonmineral lands, but that the United States Mining Laws should continue to apply to the mineral lands. This was confirmed by the Executive order, creating the reservation (Feb. 1, 1917) and Land Decision 45, 527.

Section 3 of title 111, pages 25–6–7 of H.R. 7902, would revoke the provisions of the Executive order referred to above, and vest title to the unlocated mineral lands in the Papago Tribe, while section 4 (f), page 7, would authorize condemnation of the privately-owned mining properties, on the grounds that such action was necessary for the purpose of a proposed charter. This is a threat of straight confiscation, and would immediately cloud titles of all privately-owned properties, some of which have been operating, off and on, for 50 years and more.

These two sections would put an end to all future mining on the Papago Reservation, and would, further, we contend, be a definite aid to the California

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promoters (the Hunter-Martin group), and those who are attempting to assist them in this effort to secure title to 16,000,000 acres of Arizona.

We also contend that there are other sections of these bills, which would be of assistance to the Hunter-Martin group, who, on the published evidence of a prominent employee of the Indian Bureau, are apparently continuing to sell "rights" to these Papago lands, in and around Hollywood, Calif. (Hearings before Subcommittee of Senate Committee on Indian Affairs, 71st Cong., pt. 17, p. 8416, April 1931.)

The history of the scandal connected with these lands can be found in the office of the Surveyor-General of New Mexico; docket 33,201 (Equity) Supreme Court of the District of Columbia; and in any reliable history of New Mexico and Arizona. (Bancroft vol. 17, and Twitchell, 1, New Mexico.)

These two Indians here, have come 3,000 miles, at the expense of the Papago Tribe, to protest against this attempt to take away not only the white man's property but also the property of the Indians. They want the attorneys' contract canceled (tribal attorneys); they want the reservation reopened to mining, just as it was before the withdrawal order of October 28, 1932, was issued, so that the members of their tribe can secure permanent employment, and find a market for their products.

If you gentlemen had time, they could tell you of the activities of these tribal attorneys down on the reservation, and the public statements made by one of these gentlemen as to what he intends doing with the reservation lands once he gets hold of them.

Twice last year the Papago Tribe sent formal petitions to Washington protesting to the Interior Department and the Indian Bureau, but have received no reply.

I hold here in my hands a 30-page printed protest and brief, prepared by competent attorneys, and signed by the Governor of Arizona, the State legislature, the State land commission, and 10 of the leading chambers of commerce, protesting against this attempt to secure title to 16,000,000 acres. This was laid before the Department of the Interior last December, and Senate Resolution 7902 and Senate 2755 are the only answers we have received.

We ask you gentlemen of this committee to thoroughly investigate this whole matter, and consider well, before you pass a measure which may simply perpetuate a tremendous land scandal.

The CHAIRMAN. I hope you will be able to convince your people down there, Mr. Blaine, that any one on the reservation will be given an opportunity to present the wishes of the Papago Tribe, and you will be given every consideration.

I do not know whether you desire to go on at the present time, Mr. Collier.

Mr. COLLIER. I would.

Mr. PEAVEY. Just in advance of the Commissioner's statement, might not the record show just who this gentleman is and whom he represents.

The CHAIRMAN. The young man said he was representing them and their tribe.

Mr. MITKE. I am a consulting mining engineer of Phoenix, Ariz., representing the mine operators on the Papago Indian Reservation, and I have clients who want to develop some of these mining properties.

The CHAIRMAN. I did not understand that.

STATEMENT OF JOHN COLLIER, COMMISSIONER OF INDIAN AFFAIRS

Mr. COLLIER. I had not intended to say anything not constructive on the wording of this bill, but I must in the light of what Mr. Mitke has stated, in the first place, broadly assure the committee that the bill does not do the things that Mr. Mitke indicates, and I also point out the interests Mr. Mitke represents.

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Here is the issue on the Papago Reservation. The Papago Tribe is represented by an attorney named Graves. That action was taken under the prior administration. Rightly or wrongly, this attorney persuaded the Papagos that they had a vested right in the minerals which were within their Executive-order withdrawal; that they owned the minerals and that their ownership could be proved in court. I have nothing to say about the action of my predecessors except that when a prima facie case was made of the ownership, or possible ownership of the tribe in this mineral, it was perfectly natural for them to give the tribe a chance or a day in court to prove ownership if it existed. In order to guard the situation pending action, whether by court or by Congress, the Secretary of the Interior, the predecessors of Secretary Ickes, withdrew from exploitation the minerals in the area in question. The area in question had originally been granted by Executive-order withdrawal so that the surface belonged to the Indians, but the minerals have not been withdrawn. Secretary Wilbur brought about the temporary withdrawal of the minerals as well. The claim of the tribe through its attorney is that the tribe owned this mineral whether as a result of Spanish grants or of some prescriptive right gained under Spanish sovereignty. It is admitted that the tribe owns the surface. In order to reach the minerals below the surface, the surface must be used and disturbed. It must be occupied to the exclusion of the tribe in places; in any event the tribe owns the right-of-way to the sites of mineral exploitation.

Wholly aside from the question of ownership of the minerals and assuming that the Indians do not own the minerals, it is obviously necessary to protect the surface rights that these shall not be alienated through indirection by filings under the mineral laws, and it is obviously necessary that the Papagos shall be entitled to compensation for their property when it is taken. Now, I might say that, in my judgment, it is clear that the Papagos do not own the minerals. Their contention is in error, in my judgment. I will not argue that point. I am stating my own view and it is a mature view. That, however, does not dispose of the question of how their surface rights will be protected and for many months the Department has been prepared to go forward with proposed legislation to open up mineral exploitation if the surface rights could be guarded. For some reason some interests down in Arizona are determined that the surface rights shall not be guarded, shall not be preserved, and that the Indian equities or title in the surface shall not be recognized.

All of this has no relation to the pending bill. I am simply giving the record. The pending bill certainly would have the effect, if enacted, of equipping the Papago Tribe more favorably to fight the battle itself. I think you might take it for granted the Papago Tribe would fight a battle to save this surface, the surface that admittedly it owns.

I think that covers the situation and I think it also serves a good purpose as exemplifying some of the types of opposition that are going to register here against this bill, partly based on misapprehension as to what the bill contains and partly on a direct desire that the bill shall not accomplish good ends sought in the measure. Regarding the particular allegations of Mr. Mitke, they will be dealt with as the bill is analyzed section by section.

Mr. Christianson. Upon what does the Papago title rest?

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Mr. COLLIER. The Papago title rests essentially upon an Executive-order withdrawal by the President. The courts have held that such Executive-order withdrawal conveys a title equal to a title created by a treaty reservation. Congress in 1926 legislated that hereafter Executive-order areas could not be diminished by the President.

Mr. CHRISTIANSON. Upon what does the title to the subsurface minerals rest?

Mr. COLLIER. The title that existed would have to rest either upon proved grants by the Spanish Crown, and a grant that had not been extinguished or transferred, or on some principle of law that would grant prescriptive rights, either through prescription or through adverse possession by the Indians. Now there is no evidence of any such grant by the Spanish crown of mineral property to the Papagos or to anybody else. There is the evidence that the Spanish Crown withheld such grants in order to guard the land.

Mr. CHRISTIANSON. How long have the Indians been there?

Mr. COLLIER. Immemorially.

Mr. CHRISTIANSON. Evidently if the Spanish Crown had the title, it must have gotten it from the Papago Indians.

Mr. COLLIER. In the sense that the whole continent passed from the Indians to the whites. Of course, the Indians can assert that basic right of occupancy, which the Supreme Court has recognized and which Congress has recognized, the right of occupancy which is a right to the permanent use of the land or of an equivalent value. Of course we would be very glad if we saw a chance for the Papagos to litigate for the ownership of these minerals with a chance to win. Personally I simply do not think there is a chance in the world. But that does not mean they have not the right to make every effort to see if they can.

Mr. CHRISTIANSON. My understanding is that whenever the United States Government has acquired land from the Indians they acquired it by treaty.

Mr. COLLIER. No. Alas! In a great many cases the land was acquired by just taking it.

Mr. CHRISTIANSON. It would not constitute taking it if they went through the formality of a treaty.

Mr. COLLIER. No; but often they did not do that; they just took it. Most of the northwestern areas and most of the California areas were just brutally taken.

Mr. CHRISTIANSON. In Minnesota we had treaties by which the titles of the Sioux and the Chippewas were extinguished.

Mr. COLLIER. In 1867 Congress prohibited making treaties with the Indians. Moreover, prior to 1867 lands were taken without any contract or negotiation or consideration by the Government. In the case of the Papagos that did not happen because the Papagos came in through the Gadsden Purchase. They came from Spain and at the time they came in they had an unquestionable prescriptive right to the use of the land where their pueblos were located, that is, their villages. The areas they were wandering over or grazing upon were not defined. The creation of the Executive-order reservation was supposed to be a grant of land equivalent to that which they had been occupying, to which they had the right of occupancy, but whether that grant conveys the ownership of mineral would be a moot point, but the moot point is almost certain to be resolved

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against the Indians if they ever get into court. It is to them res adjudicata as a legal principle, as a claim and there they are not involved in this controversy at all. It is a vague claim, a vague question. There have been all sorts of fake sales in connection with imaginary grants in the Southwest, but this has nothing to do with the question of preserving certain rights to the Indians, including the use of the surface and rights-of-way to the minerals.

Mr. PEAVEY. May I ask the Commissioner one question pertaining to the Papagos before we proceed?

The CHAIRMAN. Yes.

Mr. PEAVEY. Mr. Chairman, yesterday before our committee some reference was made by a gentleman representing some of these mineral interests from Arizona with relation to a certain contract for attorneys which had been approved by the previous administration of the Bureau of Indian Affairs having to do with this Papagos question. I believe he stated that that contract would expire automatically on April 4. At least that is the meaning I gathered. I will ask you at this time whether or not that attorney's contract has any serious connection with this matter as it comes before the committee at this time and whether or not any action could be taken at this time to terminate it in protecting the Indian interest involved?

Mr. COLLIER. I am unable to say what connection it has. It is just one of many attorney contracts. Frankly, I have not been able to see that the attorney was doing much since I came into office. He is working on a contingent basis and his recoveries would be predicated on capturing something back that it is difficult to say he could recapture.

Mr. PEAVEY. And that contract will automatically terminate on April 4?

Mr. COLLIER. I am not even sure of that, but it could be terminated at any time if evidence were presented that he was not acting in good faith or was doing damage. No evidence has been presented to the effect that he was acting in a corrupt way, of conspiracy or anything of that kind. He seems to have been eminently negative.

Mr. PEAVEY. In your opinion this action or failure to act on his part has not operated to the injury of the Indians?

Mr. COLLIER. I will put it this way. If I thought that the Indians could claim those minerals, then I would say that the attorney, Mr. Graves, has been very slow, very dilatory in getting into action and establishing the claim. His failure to get into action may indicate that he is not in position to protect the Indians or it may indicate that he cannot find any ground for action, but even so let me make this clear, that if the Papago Indians own these minerals, then they have owned them for a long, long time, and no action by Congress itself could divest them of ownership. They own them or they do not own them. It is a question of law. If they own them Congress cannot take them away. If they do not own them, Congress could give the minerals to the Indians, but there is no proposal of this kind before Congress and there is nothing in this bill that gives the minerals to the Indians. The only criticism of Mr. Graves would be from the standpoint of negligence, in that he has not gone into court to litigate or that he has not come to Congress with a bill to give the minerals to the Indians, one or the other, but I am not prepared to say that it is his fault. As far as I know that man is not doing much,

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but I do not know that he does harm and no evidence has been presented of any wickedness on his part. Maybe we ought to wipe out that contract because of his inactivity, but obviously the mining interests of Arizona cannot be objecting to him on that ground.

Mr. STUBBS. If I understand it, this contract with the lawyer has stopped mining development in the reservation.

Mr. COLLIER. No. The thing that stopped mining activity temporarily is this action of Secretary Wilbur in temporarily withdrawing the area from exploitation for mineral purposes. Either the Secretary could simply restore it for mining purposes or he could restore it under regulations which would effectively safeguard the surface rights of the tribe and whatever revenue they are entitled to for the use of the surface. The lawyer has nothing to do with it.

Mr. STUBBS. If I understand it, one of the worries of these Indians at the present time is that mining has stopped and they have not worked and have not had opportunity to sell their produce to the miners because of this order of the Secretary of the Interior.

Mr. COLLIER. Yes.

Mr. STUBBS. If I understand it rightly that is the thing they want cleared up so that their mines can be reopened and they can sell their beef and activities can begin on the reservation.

Mr. COLLIER. Yes.

Mr. STUBBS. I think that is the thing these gentlemen came up here to see us about instead of to oppose this bill or something of that nature.

Mr. COLLIER. And what they are saying might have relevancy to a possible bill, one which would make it safe to reopen that area through requiring the surface to be protected. All parties could have gotten together on that a long time ago except that apparently Mr. Mitke does not want to get together on it.

Mr. MITKE. Mr. Chairman, Mr. Commissioner, and members, I merely want to answer this to acquit myself and the man employing me on the reservation, that is, the representatives there at the present time who are ready to operate, Mr. Margold, assistant solicitor to Mr. Ickes, and Mr. Fahy, those two attorneys have told me right off last year that as long as this contract with the attorneys is in existence it has clouded every mining title on that reservation, and I can get that statement for you. That is an authoritiative statement because there is a chance of losing it if this were passed. If Congress should make a grant, then the Indian titles of 1853 would be wiped out; it would wipe out all titles there. Those are Mr. Margold's statements and I can get that direct from him and also Mr. Fahy. There is one thing I will just complete that the Commissioner barely touched upon. The reservation with 2,300,000 acres was opened by Executive order in 1917, as stated by the Commissioner. The people only wanted a reservation of 50 or 60 thousand acres. They made it so large and the people fully agreed that they would reserve the right to locate minerals under the laws of the United States, to have that right in order that they could mine and not hold back mining in the southwest. That is why it was made so large as to cover not only general nonmineral land but the whole area. So they had the right to the nonmineral land.

Mr. COLLIER. Just to guard the reputation of Mr. Margold, the solicitor, I want to make it clear to all members of the committee

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that an Indian tribe can come to Congress any time and ask them to give them anything. They are all the time coming. There are tribes all over the Southwest that are constantly asserting that they own vast tracts and that it is the duty of Congress to recognize that ownership and grant them the land and give it to them. Insofar as that clouds titles, then this contention of the Papagos clouds titles. As I say, obviously Congress can grant anything that belongs to the Government to an Indian tribe. If mineral belongs to the Government it can give it to the Indians. The Indians are free to ask for it. Does that cloud titles? On the other hand, until litigation is started asserting Indian ownership of minerals, the presumption certainly is that they do not own them. There is no pending litigation making any such assertion and no one could stop them from starting litigation, if they wanted to. Anyone is free to litigate and go into court. Actually the Papagos have not gone into court. This is merely to say that Mr. Mitke must have misunderstood the Solicitor of the Interior Department.

Mr. MITKE. I will prove that to you.

Mr. COLLIER. I will proceed.

Mr. CARTWRIGHT. Yes; the primary object of this meeting is to consider the Department's measure and the Commissioner will now proceed.

(WITHHELD FROM PAGE 155 OF THE HEARING OF MARCH 12, 1934)

STATEMENT OF NATHAN R. MARGOLD, SOLICITOR OF THE DEPARTMENT OF THE INTERIOR

The CHAIRMAN. The Commissioner is represented here this morning by Mr. Margold, in compliance with the previous order of the committee. We will be glad to hear from him now, and will your please suggest about how much time you desire?

Mr. MARGOLD. It should not be more than a half hour; it may be less. It depends on how many questions are asked.

The CHAIRMAN. That is all the time you will be allowed, unless the committee should grant you more. You will be recognized for a half hour.

Mr. MARGOLD. Mr. Chairman, and gentlemen of the committee, I was informed last week that there was injected into the hearings on H.R. 7902 a question as to the controversy with reference to the mineral and other rights which, for some time, has gone on with respect to the Papago Indian Reservation. I think it will be helpful if I can make a brief presentation of that controversy for the information of the committee. I think, in the course of it, it will be demonstrated that that particular controversy has no relation whatsoever to H.R. 7902 and in addition I think it will be demonstrated that that controversy is in itself now in a fair way toward satisfactory settlement.

I think the members of the committee know that from time immemorial, the Papago Tribe, a peaceful and friendly tribe, has roamed the areas which are now covered by the Papago Indian Reservation; in fact it has roamed over and occupied a large area which certainly included that. The precise bounds cannot be determined with any degree of accuracy, but it did include that area.

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Until the Executive order of January 14, 1916, the Papago Indians had no paper title or right of any kind officially recognized, other than the right to use and occupy which they had had, by sufferance, from time immemorial. However, on January 14, 1916, President Wilson definitely established a reservation by Executive order; that order was revoked on February 1, 1917, primarily for the purpose of issuing a new order, which varied somewhat the bounds of the reservation. That order of February 1, 1917, was thereafter supplemented by an act of Congress of February 21, 1931, which gave to the Papago Indians a 6-mile strip of land, which under the Executive orders had separated the two parts of their reservation. Now, both the orders and the act definitely excepted the mineral rights on the reservation; they gave the Papago Indians the right to use and occupancy of the surface, and I will go into that shortly. There was a definite reservation to the United States for general entry of the mineral rights.

After that act there was a course of litigation having to do with the so-called "Hunter-Martin deeds"; a man by the name of Lewis had obtained purported deeds from the Indians giving them certain rights to certain sections on the public reservation and in an attempt to establish by litigation the rights under those deeds, two things happened: In the first place, by litigation which went to the Supreme Court of the United States, it was definitely established that those deeds were invalid; that they were not any good at all; that they were not worth the paper they were written on. On the other hand, the litigation, because of various jurisdictional questions and questions as to the authority of the attorney to represent the Indians, did not decide at all the question of the right of the Papagoes to the minerals, despite the reservation of those minerals to the United States in the Executive order. Of course, if the Papagoes had title, the reservation to the United States would be ineffective. That question was never decided by the Supreme Court of the United States. That, and perhaps other matters, led to a group of attorneys, one by the name of Graves, who had been joined by Mr. Slemp and Mr. Calhoun, in obtaining authority from the Department of the Interior to negotiate with the Indians for a contract looking to the establishment of their mineral rights; that was granted; a contract was submitted and it was approved on April 4, 1929.

Mr. Peavey. Were any of the attorneys just mentioned by you in connection with this attorney's contract directly or indirectly concerned with the group which prosecuted the Hunter-Martin cases?

Mr. Margold. I have been definitely assured by Mr. Graves, and I have the document here if you wish it, that they have no relationship to it now. In any event, I think the question, as a matter of law, is clearly settled; that those Hunter-Martin deeds are invalid; it is a matter which is res judicata, and they cannot be revived. Even if proved that the Pagago Tribe had the right to the minerals, nevertheless they might retransfer it, but the deed would have to be by the Department of the Interior. Those old deeds were never approved by the Department; they were invalid.

Mr. Peavey. I am not following so much the history of the title as the question of the attorneys; were any of the three attorneys associated with the Hunter-Martin group in prosecuting the land titles previous to the question now before us?

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Mr. MARGOLD. I regret I cannot answer that in whole. I made the inquiry as to whether they were associated during the period, or are now associated, and was advised they are not.

Mr. PEAVEY. They are now, but they were not previously?

Mr. MARGOLD. I cannot say; I do not know. As I go along, I will show that part of it is almost an immaterial matter. I will go into that fully. I am trying to sketch the background of the questions before going into the titles at all.

After this act of Congress, Mr. Graves, on behalf of the Indians or one of those attorneys, came to Washington, I believe he came personally, I am not certain of that fact, but some of those three attorneys were here and they obtained from Commissioner Rhoads—this was during the preceding administration, on October 26, 1932—withdrawal of those mineral lands pending action by Congress which would look toward assuring, by legislation, to those Indians the right to those mineral lands if they did not have it.

That withdrawal order was made and was on record when the present administration came in, and I was appointed as Solicitor of the Interior Department last March. Very soon thereafter, after I was in office, the matter was brought forcibly to my attention through communications from the Tucson Chamber of Commerce and Mr. Mitke, claiming that the withdrawal order was unwarranted and should be rescinded, going into the whole history of it, and tying it up with the Hunter-Martin cases and making all the arguments which were made before this committee.

Mr. PEAVEY. To clarify that in my own mind, has the gentleman, since he became associated with the office, learned just what reasons actuated the office of the previous Commissioner and those associated with him in granting these attorneys this right to go out and solicit contracts?

Mr. MARGOLD. I was going into that; I will give you all we know concerning that. When these questions were raised, as I recall, the question as to the contract was not vigorously pressed until some time afterward, but they were attacking originally the withdrawal order and sought to have that revoked. I assigned the matter to Mr. Fahey, whom I have appointed as First Assistant Solicitor, and he is here with me today to speak before the committee. Mr. Fahey, after a full investigation, in connection with another Assistant Solicitor, Mr. Flannery, who could not be here this morning on account of another matter, went into the question thoroughly.

They had extended conferences with Mr. Mitke and they reached that conclusion; as to the various reasons which induced it, I will refer to Mr. Fahey. I wish to give my own contact with it; later they reached the conclusion, and recommended to the Secretary that the withdrawal order should not be withdrawn; that there was a legitimate interest of the Papago Indians which should be protected, and that the work on legislation to try to protect that interest should go forward, and the Secretary of the Interior, approved that decision. This was the end of June last year; at that time I was about to go to the western part of the country, to various Indian Reservations, and I was requested, in view of the further urging by the Chamber of Commerce of Tucson, and Mr. Mitke, to go into this matter when I was in Tucson, and I did so. That was last August; I met with the chamber of commerce in Tucson and met all

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of the members present in town; I met with all the representatives that could be contacted of the various groups of Indians and conversed with Indians as far as I could, individually, on this matter, and tried to get, and I think I did get, a fairly reliable view of the whole situation. We had one conversation in the chamber of commerce, where the chamber was represented; there were representatives of the groups of Indians who wanted the attorneys and of the Indians who did not want the attorneys, and of Indians who wanted the mineral rights and who did not want the mineral rights. We had a general discussion and, I think, a fair statement, and we reached what I thought at the time was a compromise method of handling the situation which would be satisfactory to all parties in interest.

I was told at the time that Mr. Mitke was in New York; they intimated he might be satisfied; and there was a large number of members of the chamber and they indicated that the compromise was fair. Mr. Graves could not come as his wife had had a motor-car accident, and he came a day or two later, and he thereafter said that he thought the compromise was fair and he was willing to acquiesce in it.

Mr. Peavey. What opinion did the gentleman himself arrive at of the Indians? Did you gain the opinion that a majority were in favor of the contracts or not?

Mr. Margold. This is the situation; as nearly as I can find it; it is subject to error, because I could not spare all the time necessary to see everybody, but I did see the representatives of the groups; certainly those in the foreground of pressing this matter, except Mr. Mitke. The individuals were roughly divided into two camps; there was one group of better educated Indians who wanted all they could get, and the mineral rights, if they could get them. They were vigorously opposed to any loss of their surface rights, which they said they needed for present grazing purposes; the reservation has not any adequate water supply; it is not subject to much grazing; it is largely sage brush, and the cattle were terribly underfed at the time, and that group stated that they needed all of the surface rights but the others wanted their rights preserved as far as they could, and they wanted this group of attorneys, unless we found some reason why they should not have them. The other group was less educated; generally there were those two groups. They did not want the mineral rights; I do not think they knew sufficiently as to what was involved, because I found this out; none of those Indians realized that to throw this reservation open to settlement under existing law, and to allow patents to minerals would carry with it irrevocable rights to the surface, and eat in on the surface rights of the tribe.

I spoke to those that said that was not the way they understood it, those against the attorneys, and those in favor of opening the mineral rights; they all said they did not understand the situation as allowing the leasing of their surface rights; if those were thrown open, I told them under existing law, that would be the consequence, and had been the consequence with respect to 122 patents which were already issued. I said that after you threw it open for mineral rights, it could be used in fee. I also talked to the leader of this less educated group, who said he was the father of the missionary in that region; I spoke to him, and he told me he did not understand that, and that agitation against the withdrawal order was based on the common

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notion that none of the withdrawal of mineral rights would interfere with the continued grazing and surface rights of the Indians. I know that since that time that Father Blassa himself is opposed to this, under the existing set-up which will permit somebody's going in and obtaining the surface rights and eating into the Papago Reservation, which is interspersed with minerals, and which would permit a heavy drain on the surface rights of the Indians and an irrevocable alienation of those surface rights, in connection with the mineral rights. I presented that consideration to that group, and told them I did not consider it fair, assuming the Indians had no title to the minerals at all, to permit the existing situation to continue, whereby people could come in and make proof, which is not very difficult, and eat up and emasculate this reservation, when they needed those surface rights, and they agreed, and I proposed this compromise. I said the question as to the title is a question of law; it is not a question of policy; either they have or they have not title; if they have, neither Congress nor the President of the United States nor anybody, under the Constitution, could take away their right without compensation, unless for a public purpose, and then it would have to be compensated for, because if it were not, that would be in violation of the fifth amendment.

I suggested that anything to be done should be done in an official way, to get the title to the mineral rights decided, and I suggested that they refer it to me, as Solicitor of the Department of the Interior, and they all agreed that they would abide by my decision. I said if there was a title, then the Department would have the clear duty to defend the Indian's rights and to revise the existing leasing rights to minerals, so those who wanted to could come in and prospect and that if there were any existing rights we would have to protect them, but on the other hand, I said if they did not have the authority to come in there, then there was no necessity for any litigation; that there was no necessity for any jurisdictional act; that it could be settled in that way if they wanted it, and they said they would abide by my decision as to their rights, and if I held that they had no mineral rights, they would cease that agitation, provided the other aspects of the compromise were carried out. These are the other aspects: I said, assuming that they had no rights, they still had, as I saw it, under the Executive orders, a clear right, both by immemorial use and occupancy, and by the Executive order, to the use of the whole surface of the land; what they did not have was the right to the minerals, and that I thought some new legislation was necessary to be passed which would protect their rights to go in and prospect and get title to the minerals, and at the same time protect the rights of the Indians to the surface rights, so that the patent to the minerals would not carry a patent to the surface, but would be merely a license to use the surface on the payment of a reasonable rental charge, equivalent to a grazing fee, so long as that surface right was used.

Those are the elements of the compromise which I suggested, which was acceptable. After a time Mr. Graves and I were in conference, and I presented the matter to him, and he said that would be acceptable to him, and that being so, I thought I had ironed out the situation satisfactorily. I went elsewhere and came to Washington toward the end of September. Shortly after I came I asked

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Mr. Mitke to come in to see me and presented this matter to him as it had been arranged there. At the first conference he was hesitant and said specifically, as I recall, that the compromise was fair if left up to my decision; I assured him he could trust my personal integrity to see that as long as I was in office I would see that every obligation we had undertaken would be attended to fairly to both sides; I told him before any act was submitted to Congress I would present it to him for his views and suggestions; that if there were no rights to minerals, or rights of miners to go in there, we wanted to know, and if they did have mineral rights, we would try to get legislation for the miners to come in and prospect for the minerals. Mr. Mitke came back within a week or two, and he expressed dissatisfaction, after thinking it over, with the compromise, but he directed his arguments to two things; he said first of all it might be difficult to work out a way which would enable prospectors to finance their undertakings without giving them full rights. I said I thought we could work it out; as I recall the original proposition was merely to give irrevocable licenses to miners; but he said he thought no banker would loan any money on such an undertaking. The chief point he raised and the one stressed most—that is the first time that it was very much stressed—was the impropriety of the original contract with these Indians and the necessity of cancelation.

In bringing that up, although it had been raised, but not stressed before, while on the reservation I made inquiry—they were not full inquiries, but some inquiries—as to the various Indians, and afterward as to the negotiation of this contract, and I wanted to see whether the records, which showed no irregularity, were borne out by the actual facts, and it appeared that after the attorneys had gotten the right to go in and negotiate this contract the superintendent had sent out a notice to the tribes in the regular way, just as it is done at all times, that this matter would be considered at a tribal council; that a tribal council was held, just as in other cases, not everybody being present, but there were present groups from both sides, although the predominant group was the group of more educated Indians who wanted the mineral rights pressed, and in a regular way they did agree on the contract, and they sent that in the regular way to Washington, and it was approved, so far as any matter of procedure is concerned, and quite apart from the question of the qualifications of the individual attorneys; there was no irregularity in that contract.

Mr. PEAVEY. Is that the regular matter of negotiating attorney's agreements for the Department of the Interior to grant permission to an attorney, leaving him to be governed only by the dictates of his own conscience, to use any method he wants to get the consent from the Indians?

Mr. MARGOLD. Not having been in the Government service at the time, I do not know whether it was or not; all I can say, I spoke to the superintendent and he told me that was the way they would do with reference to everybody; this was not the superintendent who was there at that time; this was the new superintendent.

Mr. PEAVEY. Would the gentlemen say that in a territory inhabited by 4,000 or 5,000 Indians, that it was a representative tribal gathering that represented less than 100 votes?

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Mr. MARGOLD. I cannot say; I do not like to speak with authority on a subject I am not informed about. I would defer that question to Mr. Flannery or to the Indian Office. I was assured that this was the way in which contracts were negotiated, and to a practical extent, where the Indians extended over a large area, they must be negotiated by the council representing that tribe.

Mr. PEAVEY. Is the gentleman familiar with the record, as it has been made in his Department, as to what transpired at those tribal meetings, and it appears that the second meeting was shown to have been held to have the contracts approved, the first meeting having been called in one place and no one showed up, and then they roamed 25 miles away, and so far as the record shows, only 2 Indians participated in that meeting.

Mr. MARGOLD. I have not gone through all of the records myself; I am speaking from what advice I have received from some of my assistants, and what was told me on the reservation; I spoke there to the official council of the reservation, or to their representatives, and they were present; they advised me that they, as the official tribal representatives, had been duly elected, and the superintendent told me that the duly elected representatives had approved the contract.

Mr. PEAVEY. Is the gentleman familiar with the customs and habits of the Papagos?

Mr. MARGOLD. I had no association with them except the brief one which I had last summer. Personally, I am not familiar.

Mr. PEAVEY. The gentleman does not know whether or not they have a general council or whether they are divided into small villages or pueblos?

Mr. MARGOLD. They have some villages; they have a general council, as I understand, which represents all officially.

Mr. PEAVEY. Is the general council recognized by the Bureau?

Mr. MARGOLD. Under the Sells Agency, as I recall.

Mr. CHAVEZ. Is it recognized by the Department?

Mr. MARGOLD. I think so. Recognized by the Department? Mr. Fahey can answer that; I think that they are, although this inquiry will diminish in importance as I go along, because I will show none of these questions really have any pertinence or important bearing today.

Mr. PEAVEY. Perhaps we can reach an agreement, so far as I am concerned, if the gentleman will state or give me some assurance that this matter is of no importance to this inquiry; why is the contract still being continued?

Mr. MARGOLD. I was coming to that. I think I can take that up now. The contract will expire on April 4 of this year. If there were any real rights, one way or the other, hinging on the validity of that contract, it would merit a very serious consideration, on its merits, which it has not received, because of the charges that were made, but when the contract expires the only question is what rights, if any, have been given under the contract. Mr. Mitke has stated before this committee that under that contract there is a 10-percent fee to the attorneys. On that, and this is important, that fee in the contract—I have the contract before me—is a purely contingent fee; if the committee wish, I will read that provision, but it provides no actual fee of any kind that would be required to be paid, either now or on April 4, when the contract expires.

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The contract looked toward the enactment of legislation, as a result of which the Papagos might obtain some recovery, and provided some maximum of 10 percent of whatever recovery might be obtained, to be paid out of that recovery, but this is something Mr. Mitke is misinformed upon; I have called this to his attention, but in spite of that he keeps discussing it, that contract is not merely contingent, but it is based on a quantum meruit, so that the Department of the Interior, before a penny is paid, will be required to go into all these facts, assuming there was a recovery, and decide what, on a quantum meruit basis these attorneys have earned. If that were pertinent we would have to go into it; it is not pertinent because there has been no recovery, and there cannot be any recovery between now and April 4; there could not possibly be any recovery, and the contract will expire before any contingency arises which would require a careful investigation into the contract.

Mr. PEAVEY. The gentleman is aware of the provision of the contract which permits the Secretary, by serving notice on those mentioned in the contract, that the life of the contract may be indefinitely continued; will the gentleman assure the committee that such notice will not be given?

Mr. MARGOLD. I can assure the committee, as I have assured Mr. Mitke, that no continuation of this contract will be made, and no inquiry except into its original validity and the necessity for making it as well. I should say this, that all of the considerations would normally be gone into in this contract if it were to be canceled; as the situation has developed now, I see no need for continuing the contract. The reason I would not speak finally, is I would like to reserve to the attorneys the right to come in and make a full presentation and persuade me that my opinion is wrong. My opinion is the contract ought not to be made unless a strong showing is made, both as to the original validity, and as to the good faith and proficiency of the attorneys, during the contract, and their competency; if they show that, I do not want to foreclose myself, by a definite undertaking not to do so.

Mr. PEAVEY. Why do you and the present personnel in charge of the Department attach so much importance to the right of these attorneys to secure the contract in the manner in which they did?

Mr. MARGOLD. I do not attach any importance to it. The importance I attach is an opportunity to those attorneys to be given a right to show that importance should be attached; that they did procure it properly. That investigation has never been made thoroughly; my own offhand opinion is that I, today, without a very strong showing, would be definitely against any extension of this contract. I do not think I ought to cut off from the attorneys the right to come in and convince me I am wrong.

Mr. PEAVEY. Is there any record in your Department, or in the Secretary's Department, with relation to the employment of the attorneys, relative to the question of ability or experience or anything else that qualifies them to represent individuals, which is shown as a part of the official records?

Mr. MARGOLD. I have found none, and that is one of the reasons—there are some others—definitely against continuance. We would have to show ability, good faith, validity of the original contract, and real need for their service. As I see it today, and I speak

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on the basis of the extent of my knowledge, which may be inadequate, they cannot establish any one of those four conditions. I do not want to say they would not be given an opportunity to be heard on all.

Mr. PEAVEY. May I ask the gentleman this question: There is only about 3 weeks now until April 4; have these attorneys signified any desire to come in and be heard?

Mr. MARGOLD. We have not heard; I do not know whether an application will be made or not; I have assumed none will be. I do not think the situation necessitates employment of attorneys.

Mr. PEAVEY. May I ask the gentleman, as this question appears to assume so much importance with relation to this all-important bill before this committee, could not the gentleman confer with the attorneys, and the Secretary and give assurance to this committee that that contract would not be renewed or continued?

Mr. MARGOLD. I think that would be possible; I think Mr. Graves is here.

Mr. CHAVEZ. If you came to the conclusion that there is no need, or was no need for the attorneys to protect the interests of the Indians in this instance, what particular need would there be for the firm of Calhoun & Slemp to protect the interests of the Indians in the same matter?

Mr. MARGOLD. None whatsoever. If the committee will allow me to proceed, I will show what seems to be important is not important, not because it is about to expire, but because as the situation lines up, there is nothing to be done. As I was saying the attorneys, or Mr. Graves, representing them, assured me he would accept my opinion as to the mineral rights, and that if I decided against them, he was not going to go ahead with the things in the contract, to establish the rights which they did not have, or to obtain jurisdiction in the Court of Claims looking toward payment to the Indians of any sum. I did look into the mineral rights, and have prepared an opinion, which was signed a week ago, although it was practically ready about 3 or 4 weeks ago, subject to changes in wording, in which I found definitely that they had no title to the minerals.

I have copies of that opinion here and will leave them for the information of the committee. That being so, the worst element of this controversy as to the existence or nonexistence of the Indian title is if those who agreed to accept my opinion do so, it is all right; they do not have to; I had in my own mind whether they could get around it. Personally, if anybody tried to introduce a jurisdictional bill, I would take the view that there was so little merit, it ought not to be pressed; that element is satisfactorily established.

Mr. PEAVEY. You have referred to your compromise agreement, reached by the contending parties in Arizona. Are the steps to be taken by the Government for the settlement of those questions actively being prosecuted at this time?

Mr. MARGOLD. The first step was the opinion as to whether or not they have mineral rights; that is completed; the next step has to do with the formulation of legislation to be submitted for the consideration of Congress, which will try to divorce the title to the surface from the title to the minerals and fully protect the rights of the Indians as to the surface, and which will fully protect the rights of the whites, or whoever wants to go in and prospect for the minerals; that work is

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going forward in my office; one assistant is giving practically all of his time to that, in an effort to draft a bill for the consideration of the Congress, with a view to its possible introduction and passage at the present session.

Mr. PEAVEY. With regard to the order closing the reservation to mineral entry, prior to the issuance of that order, this development work had been going on?

Mr. MARGOLD. The development work had been going on to a small extent; yes. There were 122 patents over a course of 50 years, perhaps, and about 58 actual claims which have been suspended.

Mr. PEAVEY. Has there been any large new development in the mining field, or any new operations in the last 2 or 3 years?

Mr. MARGOLD. I do not know; I am not familiar with the facts.

Mr. PEAVEY. I am asking particularly from the standpoint of the economic aspect as it affects the Indians. As I understand, the issuance of this order has practically closed down mining, and that has stopped business, and therefore, the Indians are without employment, and without a chance to sell their products to the miners; I would like to ask you what harm could come to either the Government or the Indians, involved in this legal question to be settled, if that order were rescinded and the reservation were left in the same position it was in before the order was issued, while you are getting legal questions settled, instead of closing the reservation and demoralizing everything? Why not leave it open and settle the questions in the courts or by legislation?

Mr. MARGOLD. As I understand, the legal question is now settled; the only thing necessary is to get legislation which will provide a method of opening up, which will not divorce the Indians from the surface rights; if it is opened up now, a flood of miners would come in, establishing claims under existing mining laws, which enable them to get patents to the minerals as well as the surface rights.

Mr. PEAVEY. What would bring in this flood of miners all at once?

Mr. MARGOLD. I was told that there are a great many miners who have nothing to do, who are on the county, and this is one of the main interests of the Tucson Chamber of Commerce, to get these men to go onto the land to try to make some headway for themselves. If they go in now, under existing statutes, they will not be merely prospecting for minerals, to which they ought to be given access, but they will be taking away the surface rights of the Indians, in which the Indians ought to be protected; the need is for legislation which will give the Indians that protection before it is thrown open.

Mr. PEAVEY. The gentleman understands, of course, that it is the desire of practically every member of the committee to protect the Indians, but I do not like to protect the Indians on the legal question, and let them starve in the meantime.

Mr. MARGOLD. I went into that, as to how much employment would occur; my own information is that that was largely fictitious, unless in this act we put in preference rights, giving the Indians preference rights as to labor; that is one of the things. I spoke to the Indians, and none made any claims of any large employment, or large purchases. The white people were brought in from the outside, and the purchases were made from the outside, and the only thing they need protection in is of their surface rights. The question, as far as the Department goes, of the title to the minerals is settled. The Indians have no title

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to the minerals; they have title to the surface; they have the right to be protected against the operation of existing laws; they have a right, though not as clear, to be given preference as to labor and materials, and, so far as advisable, in prospecting for these minerals; they have a right to be given a rental for the use of the surface. Those rights they would not have today, if that withdrawal order were revoked. It is to protect those that we are working on now; one of my best assistants is working continuously to try to draft a bill which will be introduced as quickly as possible, to give the Indians those rights. That was not possible until the opinion was rendered. That was a long, difficult, and complicated question.

Mr. CHAVEZ. Congressman Disney is here, and if we may interrupt, he desires to be heard for just a monemt.

Mr. DISNEY. I just have a moment, as I have to attend another committee. Mr. Thompson, of Joplin, representing the Quapaw Indian Tribe is here, and, at the committee's convenience, he would like to discuss H.R. 7902.

Mr. CHAVEZ. I am sure the committee would be glad to hear Mr. Thompson.

Mr. DISNEY. Mr. Thompson is here now, and he can stay until such time as the committee desires to hear him.

Mr. CHAVEZ. I do not know whether we will have time to listen to him this morning. I do not believe the Solicitor is through yet, and there is another representative from the Department here.

Mr. DISNEY. I will turn Mr. Thompson over to the chairman.

Mr. CHAVEZ. Whether or not we will have a meeting tomorrow will depend on the chairman.

Mr. PEAVEY. I am very much interested in your statement, and am inclined to agree to the soundness of your judgment in the matters involved, but to my mind, you still have not cleared up the practical question involved in the situation of these Indians being destitute, as they are, and having been practically robbed of all their markets by the closing-down of the mining operations, due to the withdrawal order. As one member of the committee, I would like very much if the gentleman would elaborate a little bit, in order to make clear to us just why the rescinding of this withdrawal order would work any particular hardship on the Indians or the Government involved. Mineral prices have not advanced tremendously; industry is not flourishing; capital is not seeking investment in mining operations or anything else. I, for one, am unable to understand why, if you were to rescind the withdrawal order and allow the status quo to prevail until the Congress or the courts decide the legal questions, you would not help not only the Indians, but the white people of the whole State.

Mr. MARGOLD. Perhaps I can make it clear in this way: If the withdrawal order is rescinded, people would come in. We do not know how many people would come in; a few people would come in. Let me go back to that; people would come in and would make claims and prospect for minerals; their rights would be determined under the existing mining laws, and those rights would give them, on a discovery and the doing of the various things that the law requires, not merely a patent to the minerals, but a patent to the surface; once they get a patent, that is irrevocably lost; not only the minerals, but the surface which the Indians need, and which they are entitled

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to. In the meantime, people will use the surface rights, and pay no compensation therefor, because none is provided for under the existing law. People might use Indian labor, but if we are to judge as to the practice that prevailed before there, little Indian labor would be used; as to the purchase of products, very few products would be used, we do not know how many. It is problematical. All hinges to a great extent on how many come in. If a few come in, as was done before the withdrawal order, then the matter is not important; there would be little employment; there would be little produce purchased, and there would not be any very great harm, until we can afford the protection. Under the existing law, if a great many people come in, then the danger becomes far more menacing, because there is a danger of a great many people getting patents under existing law, and of tying up a great deal of the Indian lands.

If we balance that situation against the situation of a brief continuation of the withdrawal order—and the other changes the status quo—if we maintain the status quo, until we can get an act, which we hope to have within 2 or 3 weeks, at the outset, perhaps less than that, to submit, if we can get that act through, and then throw it open, we have a situation where the Indians get all of the benefits, whatever they are, which they would not get if they were thrown open today, with none of the disadvantages, which they ought not to incur; they ought to be protected as to their surface rights; there ought to be some method of preference in labor and supplies.

Mr. PEAVEY. Will the gentleman permit a question or two? The issuance of these orders throwing open to entry or closing to entry are not very large or voluminous, nor do they take any very great length of time; as I understand, they cover a single page; the Secretary could prepare one in 30 minutes. What would there be to prevent, if he were to withdraw the original order closing the entry, if he found that a flow of prospectors were coming in, of issuing an order closing it to entry? I would like to ask you, and I do not want to place responsibility on you for your predecessor, but I wonder how much examination and how much presentation of facts was had by the Secretary in connection with the issuance of the original order.

Mr. MARGOLD. I cannot say as to that; we have gone into it, and we are persuaded that this order ought to continue until we can get this legislation. The difficulty is not in framing the order. If we throw it open now, it will be done under existing laws which are unfair to the Indians, in that they enable those coming in to take away the surface rights.

Mr. STUBBS. You are preparing a bill along that line?

Mr. MARGOLD. Yes, sir.

Mr. STUBBS. And you hope to get it through this session?

Mr. MARGOLD. Yes.

Mr. STUBBS. Suppose you do not; then you have an embarrassing situation until the next session of Congress; suppose you hesitate again until the next session is passed over and the situation continues on indefinitely. I do not see why you have not whipped this bill into line before this time. It seems to me it would have been possible for you to have come in the beginning of this session of Congress with this bill without taking so much time.

Mr. MARGOLD. I can answer in this way; there are two questions involved, and both are related. The first question that had to be

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decided before we knew what the bill was to be, was the question as to the title to the mineral rights; that was a very difficult, intricate and long study; it is not easy to decide that; I would like the Congressman to read a copy of my opinion, which will indicate the difficulties involved. We did not know what kind of a bill we would want until we knew whether the Indians had title. The second answer is that the pressure of work especially on the Solicitor's Office, and the Interior Department, has been so great and while if we look at just this one thing, it seems easy, if you take it in the background of all the work we have had to do, including the administration of the code of fair competition for the oil industry under the National Recovery Act, and the many other special duties imposed upon us, I think you would not be unfair, if you knew the amount of work involved, to say we have been doing it as expeditiously as anybody could, under the circumstances. The question of examining the title was long and intricate; the question as to the bill, we have only been on that a few weeks, and we hope to have it done within 2 weeks.

Mr. STUBBS. It is your opinion that if it is not passed at this session, this order will hold?

Mr. MARGOLD. That is my present opinion; if that happens, I would rather inquire into the equities and advantages and disadvantages before I decided whether to recommend it be withdrawn on the ground of the hope that that legislation is passed, or that it be continued, although I think the balance of interest favors keeping it, until we get the kind of legislation we need. I hope we will not be faced with the necessity for making that decision; I think the bill we are preparing is going to be fair to both sides, so that the chamber of commerce, Mr. Mitke, and everybody will join in recommending that it be passed, as a solution of the problem.

The CHAIRMAN. Your time has expired, and there are gentlemen here whom we have promised a hearing. We are much obliged to you.

Mr. MARGOLD. May I have 2 minutes more?

The CHAIRMAN. If you have that time, you will steal it from the others.

Mr. MARGOLD. What I want to say is one thing which I have not mentioned and which is something that can be demonstrated; this whole controversy has no relation whatsoever to H.R. 7902, which applies in no way to this special controversy. Neither of the sections mentioned by Mr. Mitke has any application; one has to do with ceded lands, which are to be sold or auctioned, which can be withdrawn; there is no such land in the Papago Reservation. The other is the general power of eminent domain, and in any Indian community they can confiscate lands only for purposes they can justify, and only after full compensation. We have carefully refrained from putting any provision in that bill which had any relation to the special controversy in the Papago situation, which will be dealt with in a separate statute.

The CHAIRMAN. We thank you very much.

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(WITHHELD FROM PAGE 165 OF THE HEARING OF MARCH 13, 1934)

STATEMENT OF CHARLES FAHY, ASSISTANT TO THE SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. HILL (presiding). We will now recognize Mr. Fahy for 30 minutes.

Mr. FAHY. Mr. Chairman, and gentlemen of the committee, yesterday Mr. Peavey asked the question as to the reasons for the original creation of the Reservation Act in 1916 and 1917.

Mr. COLLINS. Are you referring to the creation of the Papago Reservation?

Mr. FAHY. To the withdrawal of the reservation. I think you would like to have whatever information we have on that. At the time the withdrawal order was executed, it contained in itself some of the reasons for it. It stated that it appears that 180 placer mining claims, involving 20 acres, within this reservation have been surveyed and approved, 122 of which have been patented, and 58 of which are not yet patented.

Mr. PEAVEY. What was the amount of acreage involved?

Mr. FAHY. Twenty acres each. There is a letter attached, dated October 4, 1932, from the acting cadastal agent to John Graves, which says that at a conference held in this office on Wednesday, October 12, 1932, attended by representatives of the Secretary's office, of the General Land Office and several employees of this office, the Indian Office, the matter was thoroughly discussed, and the conclusion was tentatively reached that it is encumbent upon this Department, in protecting the Indians in their livestock to take preventive measures in stopping any further alienation of lands for patenting mining claims.

There was a letter written by Secretary Wilbur to Senator Hayden on December 9, 1932, in which it was stated that in connection with this matter it may be pointed out, as indicated in Father Oblassa's letter to Senator Hayden, that the Papago Indians, through certain of their friends, are now urging recognition by the Federal Government of claimed old Pueblo rights, antedating the acquisition of this territory by the United States under the Gadsen Purchase of 1853, and not desiring to preclude the Indians of an opportunity to assert such rights, the withdrawal referred to was made primarily for the purpose of protecting that interest until the Congress could consider the matter. Those are the two reasons which I am able to find from the file which we examined at the time the withdrawal order was executed.

Mr. PEAVEY. Is it your understanding that there is no further or additional evidence in support of this action, other than what you have referred to?

Mr. FAHY. No. The situation was in that state when the present administration came in last spring. At that time Mr. Mitke urged that the withdrawal order be revoked. That was the first contact I had with the matter.

Mr. PEAVEY. I am not trying to fix upon the present administrators any responsibility for what took place prior to your entry into office, because I know you are entirely free from that, and I want the record to show you are; what I want to get, for my information and for the information of the members of the committee, is what the

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records of the office of the Secretary and the records of the Office of Indian Affairs, the public records, show as to the evidence on which the Commissioner and the Secretary based their actions when they made the contracts and issued these orders.

Mr. FAHY. That is what I was going to tell you; when we had the matter brought to our attention, it was reviewed; I personally reviewed this file and wrote a memorandum to the Secretary giving my views on it, of which I will be glad to give a copy to the committee, if it is desired. I found this: That it was true that some of the area within the reservation had, over a period of time, been lost irrevocably to the Indians, if they had any right to it, by the issuance of mining patents, and that there was the importunity then being pressed upon the Department to open this for further mining locations.

Mr. PEAVEY. Do the Department records show that that was brought to the attention of the previous officers; is there evidence to show that that was brought to their attention, or is this information which you have found?

Mr. FAHY. It was brought to my own personal attention through Mr. Mitke.

Mr. PEAVEY. That is a different matter; I mean the drawing of the contracts.

Mr. FAHY. You want me to confine myself to what the previous administration did?

Mr. PEAVEY. What the record shows.

Mr. FAHY. That is the purpose, to answer what the previous administration was motivated by.

Mr. PEAVEY. So far as you have been able to find in those records and in the previous history, what is the situation? The history of this, as presented to the committee at this time, is this: Mr. Graves, seeking a contract in his own interests, and so forth, prevailed upon somebody in the Department, who, in turn, prevailed upon the Indian agents, to give him assistance to get a contract ratiffed by the Indians; he gets it from the Indians, and he gets it ratified by the Department; and then the Department, in order to help him to carry his very lucrative contract through, issues this order withdrawing these lands.

Mr. FAHY. I did not draw that conclusion; I simply stated a fact; you are entitled to draw what conclusion you desire from the facts. I am not drawing any conclusion that the Department was interested, through the personal interest of Mr. Graves; I am telling, so far as I can show, that there were two things which influenced the Department as it stated in issuing the withdrawal order: First, title to land was being lost to the Indians; second, the Indians were claiming fee simple title to all land, part of which was being gradually turned over, through mining patents, to other people; until the question of title was settled, it is stated by the previous administration that the lands should be withdrawn so that no further titles would be lost, pending a determination of whether or not the Indians owned the fee.

Mr. PEAVEY. Let me ask this question: It is testified here, and I believe you testified, and it is supported by the evidence, that there were originally 180 of these placer claims filed and that 82 of them were patented.

Mr. FAHY. One hundred and twenty-two.

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Mr. PEAVEY. One hundred and twenty-two; and that covers 20 acres each.

Mr. FAHY. That is right.

Mr. PEAVEY. Now the Department, for fear that these Indians were going to be deprived of their lands, and that there was going to be a flood—as the Solicitor testified to—a flood of settlement or placer claims upon that land, and thereby encumber it, issued the order. Is it not a fact that the reservation covers over 2 million acres?

Mr. FAHY. That is right.

Mr. PEAVEY. There had been patented 2,140 acres of land; just a negligible quantity, and not at all sufficient to influence anybody into a fear that the rights of the Indians were being jeopardized.

Mr. FAHY. 2,440 acres have been patented.

Mr. PEAVEY. Is it not a further fact that if these lands were reopened to entry, and you thereby satisfied not only the Indians but the other people of that State, that the Department, if any real flood—such as they seem to anticipate or fear might transpire—if any flood or settlement of mining claims should occur, they could, in 24 hours, issue an order stopping the future possibility of its development?

Mr. FAHY. There is no question but what that could be done. My judgment would be against it, and I so recommended.

Mr. COLLINS. You have referred to only one point, and that is upon what was the withdrawal order predicated; the other point is with respect to the title in the Indians.

Mr. FAHY. The Indians were at that time asserting title to the land.

Mr. COLLINS. Have not those questions been determined?

Mr. FAHY. That question was then undetermined.

Mr. COLLINS. Since that time, have not the courts rendered a decision adversely to the Indians?

Mr. FAHY. No, sir; the court has never rendered a decision adversely to the Indians. The Solicitor of the Department, within the last 2 weeks, after a careful and studious review of the law on the whole question, came to the conclusion—and rendered an opinion to the effect—that the Indians did not own the mineral rights but were entitled to the surface rights.

Mr. COLLINS. That opinion was not predicated upon the original title or grant from the Mexican or Spanish Government?

Mr. FAHY. They had no paper land-grant title like the Pueblos.

Mr. COLLINS. Was not that question involved in connection with the attorneys who brought suit?

Mr. FAHY. They had a so-called "paper title" from Indians themselves; it did not go back so you could trace it to Mexico or Spain; those are the so-called "Hunter-Martin deeds" given by the Indians to Hunter and Martin many years ago; and Hunter and Martin, upon the basis of those deeds, sought to sustain the Indian title to the fee to the land.

Mr. COLLINS. Which would carry the minerals with it.

Mr. FAHY. Yes; that got into court.

Mr. COLLINS. And the decision was adverse to the Hunter-Martin group?

Mr. FAHY. To the Hunter-Martin group, but not adverse to the Indian claimants. It held that the Hunter-Martin deeds themselves were invalid and precisely refused to decide whether or not the In-

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dians themselves, notwithstanding the invalidity of the Hunter-Martin deeds, nad good title.

Mr. COLLINS. They did not pass on that?

Mr. FAHY. They did not pass on that. I will read you an extract from the opinion of the Court; this is what the Court said; it is reported in 46 Appeals District of Columbia, and in 249 United States 110; what I am reading from is the Supreme Court Report:

"We agree with the conclusion of the court of first instance", which was against the claim of Hunter, "but are of the opinion that the dismissal should have been not upon the merits but without prejudice to a suit, if properly brought. The decrees of both courts therefore are erroneous, and the cause must be remanded to the court of first instance with directions to dismiss the bill on the ground that the suit was brought by counsel without authority, but without prejudice to the bringing of another suit hereafter by and with the authority of the alleged Pueblo of Santa Rosa." It did not decide anything except that the particular instruments which they acted upon were void, but it left open the question of the title of the Santa Rosa Pueblo itself.

Mr. COLLINS. Their contention is that that title was based on Mexican land grants; is that true?

Mr. FAHY. That they were based upon Mexican prescription rights; I do not think they claimed any muniments of title, such as the Pueblo Indians of New Mexico had, and many others. That was the unfortunate situation of the Papagos; it is different from many others in the Southwest; they were unable, so far, to prove a land grant which would come within the purview of the Court of Private Land Claims.

Mr. PEAVEY. That being true, unless they do produce some patents or proof of title from Mexico or Spain, or some other source, the title to this land, then, is vested in the United States Government?

Mr. FAHY. That is correct; yes. In my opinion, and according to the opinion of Mr. Margold, a copy of which he left with you yesterday, the obligation upon the part of the United States is to see to it that these Indians are protected in their surface rights. We do think they have the right to the absolute legal title to the surface rights, but that the minerals are in the United States. That conclusion has just been reached.

At the time last summer when I was first brought into the matter, the situation was that the Indians were still claiming the old Pueblo rights; that claim was unheard, and had never been determined and the language of the Court, the Supreme Court, almost invited further court proceedings to determine that; it was not conclusive. There was also the urging of Mr. Mitke that this whole area be opened to numerous people, who wanted to go in and establish mining locations. With the right of the Indians still then undetermined, it seemed to me that the withdrawal order should not be revoked, so that more lands would be lost if the Indians were later determined to have owned it, until the matter of the title could be definitely determined, or until Congress could take some action in the matter.

Mr. PEAVEY. Let me ask you this question: Is this land so intensely valuable that the Indians who have held 16 million——

Mr. FAHY (interposing). It is 2 million.

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Mr. PEAVEY (continuing). And over a period of 50 years of mineral development they have only taken 2,440 acres by patent, that your Department would feel that they should not revoke an order that is causing distress to the white people and to the Indians and complicating this situation in the consideration of H.R. 7902, because those people, insist, I believe, that the passage of this bill is going to have a bad effect on their business, and the mining situation; I cannot understand the Department's position in that respect.

Mr. FAHY. I never was impressed with the view, and am not now convinced, that it will be of any benefit to the Indians to have these mining locations gone forward with. I simply may not have enough information; it has never been brought to my attention that the Indians would benefit, but certainly only a small employment would result by opening up the land to location. It also has not been convincing to me that the people of Arizona are suffering because of a lack of opportunity to go in there and mine, to any considerable extent. There is a 6-mile strip which has been opened to mining, which could be available for that purpose, and then, even if the people of Arizona were suffering to some extent, it would be hard to persuade myself that the Indians should be deprived of any title which they have, if it were theirs, in order to relieve those who claim they are suffering in the State of Arizona.

Mr. PEAVEY. The perpetuation of these claims, and this situation such as this legal contract, and this rescinding order, and so forth, all tend to cloud the title to everything and to everybody in the south half of the State; is not that true?

Mr. FAHY. That is true, and the matter should be straightened out as expeditiously as possible. One reason, too, why no definite action was taken last summer, was because Mr. Margold was then in the West, and knew about this having been brought to the attention of the Department here, and was so interested in it, that he wanted to study it on the ground, and we wanted to await his study there, to see what he thought should be done. When he came back, he told you yesterday he moved forward as fast as he could in order to bring the matter up for final determination.

Mr. PEAVEY. As a matter of administration, under the present administration, the record, so far as I have been able to determine, shows that the Department, in entering into this legal contract with the Indians for the employment of attorneys for these Indians, and in this order rescinding or stopping the filing of any other mineral claims, took this action without any notice to the people of that State, or without taking any evidence as to the possible effect of that action, and in fact gave no consideration to either the Indians or to the people of that State. I would like to ask you, under the present control, and under the present Secretary, are you in touch with the people of that State, and are you getting their views of this situation as it affects their interests, as well as the interest of the Indians of the State; in predicating your actions, do you feel that you are bound, because of various reasons, to take the attitude that you do because of the previous action of your predecessors?

Mr. FAHY. No, sir; I do not think we feel bound at all to take the action we are taking because of the action of our predecessors. We are in touch with the people of Arizona, and have been, through correspondence with different chambers of commerce; we have cor-

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responded with Mrs. Greenway, and we have corresponded with Mr. Mitke; he has flooded us with communications with regard to it, and we have had innumerable conferences.

Mr. PEAVEY. The Senators from that State are both opposed to the continuation of the present situation.

Mr. FAHY. I think they would be; we are opposed to a continuation of the present situation; we are satisfied the Indians do not have the title to the minerals.

Mr. COLLINS. You are satisfied yourself; that is not binding upon the Indians; since the court has remanded this cause for trial to the lower court, their original contention is still open.

Mr. FAHY. In court.

Mr. COLLINS. In court, and despite any opinion that the Attorney General or anyone else may have, it is still an individual opinion, and it is not determinative of the rights of the Indians, until such time as we have a decision of the court one way or the other, that question is always going to be facing us.

Mr. FAHY. It may come up at any time, until the Supreme Court of the United States has finally decided it.

Mr. COLLINS. What effort is being made respecting the original contention as to the title of the Indians to this property?

Mr. FAHY. Having come to the conclusion that they are not entitled to the minerals, we are not making any effort; we are willling to let the balance swing toward the attitude of Mr. Peavey, because we are satisfied that the Indians do not have title to the minerals. There is only one thing more we want for the protection of the Indians, and that is the protection of their surface rights through the proposed legislation.

Mr. PEAVEY. Is not this the practical situation: There is being no legal case prosecuted which will decide these issues; it is intended that there will be brought to Congress bills which will deal with the parties affected, but no such bills have been drawn; no such bill has ever been outlined, and if I remember the testimony of Mr. Margold correctly it will be another 3 or 4 weeks before a bill will be drawn, and that means we will pass the present session without doing anything to meet the situation.

Mr. COLLINS. Does he believe that we can pass a bill that will affect the ancient right of the Indians, if they have a Mexican land grant? Any act which we might pass would not affect the title, because it antedates our jurisdiction.

Mr. FAHY. I am afraid that these particular Indians have not a sufficient basis for their claim.

Mr. COLLINS. But assuming that their contention is correct?

Mr. FAHY. Assuming their contention is correct, I do not think Congress could wipe out their title.

Mr. ROGERS. Then you would have to have court action.

Mr. FAHY. Yes.

Mr. COLLINS. If this court action is permitted to die, we are all left in the dark.

Mr. FAHY. Yes, sir.

Mr. PEAVEY. I do not want to embarrass you, but this whole situation comes to Congress at this time and before this committee because of the issuance of that original contract to employ attorneys for the Papago Indians, and this claim we are now discussing, based

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on a Mexican land grant or some other ancient land grant, is one of the things that those attorneys spread among the Indians and now it all comes back.

Mr. COLLINS. The court has held against that title.

Mr. PEAVEY. These people are not the same parties in interest.

Mr. FAHY. Mr. Peavey is speaking of a later contract.

Mr. PEAVEY. The only question the court decided was against certain deeds; it has not passed upon the grants.

Mr. COLLINS. Do I understand that there is another contract outstanding?

Mr. FAHY. The other attorneys are Mr. Graves, Mr. Bascom Slemp, and Mr. C. C. Calhoun.

Mr. ROGERS. That contract expires in April.

Mr. LEE. I would be opposed to it if Bascom Slemp had anything to do with it.

Mr. FAHY. I want to state that the first draft of the proposed bill is about ready; I do not think it will be longer than about 2 weeks before it will be submitted to Congress, and it is drawn with a view to straightening out the matter, so far as we can, unless the court is brought into it. The contract with these attorneys whom I named, was made 5 years ago this coming April; it was approved in the regular manner of attorney's contracts by the Commissioner of Indian Affairs and the Secretary of the Interior; it contemplated that those attorneys would go forth to recover for the Indians properties or moneys to which they were entitled. They have never, however, instituted any suits to sustain in court these so-called "old Pueblo rights." The contract provides that it may be canceled on 30 days' notice, so the expiration of the contract will now have come around even before we could cancel it on a 30 days' notice. I do not think that contract has any further significance at all.

Mr. PEAVEY. I asked the question of Mr. Margold, and he would not assure this committee at all; the contract contains the provision by which the Secretary may send a written notice to the lawyers and continue the contract indefinitely. He would not assure this committee that that notice would not be sent out.

Mr. FAHY. I was going to add, I would not feel justified in my position to go any further in any assurance to the committee than Mr. Margold was willing to go yesterday, but I do feel very strongly, as a practical matter, that the contract is going to be over completely on April 4. The only reservation I am sure Mr. Margold intended in his own mind was the feeling that in his official position he should not be arbitrary and refuse to give them a hearing, if they desire it, in connection with the extension of the contract.

Mr. ROGERS. I would like to have the record show that I would like to have word from the Secretary himself as to whether or not he has any intention of renewing the contract, or whether he intends, as you say, to let the contract expire.

Mr. FAHY. I will be glad to communicate that request to him.

Mr. ROGERS. I will be glad to have that statement from the Secretary himself; I do not want to embarrass you.

Mr. FAHY. I will communicate that to him.

Mr. ROGERS. I appreciate your position; you do not want to go on record.

Mr. FAHY. Yes.

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I do not think such changes can be devised and carried out without the active cooperation of the Indians themselves.

The Wheeler-Howard bill offers the basis for such cooperation. It allows the Indian people to take an active and responsible part in the solution of their own problems.

I hope the principles enunciated by the Wheeler-Howard bill will be approved by the present session of the Congress.

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. PEAVEY. Mr. Chairman, this communication was just received, might I ask?

The CHAIRMAN. It was received Saturday.

Mr. PEAVEY. I take it, then, that this is in answer to numerous telegrams and letters that other members of the committee, like myself, doubtless have received, in which the thought was expressed that the President in his original letter to the chairman of this committee was wholly unaware of the real purport of the bill, and that he has just given his endorsement in a haphazard way by having to trust to subordinates on all these various matters; and that, therefore, this is a specific endorsement from the President after having his attention called specifically to the provisions of the bill.

The CHAIRMAN. That is my understanding.

We will now hear from the Yakima delegation. Gentlemen, you will be allowed 15 minutes for presentation.

We have on file here a number of letters from your people, and if you will be kind enough, I wish you would take up the hearing this morning in the order which I shall request of you, namely that first you will tell the committee what you think about article 2 with reference to special education for Indians.

Mr. HILL. Will that be 15 minutes for the four, or 15 minutes apiece?

The CHAIRMAN. No; we will have to limit each tribe to 15 minutes, as we have a great many to be heard who have stated that they desire to be heard.

Mr. HILL. I did not know yesterday when we called up how long a time we would have, and I have not conferred with Mr. Olney. Would you want to have 15 minutes for yourself, or would you divide it up between the four?

Mr. OLNEY. No; our understanding was yesterday with Mr. Pierce that we would take whatever they allow us today, and then the rest of us could finish at some other meeting if necessary.

Mr. HILL. All of you today are just for yourselves?

Mr. OLNEY. Just one or two speakers, whatever we could get in.

The CHAIRMAN. I will say, Mr. Hill, the tribe has a great many documents officially on file here before the committee.

Mr. HILL. Mr. Olney is the interpreter, so I will just turn you over to Mr. Olney.

STATEMENTS OF JAMES SALUSKIN, REPRESENTING THE YAKIMA TRIBES, AND OF PHILIP A. OLNEY, INTERPRETER

The CHAIRMAN. Will you give your names to the reporter?

Mr. OLNEY. Yes. James Saluskin, and Philip Olney, as interpreter.

Did you say you want us to speak on title 2?

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no interests on the Papago Reservation. Leon Pancho resides part of the time at Gila Bend, Ariz., and possesses no livestock or other interests on this reservation.

We have reason to believe that the trip of these men is sponsored by the Tucson Chamber of Commerce, which organization is making every effort to have the mineral rights to our reservation thrown open to entry, and we thought it advisable to advise you of the status of the men mentioned above, who may represent that they have been delegated by the Papago Indians to speak for the tribe, which positively is not the case. They have no authority whatsoever to speak for or to act upon any matters pertaining to the administration of our properties.

We trust that no action will be taken by the office on any proposals offered by these men without the confirmation and approval of the Papago Indians in council.

Very truly,

PAPAGO TRIBE OF INDIANS,
By MARTIN MARISTO,
Chairman Executive Committee.
JUAN HARVEY,
Secretary Executive Committee.
RICHARD HENDRICKS,
Member.

Mr. FAHY. I wanted to give my views about this Papago matter; it does not really affect the bill which is before you, House bill 7902. My time is up, but I wanted to say that you will find that this Papago matter is not in any way in conflict with House bill 7902.

Mr. COLLINS. I suggest that we have Mr. Fahy return, because there are several questions which I would like to ask him.

Mr. HILL. We have only one further witness who desires only 5 minutes, and perhaps Mr. Fahy could continue then.

(THEREUPON THE COMMITTEE RESUMED ITS REGULAR HEARING FOR THE DAY)

The CHAIRMAN. This meeting of the committee has been called this morning for the express purpose of further hearing with reference to H.R. 7902.

In this connection, I feel that I ought to read for the record, and for any other persons interested, a letter I have received from the President of the United States. The letter in full is as follows:

THE WHITE HOUSE, *Washington, April 28, 1934.*

Hon. EDGAR HOWARD,
House of Representatives.

MY DEAR MR. HOWARD: The Wheeler-Howard bill embodies the basic and broad principles of the administration for a new standard of dealing between the Federal Government and its Indian wards.

It is, in the main, a measure of justice that is long overdue.

We can and should, without further delay, extend to the Indians the fundamental rights of political liberty and local self-government and the opportunities of education and economic assistance that they require in order to attain a wholesome American life. This is but the obligation of honor of a powerful Nation toward a people living among us and dependent upon our protection.

Certainly the continuance of autocratic rule by a Federal department over the lives of more than 200,000 citizens of this Nation is incompatible with American ideals of liberty. It also is destructive of the character and self-respect of a great race.

The continued application of the allotment laws, under which Indian wards have lost more than two-thirds of their reservation lands, while the costs of Federal administration of these lands have steadily mounted, must be terminated.

Indians throughout the country have been stirred to a new hope. They say they stand at the end of the old trail. Certainly, the figures of impoverishment and disease point to their impending extinction, as a race, unless basic changes in their conditions of life are effected.

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I do not think such changes can be devised and carried out without the active cooperation of the Indians themselves.

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The CHAIRMAN. Will you give your names to the reporter?

Mr. OLNEY. Yes. James Saluskin, and Philip Olney, as interpreter.

Did you say you want us to speak on title 2?

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The CHAIRMAN. We would particularly like to hear about that. Just tell the committee whether or not you approve that section.

Mr. SALUSKIN (speaking through the interpreter, Mr. Olney). Mr. Chairman and members of this committee, ever since this Wheeler-Howard bill has been interpreted to me, I have been very much annoyed and worried. We had a treaty in the year of 1855, and ever since that it has been handed down from my forefathers and we have lived and abided by this treaty.

Since this Wheeler-Howard bill has been interpreted to me, I never can get heads nor tails to the thing. I just imagine that it does not amount to anything to me. It seems as though if this bill were passed it would be no protection really for my children and that is the reason I want to protect myself and give my reasons for not wanting this bill passed.

In regard to this community plan, I do not think that I am capable, as a tribe of Indians, to operate under the new system. I feel this way, that if we were to adopt this self-government, the people that are running our self-government would be expecting some kind of a compensation, and we have no funds to pay them.

The CHAIRMAN. Will you ask, him, please, if he is familiar with the proposed amendment which provides that no tribe of Indians shall be drawn under the provisions of this proposed law without their own consent, and by a majority vote of the tribe, at their request. Ask him if he understands that.

Mr. SALUSKIN. I understand that amendment as it has been interpreted to me, but the thing comes up, it is the landless Indian, the Indian that has sold his land; they are going to rule as a majority and accept this bill into a reservation. This landless Indian is going to be the cause of my going into this community plan when I am against it. I will put in my land, and what has he got to put in against my land?

The CHAIRMAN. Ask him if he has any objection to the proposal in the bill providing for the special education for Indians.

Mr. SALUSKIN. I would like to find out where this money would be available, from what department.

Mr. PEAVEY. I would like to ask the chief with regard to the objection just stated. As I understand it, he feels that the landless Indians, being in a larger number within the tribe than those who now own land and property, would therefore outvote them, the land-owning members. I would like to ask him if he knows of the provision in the bill under which it is proposed to reinvest these landless Indians with land by Government purchase, and if that does not meet his objection.

Mr. SALUSKIN. In reply to that question, I would say this, that if the Government was to buy land for this landless Indian that has already sold his own allotment, what assurance has the Government got that this Indian is going to make use of that land after it is purchased for him?

The CHAIRMAN. Does he have objection to the Government buying lands for the landless Indians?

Mr. SALUSKIN. I have no objections to the Government buying this land for the landless Indians, but I do not want him to come into what I am holding and try to take that away from me just in order to accommodate the landless Indian.

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The CHAIRMAN. Ask him if he knows of any provision in this bill that would do anything of that kind.

Mr. SALUSKIN. No; that is not really the understanding that I have of the bill, but at the same time I know this much, that if I go to this community plan I have to give up my allotment for the benefit of the landless Indian.

The CHAIRMAN. What does he mean by giving it up?

Mr. SALUSKIN. The way that I understand, the way the bill has been interpreted to me, in the passage of this bill if a certain reservation accepts the bill, they would take all of the land, the allotments, the inherited lands, and put it into a community for the alloted Indian and the landless Indian to share alike in the profits.

The CHAIRMAN. Does he not understand that every owner of Indian property would be reimbursed in money or otherwise by the Government for any land which would be taken for that purpose under the provisions of the bill?

Mr. SALUSKIN. Yes; I understand it that way, but I am afraid of the effects afterward.

The CHAIRMAN. Does he not understand that always and forever he would be permitted as a present owner of land to occupy that land as a place of abode?

Mr. SALUSKIN. This staff, the commissioner's staff that was representing the commissioner at the conference in Chemawa, Oreg., made this statement, that in the adoption of this community plan whatever land was put into this community would be shared alike, equally, by all the Indians of the tribe.

The CHAIRMAN. I would like to have you ask the chief now if he has made a study of the provision in that bill for a Court of Indian Affairs.

Mr. SALUSKIN. I have not given that certain title very much study, in fact, I am not capable of going into it, but at any rate I feel that no part of this bill should affect our reservation.

The CHAIRMAN. Ask him if he does not know that his reservation does not need to come under the bill unless it asks to, unless it shall vote by a majority vote of all the Indians on the reservation who are entitled to vote.

Mr. SALUSKIN. I understand that, Mr. Chairman, and I would like to ask you a question: Have the landless Indians got the same right to vote as I have?

The CHAIRMAN. Every member of every tribe, as I understand it, who is qualified to cast a vote with reference to tribal affairs would have a right to vote here.

Mr. SALUSKIN. Even though this Indian has asked for his patent in fee and has it, or has got it and sold his land, has he got as much right as the Indian that still holds his allotment?

The CHAIRMAN. If he is a member of the tribe and recognized as such, and is a qualified voter in the tribe, of course he would have a right to petition, and a right to vote.

Mr. SALUSKIN. I would like to direct myself now toward that title 2 regarding the school.

The CHAIRMAN. All right.

Mr. SALUSKIN. In our reservation, we used to have the boarding school there, and that was, I think, a good system that we had, the boarding school. Since they have abolished our boarding school and

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have transferred our children to the public schools, we can see the difference. The children are not capable any more of accomplishing anything after they leave the boarding schools. When we had our boarding school in our reservation, they taught the boys how to farm, taught them shop work, blacksmithing, carpenter work, other things—harness making—and after the boy finished school, he was useful. Since they have been transferred to the public schools, all our boys are good for now-a-days is to come out from the school room, get a bat and ball, and go and play ball, and they are not worth anything for any other thing.

The CHAIRMAN. Mr. Interpreter, I notice here in the official filing with the committee by five chiefs of the tribe, this language:

> We object to the proposed bill specifically for the reason that we feel it might result in placing in the hands of irresponsible Indians too much authority and power.

I wish you would ask the chief whether or not it is true that the tribe itself passes upon the membership of a tribe, admits such members as the governing authority of the tribe desires, and that nobody would be entitled to any voice in the tribe unless he or she had been admitted to a position of regular membership in the tribe.

That is a pretty long question, but I would like an expression from him as to whether or not that is true, that nobody, for instance, would be permitted to have a vote for or against taking advantage of the provisions of this bill unless that person had been admitted to membership in the tribe and was qualified to vote. In other words, that those who will vote are given the right to vote by the tribe. Is that true, or is it not tiue? That is what I would like you to ask him.

Mr. SALUSKIN. I think that the council has that right, although we have not made much of a practice of it; but it is the landless Indian, the half-breed and from there up, they take things upon themselves and exercise their rights, without the knowledge of the tribal council.

The CHAIRMAN. Let me ask a question there now, and see if we understand the chief. Is it or is it not his view that no Indian should have a right to vote on a proposition of this kind who does not own land?

Mr. SALUSKIN. Yes; I understand that, that the landless Indian should not have a vote.

The CHAIRMAN. All right.

Mr. Hill, instead of 15 minutes, I have been so interested in the testimony of the chief that we have now consumed nearly 35 minutes, and I think we will have to cease and take up some other line. We are much obliged to you, Mr. Interpreter.

Mr. OLNEY. Thank you.

The CHAIRMAN. Is the Menominee delegation present?

You are a delegate, are you, from the Menominees?

Mr. FREDENBERG. I am, Mr. Chairman.

The CHAIRMAN. You submitted your credentials here?

Mr. FREDENBERG. To the Commissioner.

Mr. WERNER. Pardon me, Mr. Chairman, I would like to ask the chief one question.

The CHAIRMAN. All right.

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Mr. WERNER. How many are in your delegation? How many in the official delegation are here protesting this bill?

Mr. SALUSKIN. Four.

Mr. WERNER. You are the duly authorized representatives of the tribe?

Mr. SALUSKIN. Yes.

Mr. WERNER. Have the expenses of your trip and your per diem here been authorized by the Commissioner to be paid out of funds belonging to your tribe?

Mr. SALUSKIN. No.

Mr. WERNER. You are paying your own expenses?

Mr. SALUSKIN. Yes.

Mr. HILL. I want to show for the record that we are going to have an interview with the Commissioner on this point in a few days.

Mr. O'MALLEY. Have other delegates appearing in favor of the bill had their pay authorized to be taken from tribal funds by the Indian Bureau? Is it possible to get an answer to that, Mr. Chairman?

The CHAIRMAN. The Chair is not informed.

Mr. WERNER. I could not answer it for the record.

Have you made application to the Indian Bureau for your expenses to be paid out of tribal funds?

Mr. OLNEY. No; we have not.

Mr. WERNER. Have you taken it up with them at all?

Mr. OLNEY. The chief states that some time, I believe it was in the month of January, they made an application for some money to defray the expenses of the delegation, and he said he was refused by the Commissioner, in a telegram to our superintendent, Mr. Whitlock.

Commissioner COLLIER. May I say that when an Indian tribe has funds, and there is legal authority, and it wants to send a delegation, they are provided; when it does not have funds, and the Department has the funds, they are provided. In the case of our Yakima friends, they have been here, I think, about 2 weeks, maybe longer. If they have raised the question of having their expenses paid out of the tribal funds, I do not know it. They say they have not. They, of course, will be treated as any other delegation is and duly taken care of.

The CHAIRMAN. I understand that their Representative in Congress, Mr. Hill, is going to make a presentation for them, and I apprehend that the Commissioner will yield to the Representative from Washington when he shall present the matter to him.

Mr. HILL. I have no doubt that the Commissioner will give us the same consideration that he will the other delegations. That is all that we will ask for.

The CHAIRMAN. I apprehend so.

Mr. WERNER. These gentlemen called on me one day and made complaint of that, and I just asked those questions for the record to ascertain the facts, if possible.

Commissioner COLLIER. I would like to get in the record that in January the delegation expressed a desire to come here on this subject, before the bill was introduced. They were advised they had better wait until they saw the bill and knew what they wanted. Of course, they could come when they were ready to come. If they have been carrying complaints here, they have not brought them to the Indian Office. All they need to do is to come and discuss it.

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STATEMENT OF RALPH FREDENBERG, REPRESENTING THE MENOMINEE TRIBE

The CHAIRMAN. Gentlemen of the committee, the representative of the Menominee Tribe is now the witness before the committee.

Go ahead, Mr. Fredenberg.

Mr. FREDENBERG. Mr. Chairman, and gentlemen of the committee: We are interested in the Wheeler-Howard bill. About 4 or 5 years ago we tried to pass special legislation pertaining to the Menominees, that would have in a sense given them self-government. We were not successful in attracting the attention of a great number of people to the bill. We realized then that unless a bill of this kind had the force of the administration behind it, it would be practically impossible to legislate for a separate group of people. We proposed at that time an incorporation of the Menominee Tribe.

I am going to tell you briefly just where we are and what we have:

We are in north-central Wisconsin. We have 233,000 acres of land. We have never been allotted, no part of our reservation. We have a timber stand of about 800,000,000 feet. We have a cash balance in the treasury amounting to about $1,600,000.

Our Indians practice farming, some of them log and cut timber, others work around the mill. We maintain our own schools, our own hospitals, and generally we are self-sustaining. We do not ask the Congress for any money to be expended on our reservation. We have lived in this manner for a great number of years.

The Menominee Tribe is located on part of the land where the first white man found them, in the neighborhood of Green Bay.

We realize that unless we can have a law that will protect us in our rights and allow us to continue to live as we are—we are quite satisfied in our present set-up; there is a sufficient amount of land for everybody, and our old people are well taken care of through moneys from our own funds that we provide annually—unless we can have a law that will secure us in this method and this mode of life, we fear that we are going to continue to be without any protection.

Mr. O'MALLEY. Do not the present laws guarantee a continuance of the system that has prevailed upon the Menominee Reservation for many years?

Mr. FREDENBERG. I wonder. We are amenable, I assume, to the allotment law.

Mr. WERNER. You have gotten along pretty well thus far, have you not?

Mr. FREDENBERG. We have opposed allotment up to now, and have been successfully opposing it. But here is an example of the dangers that we are in:

About a month and a half ago, the tribal council met and voted to close the trout fishing on the Menominee Reservation. The sentiment to close was unanimous. We had had an awful lot of expense through fighting forest fires from careless fishermen, and the streams were depleted. We proposed to close the reservation to outside fishermen for a period of 2 or 3 years, until we were able to restock the stream.

When the tribe took this action, immediately hundreds of letters came into this capital to every representative, I assume, from Wisconsin, protesting against the Indians having the right to close the fishing against the white people.

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Mr. O'MALLEY. I have not even had a letter on that. I cannot recall any.

Mr. FREDENBERG. We have hundreds of them in the files. They have been referred to the Commissioner's office. That is only one example. I wish I had some of the letters here to read to you in order to give you an idea of the attitude of the people in the State towards Indian ownership of this property. They protested that the Indians had no right to close the fishing, they had no right to take any tribal action to protect their own resources.

That is only one example. We assume that that sort of thing is going to be springing up ever year. Some few years ago it suddenly developed that we had desirable water-power sites on the Menominee. The power interests came in and they made a preliminary survey which carried with it the right to develop. Only through the fact that the Menominees in 1922, and prior to the passage of the Federal Power Act, had introduced a bill into Congress providing for the development of this plant by Menominee funds, were we able to offset the pressure, otherwise we would have had those developments today. So, in our present state, we are in constant danger of encroachment from the white people.

The CHAIRMAN. Would you be kind enough to state to the committee whether or not your tribe approves the principle of the pending bill, and feels that it would or would not be of value to your tribe?

Mr. FREDENBERG. Mr. Chairman, the Menominee Tribal Council have approved the Wheeler-Howard bill.

Mr. O'MALLEY. The entire bill, Mr. Fredenberg?

Mr. FREDENBERG. They have approved the entire bill. There are many provisions in that bill that probably will not affect the Menominees. We are not landless and we are self-sustaining. We would like to get the protection of this bill to continue to have the things that we now enjoy.

Mr. ROGERS. May I ask a question? You approved the bill without the amendments, the proposals? Those amendments have not been added officially yet.

Mr. FREDENBERG. I assume that this bill will come out of the committee a whole lot different than it came in.

Mr. ROGERS. What I am saying is, your people have approved it regardless——

Mr. FREDENBERG. We have approved the principles of the bill.

Mr. ROGERS. Regardless of how it comes out of the committee?

Mr. FREDENBERG. Regardless.

The CHAIRMAN. May I ask you, please, will you inform the committee as to the ownership of the mill and the logging plant on your reservation? Who owns them?

Mr. FREDENBERG. Mr. Chairman, the mill represents an investment of about $2,000,000. It is a modern lumber mill, electrically operated. It is operated at this time about 95 percent Menominees. Within the past year, under the present administration, Indians have been put in every responsible position. Up to that time, and over a period of about 25 years, we did not have an Indian foreman on the job. But within the last year, as I say, the Indians have been put in the more responsible positions. We have Indian foremen in the woods conducting logging, we have Indian foremen in the mill operating the mill, responsible for its operation. We have Indians

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who have gone into the skilled labor department of the mill, in the handling of the machines. We maintain our own railroad, which is operated entirely by Indians. Generally speaking, the entire organization will be Indians.

Mr. O'MALLEY. That could always have been done like that, it was just a matter of cooperation from the Indian Department, was it?

Mr. FREDENBERG. That could have been done some years ago, had we had the sympathetic interest of the administration.

The CHAIRMAN. Just one more question, please; you did not make quite plain who owns the mill, who owns the logging machinery, and so forth.

Mr. FREDENBERG. The Menominee Tribe. It has been built, purchased, and developed entirely through Indian funds. We have never had any Federal funds at all. We visualize that under certain provisions of this law, we will be able to continue to live self-sustaining with the resources that we have. Our timber is being cut on a selective cutting basis, only taking the green, ripe, fully matured timber, with the thought that we can perpetuate that stand.

Mr. WERNER. How long has this mill been in operation?

Mr. FREDENBERG. Since 1909.

Mr. PEAVEY. Right on that score, is it not true that the success of the entire operation from the tribal standpoint, as well as in the matter of the preservation of your ownership of the land as well as the timber, is due entirely to the foresight of Senator La Follette, of Wisconsin, who introduced the original bill which has given you that possibility, and which makes possible the situation as it exists today?

Mr. FREDENBERG. Mr. Chairman, that is very true. The act of 1908, under which we operate, we believe is the first forestry law that ever was passed looking to the perpetuation of a timber stand. That law was the result of a conference lasting over a period of a week, in which the senior Senator La Follette visited the Menominee Reservation and in general council discussed and agreed upon the principles of this act under which we operate.

Mr. O'MALLEY. Mr. Fredenberg, that act of 1908, permitted and protected the present set-up that you have now in the Menominee Indian Reservation. How do you believe that this particular act will add to that protection? In just what way will that give you any advantages that you do not enjoy, both in the law and in the methods under which you operate?

Mr. FREDENBERG. The act of 1908 provided for the perpetuation of this timber stand. There is nothing in the act of 1908 that tended to protect the ownership of this property in the Indians. There is nothing in the act that would prevent the Indians from being allotted.

Mr. O'MALLEY. Did not the act of 1908 protect the Menominee Tribe from the time of its passage, in the collective ownership of all that timber?

Mr. FREDENBERG. In principle, I think it did, but as I say, I do not see that we ever had any protection against allotment.

Mr. O'MALLEY. You mean that as the laws are now they could force the Indians on that reservation to take allotments?

Mr. FREDENBERG. They could give us allotments. It is within the power of the Secretary.

Mr. O'MALLEY. To compel you to take allotments?

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Mr. FREDENBERG. To take our allotments.

Mr. O'MALLEY. Then that would break up the collective ownership of the timber, would it not?

Mr. FREDENBERG. It certainly would. Six or seven years ago there was an effort which we learned about that would have set aside the four western townships of the reservation and created a Federal experiment station or a Federal experimentation in timber operation. That was to be taken entirely away from the tribe, and the tribe was to be removed to the six eastern townships, where the timber had been all removed, and they were going to be required to farm.

Mr. O'MALLEY. Of course, if the act of 1908 vested the ownership of the timber in the tribe as an elective unit, I cannot quite understand how the Indian Bureau or the Secretary could force an allotment system on the Menominee Indians that would contravene the purposes of that act.

Mr. FREDENBERG. In one sense, as I understand the allotment bill, the Indians became competent when they became broke, and we were not broke.

Commissioner COLLIER. Might I interrupt to answer the question as to the law?

What happened on the Quinault Reservation is illustrative. That was tribal timber, just like the Menominee timber. In that instance, even the Department, which then believed in allotment, did not want to allot because they knew the consequences would be very disastrous. Mandamus was brought against the Department, and the court issued an order compelling them to allot the timber under the Allotment Act. So that in the first place, the Department could, in its discretion, proceed to allot the Menominee. In the second case, if the Quinault precedent indicates anything, an individual Menominee Indian could bring mandamus and force allotment.

Mr. O'MALLEY. Then the act of 1908 did not guarantee——

Commissioner COLLIER. It did not touch on this, but Mr. Fredenberg very clearly states that act protected the timber.

Mr. O'MALLEY. But not the Indians?

Commissioner COLLIER. Not the Indians. It sought to protect the timber. In the matter of preferential employment, also, a guaranty which for 20 years was largely ignored by the Department and could be ignored again, of course, they want to have some power to control that themselves.

Mr. O'MALLEY. Of course, with an amendment to the act of 1908, you might be able further to protect your system as you have it set up.

The CHAIRMAN. Mr. Fredenberg, unless there is something particular you would like to say, the time allotted to the tribe has expired.

Do you wish to ask a question, Mr. Rogers?

Mr. ROGERS. Yes. You say your people are for the bill?

Mr. FREDENBERG. Yes.

Mr. ROGERS. How was it decided that they were for it?

Mr. FREDENBERG. In general council.

Mr. ROGERS. Of all the Indians?

Mr. FREDENBERG. Of all the Indians.

Mr. ROGERS. I am interested in this fact that no member of the committee here knows what this bill is going to contain after it is amended.

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Mr. FREDENBERG. No.

Mr. ROGERS. Even the Department itself may not be for the bill after we get through with it. You made a statement that your people are for it now, and are for it even after we amend it. You would not want the record to show that you would be for it if the general principles of the bill were destroyed?

Mr. FREDENBERG. No, indeed. We are for the principles of the bill.

Mr. WERNER. When did you take that action?

Mr. FREDENBERG. About a month ago, the 15th of April.

Mr. ROGERS. I take it that your people are for the bill if it is passed as it is, or with the amendments as recommended by the Department. Is that true? Could you make that statement?

Mr. FREDENBERG. The self-government phase of the bill is the thing that we are most interested in. As I said, there is a large part of the bill that is not applicable to our situation, on account of our owning the land in common as we now do.

The CHAIRMAN. If there are no other questions, we will proceed to hear the Blackfeet delegation.

Mr. ROGERS. I want to say this for the protection of anyone who may appear in favor of this bill, that it might be well that any statement that is made favoring the bill would be made with reservation insomuch as they do not know what this bill is going to contain when we get through with it. I am very confident that it will not be substantially as it is now when this committee gets through with it.

The CHAIRMAN. The Chair thinks the witness qualified that by stating that he and his tribe were in favor of the principles involved.

Mr. ROGERS. I made a direct statement, if they would favor it as it would be amended by his committee. He said, "Yes." I want the record to show that he did not know what the committee was going to do.

Mr. FREDENBEEG. As to principle, I think you will find I said.

The CHAIRMAN. Is the Blackfeet representative here?

Mr. Joseph Brown, chairman of the Tribal Council.

STATEMENT OF JOSEPH W. BROWN, REPRESENTING THE BLACKFEET TRIBE

The CHAIRMAN. Mr. Brown, will you give your name to the reporter, please, and state whom you represent, and by what authority?

Mr. BROWN. My name is Joseph W. Brown, from the Blackfeet Reservation, chairman of the Blackfeet Tribal Council. I am a member of the delegation that is here, consisting of four.

Among other business that we came to Washington for, was also the Wheeler-Howard bill. This bill was being discussed at the time that we were here—this is our second trip here, I might say. At the former trip, they were discussing this bill, and we were very much opposed to it and stated our opposition at that time. We had not had a chance to study it. We took the bill with us to the Congress that was held at Rapid City, and there it was gone into much more fully than it has been gone into here. We offered some amendments to the bill. We were told that those amendments would be given careful consideration. We were asked by the Commissioner of Indian

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Affairs, Mr. Collier, to take this to our people and explain it the best we could to them.

We did this. Going back to our reservation, we held four large meetings. Our population there is 3,890, and I believe that all of those, at least on the reservation, had access to attend one of these meetings. After explaining the bill the best that we could and talking over the amendments that we had to offer, we then asked the people what they thought. I do not believe that there is one objection up there on that reservation. If there is, I do not know of it. Every vote that was taken went over unanimously, without a dissenting vote. The last vote, I remember, we took was on a question of whether we should have one community government or many over the reservation, as the bill provides for, and there in this meeting the vote stood for many governments, 24, and those against were 88. They believe there that they can go into one community government and handle the affairs under this bill.

So with a study of the bill, and with 15 amendments that we have sent in here and offered to the bill, if those are taken care of, the Blackfeet are in favor of this bill and would like to see it go over.

I might state that upon a remark that was made at the Rapid City convention, we took time to run that statement down, and that was made by the Commissioner of Indian Affairs, in which he said that the community plan of government was a success in Canada and in Mexico. Of course, we live adjacent to Canada, and alongside of groups and communities that were organized under a similar government as proposed by this bill.

So we went to Canada, the superintendent of that reservation, and three other delegates. We visited the Huterlites, the Mennonites, and the Doukhobars, who all have community governments and hold their stuff in common, and we found out upon investigation that they were very successful in their plans. They were making money; they had money in the bank. One outfit banked their money, and the other kept it within the organization.

Mr. O'Malley. Mr. Chairman, I would like to ask Mr. Brown a question: Of course, those communities are religious communities?

Mr. Brown. They are.

Mr. O'Malley. The members are all members of some religion?

Mr. Brown. That is it.

Mr. O'Malley. And they have the same interest?

Mr. Brown. Yes.

Mr. O'Malley. No conflict of interest among the members in those communities. I have seen the Mennonite system in their community up there. Those that you visited were a religious community, is that not so?

Mr. Brown. They were. We brought that up. We wanted to know how it was that they were held together so well, not divided, all agreeable and happy, and they said, "Well, it is a religion that holds us together." I asked them if they thought that we could go over there on the Blackfeet Reservation and organize the same as they did. They said, "Unless all you believe in one religion, you cannot." But those were questions that we just asked incidentally. One was about the nudeness of the Doukhobars, and they denied that. They said they did not tolerate that in this community government there.

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Gentlemen, there are features in this bill that are very acceptable. They are extraordinary. I have lived on a reservation, I am an Indian, and I feel that I have some knowledge of handling the Indian and legislating for him. You have an educational feature in that bill that we have been wanting for years, the chance to educate our girls and boys that come out of the high school, and there we were unable to carry them any further. Under this bill there is a provision in there that takes care of that.

You have the employment situation, something that we have fought for for years and years, and we ran up against the civil service, and there we stopped. Yet we have boys and girls and men and women up there that can fill every position on that reservation with the exception, as I stated the other day, before the Senate committee, of the chief clerk and the superintendent; and under this bill it would not be very long until we could develop men that would take those places.

Mr. HILL. Do we understand that the more you studied this bill, the more you understood it, the more you are for it?

Mr. BROWN. With these amendments, yes. As I say, we came here opposed to it.

Mr. ROGERS. Mr. Brown, if you qualify it that way, how do you know that those amendments are going to be added?

Mr. BROWN. We have been given the promise that they would be given careful consideration.

Mr. ROGERS. Will you endorse the bill even though those amendments are not added?

Mr. BROWN. No; I would not say that I would, but I have been given to understand that some of those amendments are already taken care of in this new bill. It has been rewritten, I understand. However, we have two that are pending now before the Indian Office, and I feel that they are going to go over.

Mr. PEAVEY. At the opening of your remarks with reference to the communities under operation of a similar law over in Canada, by the name given I take it that you referred to the first community you visited as being an Indian community. Is that true?

Mr. BROWN. No; they are white.

Mr. O'MALLEY. They are three religious communities.

Mr. PEAVEY. There are no Indian communities living near you on the border, on the Canadian side?

Mr. BROWN. Yes; they are. They do not call them community governments there. They are reservations. Their lands are held in common, but they have individual rights; that is, individual crops, farms, and individual stocks. But their whole reservation is in common. It is not allotted. You are simply given a piece of land. The family goes onto the land, and they farm and raise a crop there, and they keep the money.

Mr. PEAVEY. That is the very point in which I think the committee would be interested. Do I understand then that——

Mr. BROWN. Those are Indians.

Mr. PEAVEY. That the Canadian system of handling Indians in Canada corresponds very closely to the operation of a bill of this kind, if it should be put into law?

Mr. BROWN. I imagine that it would be similar to this bill after it becomes a law.

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Mr. HILL. After studying the bill, is your tribe in favor of the principles of this bill?

Mr. BROWN. Yes; they are.

The CHAIRMAN. The time, gentlemen, has expired. We are trying to allot 15 minutes to each tribe.

Mr. BROWN. Mr. Chairman, these questions have taken up some of my time. I would like to have just about a minute.

The CHAIRMAN. All right.

Mr. BROWN. This plan is not what you call a new question. We have organized a chapter movement up there, I think in 1921; organized the Indians into groups, chapter groups over the reservation, and each group would elect a chairman and a vice president and a secretary and a sergeant at arms. They did not have a treasurer. They would meet at their various community gatherings, and arrange for handling of their stock, and handling with a sort of a court situation within their own community. But they came to the agency, to the superintendent, for their wants; whatever it was that they needed they came to the superintendent. It is similar to what this bill provides. We called it up there "the chapter organization". It is supposed to include the farmers, the stockmen, the Indians of that reservation. They issued a small amount of stock around under this program. If the Government at that time would have come in and done its part, those Indians today, I predict, would be on their feet. But after they had started this plan and gotten it organized, the Government would not give them any more money that they had asked for, or any more stock. As a result of this, the thing fell through. But that organization still stands there today, and those old Indians think more of that than anything else. They call their clans together, and they talk over the affairs of the reservation.

This bill is something of the same plan. We hope that you people will see some way of getting this bill over, because we certainly hate to lose the good features that are in that bill. We do not know when we will get a chance of this kind, we do not know when we will ever get a man again in the chair of the Commissioner of Indian Affairs whose heart and sympathies are with the Indian. If he makes any mistake, I am sure it is going to be because of his hard efforts to do some good and to be of some help to the Indian race.

Mr. WERNER. You were present at the Rapid City meeting, were you not?

Mr. BROWN. Yes, sir.

Mr. WERNER. And you heard all of the discussions there?

Mr. BROWN. Yes.

Mr. WERNER. I ask you if you heard all of the statements made by the Commissioner at that meeting.

Mr. BROWN. I did.

Mr. WERNER. Did the Commissioner in your opinion hold out any false hopes as to what this bill would do?

Mr. BROWN. False hopes?

Mr. WERNER. Yes.

Mr. BROWN. I do not remember any.

Mr. WERNER. Did you hear the Indian Commissioner say that large sums of money were misappropriated, amounting to hundreds of millions of dollars?

Mr. BROWN. I did.

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Mr. WERNER. And that those appropriations by Congress were illegal?

Mr. BROWN. I do not remember him saying that they were illegal.

Mr. WERNER. I was just wondering if you heard the Commissioner at Rapid City say that for many years the Government—and by that I mean Congress and the Executive—has been using every method possible to prevent your claims from coming to judgment?

Mr. BROWN. Did he make that statement?

Mr. WERNER. I was wondering if you heard him make that statement?

Mr. BROWN. He did say something about that, I remember, but in answer to that, let me say that we had a judgment that has already been decided here in the court, and is now pending on motion.

Mr. WERNER. When you were here before, did you pay your own expenses?

Mr. BROWN. We are always broke up there, and the Government always pays our expenses.

Mr. WERNER. And the Government is now paying them?

Mr. BROWN. Yes.

Mr. WERNER. How long have you been here?

Mr. BROWN. We came a week ago Thursday.

Mr. WERNER. How many in your delegation?

Mr. BROWN. Four.

Mr. WERNER. How much are you getting per day?

Mr. BROWN. $5.

Mr. WERNER. $5 for every day, from the time you leave home until you get back?

Mr. BROWN. Yes.

Mr. WERNER. And your expenses?

Mr. BROWN. Our tickets are bought, and our berths.

Mr. WERNER. You pay your own expenses out of the $5 a day while you are here?

Mr. BROWN. Yes; our room and our board.

Mr. WERNER. Did you make application to get $7 a day?

Mr. BROWN. No; I did not.

Mr. O'MALLEY. You stated that you came down here opposed to the bill originally. At that time, was a copy of the bill available, and had you heard discussions on it or seen a copy of it?

Mr. BROWN. No. There was a circular memorandum sent out to all reservations, and we got that, this bill coming up.

Mr. O'MALLEY. On the basis of the memorandum or circular sent to all reservations, which undoubtedly was sent from the Commissioner's office—is that correct?

Mr. BROWN. Yes.

Mr. O'MALLEY. You were opposed to the bill?

Mr. BROWN. Yes, sir.

Mr. O'MALLEY. And now, after the Rapid City meeting and what you say was a study of the bill and a discussion of it with members of your tribe, you are in favor of it?

Mr. BROWN. Yes, sir.

Mr. O'MALLEY. You qualified your statement as being in favor of it to the effect that if the amendments your tribe desired were added, you would positively be in favor of it?

Mr. BROWN. Yes.

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Mr. O'MALLEY. What do your tribe and yourself understand is the principal guaranty that this bill gives your tribe and the Indians?

Mr. BROWN. One, a very essential one, is that we would never lose any more of our land, that it would be impossible under this bill.

Mr. O'MALLEY. You believe the bill guarantees that?

Mr. BROWN. I believe that.

Mr. O'MALLEY. You will never lose any of your land, or it cannot be sold by any individual member, and that the reservation as it now stands will remain intact?

Mr. BROWN. Yes.

Mr. O'MALLEY. Are there any other things that you think this bill guarantees to your tribe?

Mr. BROWN. There is a credit system set up in that that is a wonderful system if it will go over, that $10,000,000 revolving fund which gives them the right to purchase stock and build houses with, and use almost in any way that they want to use it. I think that is a fine feature. That is something that has been needed, because our credit system—we have none. We go to the bank, and they say, "You are an Indian. We cannot give you any credit. The title to your land is in trust. You go back to your agency if you want any."

Mr. O'MALLEY. In other words, you feel that because the 10 million dollar tribal fund is set up here, your Indians can get some of that money to develop?

Mr. BROWN. We do.

Mr. O'MALLEY. You do not consider that that $10,000,000 has a lot of weight in making the tribe in favor of the bill?

Mr. BROWN. Oh, no.

Should I say the educational feature there? That is another one, and that is primary with them. They see that because they can see their boys and girls going to these schools there on the reservation and they are being turned out of those schools with nothing to do, no place to go; and yet they are capable of filling positions there, and they are not given those positions because you have this Civil Service law which prevents them from qualifying for those positions.

Mr. PEAVEY. Mr. Brown, just to clarify the record for the members of the committee who were not present; I am sure that my recollection is right—I was present when the gentleman appeared before our committee at that time. Your principal objection to the bill at that time was that you were under the impression that the bill was going to be railroaded, as I believe you put it, through Congress right at that time, and you were opposed to a bill of that kind being passed until you had a chance to go home and confer with your people on it. When you were given that assurance, that is all that you were appearing at that time in behalf of. Is that not true?

Mr. BROWN. Yes, sir; that is very true. Further than that, we did know that there was a provision in that bill which gave the Secretary of the Interior the right to force your allotment into this community government, and that we were diametrically opposed to.

Mr. WERNER. You say that you have given very careful study to this bill?

Mr. BROWN. Careful in my humble way. I am not a lawyer. I want you to know that.

Mr. WERNER. You know that after you have given careful study to this bill, that you now are qualified to say that you are for this bill?

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Mr. BROWN. I feel that we want that bill.

Mr. WERNER. Regardless of the fact that this committee this morning does not know what this bill shall contain, you are in favor of it? You want this committee to understand that you are for this bill?

Mr. BROWN. Yes, sir.

Mr. ROGERS. I want to ask you one question, then I will not indulge the time any further. In order to clarify the record, I understood you a while ago to say that you would not favor the bill unless the amendments that you——

Mr. BROWN. That is generally understood. I stated that in the beginning we had 15 amendments.

Mr. ROGERS. Mr. O'Malley asked you to name the general principles that you favor. Are these general principles in the bill or in the amendments that you have proposed?

Mr. BROWN. Both; except they are clarified in the amendments.

Mr. ROGERS. Any other questions?

Mr. O'MALLEY. Title 4 of this bill sets up a Court of Indian Affairs. Does your tribe understand that this rather unusual and entirely new type of court—in my own mind I doubt very much whether it is constitutional or not—does your tribe believe that they will have a court there in which will be handled all litigation affecting the tribe, and that it forecloses the Indians, from the creation of this court, from going into any other courts of the United States in case of a lawsuit between an Indian and someone who is not a resident of the community?

Mr. BROWN. They understand that court feature very well. Here is the stand that we take on it. We would like to have it, but if we cannot have it, we can get along without it. But by getting along without it, with our congested conditions in our courts, the Indian is shoved aside to be the last one whose case would be brought up before the United States court. This Indian court, being set up to take care of those cases only, Indian cases, we feel that we would get quicker action under this court set-up. But as I say, we are not crying about that.

Mr. O'MALLEY. You do not think that is an essential feature to the successful operation of this collectivist plan in the community?

Mr. BROWN. I think it would be a help, but we can get along without it.

Mr. O'MALLEY. I just wonder whether or not the Indians wanted to be foreclosed from the passage of this bill from going into any other courts of the United States or their own State, which I think might happen if this court feature were included.

Mr. WERNER. Mr. Brown, you being in favor of this bill, do you think it is all right to take away from your people the right to bequeath their property to their heirs?

Mr. BROWN. We have got that taken care of in an amendment. We do not believe it will, as it reads in the bill.

Mr. WERNER. Do you think that you would be satisfied with having allotted to you a piece of land upon which you could live for your lifetime and your children could live, but that it would revert to the community upon your death and you would have nothing to say about it whatsoever?

Mr. BROWN. No.

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Mr. WERNER. Do you think that would make for assimilation of your people with the white race?

Mr. BROWN. We have that taken care of, I say, with amendments. If they fail to adopt that amendment——

Mr. WERNER. If we do not accept the amendments, would you still be in favor of the bill?

Mr. BROWN. I would hate to lose the good features of the bill.

Mr. WERNER. You would take the bill even with those good features eliminated, would you?

Mr. BROWN. I do not know whether I would or not.

Mr. WERNER. Then there is some question as to whether or not you are unqualifiedly for the bill.

Mr. BROWN. We are for the bill in principle.

Mr. WERNER. What do you mean by "principle"?

Mr. BROWN. The principle that it establishes to create.

Mr. WERNER. The principle with reference to setting up a court within a court?

Mr. BROWN. Yes.

Mr. WERNER. You are in favor then of setting up a court as proposed by the present sections of the bill?

Mr. BROWN. You mean this Indian court?

Mr. WERNER. Yes; this Indian court.

Mr. BROWN. Yes; I am in favor of this Indian court.

Mr. WERNER. You would want to set up a supergovernment within the Government of the United States, would you, so far as courts are concerned?

Mr. BROWN. We want to put up this court with this bill, because we believe it will be better for the Indians.

Mr. WERNER. Then eventually would you be in favor of setting up a court to look after the Negro race?

Mr. BROWN. If they are not looked after by our other courts; yes.

Mr. WERNER. You do not think the courts of the United States protect the rights of the Indian?

Mr. BROWN. Yes; they do when they get to them, but they are so long getting to them, this court would be a benefit.

Mr. WERNER. I am afraid your hopes are being held too high.

Mr. BROWN. I think we could get together if we just all lower our sights a bit and cooperate. I believe we can put a bill through here that will satisfy the Indians.

I thank you.

Mr. ROGERS. I understand the Rocky Boy Reservation has a delegation here. I would like to know before we proceed how many want to be heard of that delegation.

Mr. WOOLDRIDGE. There is not a delegation.

Mr. ROGERS. You are the only one?

Mr. WOOLDRIDGE. Yes.

Mr. ROGERS. You are the superintendent?

Mr. WOOLDRIDGE. Yes.

Mr. ROGERS. I will ask you to make a brief statement, in order to give the members a chance to question you, because we are limiting the time.

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STATEMENT OF EARL WOOLDRIDGE, SUPERINTENDENT OF THE ROCKY BOY INDIAN RESERVATION

Mr. WOOLDRIDGE. My name is Earl Wooldridge. I am superintendent of the Rocky Boy Reservation.

Mr. O'MALLEY. An employee of the Government?

Mr. WOOLDRIDGE. Yes.

Mr. MURDOCK. Where is the reservation?

Mr. WOOLDRIDGE. In Montana.

Mr. PEAVEY. Would the gentleman clarify the record at the present time by stating why you are representing the Indians rather than Indians or delegates of the tribe?

Mr. WOOLDRIDGE. I happen to be here on other business.

Mr. PEAVEY. They asked you to represent them?

Mr. WOOLDRIDGE. Yes.

I imagine the thing especially interesting in our reservation is that we have a set-up now that the bill is attempting to do for all reservations. Ours is a new reservation. Our people are made up of Indians who were wanderers over the State and came to the reservation in 1916, penniless and without property of any sort, many of them being required to walk to the reservation. Until 1916 they lived in a little camp at the agency, houses made of mud and pasteboard, and there are a few such camps left in Montana yet at the various towns.

Mr. PEAVEY. How many Indians in the reservation?

Mr. WOOLDRIDGE. There are about 1,100 there now, including a few nonwards who have no right to be there.

Mr. PEAVEY. Mostly full-blood Indians?

Mr. WOOLDRIDGE. Most; yes.

Mr. PEAVEY. Where is the reservation located?

Mr. WOOLDRIDGE. South of Havre, Mont.

Mr. O'MALLEY. I would like to ask the superintendent a question: As an employee of the Government, superintendent of that reservation, you are under civil service, are you not?

Mr. WOOLDRIDGE. Yes, sir.

Mr. O'MALLEY. Your time here, your expenses here, are being paid as part of your compensation?

Mr. WOOLDRIDGE. My expenses are always paid when I am on Government business.

Mr. O'MALLEY. You are now assumed to be on Government business?

Mr. WOOLDRIDGE. Yes, sir.

Mr. O'MALLEY. I desire that shown in the record, Mr. Chairman.

Mr. WOOLDRIDGE. As I said in the beginning, the thing about our people is that they were new on the reservation, and they made remarkable progress. In 1916 they were moved away from the central camp onto land selections of their own, until now there are over 100 farmers living on land that they selected themselves. More than half of these have new houses. All of them farm an average of 20 acres. They all have truck gardens. About 65 of the farmers have more than a thousand head of cattle. They have acquired their possessions in less than 5 years.

The thing, I think, that has brought that about—of course, our people are unusually good workers—but the big thing is the system

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under which we work, and it is a system that this bill is attempting to do for all reservations. We have land control. The Indians do not own the land themselves, but they can occupy it as long as they want to use it. Later on I want to show you a few pictures. But they have a sawmill, like this other reservation the gentleman represented. The sawmill has been operating for about 6 years. During the last 3 years it is almost entirely self-supporting, brought about by the fact that they collected money to repay back into the general fund that operates the sawmill. They at first operated on reimbursement money, but practically all that money has been repaid. They now have about $2,000 in their sawmill fund.

They operate a flour mill of their own that, with the exception of the first year, has been entirely self-supporting. It was under Government money then. The mill, of course, was built with reimbursement money and is being repaid. These people work continually aside from the work on their own places, and they earn together about $2,500 a month. It is from those earnings that they help to repay what they borrow from the Government.

Out of the various moneys that they have borrowed from the Government to build houses, to furnish livestock, and to operate their flour mill and sawmill, they repaid, in 1930, $3,682; in 1931, $10,793; in 1932, $9,619; and in 1933, a year of depression, $10,690. Their total debt is $67,579, and they repaid an average of $85 last year.

Mr. PEAVEY. $85?

Mr. WOOLDRIDGE. For those who owe.

Mr. PEAVEY. For each individual Indian?

Mr. WOOLDRIDGE. About 125 owe the Government, and they repaid an average of $85.

Mr. PEAVEY. Do I understand that they made this among themselves, by their own efforts, off their own land?

Mr. WOOLDRIDGE. Entirely from their own efforts, together with what they earned from their land in the cattle sales and what they earned by working on the various projects on the reservation.

Mr. PEAVEY. They have done better than most white farmers.

Mr. WOOLDRIDGE. They have done just that.

Before I show you the pictures, I want to point out a few of the things that we see examples of, and I think it is brought about by the system under which we operate.

Mr. WERNER. How long has this system been in operation?

Mr. WOOLDRIDGE. About 5 years.

Mr. WERNER. That will take us back to 1929 or 1928?

Mr. WOOLDRIDGE. 1929; yes, sir.

Mr. ROGERS. Do you anticipate if this bill is passed other Indians might be able to do something like that?

Mr. WOOLDRIDGE. We have an example.

Mr. ROGERS. You anticipate that other Indians might be able to do the same thing if given a chance?

Mr. WOOLDRIDGE. I see no reason why they cannot.

We have a group that under the system, as I say, tends, by public opinion, to force the backward and unruly members into line and get them to take up the general program and to become active—as we call them—active farmers. We have definite examples of our business committee suggesting that they bring backward men in and do something by public opinion to get them into the program.

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We have a group that ever since their knowledge of this new bill are thinking in terms of doing something for the very old. We have some very old, of course, like other reservations. They are thinking in terms of taking collections from all those who work and gathering a fund to put that with the money that is provided by the Government for destitute people; and then, too, raising community gardens at the day schools—there are three—to go to help take care of the very old. That is their idea.

You have there more active farmers every year, usually 10 or 12 or 15 more. Young people who are married, or people who have not become active, come every spring wanting to enter into the program to establish homes and to set up something for themselves. You have more wanting new houses every year. In fact, they all want houses. We can hardly provide them as fast as they want them.

We have a group now that is thinking as a result of this new proposed legislation of doing something to control family life, because regardless of what is said about the Indian courts, the Indians on our reservations have no courts. We have occasions right now where white people have stolen horses off the reservation. The Indians have not been able to handle the situation at all, and we recently had to go to Havre and hire private attorneys to take up their cases.

Mr. WERNER. Were you at the Rapid City meeting?

Mr. WOOLDRIDGE. Yes, sir.

Mr. WERNER. Do you recall some statement that was made there with reference to Indians getting in trouble, and the methods that were engaged in and the policy with reference to that trouble?

Mr. WOOLDRIDGE. No; I do not recall that.

Mr. WERNER. Would you recall if I read from the official minutes of the Plains Congress?

Mr. WOOLDRIDGE. Yes.

Mr. WERNER. Mr. Woehlke attempted to illustrate a statement of Mr. Cohen, and spoke as follows:

> On the Fort Peck Reservation a few weeks ago a young man by the name of Brown, the son-in-law of Roger Running Bear, was arrested on a charge of stealing a mare. The mare was 18 years old and worth about $50, but the court fixed a bond of $1,500. The superintendent and I looked over the evidence and we thought it was not strong enough to convict him. The superintendent and I worked for days and days with the county attorney, with the white man who preferred the charge and with the sheriff to get that young man out of jail. We finally had to hire an attorney for him and we got his bail reduced and got him out. Now, if there had been a court of Indian Affairs the whole thing would have been settled without any trouble——

That is, the stealing of a horse, which is a felony in my State. [Reading:]

> Without any of this waste of time, without having the boy in jail for a month. It would have been settled in 3 or 4 days. Roger Running Bear's son-in-law would have been out again. That is what the court of Indian affairs would have done for him.

Mr. WOOLDRIDGE. I recall that.

Mr. WERNER. Do you think that that is what the court of Indian affairs is to be established for, to permit the commitment of a felony and the settlement of that felony by a back-office arrangement in some kangaroo court or other, or would you let it pursue the natural terms of justice and bring the gentleman before the bar, and if guilty, adjudicated so by a jury of his peers?

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Mr. WOOLDRIDGE. No; I would hope, though, that something might be done to allow an Indian to have his case heard, and not be shoved aside, because that certainly is the case in our State.

Mr. O'MALLEY. You do not intimate that if an Indian has a case and it is ordered to the calendar of the court it does not get its hearing at the due time in which that part of the calendar is taken up by the court?

Mr. WOOLDRIDGE. Sometimes they cannot get it ordered there.

Mr. WERNER. Does the gentleman know that under the criminal procedure that one charged with the commitment of a crime is entitled to have a hearing at the earliest possible date, as provided by the Constitution?

Mr. WOOLDRIDGE. Here is what happens in our case. White men take these horses. The county attorney says he cannot be bothered with it. We go to the United States attorney and he says that is too small a case, "I would not be permitted to have anything to do with it." That is what actually happens.

Mr. O'MALLEY. Does not any member of the bar of that particular State or Federal court jurisdiction make a point on the remissness of the United States district attorney or the judge?

Mr. WOOLDRIDGE. Sometimes they do.

Mr. WERNER. The point I wish to make is this, that by this deceptive method of holding out false hope for these unsuspecting people, they are led into traps which they otherwise would not get into. That statement is not a statement that would be made by any man with any sense of simple justice to a group of men who were not informed as to their rights under the law. That is a statement of deception; to lead them into this thing and say they are for it, when as a matter of fact if they understood what it really was intended to do, they would not be for it.

Mr. WOOLDRIDGE. I would hope that there would not be any false hopes held out to any Indians. I do not think the Indians have gotten that impression. But I do know that so far as our Indians go, they feel that this is one of the times that something is really trying to be done for the Indians.

Mr. WERNER. Yes; but you are speaking now as an employee of the Federal Government employed in the Indian Service?

Mr. WOOLDRIDGE. No; I am speaking of what our Indians really believe.

Mr. ROGERS. Mr. Wooldridge, would you yield just a minute to the Commissioner?

Commissioner COLLIER. I just desire in the record to meet the statement of the gentleman from South Dakota. The statement as it appears in the record is strictly accurate, not deceptive, and entirely defensible. We have not discussed the court title of this bill yet. When we do, it will become apparent to all of the committee that there is a serious condition of inability to get Indian cases handled by the Federal attorneys and by the Federal courts; that there is a very large zone of minor offenses covered by no law; that the Indians frequently are compelled to depend on public defenders, assigned by the court, who are indifferent to their situation. The reference that Mr. Woehlke made in the record as read is perfectly clear on the face of the record, and it had to do with all of the rigmarole necessary to obtain bail for an Indian living on the reservation pending the

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time when his case came to trial. There was no deception in it. It was accurate and just.

Mr. LEE. The Secretary of the Interior is in favor of this bill?

Mr. WOOLDRIDGE. Yes.

Mr. LEE. Senator Wheeler, of Montana. is very much in favor of this bill, is he not?

Commissioner COLLIER. Senator Wheeler is in favor of many parts of the bill.

Mr. WERNER. Mr. Chairman, I would like to have the record state that Senator Wheeler is best able to speak for himself. I think if he spoke for himself he would say that he is opposed to the major portions of this bill.

Commissioner COLLIER. Senator Wheeler spoke for himself yesterday, and I refer you to the Senate record.

Mr. LEE. I think Mr. Wheeler is an able man. I do not mind following him. I think he is one of the ablest men in the Senate, myself.

Mr. O'MALLEY. It seems to me there is not much particular point in discussing the court features except to clear up the fact as to whether or not the Indians have been persuaded in any way that the creation of this court will give them some distinctions or advantages over taking their cases into the regularly established courts of the United States. If they had that impression, or anybody thinks they have that impression, the record ought to show that.

Commissioner COLLIER. They have been distinctly told that the creation of this court will give them advantages. It will give them advantages.

Mr. O'MALLEY. They have been told it will give them advantages?

Commissioner COLLIER. It would give them advantages, conveniences, and protection, and in many cases it would give them access to court proceedings which are now denied them, the due process of law which is withheld from them now.

I wish to say at this point that I myself feel, and I think the Department does, very much as the witness from the Black Feet, that the court title, while desirable, is not structurally essential to the main parts of this bill. But there can be no question that either through that title as it is or as it may be amended, or through a separate bill, something has to be done to get the chaos of Indian lawlessness, or white lawlessness on Indian reservations, into hand. When the time comes we will give you abundant evidence of the need of doing something, and we will convince you.

Mr. O'MALLEY. If that evidence is abundant enough to justify a provision like this in the bill because of the fact that the Indians are denied equal rights in the regular courts, that evidence at the same time should be sufficient to bring about the impeachment of those judges responsible for the discrimination, or the removal of the United States district attorney.

Commissioner COLLIER. Mr. O'Malley, as a matter of fact, the jurisdiction itself of the Federal courts is very limited over Indian matters under existing law. A wide range of important Indian concerns is not under the jurisdiction of the Federal courts at all.

Mr. O'MALLEY. Under what courts are they?

Commissioner COLLIER. Under no courts; under no courts at all.

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Mr. PEAVEY. Mr. Chairman, I would like to say to the gentleman from my own State and the gentleman from South Dakota, who are both lawyers, that every one of us who have Indian populations in our districts and have first-hand practical knowledge of the situation knows that it is not a question of law at all. For the most part these Indians are denied any consideration of justice before the courts because they have no money, and lawyers will not make their cases unless they do have money.

Mr. O'MALLEY. Does not the court provide free attorneys for indigent litigants?

Mr. PEAVEY. Oh, yes; on some important case that is covered by the law, and where the court appoints some attorney to represent them; you know what kind of service is given in those connections. But that is only in isolated cases. For the most part the Indian has no recourse to the law at all because he has not the money to buy it.

Mr. O'MALLEY. That is almost true of anybody in this country, is it not?

Mr. WERNER. That is not the question at issue, if I may answer the gentleman from Wisconsin. The question at issue is this: I live in a State on the border line. I live among the Indians and I think they are my friends. I think that I could go and easily mislead a great number of them, probably once and probably twice. They have been misled many times. The question is holding out false hope as to what some law will do, or some court. This is the thing I object to.

As to that analogy of that horse case, in my State a sum of $50 taken or purloined constitutes a felony as distinguished from a misdemeanor; and a felony is a penitentiary offense. You know, the Indians are easily led, and I don't like to see that statement go uncontradicted.

Mr. PEAVEY. If the gentleman will permit, he knows that that is more or less an obsolete statute, passed back in the day when men had to depend on a horse. Now he depends on the automobile.

Mr. WERNER. Yes, but the horse is more valuable to the Indian than an automobile.

(Discussion off the record.)

Mr. WOOLDRIDGE. I have a few more points, then I will show you the pictures.

We have a group that expects to pay for what they get from the Government. Absolutely everything that has been furnished them in the last few years in the way of relief they have repaid the Government in work. There are no exceptions to that. I would like to point out for you as to this group, as I said in the beginning, that the people came there without property or worth of any sort. Now, of the 100 active farmers, they are perhaps all of them worth an average of $500, and of that 100 there are at least 30 that are worth perhaps $3,000, and they have done that since they have been on the reservation.

I will show you these pictures here:

Here is a picture of the camp as it existed in the beginning. Here is a picture of the individual houses as they were. Here is a picture of one of the new houses. Another picture of one of the new houses. Here is one of the new houses and one of the old ones. I would like to point out also that of the people who are on the ration roll, we

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suggested last fall that a lot of them go off the ration roll. We think they would be better off doing by some work. Half of them volunteered to go off the ration roll. Here is a picture of a man 60 years old doing some work. Hère is a picture of Indians at work on the roads. Our schools have 4-H club work. Here is one of the projects, a young girl with chickens, a boy with potatoes.

Mr. WERNER. When was this road built; was it built under the C.W.A. allotment work?

Mr. WOOLDRIDGE. No; a year ago; regular road funds.

Here is a boy with potatoes.

Mr. MURDOCK. You attribute the progress and success made on this reservation to your administration of affairs out there?

Mr. WOOLDRIDGE. No; those Indians are good workers, and they are good workers because we can handle them.

Mr. MURDOCK. There are probably good workers on every reservation that has not shown the progress that yours has. I am just wondering if you do not think it is probably the result of your administration out there.

Mr. WOOLDRIDGE. I think it is a combination of their being good workers, and the Indian Office has given us good support, always.

Mr. MURDOCK. It has been accomplished under the present law, without any assistance of the contemplated act?

Mr. WOOLDRIDGE. It is the land set-up, like this bill is attempting to do. They are not allotted. The land is held by the community.

Mr. WERNER. How long have you been on the reservation?

Mr. WOOLDRIDGE. Five years.

Mr. ROGERS (presiding). Do you anticipate that your people could do even better if this bill is passed?

Mr. WOOLDRIDGE. There is talk right now in the community of trying to allot them; there has been for 4 or 5 years.

Mr. MURDOCK. Of doing what?

Mr. WOOLDRIDGE. Trying to allot these people.

Mr. ROGERS (presiding). That is one thing that prompts you to be for this bill?

Mr. WOOLDRIDGE. Yes.

Mr. MURDOCK. Where does the talk come from, from the Indians themselves?

Mr. WOOLDRIDGE. White people.

Mr. ROGERS (presiding). Is it rumor or from official sources, that talk?

Mr. WOOLDRIDGE. It is not rumor. We can trace where that comes from.

Mr. ROGERS (presiding). Is it official, or is it——

Mr. WOOLDRIDGE. Oh, yes; not from the Indian Office. I do not think there has ever been any talk from the Indian Office of allotting those people.

Mr. WERNER. What do you mean by "official"?

Mr. WOOLDRIDGE. I mean that it is not rumor, because we know the men in that vicinity would like to allot the reservation.

Mr. WERNER. Who are they? What are their names?

Mr. WOOLDRIDGE. One of them is "Shorty" Young.

Mr. WERNER. What is his first name, "Shorty"?

Mr. WOOLDRIDGE. Yes.

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Mr. WERNER. Who is another one? You might just as well name the people. We do not want to be vague and indefinite. Let's be positive. Who are they?

Mr. WOOLDRIDGE. He is the principal one.

Mr. WERNER. There are some others? Is he the only one?

Mr. WOOLDRIDGE. He is the principal one.

Mr. WERNER. Are there any others?

Mr. ROGERS (presiding). How does that make it official, then?

Mr. WOOLDRIDGE. I do not know whether I understood your term "official."

Mr. ROGERS (presiding). I asked you if it was rumor or official information. You said it was official.

Mr. WOOLDRIDGE. In that case, we know that he would like to allot the reservation.

Mr. ROGERS (presiding). Does that make it official information?

Mr. WOOLDRIDGE. No; not from the standpoint of the Indian office.

Mr. ROGERS (presiding). The record ought to be corrected.

Mr. WERNER. Let the record stand as it is.

Mr. MURDOCK. You do not believe the rumors have been incited so as to throw a fear into the Indians for the purpose of getting any legislation passed as a result of that sense of fear? You would not believe that?

Mr. PEAVEY. Let me say to the gentleman it does not require any legislation. The Secretary of the Interior can order it at any time without the consent of the Congress at all.

Mr. MURDOCK. But that can be prevented without the passage of this law by a law preventing any other allotments, can it not?

Mr. PEAVEY. Yes, certainly, if Congress would take that action.

Mr. O'MALLEY. By whose direction, Mr. Superintendent, do you appear before this committee?

Mr. WOOLDRIDGE. It was pretty much my desire to express our set-up as it is, because I thought that it gave an example of what this bill is trying to do.

Mr. O'MALLEY. Do you appear before this committee, Mr. Superintendent, by the direction of the Rocky Boy Indians? Did they desire your appearance here to appear in favor of the bill?

Mr. WOOLDRIDGE. I do not know that they do, but our Indians from the very beginning have been in favor of this bill.

Mr. ROGERS. Have they taken any official action endorsing it?

Mr. WOOLDRIDGE. Yes, they have had group meetings, several meetings over the reservation, and instructed their business committee to——

Mr. ROGERS. But they did not instruct you to come and present their views?

Mr. WOOLDRIDGE. Except that all this correspondence has been through our office.

Mr. O'MALLEY. Mr. Superintendent, if the Indians did not direct you to appear here, you were not summoned by the committee to appear, were you, for questions or anything else?

Mr. WOOLDRIDGE. This committee?

Mr. O'MALLEY. Yes.

Mr. WOOLDRIDGE. No.

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Mr. O'MALLEY. Did you appear here at the direction or the suggestion of any member or official of the Department of the Interior?

Mr. WOOLDRIDGE. I think it was arranged.

Mr. O'MALLEY. It was arranged? Who suggested that you appear here in favor of this bill?

Mr. WOOLDRIDGE. As I said in the beginning, it has been my desire to explain what our reservation has done, because it is an example.

Mr. O'MALLEY. Who is your immediate superior officer?

Mr. WOOLDRIDGE. The Commissioner.

Mr. O'MALLEY. The Commissioner? Did the Commissioner suggest that you appear in favor of the bill with your exhibits?

Mr. WOOLDRIDGE. I have not talked to the Commissioner since I have been here.

Mr. O'MALLEY. Are you familiar with section 10281-A of the United States Compiled Statutes?

Mr. WOOLDRIDGE. No.

Mr. O'MALLEY. That is all.

Mr. ROGERS. Just a minute, what did you mean there, "arrangement", "it was arranged"; what did you mean by that?

Mr. WOOLDRIDGE. It was thoroughly understood that I was——

Mr. ROGERS. Understood with whom?

Mr. WOOLDRIDGE. With the Commissioner's staff.

Mr. O'MALLEY. Mr. Chairman, I would like to pursue my inquiry, with the permission of the chair and the committee. I believe that this question should be answered and answered in the record. This gentleman who appears here is a civil-service employee. He is in Washington at Government expense, and he says he does not appear here at the direction of the Rocky Boy Indian Tribe. He appears in favor of this bill, and he offers exhibits. I would like to know whether he appears voluntarily, or whether he appeared at the suggestion or encouragement of any member of the Department of the Interior. I want the record to show it.

Commissioner COLLIER. Mr. Chairman, I would like to——

Mr. WERNER. I object to the Commissioner making a statement at this time.

Mr. ROGERS. I think before we go any further that question should be answered, if the gentleman insists on it, unless you prefer not to answer it.

Mr. O'MALLEY. As a member of this committee and upon my rights as a Member of the House, I demand that the question be answered in the affirmative or the negative.

Mr. HILL. Give him a chance to answer. He is trying to answer.

Mr. WOOLDRIDGE. I think you could consider it as being at the direction of the Indian Office.

Mr. O'MALLEY. You appear here then at the direction of the Indian Office?

Mr. WOOLDRIDGE. I think so.

Mr. O'MALLEY. In favor of this bill?

Mr. WOOLDRIDGE. No; I think to voice the sentiment of our Indians.

Mr. O'MALLEY. But the Indians did not direct you to appear in their behalf, according to your previous statement.

Mr. WOOLDRIDGE. Not in this specific instance, I say, but our Indians have been in favor of this thing, and all their correspondence

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Affairs, Mr. Collier, to take this to our people and explain it the best we could to them.

We did this. Going back to our reservation, we held four large meetings. Our population there is 3,890, and I believe that all of those, at least on the reservation, had access to attend one of these meetings. After explaining the bill the best that we could and talking over the amendments that we had to offer, we then asked the people what they thought. I do not believe that there is one objection up there on that reservation. If there is, I do not know of it. Every vote that was taken went over unanimously, without a dissenting vote. The last vote, I remember, we took was on a question of whether we should have one community government or many over the reservation, as the bill provides for, and there in this meeting the vote stood for many governments, 24, and those against were 88. They believe there that they can go into one community government and handle the affairs under this bill.

So with a study of the bill, and with 15 amendments that we have sent in here and offered to the bill, if those are taken care of, the Blackfeet are in favor of this bill and would like to see it go over.

I might state that upon a remark that was made at the Rapid City convention, we took time to run that statement down, and that was made by the Commissioner of Indian Affairs, in which he said that the community plan of government was a success in Canada and in Mexico. Of course, we live adjacent to Canada, and alongside of groups and communities that were organized under a similar government as proposed by this bill.

So we went to Canada, the superintendent of that reservation, and three other delegates. We visited the Huterlites, the Mennonites, and the Doukhobars, who all have community governments and hold their stuff in common, and we found out upon investigation that they were very successful in their plans. They were making money; they had money in the bank. One outfit banked their money, and the other kept it within the organization.

Mr. O'Malley. Mr. Chairman, I would like to ask Mr. Brown a question: Of course, those communities are religious communities?

Mr. Brown. They are.

Mr. O'Malley. The members are all members of some religion?

Mr. Brown. That is it.

Mr. O'Malley. And they have the same interest?

Mr. Brown. Yes.

Mr. O'Malley. No conflict of interest among the members in those communities. I have seen the Mennonite system in their community up there. Those that you visited were a religious community, is that not so?

Mr. Brown. They were. We brought that up. We wanted to know how it was that they were held together so well, not divided, all agreeable and happy, and they said, "Well, it is a religion that holds us together." I asked them if they thought that we could go over there on the Blackfeet Reservation and organize the same as they did. They said, "Unless all you believe in one religion, you cannot." But those were questions that we just asked incidentally. One was about the nudeness of the Doukhobars, and they denied that. They said they did not tolerate that in this community government there.

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Gentlemen, there are features in this bill that are very acceptable. They are extraordinary. I have lived on a reservation, I am an Indian, and I feel that I have some knowledge of handling the Indian and legislating for him. You have an educational feature in that bill that we have been wanting for years, the chance to educate our girls and boys that come out of the high school, and there we were unable to carry them any further. Under this bill there is a provision in there that takes care of that.

You have the employment situation, something that we have fought for for years and years, and we ran up against the civil service, and there we stopped. Yet we have boys and girls and men and women up there that can fill every position on that reservation with the exception, as I stated the other day, before the Senate committee, of the chief clerk and the superintendent; and under this bill it would not be very long until we could develop men that would take those places.

Mr. HILL. Do we understand that the more you studied this bill, the more you understood it, the more you are for it?

Mr. BROWN. With these amendments, yes. As I say, we came here opposed to it.

Mr. ROGERS. Mr. Brown, if you qualify it that way, how do you know that those amendments are going to be added?

Mr. BROWN. We have been given the promise that they would be given careful consideration.

Mr. ROGERS. Will you endorse the bill even though those amendments are not added?

Mr. BROWN. No; I would not say that I would, but I have been given to understand that some of those amendments are already taken care of in this new bill. It has been rewritten, I understand. However, we have two that are pending now before the Indian Office, and I feel that they are going to go over.

Mr. PEAVEY. At the opening of your remarks with reference to the communities under operation of a similar law over in Canada, by the name given I take it that you referred to the first community you visited as being an Indian community. Is that true?

Mr. BROWN. No; they are white.

Mr. O'MALLEY. They are three religious communities.

Mr. PEAVEY. There are no Indian communities living near you on the border, on the Canadian side?

Mr. BROWN. Yes; they are. They do not call them community governments there. They are reservations. Their lands are held in common, but they have individual rights; that is, individual crops, farms, and individual stocks. But their whole reservation is in common. It is not allotted. You are simply given a piece of land. The family goes onto the land, and they farm and raise a crop there, and they keep the money.

Mr. PEAVEY. That is the very point in which I think the committee would be interested. Do I understand then that——

Mr. BROWN. Those are Indians.

Mr. PEAVEY. That the Canadian system of handling Indians in Canada corresponds very closely to the operation of a bill of this kind, if it should be put into law?

Mr. BROWN. I imagine that it would be similar to this bill after it becomes a law.

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Mr. HILL. After studying the bill, is your tribe in favor of the principles of this bill?

Mr. BROWN. Yes; they are.

The CHAIRMAN. The time, gentlemen, has expired. We are trying to allot 15 minutes to each tribe.

Mr. BROWN. Mr. Chairman, these questions have taken up some of my time. I would like to have just about a minute.

The CHAIRMAN. All right.

Mr. BROWN. This plan is not what you call a new question. We have organized a chapter movement up there, I think in 1921; organized the Indians into groups, chapter groups over the reservation, and each group would elect a chairman and a vice president and a secretary and a sergeant at arms. They did not have a treasurer. They would meet at their various community gatherings, and arrange for handling of their stock, and handling with a sort of a court situation within their own community. But they came to the agency, to the superintendent, for their wants; whatever it was that they needed they came to the superintendent. It is similar to what this bill provides. We called it up there "the chapter organization". It is supposed to include the farmers, the stockmen, the Indians of that reservation. They issued a small amount of stock around under this program. If the Government at that time would have come in and done its part, those Indians today, I predict, would be on their feet. But after they had started this plan and gotten it organized, the Government would not give them any more money that they had asked for, or any more stock. As a result of this, the thing fell through. But that organization still stands there today, and those old Indians think more of that than anything else. They call their clans together, and they talk over the affairs of the reservation.

This bill is something of the same plan. We hope that you people will see some way of getting this bill over, because we certainly hate to lose the good features that are in that bill. We do not know when we will get a chance of this kind, we do not know when we will ever get a man again in the chair of the Commissioner of Indian Affairs whose heart and sympathies are with the Indian. If he makes any mistake, I am sure it is going to be because of his hard efforts to do some good and to be of some help to the Indian race.

Mr. WERNER. You were present at the Rapid City meeting, were you not?

Mr. BROWN. Yes, sir.

Mr. WERNER. And you heard all of the discussions there?

Mr. BROWN. Yes.

Mr. WERNER. I ask you if you heard all of the statements made by the Commissioner at that meeting.

Mr. BROWN. I did.

Mr. WERNER. Did the Commissioner in your opinion hold out any false hopes as to what this bill would do?

Mr. BROWN. False hopes?

Mr. WERNER. Yes.

Mr. BROWN. I do not remember any.

Mr. WERNER. Did you hear the Indian Commissioner say that large sums of money were misappropriated, amounting to hundreds of millions of dollars?

Mr. BROWN. I did.

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Mr. WERNER. And that those appropriations by Congress were illegal?

Mr. BROWN. I do not remember him saying that they were illegal.

Mr. WERNER. I was just wondering if you heard the Commissioner at Rapid City say that for many years the Government—and by that I mean Congress and the Executive—has been using every method possible to prevent your claims from coming to judgment?

Mr. BROWN. Did he make that statement?

Mr. WERNER. I was wondering if you heard him make that statement?

Mr. BROWN. He did say something about that, I remember, but in answer to that, let me say that we had a judgment that has already been decided here in the court, and is now pending on motion.

Mr. WERNER. When you were here before, did you pay your own expenses?

Mr. BROWN. We are always broke up there, and the Government always pays our expenses.

Mr. WERNER. And the Government is now paying them?

Mr. BROWN. Yes.

Mr. WERNER. How long have you been here?

Mr. BROWN. We came a week ago Thursday.

Mr. WERNER. How many in your delegation?

Mr. BROWN. Four.

Mr. WERNER. How much are you getting per day?

Mr. BROWN. $5.

Mr. WERNER. $5 for every day, from the time you leave home until you get back?

Mr. BROWN. Yes.

Mr. WERNER. And your expenses?

Mr. BROWN. Our tickets are bought, and our berths.

Mr. WERNER. You pay your own expenses out of the $5 a day while you are here?

Mr. BROWN. Yes; our room and our board.

Mr. WERNER. Did you make application to get $7 a day?

Mr. BROWN. No; I did not.

Mr. O'MALLEY. You stated that you came down here opposed to the bill originally. At that time, was a copy of the bill available, and had you heard discussions on it or seen a copy of it?

Mr. BROWN. No. There was a circular memorandum sent out to all reservations, and we got that, this bill coming up.

Mr. O'MALLEY. On the basis of the memorandum or circular sent to all reservations, which undoubtedly was sent from the Commissioner's office—is that correct?

Mr. BROWN. Yes.

Mr. O'MALLEY. You were opposed to the bill?

Mr. BROWN. Yes, sir.

Mr. O'MALLEY. And now, after the Rapid City meeting and what you say was a study of the bill and a discussion of it with members of your tribe, you are in favor of it?

Mr. BROWN. Yes, sir.

Mr. O'MALLEY. You qualified your statement as being in favor of it to the effect that if the amendments your tribe desired were added, you would positively be in favor of it?

Mr. BROWN. Yes.

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Mr. O'MALLEY. What do your tribe and yourself understand is the principal guaranty that this bill gives your tribe and the Indians?

Mr. BROWN. One, a very essential one, is that we would never lose any more of our land, that it would be impossible under this bill.

Mr. O'MALLEY. You believe the bill guarantees that?

Mr. BROWN. I believe that.

Mr. O'MALLEY. You will never lose any of your land, or it cannot be sold by any individual member, and that the reservation as it now stands will remain intact?

Mr. BROWN. Yes.

Mr. O'MALLEY. Are there any other things that you think this bill guarantees to your tribe?

Mr. BROWN. There is a credit system set up in that that is a wonderful system if it will go over, that $10,000,000 revolving fund which gives them the right to purchase stock and build houses with, and use almost in any way that they want to use it. I think that is a fine feature. That is something that has been needed, because our credit system—we have none. We go to the bank, and they say, "You are an Indian. We cannot give you any credit. The title to your land is in trust. You go back to your agency if you want any."

Mr. O'MALLEY. In other words, you feel that because the 10 million dollar tribal fund is set up here, your Indians can get some of that money to develop?

Mr. BROWN. We do.

Mr. O'MALLEY. You do not consider that that $10,000,000 has a lot of weight in making the tribe in favor of the bill?

Mr. BROWN. Oh, no.

Should I say the educational feature there? That is another one, and that is primary with them. They see that because they can see their boys and girls going to these schools there on the reservation and they are being turned out of those schools with nothing to do, no place to go; and yet they are capable of filling positions there, and they are not given those positions because you have this Civil Service law which prevents them from qualifying for those positions.

Mr. PEAVEY. Mr. Brown, just to clarify the record for the members of the committee who were not present; I am sure that my recollection is right—I was present when the gentleman appeared before our committee at that time. Your principal objection to the bill at that time was that you were under the impression that the bill was going to be railroaded, as I believe you put it, through Congress right at that time, and you were opposed to a bill of that kind being passed until you had a chance to go home and confer with your people on it. When you were given that assurance, that is all that you were appearing at that time in behalf of. Is that not true?

Mr. BROWN. Yes, sir; that is very true. Further than that, we did know that there was a provision in that bill which gave the Secretary of the Interior the right to force your allotment into this community government, and that we were diametrically opposed to.

Mr. WERNER. You say that you have given very careful study to this bill?

Mr. BROWN. Careful in my humble way. I am not a lawyer. I want you to know that.

Mr. WERNER. You know that after you have given careful study to this bill, that you now are qualified to say that you are for this bill?

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Mr. Brown. I feel that we want that bill.

Mr. Werner. Regardless of the fact that this committee this morning does not know what this bill shall contain, you are in favor of it? You want this committee to understand that you are for this bill?

Mr. Brown. Yes, sir.

Mr. Rogers. I want to ask you one question, then I will not indulge the time any further. In order to clarify the record, I understood you a while ago to say that you would not favor the bill unless the amendments that you——

Mr. Brown. That is generally understood. I stated that in the beginning we had 15 amendments.

Mr. Rogers. Mr. O'Malley asked you to name the general principles that you favor. Are these general principles in the bill or in the amendments that you have proposed?

Mr. Brown. Both; except they are clarified in the amendments.

Mr. Rogers. Any other questions?

Mr. O'Malley. Title 4 of this bill sets up a Court of Indian Affairs. Does your tribe understand that this rather unusual and entirely new type of court—in my own mind I doubt very much whether it is constitutional or not—does your tribe believe that they will have a court there in which will be handled all litigation affecting the tribe, and that it forecloses the Indians, from the creation of this court, from going into any other courts of the United States in case of a lawsuit between an Indian and someone who is not a resident of the community?

Mr. Brown. They understand that court feature very well. Here is the stand that we take on it. We would like to have it, but if we cannot have it, we can get along without it. But by getting along without it, with our congested conditions in our courts, the Indian is shoved aside to be the last one whose case would be brought up before the United States court. This Indian court, being set up to take care of those cases only, Indian cases, we feel that we would get quicker action under this court set-up. But as I say, we are not crying about that.

Mr. O'Malley. You do not think that is an essential feature to the successful operation of this collectivist plan in the community?

Mr. Brown. I think it would be a help, but we can get along without it.

Mr. O'Malley. I just wonder whether or not the Indians wanted to be foreclosed from the passage of this bill from going into any other courts of the United States or their own State, which I think might happen if this court feature were included.

Mr. Werner. Mr. Brown, you being in favor of this bill, do you think it is all right to take away from your people the right to bequeath their property to their heirs?

Mr. Brown. We have got that taken care of in an amendment. We do not believe it will, as it reads in the bill.

Mr. Werner. Do you think that you would be satisfied with having allotted to you a piece of land upon which you could live for your lifetime and your children could live, but that it would revert to the community upon your death and you would have nothing to say about it whatsoever?

Mr. Brown. No.

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Mr. WERNER. Do you think that would make for assimilation of your people with the white race?

Mr. BROWN. We have that taken care of, I say, with amendments. If they fail to adopt that amendment——

Mr. WERNER. If we do not accept the amendments, would you still be in favor of the bill?

Mr. BROWN. I would hate to lose the good features of the bill.

Mr. WERNER. You would take the bill even with those good features eliminated, would you?

Mr. BROWN. I do not know whether I would or not.

Mr. WERNER. Then there is some question as to whether or not you are unqualifiedly for the bill.

Mr. BROWN. We are for the bill in principle.

Mr. WERNER. What do you mean by "principle"?

Mr. BROWN. The principle that it establishes to create.

Mr. WERNER. The principle with reference to setting up a court within a court?

Mr. BROWN. Yes.

Mr. WERNER. You are in favor then of setting up a court as proposed by the present sections of the bill?

Mr. BROWN. You mean this Indian court?

Mr. WERNER. Yes; this Indian court.

Mr. BROWN. Yes; I am in favor of this Indian court.

Mr. WERNER. You would want to set up a supergovernment within the Government of the United States, would you, so far as courts are concerned?

Mr. BROWN. We want to put up this court with this bill, because we believe it will be better for the Indians.

Mr. WERNER. Then eventually would you be in favor of setting up a court to look after the Negro race?

Mr. BROWN. If they are not looked after by our other courts; yes.

Mr. WERNER. You do not think the courts of the United States protect the rights of the Indian?

Mr. BROWN. Yes; they do when they get to them, but they are so long getting to them, this court would be a benefit.

Mr. WERNER. I am afraid your hopes are being held too high.

Mr. BROWN. I think we could get together if we just all lower our sights a bit and cooperate. I believe we can put a bill through here that will satisfy the Indians.

I thank you.

Mr. ROGERS. I understand the Rocky Boy Reservation has a delegation here. I would like to know before we proceed how many want to be heard of that delegation.

Mr. WOOLDRIDGE. There is not a delegation.

Mr. ROGERS. You are the only one?

Mr. WOOLDRIDGE. Yes.

Mr. ROGERS. You are the superintendent?

Mr. WOOLDRIDGE. Yes.

Mr. ROGERS. I will ask you to make a brief statement, in order to give the members a chance to question you, because we are limiting the time.

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STATEMENT OF EARL WOOLDRIDGE, SUPERINTENDENT OF THE ROCKY BOY INDIAN RESERVATION

Mr. WOOLDRIDGE. My name is Earl Wooldridge. I am superintendent of the Rocky Boy Reservation.

Mr. O'MALLEY. An employee of the Government?

Mr. WOOLDRIDGE. Yes.

Mr. MURDOCK. Where is the reservation?

Mr. WOOLDRIDGE. In Montana.

Mr. PEAVEY. Would the gentleman clarify the record at the present time by stating why you are representing the Indians rather than Indians or delegates of the tribe?

Mr. WOOLDRIDGE. I happen to be here on other business.

Mr. PEAVEY. They asked you to represent them?

Mr. WOOLDRIDGE. Yes.

I imagine the thing especially interesting in our reservation is that we have a set-up now that the bill is attempting to do for all reservations. Ours is a new reservation. Our people are made up of Indians who were wanderers over the State and came to the reservation in 1916, penniless and without property of any sort, many of them being required to walk to the reservation. Until 1916 they lived in a little camp at the agency, houses made of mud and pasteboard, and there are a few such camps left in Montana yet at the various towns.

Mr. PEAVEY. How many Indians in the reservation?

Mr. WOOLDRIDGE. There are about 1,100 there now, including a few nonwards who have no right to be there.

Mr. PEAVEY. Mostly full-blood Indians?

Mr. WOOLDRIDGE. Most; yes.

Mr. PEAVEY. Where is the reservation located?

Mr. WOOLDRIDGE. South of Havre, Mont.

Mr. O'MALLEY. I would like to ask the superintendent a question: As an employee of the Government, superintendent of that reservation, you are under civil service, are you not?

Mr. WOOLDRIDGE. Yes, sir.

Mr. O'MALLEY. Your time here, your expenses here, are being paid as part of your compensation?

Mr. WOOLDRIDGE. My expenses are always paid when I am on Government business.

Mr. O'MALLEY. You are now assumed to be on Government business?

Mr. WOOLDRIDGE. Yes, sir.

Mr. O'MALLEY. I desire that shown in the record, Mr. Chairman.

Mr. WOOLDRIDGE. As I said in the beginning, the thing about our people is that they were new on the reservation, and they made remarkable progress. In 1916 they were moved away from the central camp onto land selections of their own, until now there are over 100 farmers living on land that they selected themselves. More than half of these have new houses. All of them farm an average of 20 acres. They all have truck gardens. About 65 of the farmers have more than a thousand head of cattle. They have acquired their possessions in less than 5 years.

The thing, I think, that has brought that about—of course, our people are unusually good workers—but the big thing is the system

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under which we work, and it is a system that this bill is attempting to do for all reservations. We have land control. The Indians do not own the land themselves, but they can occupy it as long as they want to use it. Later on I want to show you a few pictures. But they have a sawmill, like this other reservation the gentleman represented. The sawmill has been operating for about 6 years. During the last 3 years it is almost entirely self-supporting, brought about by the fact that they collected money to repay back into the general fund that operates the sawmill. They at first operated on reimbursement money, but practically all that money has been repaid. They now have about $2,000 in their sawmill fund.

They operate a flour mill of their own that, with the exception of the first year, has been entirely self-supporting. It was under Government money then. The mill, of course, was built with reimbursement money and is being repaid. These people work continually aside from the work on their own places, and they earn together about $2,500 a month. It is from those earnings that they help to repay what they borrow from the Government.

Out of the various moneys that they have borrowed from the Government to build houses, to furnish livestock, and to operate their flour mill and sawmill, they repaid, in 1930, $3,682; in 1931, $10,793; in 1932, $9,619; and in 1933, a year of depression, $10,690. Their total debt is $67,579, and they repaid an average of $85 last year.

Mr. PEAVEY. $85?

Mr. WOOLDRIDGE. For those who owe.

Mr. PEAVEY. For each individual Indian?

Mr. WOOLDRIDGE. About 125 owe the Government, and they repaid an average of $85.

Mr. PEAVEY. Do I understand that they made this among themselves, by their own efforts, off their own land?

Mr. WOOLDRIDGE. Entirely from their own efforts, together with what they earned from their land in the cattle sales and what they earned by working on the various projects on the reservation.

Mr. PEAVEY. They have done better than most white farmers.

Mr. WOOLDRIDGE. They have done just that.

Before I show you the pictures, I want to point out a few of the things that we see examples of, and I think it is brought about by the system under which we operate.

Mr. WERNER. How long has this system been in operation?

Mr. WOOLDRIDGE. About 5 years.

Mr. WERNER. That will take us back to 1929 or 1928?

Mr. WOOLDRIDGE. 1929; yes, sir.

Mr. ROGERS. Do you anticipate if this bill is passed other Indians might be able to do something like that?

Mr. WOOLDRIDGE. We have an example.

Mr. ROGERS. You anticipate that other Indians might be able to do the same thing if given a chance?

Mr. WOOLDRIDGE. I see no reason why they cannot.

We have a group that under the system, as I say, tends, by public opinion, to force the backward and unruly members into line and get them to take up the general program and to become active—as we call them—active farmers. We have definite examples of our business committee suggesting that they bring backward men in and do something by public opinion to get them into the program.

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We have a group that ever since their knowledge of this new bill are thinking in terms of doing something for the very old. We have some very old, of course, like other reservations. They are thinking in terms of taking collections from all those who work and gathering a fund to put that with the money that is provided by the Government for destitute people; and then, too, raising community gardens at the day schools—there are three—to go to help take care of the very old. That is their idea.

You have there more active farmers every year, usually 10 or 12 or 15 more. Young people who are married, or people who have not become active, come every spring wanting to enter into the program to establish homes and to set up something for themselves. You have more wanting new houses every year. In fact, they all want houses. We can hardly provide them as fast as they want them.

We have a group now that is thinking as a result of this new proposed legislation of doing something to control family life, because regardless of what is said about the Indian courts, the Indians on our reservations have no courts. We have occasions right now where white people have stolen horses off the reservation. The Indians have not been able to handle the situation at all, and we recently had to go to Havre and hire private attorneys to take up their cases.

Mr. WERNER. Were you at the Rapid City meeting?

Mr. WOOLDRIDGE. Yes, sir.

Mr. WERNER. Do you recall some statement that was made there with reference to Indians getting in trouble, and the methods that were engaged in and the policy with reference to that trouble?

Mr. WOOLDRIDGE. No; I do not recall that.

Mr. WERNER. Would you recall if I read from the official minutes of the Plains Congress?

Mr. WOOLDRIDGE. Yes.

Mr. WERNER. Mr. Woehlke attempted to illustrate a statement of Mr. Cohen, and spoke as follows:

> On the Fort Peck Reservation a few weeks ago a young man by the name of Brown, the son-in-law of Roger Running Bear, was arrested on a charge of stealing a mare. The mare was 18 years old and worth about $50, but the court fixed a bond of $1,500. The superintendent and I looked over the evidence and we thought it was not strong enough to convict him. The superintendent and I worked for days and days with the county attorney, with the white man who preferred the charge and with the sheriff to get that young man out of jail. We finally had to hire an attorney for him and we got his bail reduced and got him out. Now, if there had been a court of Indian Affairs the whole thing would have been settled without any trouble——

That is, the stealing of a horse, which is a felony in my State. [Reading:]

> Without any of this waste of time, without having the boy in jail for a month. It would have been settled in 3 or 4 days. Roger Running Bear's son-in-law would have been out again. That is what the court of Indian affairs would have done for him.

Mr. WOOLDRIDGE. I recall that.

Mr. WERNER. Do you think that that is what the court of Indian affairs is to be established for, to permit the commitment of a felony and the settlement of that felony by a back-office arrangement in some kangaroo court or other, or would you let it pursue the natural terms of justice and bring the gentleman before the bar, and if guilty, adjudicated so by a jury of his peers?

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Mr. WOOLDRIDGE. No; I would hope, though, that something might be done to allow an Indian to have his case heard, and not be shoved aside, because that certainly is the case in our State.

Mr. O'MALLEY. You do not intimate that if an Indian has a case and it is ordered to the calendar of the court it does not get its hearing at the due time in which that part of the calendar is taken up by the court?

Mr. WOOLDRIDGE. Sometimes they cannot get it ordered there.

Mr. WERNER. Does the gentleman know that under the criminal procedure that one charged with the commitment of a crime is entitled to have a hearing at the earliest possible date, as provided by the Constitution?

Mr. WOOLDRIDGE. Here is what happens in our case. White men take these horses. The county attorney says he cannot be bothered with it. We go to the United States attorney and he says that is too small a case, "I would not be permitted to have anything to do with it." That is what actually happens.

Mr. O'MALLEY. Does not any member of the bar of that particular State or Federal court jurisdiction make a point on the remissness of the United States district attorney or the judge?

Mr. WOOLDRIDGE. Sometimes they do.

Mr. WERNER. The point I wish to make is this, that by this deceptive method of holding out false hope for these unsuspecting people, they are led into traps which they otherwise would not get into. That statement is not a statement that would be made by any man with any sense of simple justice to a group of men who were not informed as to their rights under the law. That is a statement of deception; to lead them into this thing and say they are for it, when as a matter of fact if they understood what it really was intended to do, they would not be for it.

Mr. WOOLDRIDGE. I would hope that there would not be any false hopes held out to any Indians. I do not think the Indians have gotten that impression. But I do know that so far as our Indians go, they feel that this is one of the times that something is really trying to be done for the Indians.

Mr. WERNER. Yes; but you are speaking now as an employee of the Federal Government employed in the Indian Service?

Mr. WOOLDRIDGE. No; I am speaking of what our Indians really believe.

Mr. ROGERS. Mr. Wooldridge, would you yield just a minute to the Commissioner?

Commissioner COLLIER. I just desire in the record to meet the statement of the gentleman from South Dakota. The statement as it appears in the record is strictly accurate, not deceptive, and entirely defensible. We have not discussed the court title of this bill yet. When we do, it will become apparent to all of the committee that there is a serious condition of inability to get Indian cases handled by the Federal attorneys and by the Federal courts; that there is a very large zone of minor offenses covered by no law; that the Indians frequently are compelled to depend on public defenders, assigned by the court, who are indifferent to their situation. The reference that Mr. Woehlke made in the record as read is perfectly clear on the face of the record, and it had to do with all of the rigmarole necessary to obtain bail for an Indian living on the reservation pending the

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time when his case came to trial. There was no deception in it. It was accurate and just.

Mr. LEE. The Secretary of the Interior is in favor of this bill?

Mr. WOOLDRIDGE. Yes.

Mr. LEE. Senator Wheeler, of Montana. is very much in favor of this bill, is he not?

Commissioner COLLIER. Senator Wheeler is in favor of many parts of the bill.

Mr. WERNER. Mr. Chairman, I would like to have the record state that Senator Wheeler is best able to speak for himself. I think if he spoke for himself he would say that he is opposed to the major portions of this bill.

Commissioner COLLIER. Senator Wheeler spoke for himself yesterday, and I refer you to the Senate record.

Mr. LEE. I think Mr. Wheeler is an able man. I do not mind following him. I think he is one of the ablest men in the Senate, myself.

Mr. O'MALLEY. It seems to me there is not much particular point in discussing the court features except to clear up the fact as to whether or not the Indians have been persuaded in any way that the creation of this court will give them some distinctions or advantages over taking their cases into the regularly established courts of the United States. If they had that impression, or anybody thinks they have that impression, the record ought to show that.

Commissioner COLLIER. They have been distinctly told that the creation of this court will give them advantages. It will give them advantages.

Mr. O'MALLEY. They have been told it will give them advantages?

Commissioner COLLIER. It would give them advantages, conveniences, and protection, and in many cases it would give them access to court proceedings which are now denied them, the due process of law which is withheld from them now.

I wish to say at this point that I myself feel, and I think the Department does, very much as the witness from the Black Feet, that the court title, while desirable, is not structurally essential to the main parts of this bill. But there can be no question that either through that title as it is or as it may be amended, or through a separate bill, something has to be done to get the chaos of Indian lawlessness, or white lawlessness on Indian reservations, into hand. When the time comes we will give you abundant evidence of the need of doing something, and we will convince you.

Mr. O'MALLEY. If that evidence is abundant enough to justify a provision like this in the bill because of the fact that the Indians are denied equal rights in the regular courts, that evidence at the same time should be sufficient to bring about the impeachment of those judges responsible for the discrimination, or the removal of the United States district attorney.

Commissioner COLLIER. Mr. O'Malley, as a matter of fact, the jurisdiction itself of the Federal courts is very limited over Indian matters under existing law. A wide range of important Indian concerns is not under the jurisdiction of the Federal courts at all.

Mr. O'MALLEY. Under what courts are they?

Commissioner COLLIER. Under no courts; under no courts at all.

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Mr. PEAVEY. Mr. Chairman, I would like to say to the gentleman from my own State and the gentleman from South Dakota, who are both lawyers, that every one of us who have Indian populations in our districts and have first-hand practical knowledge of the situation knows that it is not a question of law at all. For the most part these Indians are denied any consideration of justice before the courts because they have no money, and lawyers will not make their cases unless they do have money.

Mr. O'MALLEY. Does not the court provide free attorneys for indigent litigants?

Mr. PEAVEY. Oh, yes; on some important case that is covered by the law, and where the court appoints some attorney to represent them; you know what kind of service is given in those connections. But that is only in isolated cases. For the most part the Indian has no recourse to the law at all because he has not the money to buy it.

Mr. O'MALLEY. That is almost true of anybody in this country, is it not?

Mr. WERNER. That is not the question at issue, if I may answer the gentleman from Wisconsin. The question at issue is this: I live in a State on the border line. I live among the Indians and I think they are my friends. I think that I could go and easily mislead a great number of them, probably once and probably twice. They have been misled many times. The question is holding out false hope as to what some law will do, or some court. This is the thing I object to.

As to that analogy of that horse case, in my State a sum of $50 taken or purloined constitutes a felony as distinguished from a misdemeanor; and a felony is a penitentiary offense. You know, the Indians are easily led, and I don't like to see that statement go uncontradicted.

Mr. PEAVEY. If the gentleman will permit, he knows that that is more or less an obsolete statute, passed back in the day when men had to depend on a horse. Now he depends on the automobile.

Mr. WERNER. Yes, but the horse is more valuable to the Indian than an automobile.

(Discussion off the record.)

Mr. WOOLDRIDGE. I have a few more points, then I will show you the pictures.

We have a group that expects to pay for what they get from the Government. Absolutely everything that has been furnished them in the last few years in the way of relief they have repaid the Government in work. There are no exceptions to that. I would like to point out for you as to this group, as I said in the beginning, that the people came there without property or worth of any sort. Now, of the 100 active farmers, they are perhaps all of them worth an average of $500, and of that 100 there are at least 30 that are worth perhaps $3,000, and they have done that since they have been on the reservation.

I will show you these pictures here:

Here is a picture of the camp as it existed in the beginning. Here is a picture of the individual houses as they were. Here is a picture of one of the new houses. Another picture of one of the new houses. Here is one of the new houses and one of the old ones. I would like to point out also that of the people who are on the ration roll, we

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suggested last fall that a lot of them go off the ration roll. We think they would be better off doing by some work. Half of them volunteered to go off the ration roll. Here is a picture of a man 60 years old doing some work. Hère is a picture of Indians at work on the roads. Our schools have 4-H club work. Here is one of the projects, a young girl with chickens, a boy with potatoes.

Mr. WERNER. When was this road built; was it built under the C.W.A. allotment work?

Mr. WOOLDRIDGE. No; a year ago; regular road funds.

Here is a boy with potatoes.

Mr. MURDOCK. You attribute the progress and success made on this reservation to your administration of affairs out there?

Mr. WOOLDRIDGE. No; those Indians are good workers, and they are good workers because we can handle them.

Mr. MURDOCK. There are probably good workers on every reservation that has not shown the progress that yours has. I am just wondering if you do not think it is probably the result of your administration out there.

Mr. WOOLDRIDGE. I think it is a combination of their being good workers, and the Indian Office has given us good support, always.

Mr. MURDOCK. It has been accomplished under the present law, without any assistance of the contemplated act?

Mr. WOOLDRIDGE. It is the land set-up, like this bill is attempting to do. They are not allotted. The land is held by the community.

Mr. WERNER. How long have you been on the reservation?

Mr. WOOLDRIDGE. Five years.

Mr. ROGERS (presiding). Do you anticipate that your people could do even better if this bill is passed?

Mr. WOOLDRIDGE. There is talk right now in the community of trying to allot them; there has been for 4 or 5 years.

Mr. MURDOCK. Of doing what?

Mr. WOOLDRIDGE. Trying to allot these people.

Mr. ROGERS (presiding). That is one thing that prompts you to be for this bill?

Mr. WOOLDRIDGE. Yes.

Mr. MURDOCK. Where does the talk come from, from the Indians themselves?

Mr. WOOLDRIDGE. White people.

Mr. ROGERS (presiding). Is it rumor or from official sources, that talk?

Mr. WOOLDRIDGE. It is not rumor. We can trace where that comes from.

Mr. ROGERS (presiding). Is it official, or is it——

Mr. WOOLDRIDGE. Oh, yes; not from the Indian Office. I do not think there has ever been any talk from the Indian Office of allotting those people.

Mr. WERNER. What do you mean by "official"?

Mr. WOOLDRIDGE. I mean that it is not rumor, because we know the men in that vicinity would like to allot the reservation.

Mr. WERNER. Who are they? What are their names?

Mr. WOOLDRIDGE. One of them is "Shorty" Young.

Mr. WERNER. What is his first name, "Shorty"?

Mr. WOOLDRIDGE. Yes.

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Mr. WERNER. Who is another one? You might just as well name the people. We do not want to be vague and indefinite. Let's be positive. Who are they?

Mr. WOOLDRIDGE. He is the principal one.

Mr. WERNER. There are some others? Is he the only one?

Mr. WOOLDRIDGE. He is the principal one.

Mr. WERNER. Are there any others?

Mr. ROGERS (presiding). How does that make it official, then?

Mr. WOOLDRIDGE. I do not know whether I understood your term "official."

Mr. ROGERS (presiding). I asked you if it was rumor or official information. You said it was official.

Mr. WOOLDRIDGE. In that case, we know that he would like to allot the reservation.

Mr. ROGERS (presiding). Does that make it official information?

Mr. WOOLDRIDGE. No; not from the standpoint of the Indian office.

Mr. ROGERS (presiding). The record ought to be corrected.

Mr. WERNER. Let the record stand as it is.

Mr. MURDOCK. You do not believe the rumors have been incited so as to throw a fear into the Indians for the purpose of getting any legislation passed as a result of that sense of fear? You would not believe that?

Mr. PEAVEY. Let me say to the gentleman it does not require any legislation. The Secretary of the Interior can order it at any time without the consent of the Congress at all.

Mr. MURDOCK. But that can be prevented without the passage of this law by a law preventing any other allotments, can it not?

Mr. PEAVEY. Yes, certainly, if Congress would take that action.

Mr. O'MALLEY. By whose direction, Mr. Superintendent, do you appear before this committee?

Mr. WOOLDRIDGE. It was pretty much my desire to express our set-up as it is, because I thought that it gave an example of what this bill is trying to do.

Mr. O'MALLEY. Do you appear before this committee, Mr. Superintendent, by the direction of the Rocky Boy Indians? Did they desire your appearance here to appear in favor of the bill?

Mr. WOOLDRIDGE. I do not know that they do, but our Indians from the very beginning have been in favor of this bill.

Mr. ROGERS. Have they taken any official action endorsing it?

Mr. WOOLDRIDGE. Yes, they have had group meetings, several meetings over the reservation, and instructed their business committee to——

Mr. ROGERS. But they did not instruct you to come and present their views?

Mr. WOOLDRIDGE. Except that all this correspondence has been through our office.

Mr. O'MALLEY. Mr. Superintendent, if the Indians did not direct you to appear here, you were not summoned by the committee to appear, were you, for questions or anything else?

Mr. WOOLDRIDGE. This committee?

Mr. O'MALLEY. Yes.

Mr. WOOLDRIDGE. No.

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Mr. O'MALLEY. Did you appear here at the direction or the suggestion of any member or official of the Department of the Interior?

Mr. WOOLDRIDGE. I think it was arranged.

Mr. O'MALLEY. It was arranged? Who suggested that you appear here in favor of this bill?

Mr. WOOLDRIDGE. As I said in the beginning, it has been my desire to explain what our reservation has done, because it is an example.

Mr. O'MALLEY. Who is your immediate superior officer?

Mr. WOOLDRIDGE. The Commissioner.

Mr. O'MALLEY. The Commissioner? Did the Commissioner suggest that you appear in favor of the bill with your exhibits?

Mr. WOOLDRIDGE. I have not talked to the Commissioner since I have been here.

Mr. O'MALLEY. Are you familiar with section 10281–A of the United States Compiled Statutes?

Mr. WOOLDRIDGE. No.

Mr. O'MALLEY. That is all.

Mr. ROGERS. Just a minute, what did you mean there, "arrangement", "it was arranged"; what did you mean by that?

Mr. WOOLDRIDGE. It was thoroughly understood that I was——

Mr. ROGERS. Understood with whom?

Mr. WOOLDRIDGE. With the Commissioner's staff.

Mr. O'MALLEY. Mr. Chairman, I would like to pursue my inquiry, with the permission of the chair and the committee. I believe that this question should be answered and answered in the record. This gentleman who appears here is a civil-service employee. He is in Washington at Government expense, and he says he does not appear here at the direction of the Rocky Boy Indian Tribe. He appears in favor of this bill, and he offers exhibits. I would like to know whether he appears voluntarily, or whether he appeared at the suggestion or encouragement of any member of the Department of the Interior. I want the record to show it.

Commissioner COLLIER. Mr. Chairman, I would like to——

Mr. WERNER. I object to the Commissioner making a statement at this time.

Mr. ROGERS. I think before we go any further that question should be answered, if the gentleman insists on it, unless you prefer not to answer it.

Mr. O'MALLEY. As a member of this committee and upon my rights as a Member of the House, I demand that the question be answered in the affirmative or the negative.

Mr. HILL. Give him a chance to answer. He is trying to answer.

Mr. WOOLDRIDGE. I think you could consider it as being at the direction of the Indian Office.

Mr. O'MALLEY. You appear here then at the direction of the Indian Office?

Mr. WOOLDRIDGE. I think so.

Mr. O'MALLEY. In favor of this bill?

Mr. WOOLDRIDGE. No; I think to voice the sentiment of our Indians.

Mr. O'MALLEY. But the Indians did not direct you to appear in their behalf, according to your previous statement.

Mr. WOOLDRIDGE. Not in this specific instance, I say, but our Indians have been in favor of this thing, and all their correspondence

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has gone through our office. Our Indians in my presence handed the Commissioner a letter expressing their views in favor of the bill.

Mr. ROGERS. Now, Mr. Commissioner.

Commissioner COLLIER. I really think that the Commissioner should be allowed to answer this question that has been propounded.

Decidedly, Mr. Woolridge was directed to appear before the committee by the Department. We assume that the committee wants information. Mr. Wooldridge has very important information to give the committee. That is number 1.

Now, number 2. It happens that Mr. Wooldridge has a number of other important jobs here. If the committee is interested, I will be glad to tell the committee what they are. But if the Department had no other job and no other assignment but to come and appear as a witness before this committee and give it essential facts, we would consider that it was entirely appropriate for him to be brought here and to appear.

Mr. O'MALLEY. It is not a question of appropriateness. All I desire to do is to get into the record the question of whether or not a superintendent of a reservation appearing in behalf of pending legislation before a committee did so at the direction of his superior officer.

Commissioner COLLIER. And the answer is yes.

Mr. O'MALLEY. I think that will conclude my interest in the matter.

Mr. ROGERS. Unless there is something else to come before the committee, a motion for adjournment will be in order.

Mr. O'MALLEY. By the way, Mr. Chairman, I would like to make the point that I think the committee should determine what is appropriate and who shall appear and the way they shall appear and the testimony they shall give, whether it shall be heard or not. I do not want to be in the position of attempting to guide the committee, but I would like the committee hereafter to express its opinion upon the appropriateness of witnesses appearing for or against a bill.

Mr. ROGERS. If you don't mind, Mr. O'Malley, you can raise that point at the next meeting, because it is time now to adjourn.

The CLERK. As clerk of the committee, may I ask a question?

Mr. ROGERS. Yes.

The CLERK. I think that I am responsible, Mr. O'Malley. The committee not being present, the chairman being on the floor, and delegations from the various States calling up and asking for appearance here, I supposed that you wanted to hear them.

Mr. O'MALLEY. Oh, yes.

The CLERK. I thought that they had the information that you wanted them to give, so I gave them permission.

(The committee thereupon adjourned to meet at 10:30 a.m., on Wednesday, May 2, 1934.)

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READJUSTMENT OF INDIAN AFFAIRS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

PART 7

Printed for the use of the Committee on Indian Affairs

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READJUSTMENT OF INDIAN AFFAIRS

WEDNESDAY, MAY 2, 1934

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met in its committee room, Capitol, at 10:30 a.m., Hon. Edgar Howard (chairman) presiding.

Present: Representatives Howard, Chavez, Rogers, O'Malley, Stubbs, Hill, Werner, Lee, Peavey, De Priest, Dimond, and Greenway.

The CHAIRMAN. Before we begin our regular hearing the chairman would suggest that the reporter insert in the record at this point the testimony pertaining to the Mission Indian Reservations of California taken before the committee at the hearings held March 12 (see p. 155) and March 13 (see p. 165), but not printed in the proceedings of those dates.

MISSION INDIAN RESERVATIONS OF CALIFORNIA

(WITHHELD FROM PAGE 155 OF THE HEARING OF MAR. 12, 1934)

STATEMENT OF PAUL WILLIS, OF CALIFORNIA

The CHAIRMAN. What is your location?

Mr. WILLIS. I am from California, representing the Mission Indians of southern California.

While we have had no opportunity until we arrived in Washington to study the "big bill", so-called, we do find certain provisions to which we very seriously object, especially section 5, wherein an attempt is made to give the Indians the plan of recalling their superintendent, or rather removing him. We believe that if a direct, simple method of recalling or removing, or transferring the superintendent were present, most all of the ills to which the Indians are subjected would be removed. The Indians in our State vote in all elections—bond elections, elections for officials, recalls, and all of that—they are experienced; they live on reservations throughout southern California, 50, 75, 100, or 200 Indians; they are well experienced in local self-government; they always have continued their tribal relations. When the treaties were made with the California Indians in 1852, they got word to the chiefs and to the leaders, and they were able to hold conferences in which the treaties were made. Since that time, the Indians have always had tribal relations, but they have been up against the intimidation of the superintendent and the Bureau officials until their case is pitiful, indeed. The Senate investigated 2 years ago and recommended the approval of the Indians' petition to remove their then superintendent. That was done on the asssumption of

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office by the present Commissioner last July, and a new agent was sent from the East. The Indians asked for a conference with this man, submitted in writing, a simple direct appeal, in which they were interested; one was the treaties, one was in connection with a hospital in the county to which the county commissioners agreed, and one related to the resurveying of reservations. That superintendent refused to confer with the Indian leaders, and as a result, they have been intimidated.

The CHAIRMAN. May I ask if the refusal of the superintendent to confer with the lawfully constituted body has been reported to the Commissioner?

Mr. WILLIS. Copies were sent to the Commissioner and to the Secretary; here is the president here with me; there is no other who assumes to represent them; they have tried to have a consultation with the new superintendent, although they had no choice in his selection, they wanted to proceed to rehabilitate themselves; they are capable of taking their proper place, not only in matters such as I have described, but they have the right to have a voice in the choosing of their superintendent and the employees.

Mr. CHAVEZ. What objection do you have to section 5, page 10, line 17. Please read the section.

Mr. WILLIS (reading):

> Any Indian community shall have the power to compel the transfer from the community of any persons employed in the administration of Indian affairs within the territorial limits of the community other than persons appointed by the community—

That would be better if the provision following were not appended—

> *Provided, however,* That the Commissioner of Indian Affairs may prescribe such conditions for the exercise of this power as will assure to employees of the Indian Service a reasonable security of tenure, an opportunity to demonstrate their capacities over a stated period of time, and an opportuntity to hear and answer complaints and charges.

That is the trouble, that power is already in the Secretary of the Interior and the Commissioner of Indian Affairs here at the expense of the Indians. It strengthens the power of the Commissioner, whereby he can continue the superintendent, and the Indians under this bill have no right to removal; they only have a right to request a transfer. That can be continued from time to time, practically on the sole protection of the Bureau employee, in his tenure of office.

The greatest benefit to the Indian would be had, if that were direct and simple so the Indian himself would understand. He can vote for every public official, and on bond issues, but he has not a voice in the selection of his own superintendent; he is experienced and able in every way to assume the duties of citizenship; this right has been denied. About a year ago, a conference was held in Washington in which that was one of the fundamental things on which they asked relief. We figured that would be given. The Indians have been hoping it would finally pass, and now it is bound up in the new bill. It is not fair; it cannot be understood, and apparently will not operate. The Mission Indians of southern California would like that part of the bill stricken out and the bill that has been introduced here last year enacted, wherein it gives direct authority to the Indians to remove the superintendents; that is the bill that the Indians would get relief from.

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Mr. PEAVEY. Will the gentleman yield?

Mr. WILLIS. Yes, sir.

Mr. PEAVEY. The gentleman has an Indian situation apparently very different from the average Indian situation prevailing in the country. If what he says is true with regard to the Indians being united and working harmoniously together, the Indians are to be congratulated. This bill is drawn with the idea of meeting the Indian situation in the whole United States. In most Indian communities, the Indians, just like the white people, are divided into two or three or four or five groups. There is great contention and strife amongst them. If the Department did not retain some supervision over who was to remain as to superintendent, there would be constant removals; you would not accomplish anything for the Indians and you would make a lot of trouble in the Department.

Mr. WILLIS. I realize that; I can only speak for the Indians who are qualified to exercise this right. Today, they cannot get copies of this bill; they have requested copies of any bills that might affect them and that request was made on January 10.

The CHAIRMAN. Such a request was made of this committee and not granted?

Mr. WILLIS. It was made to the Commissioner of Indian Affairs, and to the Secretary of the Interior; they have tried to get copies of the proposed bill, because they knew it was forthcoming; it was promised a year ago; they have been recognized as having tribal relations; they were appealed to some 2 or 3 years ago, by the present Commissioner, when a great fight was being made to support certain measures, which was given; now they will not be recognized in any capacity.

Mr. PEAVEY. I can understand, where you have a situation like you describe, that would be desirable, but there must be some provision in the law to take care of these more numerous other situations which are not at all comparable, and where it would but lead to some of the difficulties the gentleman is complaining of.

Mr. WILLIS. There are exceptions in the bill, granted to certain Indians; this bill does not affect the Navajos. A statement has been prepared by the Mission Indians, drafted in their conference on February 3, covering the points, historically, that should be considered. I would be glad to submit to the committee a copy of that report, which will clarify the situation of the Mission Indians, and it might really affect the consideration of this bill in the future.

The CHAIRMAN. It might interest the gentleman to know that this committee has made every effort to get copies of the bill and copies of the hearings to every tribe of Indians under the flag. Two hundred copies of this bill were sent out 14 days ago to your own Mission Indians in California.

Mr. WILLIS. To the school, or the agent?

The CHAIRMAN. Direct to the Indians themselves. I will promise you that if that gentleman refuses to entertain a petition, or to meet with the representatives of the tribe out there, that I will raise hell and put a chunk under it in an effort to get rid of him.

Mr. WILLIS. I can assure you that such has been the case, and it has been the case since the new man came. We would like to have an opportunity to submit copies of that communication, which was duly presented to the Superintendent. I would also like to present

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Mr. Castillo, who has been president of that association for 12 years.

The CHAIRMAN. I am sure the committee will be glad to receive such a communication, and that the committee, when the opportunity presents itself, will be glad to hear from the president. Do you have any written credentials?

Mr. WILLIS. I was going to present them; here they are.

The CHAIRMAN. No doubt, the committee would be glad to hear from the president of the association, but the time has arrived when the members of the committee must go to the House.

(WITHHELDFROM PAGE 165 OF THE HEARING OF MARCH 13, 1934)

STATEMENT OF ADAM CASTILLO, REPRESENTING THE MISSION INDIANS OF CALIFORNIA

Mr. CASTILLO. Mr. Chairman and gentlemen, I am from Riverside, Calif. I represent an Indian organization in Southern California.

Mr. PEAVEY. What is the name of it?

Mr. CASTILLO. The Mission Indian Federation.

Mr. COLLINS. Consisting of how many Indians?

Mr. CASTILLO. About 3,000 Indians.

Mr. ROGERS. In the organization or in the three counties?

Mr. CASTILLO. In the three counties.

Mr. ROGERS. How many are in the organization?

Mr. CASTILLO. Over 2,500, including the Yuma Indians. Since Mr. Collier went into the office, I have written a letter from the organization; this program of introducing a bill here would affect us, but I have not heard anything from him. I wrote on January 10 and again on the 24th. On the 24th the people decided to send us; we had a conference in San Diego on February 3, and we were delegated to come to Washington to see Mr. Collier and the Secretary of the Interior, the four of us were delegated, Mr. Purl Willis, Vicente Albanez, and Mr. Eugene Ness, a young attorney, came with us, and when we arrived here we saw this bill that is being presented, and it is very complicated, and under section 5 if the Indians petition against the Indian agent he cannot be removed immediately, and that is why our people are suffering back there, because when we petition to the Government or to the Indian agency nothing is taken up.

So, in this bill, from what we understand, Mr. Collier will be in Riverside on the 17th and 18th, and our Indian people are a long way from Riverside, and are very poor; they could not afford to attend that meeting, but if they are notified perhaps some of them will attend the meeting, but I am sure not all of them, so I do not believe it would be right that a few should vote on that bill. It would be giving justice to our people without knowing or understanding the bill, while we are out here as delegates, and most of the people depend on us, what we are to take back to them; for this reason I object to that meeting that is to be held there because not all of them will know much about it, and it is a very complicated matter. Our people are all voters; nearly half of them are voters, registered, and regarding this bill my people would be excluded from this bill because the Government has dealt with our people in a different way. Treaties

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were made with the California Indians but were never carried out, so the Indian's life has been just like the white man; he has his tribal council on each reservation, and that is how this treaty was made with them, through the tribal councils, and the chiefs and head men of the tribes were called to that meeting and the treaty was made in 1852.

Mr. HILL. I understood that when Mr. Thompson was permitted 10 minutes extra, that we were to limit this gentleman to 5 minutes.

Mr. PEAVEY. I move that the witness be given an additional 5 minutes.

Mr. CASTILLO. I am through now.

Mr. PEAVEY. You say you were selected as the regular chosen delegates of the tribes to come here?

Mr. CASTILLO. Yes, sir.

Mr. PEAVEY. In a regular tribal council?

Mr. CASTILLO. Yes, it was a conference.

Mr. PEAVEY. Along with the lawyer that accompanied you?

Mr. CASTILLO. Yes.

Mr. PEAVEY. Do you have tribal funds and are your expenses paid out of tribal funds, or are you voluntarily making that sacrifice yourself; are you paying your own expenses; how are your expenses paid?

Mr. CASTILLO. The tribes have raised this money for us two Indians who come here. Mr. Ness and Mr. Willis are not included.

Mr. PEAVEY. It will be paid out of tribal funds?

Mr. CASTILLO. Yes.

Mr. PEAVEY. As I understand, you Indians feel that you have been very shabbily and poorly treated by the Government departments in the past? Would not that, it seems to me, necessarily give you an interest in the passage of this bill? I understand from your testimony that you are inclined to be opposed to the bill as a whole, or only to section 5?

Mr. CASTILLO. I am opposed to the whole bill, because I have not had the time to study it.

Mr. COLLINS. That is the objection; they do not know what the bill contains; until they do, they are opposed to it.

Mr. Rogers. And also that the people have not studied it at all.

Mr. COLLINS. You do not know whether you would favor or oppose it until you know what is in the bill; your objection is they will not have a chance to know what it is?

Mr. CASTILLO. My objection is that probably this meeting will be held but it is too far away.

Mr. ROGERS. How far away is it?

Mr. CASTILLO. Two hundred and fifty miles.

Mr. COLLINS. I understand from press reports that the Yuma Indians are on their way there now.

Mr. PEAVEY. Under the terms of the bill, if any Indian community desires to come in under the provisions, you would have a chance to familiarize yourself with it before voting on the question, would you not?

Mr. CASTILLO. Yes.

Mr. HILL. What is the attitude toward the present superintendent there?

Mr. CASTILLO. He is prejudiced against our organization.

Mr. HILL. When was he appointed?

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Mr. CASTILLO. He was appointed in July, and we wrote a letter to him inviting him to a conference and to talk on these Indian affairs and he came to the conference but only spoke 5 minutes and left and said he had to attend some white people's meeting and he went out, and these Indians were very much disappointed, and there were many captains there.

Mr. PEAVEY. You have spoken here, chief, of two different organizations; do you represent as a delegate both organizations; are you both a tribal delegate and a representative of the organization you spoke of?

Mr. CASTILLO. Yes.

Mr. PEAVEY. What is this second organization?

Mr. CASTILLO. The tribal organization is the oldest; they always had tribal officers; the Indians have elected their own officers, such as captains, judges, and officers of the tribe, and settled matters among themselves for many years, it has been the custom; when the mission padres taught them justice, that is the time they carried it out, and it has been carried out ever since on each reservation, each tribe has its own officers elected by themselves.

Mr. PEAVEY. What is this federation you spoke of?

Mr. CASTILLO. This federation was organized about 14 years ago, uniting all reservations together, in order to get a more understanding with our Government ,like in the treaties. We are sent out here to know what is best for the interests of our people.

Mr. PEAVEY. Is the federation composed entirely of Indians?

Mr. CASTILLO. Yes; of Indians.

Mr. PEAVEY. Is it a voluntary organization, or do you have dues, or what?

Mr. CASTILLO. They pay dues, about $1 per month, now since you cannot raise money, and they cannot put in money, they put in what they can.

Mr. PEAVEY. What do you use those funds for?

Mr. CASTILLO. It is used in the defense of our people, in defending any member that gets in trouble in the courts.

Mr. PEAVEY. In presenting matters to the Department, has the federation that you speak of been recognized by the Department as an Indian organization?

Mr. CASTILLO. Yes; in here I have received many letters from many Congressmen and Senators for that length of years, but we have not got anywhere, and for that reason we have made the trip out here.

Mr. ROGERS. How many Indians does your superintendent represent? How many are under him?

Mr. CASTILLO. I think about 3,000.

Mr. ROGERS. The same number as the federation?

Mr. CASTILLO. Yes.

Mr. ROGERS. The same people?

Mr. CASTILLO. Yes.

Mr. ALLAN G. HARPER. The meeting which the superintendent attended and immediately thereafter left was on Sunday?

Mr. CASTILLO. Yes.

Mr. HARPER. He went to a meeting at his church?

Mr. FRED H. DAIKER. In connection with the statement made by Mr. Castillo about the Indians being required to vote at the meeting

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at Riverside, that is not the purpose of the meeting; the purpose of the meeting is to enlighten the Indians with reference to the purpose and objects of the bill. Official delegates are being called to this meeting, and their expenses are being paid by the Government, so that they might be informed and take word back to their people; they are not being asked to commit themselves or their people as to what their attitude is on the bill.

Mr. ROGERS. I tried to ascertain before the Commissioner left what he intended to do on this trip, and the hearings will bear me out that he intimated that he was going to find out what the Indians think of the bill.

Mr. DAIKER. He is going to find their attitude.

Mr. ROGERS. How is he going to find that if he is going to tell them what it contains?

Mr. DAIKER. A circular has been prepared and is now going out, asking the Indians for a consideration of their views as a result of the information they are receiving through conferences.

Mr. ROGERS. Will the Indians get the circular?

Mr. DAIKER. The superintendents are sending it out to the organizations speaking for the Indians; it does not go to every Indian.

Mr. ROGERS. It does to the superintendents?

Mr. DAIKER. Yes; it goes to the superintendents.

Mr. ROGERS. And they send it out?

Mr. DAIKER. They are expected to distribute it among the tribal organizations, and they will hold meetings and express their views on the bill. I thought that the committee should know that.

Mr. COLLINS. These delegates are to be paid by the Government?

Mr. DAIKER. The official delegates.

Mr. COLLINS. Of the Indians themselves?

Mr. ROGERS. May I have the delegates that have been selected from the Yuma Tribe?

Mr. DAIKER. I do not know that we have that.

Mr. ROGERS. How are you going to send them the money if you do not know their names?

Mr. DAIKER. The superintendent will pay them.

Mr. ROGERS. How are the delegates selected?

Mr. DAIKER. On the major reservations the Indians have a general council.

Mr. ROGERS. The Indians themselves select the delegates?

Mr. DAIKER. At the major reservations the Indians have a general council at which they select their tribal officers and members of their council; those are the people representing the Indians at these gatherings.

Mr. HILL. I think that is true; in my own district, there is a reservation and the council selects their members to go and those get the information and bring it back to the others.

Mr. ROGERS. The point I wanted to know about is whether or not the Indians will be represented.

Mr. HILL. That is up to the Indians.

Mr. COLLINS. I understood him to say the expenses were to be paid.

Mr. ROGERS. The Commissioners assured us that he was going to find out the consensus of opinion.

Mr. PURL WILLIS. I would like to have 3 or 4 minutes.

Mr. HILL. Without objection, you may be heard for that time.

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Mr. WILLIS. The Chair yesterday asked me to give him confirmation of what I said, when I stated Mr. Castillo had sent a letter to the superintendent asking for a conference, and he refused to confer with him, and has continually refused; there are the documents, and the comment of the newspaper.

Mr. HILL. Do you wish to include them?

Mr. WILLIS. I do.

Mr. HILL. Without objection, they will be included.

(The papers referred to are here printed in full as follows:)

OFFICIAL BALLOT

ELECTION OF SPOKESMEN AND COMMITTEES, DECEMBER 28, 1933

SABOBA RESERVATION

(Vote for one)

Spokesman --

(Vote for four)

Committee members:

By adult (21 years old or over on Dec. 28, 1933) enrolled member of Soboba Reservation.

(Sign here)

[From the San Diego (Calif.) Sun, July 27, 1933]

THE INDIAN MAGNA CHARTA

The 3,000 Mission Indians of southern California declared their independence at their convention last Sunday—the first in their history. That action was as important to them as the Declaration of Independence was to this Nation, or the Magna Charta to early England.

Under the regime of Charles L. Ellis, former agent, there were two factions among the Missions, the strong federation and the antifederation.

Sunday the delegates represented all the reservations and all the tribes. Officials of the two groups sat side by side on the platform at Lincoln School, not far from a picture of the patron "saint" of the redmen, old Chief Calac, who started the fight for equality back in 1876 when he demanded ratification of the California treaties by virtue of which the Indians peacefully gave up their lands.

"Sure, we'll take care of the Indians. Go home and await developments," promised the politicians of those days. Calac died still waiting for "developments."

In rapid-fire order, the Mission Indians informed Commissioner John Collier of their "bill of rights."

They demand—

A new superintendent whom they can trust. Purl Willis, the San Diegan declared by the redmen to be responsible for many reforms thus far obtained, was recommended.

Defeat of the Swing-Johnson bill permitting the State to handle such functions as health, welfare, and education of Indians. The Indians, praising the act in theory, say it has been misapplied, and they have had no voice in expenditure of considerable of their money.

Discharge of all the employees who worked under the Ellis regime whom they charge contributed to much of their recent distress and criminal neglect.

Remedy of the allotment evil, which has caused them so much grief. They ask the Government either to return the lands in question or reimburse the tribesmen thus injured.

Resurvey of reservations along original lines to stop the landgrabbing by the white men.

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Construction of an Indian hospital at Warners Hot Springs.

The Indians' program seems reasonable and just. They should be permitted the strongest possible voice in their own government. More power to that voice.

WASHINGTON, D.C., *March 11, 1934.*

Hon. EDGAR HOWARD,
Chairman Committee on Indian Affairs,
House of Representatives.

DEAR SIR: At the hearing of your Committee on Indian Affairs today you requested that I furnish your committee with copy of letter sent by the Mission Indian Federation in behalf of the Mission Indians of California to their newly appointed Superintendent, Mr. John W. Dady, whose office is in Riverside, Calif. Statements concerning the indifferent attitude of the Superintendent were made by the undersigned and reference made to the courteous offer of cooperation on the part of Mr. Adams Castillo as president of the Federation.

Therefore I am attaching hereto true copy of said letter, and which is certified to by Mr. Castillo, who is present. I desire to here repeat what I stated today, that up to present time no offer has been made, insofar as I have been able to learn, on part of the Superintendent to discuss any of the matters outlined in said letter.

For the benefit of members of your committee, might I here state that I had been appointed by the Board of Supervisors of San Diego County to investigate and report on the condition of the Mission Indians, such evidence, as the board stated, "to be used before United States grand jury, in an endeavor to get proper treatment for the Indians." In this capacity I made careful investigation over a period of some 18 months of all the reservations among the Mission Indians. During this time many official investigations and hearings were had; finally, the Senate Indian Affairs Committee came. Later the former agent was transferred.

The new agent came in July 16, 1933. Mr. Castillo sent him a letter offering cooperation and assistance and asking for a conference, as per his letter. Mr. Dady came and remained about 10 minutes, reading a short prepared address, and immediately and abruptly left. His introduction by the undersigned was received most favorably by all the delegates, and they clapped their hands and appeared very happy. This was the first time an agent ever appeared before them they stated. When Mr. Dady left, he stated he had to go and meet some white friends at the request of the Commissioner, Mr. Collier. The Indians were naturally disappointed, and so expressed themselves. As many of them stated, he had accepted their invitation, and they had come to the conference at great expense and for a definite purpose. They asked for his removal.

However, after a night and day's careful deliberation over events, and with the welfare of the Indians uppermost in my own mind, on the next day, Monday, July 24, 1933, I addressed a personal message to Mr. Dady, asking for an opportunity for a conference and offering my influence in the hope of getting both he and the Indians back to where they were before the conference. As this letter also may have a definite bearing on the attitude of the superintendent toward the Indians and myself, I am attaching a copy of same. My letter to Mr. Dady was never acknowledged in any manner, shape, or form. He has however, made reference to me before Indians and white persons, referring to me as an "agitator." Copies of both my own letter and also that of Mr. Castillo have been sent the Commissioner and other officials in Washington.

In this connection, might I also state that the Mission Indians some 2 years ago appointed an advisory committee, consisting of 8 or 10 white persons of proven friendship and the captains of some 18 reservations. It was advised by former administration officials for the Indians to have such white friends if they desired. After this committee was in operation sometime, an "official" committee on Indian matters was sponsored by Bureau officials. This latter committee was duly recognized by the new agent and the one appointed by the Indians ignored. Thus, at every turn and at every opportunity, the new agent has shown his prejudice against the best interests of the Mission Indians.

Both the San Diego Union and the San Diego Sun, the leading papers of the city, severely criticized the attitude of the agent in not conferring with the Indian leaders. Copy of an editorial appearing in the Sun of July 27 is given herewith.

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Thanking you and holding myself ready for further assistance in any way possible for a better understanding between the Mission Indians and their officials, I am,

Respectfully,

P. WILLIS,
For Mission Indians of California.

SAN JACINTO, CALIF., *July 8, 1933.*

Mr. JOHN W. DADY,
Superintendent Mission Indian Agency,
Riverside, Calif.

DEAR SIR: I see by the press that you have been appointed as the new superintendent of the Mission Indian Agency.

As the president of the Mission Indian Federation and the spokesman for a great number of our people throughout southern California, I am, therefore, bringing to your attention certain matters of great importance to the Indians. Some of these matters affect directly every Indian, while others are local and of interest to a particular reservation.

The Mission Indians have long been the object of neglect and prejudice of former Bureau officials and their assistants and they are hoping that the "new deal" as announced by the Government officials at Washington, will be extended to the Mission Indians. During all these years our hopes have been shattered; our property and other rights have been taken; hundreds of our people have met premature deaths because of neglect and prejudice of the people who should have been assisting us. Today, though we have always been peaceful, law abiding and patriotic toward our Government and its orders, we still have a ray of hope and belief that by united action, we can, if given proper assistance and opportunity, prove to the white man that the Mission Indians are capable of taking their proper place as respected citizens of this great State and Nation.

It is the announced program of the officials at Washington that the Indians shall promptly be given a voice in their own affairs; in fact this freedom has already been extended to certain Indians of other States. In this matter, the Mission Indians have a very definite program. This feeling of freedom and a right in our own business is not one of recent birth; no one has "incited" us to ask for it now. It has always been in the breast of every Indian. We have many white friends who have assisted us in recent years. Our people appreciate such help. The Indians throughout this agency have recently joined all forces and have endorsed Mr. Purl Willis of San Diego for our new superintendent. This endorsement has been given Mr. Willis without his previous knowledge. In the fullest sense of the expression, "He has been our friend—he understands us and has our fullest confidence." We are sure, however, that Mr. Willis and our other white friends who have proven themselves, are ready to extend to you every cooperation and assistance in your new responsibilities.

No new program should be started with the expectation of its being a success, without the help and assistance of the Indians themselves. In these matters we expect to advise with our proven friends. In this connection, might I call to your attention that the Indians have, after very careful consideration, appointed a "California Mission Indian Advisory Council." This organization, through its chairman, Mr. H. R. Prather of La Jolla, has been of great assistance to our people. Might I say further that Mr. Prather, long a friend of the Indian, has for years been a friend and supporter of Mr. John Collier and his program.

This is truly a representative committee or council. It is composed of Indians (a majority) and their white friends. On this committee are five Indians chosen at large; the captain of each reservation, and 8 to 10 white friends. There are no salaries—all work voluntarily.

The Indians throughout the Mission Indian Agency, I am sure, join in offering you our honest cooperation. We have a number of vital matters which we think are necessary for an early consideration—some of them of pressing immediate importance. We desire to discuss these matters with you with the hope of meeting on a common ground for the good of the Indians. We, therefore, ask that you attend a meeting of the Indian leaders and their friends to be held in San Diego, Sunday, July 23, 1933, at 10 a.m at a place to be announced later. The following are some of the subjects and matters which we would like to discuss with you at this meeting:

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Indians having a vogue in their own matters.
Eliminating of certain Indian policemen.
Emergency relief work.
Resurveying of all reservations on old lines.
Indians as employees in welfare, health, and other work.
Allotment abuses in San Diego County
Locating of Los Conejos (captain) Indians.
Cooperation in securing payments due Indians under unratified treaties—now in court of claims.
Construction of Indian hospital—Warner Hot Springs.
Water rights on several reservations.
Indians right to review expenditures—tribal funds.
Closing Indian schools—public schools.
Reimbursable trust fund from which Indians might get loans.
Removal of certain welfare workers; also Indian farmers in Coachella Valley, Banning and San Diego Counties, Indians choosing successors.
Others matters mutual importance all Indians.

The subjects above referred to are all of very great importance to the Indians. They are given you with the thought that it might be of assistance to you in planning your program of giving the needed relief to the Indians. At this conference it is hoped that a frank and open discussion might be had in all these matters and that our people might return to their homes assured that indeed "a new day" has arrived.

Again I assure you on behalf of the Mission Indians, of California, that in your efforts to work out the above program, you shall have our fullest and most loyal cooperation.

Hoping and trusting that you will meet with us on above date Sunday, July 23, at 10 a.m.

I am, most respectfully,

ADAM CASTILLO.

Mr. WILLIS. The following day I sent a letter to the superintendent, indicating that a serious error had been committed, and asking for a conference to get the situation straightened out.

Mr. ROGERS. Can you state for the record as to whether this superintendent will select delegates now to attend the meetings we have been discussing?

Mr. WILLIS. The superintendent has started a new plan of choosing delegates; he does not recognize the organization they have. Here is a sample of the ballot he is forcing the Mission Indians to use, in his new plan to destroy the tribal organizations. This ballot requires a man to write his name and the name of the man for whom he is voting, and it requires the Indian to sign his name on the bottom of the ballot. Those Indians are voters in California.

Mr. ROGERS. The ballot is not counted unless it is signed?

Mr. WILLIS. They are sent to the superintendent, and every Indian is a marked Indian. Eighty-five percent of the members are in sympathy with this organization.

Mr. PEAVEY. Under the general terms of H.R. 7902, could not that kind of a thing which has been going on for 40 years be terminated?

Mr. WILLIS. It would not, if the attitude of the Commissioner or the officials is as it is now, because the superintendents will not meet with the Indians, where they offer him their cooperation and he refuses to meet with them. Mr. Harper referred to Mr. Dady attending church; he accepted the invitation and thereby caused the Indians great expense, because some of them came 200 miles, and we had to raise money to get them back home. He stayed for 5 minutes after I had introduced him, and the paper calls it a continental congress; he left saying he had to attend a meeting of the white people.

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The CHAIRMAN. Do I understand the gentleman to express the opinion that if this bill should be enacted into law it would be harmful to the Indians whom he represents?

Mr. WILLIS. It would be, because the Indians under section 5, and there are many other sections affecting the Indians, but section 5 would only allow the Indians to request by vote the transfer, and the transfer could not be made until the Commissioner of Indian Affairs can use certain rules and regulations that will protect the superintendent in his tenure of office. What they want is a direct, simple opportunity to remove the superintendent, and that was one of the fundamental considerations of the meeting in January 1933, which was held in Washington; they wanted a change in the law.

The CHAIRMAN. With all due respect to the gentleman, and he is making a very nice talk, but the time under the rules for adjournment has arrived.

STATEMENT SUBMITTED BY THE COMMISSIONER OF INDIAN AFFAIRS

THE MISSION RESERVATION. THE MISSION INDIAN FEDERATION, AND THE ALLEGATIONS OF MR. PURL WILLIS AND MR. ADAM CASTILLO

The House Committee on Indian Affairs:

On March 13, verbal testimony and a signed statement were placed in your committee's record by Mr. Purl Willis and Mr. Adam Castillo, spokesmen for the Mission Indian Federation of Southern California. A number of the statements made were inaccurate as well as hurtful.

The relations between these gentlemen and myself personally, and between the Mission Indian Federation and myself personally, continue to be friendly, as they have been for many years. Nevertheless, it is necessary to state the facts as they are.

THE WILLIS-CASTILLO ALLEGATIONS

The most serious of the allegations made by Messrs. Castillo and Willis, before your committee and otherwise, at Washington, have been to the effect that Indian "espionage" or "gage" laws have been used by the present administration to frighten and coerce the Indians; that the Mission Indian superintendent, Mr. Dady, has held unfair elections; that Indians have been discriminated against because they were members of the Mission Indian Federation, both by the Mission Indian Agency and by the Washington office; and that the administration of the Mission Indian jurisdiction is atrociously bad. The untruth of some of these allegations, and the distorted character of others of them, will be made clear. However, the present facts are scarcely intelligible unless the peculiar background be first understood.

THE FACTUAL BACKGROUND

The Mission Indians of California live on more than 30 small reservations, scattered through the mountain and desert area of Southern California. Their total number is somewhat over 3,000. Their reservations usually are insufficient for the maintenance of a good standard of living for all. Along with the other California Indians, but for a longer period than most of them, these Mission groups have undergone expropriation, physical enslavement, and maltreatment in numberless ways. I refer to the past. It is present in their memories, emotions, and continuing attitudes of mind.

Into their unhappy situation the miseries of land allotment were forced, beginning about 15 years ago. The Mission Indian Federation, starting about that time, fought against allotment, and its position has never varied. It is fighting yet.

THE BEGINNING OF PHYSICAL COERCION

However, the methods which the Federation members used were impracticable methods. A physical resistance to the Government's agents might have dramatized their cause effectively, but they went further and carried out assaults against other Indians and drove them off from their lands. A temporary injunction, followed by a permanent one, resulted from the facts as thus described by the

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special master, F. F. Grant, in recommending that the temporary injunction be made permanent:

"The voluminous mass of evidence adduced in this action is laden with incidents of individual respondents and of collective bodies of respondents trying to prevent and preventing all other Indian residents on said reservation or otherwise, from taking or applying for allotments; that respondents individually and in concert have threatened personal injury to relators; have gone upon the enclosed lands of relators and by force and threats of force prevented these relators from and allottee Indians from the free use and enjoyment of their individual allotments. The evidence further shows that respondents, individually and collectively, have torn down fences on relators' lands; have caused cattle and stock to destroy the vegetation and crops of relators."

ASSERTION OF GOVERNMENTAL AUTHORITY BY FEDERATION

The above incidents were merely a point of departure for the federation. Under the leadership of Jonathan Tibbetts, of Riverside, a white associate, the federation undertook to establish itself as the authoritative government over the Mission reservations. As such, it resisted the work of the Indian Service in the spirit of ousting a foreign power from the native soil or beating off an invasion by a foreign power. The federation created its own police, who wore badges and sometimes carried weapons. I abbreviate a very long record by mentioning the Campo incident, which resulted in four killings in July 1927. This incident connects with the immediate present.

THE KILLINGS AT CAMPO

The testimony of Indian Service policeman, Santiago Venegas, who was beaten up by the federation agents and who later died, is summarized as follows by the Department of Justice. It indicates why the federation made administration difficult in the Mission area. Four men were killed in the Campo outbreak.

"Santiago (Jim) Venegas, that he is United States Indian policeman and was with District Farmer George J. Robertson at Campo Indian Reservation on the night of July 16; that in company with Indian Policeman Mariano Blacktooth he went to a shack on the reservation where they peeked through a hole and saw two boys, one named Thomas Helmequemp and the other boy named Lucas, stirring up some canned heat liquid in a jar; that they returned to the remada and reported this to Mr. Robertson; that Mr. Robertson, Deputy Sheriff Kennedy, Mariano Blacktooth, and himself returned to that house to arrest the two boys therein; that upon reaching a point near the remada where the fiesta was in session they were attacked by a large number of Indians who are members of what is known as the "Mission Indian Federation" and term themselves "policemen"; that these so-called "federation policemen" attacked them, permitted the two boys they had under arrest to escape and proceeded to beat him, Mariano Blacktooth, and Mr. Robertson with clubs; that these so-called "federation police" knocked Mariano Blacktooth down and took his pistol; that he, Venegas obtained the pistol from whoever it was that took it away from Blacktooth but was finally overpowered himself and both his and Blacktooth's pistols were taken away from him; that he was then dragged into the remada by this bunch of so-called "federation police", headed by Jim Mesa, and was surrounded by a large crowd of Indians, and was in this position when shooting began inside the remada; that during the shooting Frank Cuero and Marcas Helmequemp were killed; that the latter, Marcas Helmequemp was what is termed by the federation Indians as a "captain", and he was the one who was directing that Venegas be tied to the flag pole in the center of the remada; further, that during the shooting affray Domingo Conihich, and Jose Barrago, were shot and wounded; that both these men also were members of the federation police; that during the shooting District Farmer George J. Robertson of the United States Indian Service was shot but that he, Venegas, could not see who was doing the shooting."

THE MESA GRANDE TELEGRAMS

The above incident leads to a disposal of the assertion by Messrs. Castillo and Willis that the present administration has frightened and coerced the Indians by means of the so-called "espionage" or "gag" acts. Secretary Ickes and I have urged the repeal of these old acts, and we have notified the Mission Indians that it was not our policy to invoke them but that, on the contrary, there existed plenty of general law under which acts of violence and conspiracies could be

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punished. Our communication, dated August 14, to the Mission superintendent, is appended as exhibit A.

The occasion of the Willis-Castillo allegation is the following exchange of telegrams dated August 6 and 7, 1933.

1. Telegram to John Collier, Commissioner of Indian Affairs, August 6, 1933, from J. A. Moore, deputy special officer, San Diego, Calif.:

"Barely averted serious conflict Saturday night with federation at Mesa Grande fiesta. Seventy-five Indians demanded that United States Indian police and myself leave the fiesta at once, threatening violence if we made any arrests or confiscated liquor if we saw it in cars. They demanded search warrants for automobiles. They insisted we had no authority on reservation, that federation police were supreme and in charge. Only fast, quiet, unexcited talking on my part avoided repetition of Campo shooting and killing. Several federation police carried concealed weapons. I met with 25 Indians Friday morning at fiesta composed of committeemen, captains, and federation police. Offered my cooperation and sought theirs. They guaranteed cooperation and were well pleased. All went well Friday night and Saturday until 6 p.m. Willis and Prather had meeting with the same Indians Saturday night. After meeting Indians were antagonistic, arrogant, unruly on subject, and knew it would be granted that they had been advised they were right. I attempted to reason with them but succeeded only in avoiding immediate riot. We did not leave until daylight when fiesta broke up. Luckily no arrests were necessary. Nonfederation Indians present thought actions of federation wrong. Spokesmen for committee were George Ponchetti, Remijo Lechussa, Coonrol Chapparaso, who is chief of police of federation. Capt, Valentine Luchessa and Reginald Duro, Indian police, present. Bernardino Couts, Remijo Lugo, Ramon Ames, and John Bersford. Imperative that firm decisive stand be taken now full authority to United States Indian police and myself must be visibly and forcefully backed by Washington. Impossible for one man to handle the situation without such backing. Willis and Prather must cease interfering in law-enforcement work. Believe section 2147, Revised Statutes, could be invoked against above two racketeers with your approval. Anticipate more trouble tonight, Sunday. Please wire instructions."

2. Telegram to J. A. Moore, San Diego, Calif., August 6, 1933, from Commissioner of Indian Affairs:

"Federation police have no status in law and no authority. In principle and ultimately this office will back you to limit in liquor and law-and-order enforcement within limits of Constitution, statutes, and reasonableness. At present moment and in view facts as recited in your telegram just received, I do not consider stake in this instant case justifies possible killings or that showdown should be invited tonight, therefore you are authorized to attend fiesta, observe, leave actual physical interferences with liquor carriers to so-called 'federation police' and report fully. Assume you are in contact Superintendent Dady. You may exhibit telegram in your discretion. You may likewise inform federation officers their present action jeopardizes any future recognition of federation by United States Government and penalties will be duly invoked. Obtain competent evidence interference by these men with officers of law and carrying concealed weapons."

3. Telegram to John Collier, Commissioner of Indian Affairs, August 7, 1933, from J. A. Moore, San Diego, Calif.

"Read your telegram before Mesa Grande Indians tonight. It averted trouble and cleared up a dangerous situation. Ring leaders of trouble speechless after hearing telegram."

Following the Mesa Grande incident, dealt with above, an investigation was made by a special investigator of the Department of Justice, Mr. B. W. Cohoon. His long report contains the following, among its summary paragraphs:

"As this situation is nothing but an organized racket conducted by Willis and Prather for their own benefit, and as it is apparent that no administrative action can be successful in stamping out this insidious racket, it is my recommendation that an intensive criminal investigation be prosecuted with a view to obtaining an indictment against these men on criminal charges. This is the only way that this matter can be successfully terminated.

"It should be clearly understood that the matter as it stands at present is a serious one. Officer J. A. Moore was fortunate to handle the situation at the Mesa Grande Reservation as he did with no serious results, but another such affair may result in killings. The Indians can never be properly handled by

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Government officers so long as Willis and Prather are allowed to operate their racket."

The Messrs. Willis and Prather, mentioned by Special Agent Cohoon, are two white men who gained ascendency in the Mission Federation after the death of Jonathan Tibbetts several years ago. They desired appointments under the present administration, did not get them, and have led in a persistent attack against the present Indian Superintendent, John W. Dady, which is dealt with below. James M. Stewart, Chief of the Land Division of the Indian Office, wires from Crown Point, N.Mex., on the Navajo Reservation, April 8: "Prather, of Willis-Collett clique, here inciting Indians against Wheeler-Howard bill."

UNION OF WILLIS AND COLLETT FORCES

Beginning apparently in 1933, they (Willis and Prather), with the Mission Indian Federation presumably following them, joined forces with Frederick C. Collett, who is executive representative of an organization called "Indians of California, Inc.", and their solicitations of money from the Indians became joint solicitations, at least in part. The Collett organization has been at work for about 15 years. Between January 1, 1920, and October 31, 1922, the Collett organization raised, from the needy Indians of California, $30,628.58. Mr. Collett's solicitation has been uninterrupted from that date to the present, and if his collections have been maintained at the rate achieved in the 34 months mentioned above, they will have totaled $150,000. The actual total is, I believe, not publicly known.

The two organizations (the Mission Indian Federation and Indians of California, Inc.) are now supporting a bill, H.R. 7905, which, if enacted, would give to certain attorneys a claim of unpredictable amount against the forthcoming judgment to be obtained by the California Indians under their jurisdictional suit now pending in the Court of Claims. The amount (a maximum of 3 percent of the judgment) would presumably be from $180,000 up. The services in the California Indians' litigation are being rendered without charge by the attorney general of California.

In one instance, Messrs. Willis, Prather, and Collett jointly interviewed a prominent friend of the Indians in California, and during the interview one or all of them requested a loan of $50,000, to be repaid out of this forthcoming judgment upon which, of course, they possess no lien and to which they and their organizations as such can assert no claim.

From the above recital it will begin to become apparent why the local officials of the Indian Service cannot be altogether in harmony with the spokesman of the Mission Indian Federation. I now proceed to the other allegations of Messrs. Willis and Castillo.

SUMMARY EXECUTION FOR SUPERINTENDENT AND HIS STAFF

The document which they placed in your committee's record states that the federation, on February 3, 1934, unanimously requested the removal or the transfer of Superintendent Dady.

But the fact also is that on July 23, 1933, the federation, as reported in the local press, "overwhelmingly adopted":

"Demand that John W. Dady, newly appointed superintendent of the Mission Agency, be recalled at once, and

"Discharge of Dady's entire staff with the exception of Dr. C. L. Hildreth, Jr., and

"Appointment of Purl Willis as Dady's successor."

These demands were made on the day when the federation first met the newly appointed superintendent, Mr. Dady. Not even for 1 day was Mr. Dady to be given the opportunity to establish his ability or his virtues. And the attack has been unremitting from that date to this.

NO DISCRIMINATION AGAINST FEDERATION MEMBERS

Nevertheless, Mr. Dady has proceeded to negotiate with, to do business with, and to recognize, the members of the federation. In the indian emergency conservation work, which has with great success employed up to 700 of the Mission Indians at one time, Mr. Dady has never discriminated against the federation members, and even they, so far as the record shows, have not charged that he has discriminated in this matter.

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THE MISSION RESERVATION ELECTIONS

The Mission Indian Federation has a numerically powerful membership. Its members are in the majority on several of the Mission reservations. This fact was known before Mr. Dady took office. Nevertheless, following his own policy as well as the policy of the Department, Mr. Dady has proceeded to arrange and to hold elections, at which the several reservations have elected their spokesmen and committees who have been recognized as official. At the present time, the composition of these elected bodies is as follows:

Of the 17 spokesmen, so far as I can ascertain, 6 are federation members, 9 are nonfederation, and the balance are of indeterminate affiliation. Of the 61 committee members, 25 are federation members, 23 are nonfederation, and the balance are of indeterminable affiliation.

Attached as exhibit 2 is a copy of telegram which I sent to Superintendent Dady on March 31, 1934, and his reply, dealing with the procedures and results of the elections.

Attached, as part of exhibit B, are the various documents, connected with the elections, which were issued by the Mission superintendency. The use of signed ballots has been criticised, and if mentioned outside of the context of facts it has a peculiar look. It was not submitted to this office and would not have been authorized by me. In a ballot election the secret ballot is the only proper one. I should add, however, that the ballots were counted when cast, by judges on the ground; that practically speaking, ballots delivered by mail have to be signed ballots; and that the checking of signatures against the rolls was carried out as a means of insuring that the local Indians, reservation by reservation, and not traveling squads of Indians journeying from point to point, should cast the vote. (See Dady statement, exhibit B.) My statement at this point, as mentioned above, explains rather than justifies this item. I should add that the results of the elections show that the Mission Federation members were free to vote, did vote, and carried many of the reservations. A more objective test of Superintendent Dady's fairness, namely, his handling of Emergency Conservation Work opportunities, is mentioned above.

APPRAISAL OF SUPERITENDENT DADY'S WORK

As for the charges of inefficiency against Superintendent Dady, I believe that the testimony of those close to the situation, as well as the records at this office, establish that he has brought unusual administrative energy as well as intelligence to bear in a most difficult situation. This must stand as a mere expression of opinion until specifications of incompetency be brought forward. Any definite allegations will be promptly investigated by the Division of Investigations of the Interior Department, and if supported, will be acted upon by Secretary Ickes or by me.

The final allegation, repeatedly made by Messrs. Willis and Castillo, is to the effect that the Washington office has discriminated against the Federation. The entire record shows that this charge is untrue. For example, when the Solicitor of the Interior Department visited the Mission area last summer, he met with the representatives of the Federation in advance of the time when he met with the agency personnel or any other persons. Secretary Ickes and I have addressed ourselves personally, through correspondence, to Mr. Castillo. Since Messrs. Castillo and Willis reached Washington I have given them more than 5 hours of my rather crowded time.

But their allegation has a basis in fact which I take this opportunity to clearly define.

The Federation is a nonofficial cooperative or political organization, whose members are distributed among numerous reservations, which does not represent the Mission Indians as a whole, and which does not constitute the tribal council of any reservation, although as stated above, its members have been elected to the official positions on some reservations.

The federation is under the influence of white men, and these white men are, to say the least, impracticable in their demands. Their status is, of course, wholly unofficial.

The line of authority reaches to the superintendent, and to the elected tribal councils (called committees and spokesmen) of each several reservation. The federation has no status from the point of view of administration or of governmental authority, and least of all can it be allowed to usurp police powers or to use coercion upon nonfederation Indians.

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THE BARON LONG PROPERTY

Mr. Purl Willis has insisted through the year gone by that there be purchased for the El Capitan Mission Indians a certain property called the "Baron Long Ranch". The money for land purchase is in the United States Treasury. The price which the Baron Long owners demand is prohibitive. A property which the Government might justifiably buy for $90,000 is being offered for $150,000. It is urgently important to complete the land purchase for the Capitan Grande Indians; but following Mr. Willis' persuasion, the interested Indians, members of the federation, have refused to consider any property but this single one, and Mr. Willis continues to insist that $150,000 is a cheap price. It must be evident that the Government's land-buying work cannot be negotiated through Mr. Willis under circumstances such as are accurately stated above. Ulterior motive on Mr. Willis' part, whether or not it exists, is not here alleged, but merely an extreme impracticability.

THE RECORDS SUPPORTING THE ABOVE STATEMENTS

These are particularly voluminous, actually totaling more than 18,000 pages printed and typed. All or any part of this record is at the disposal of your committee. The supporting records for each of the statements of fact here made will be supplied if wanted.

SUMMARY

I have endeavored to make it clear that the Mission Indian Federation took its rise out of miseries and wrongs long endured and, in part, continuing. The existing condition of grossly insufficient land holdings has perpetuated the misery. There is no doubt that the federation possesses, for many or most of its members, a strong psychological, emotional, even, it might be said, a quasi-religious value. There are intense loyalties and energies tied up within the federation.

The federation has been led to pursue objects which are unattainable in the nature of things, which have resulted in such clashes with law enforcement as are specified above, and which for several years have forced the Indian Service to contend with a blind and emotionally intrenched resistance. The leadership has come from white men, and it has been an unfortunate kind of leadership. I believe that if the federation would espouse, and work with, the program of local self-government, of which the beginnings have been made since July last, and would establish a modicum of independence from white-man control and white-man financial interference, there might yet be an important future for its activity.

———— ————,
Commissioner of Indian Affairs.

EXHIBIT A

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, August 14, 1933.

Mr. JOHN W. DADY,
Superintendent Mission Agency, Riverside, Calif.

DEAR SIR: The following instructions and information are for your guidance, and this letter may be exhibited to Indians and other, in your discretion.

(1) Executive authority in Indian matters is vested in the Commissioner of Indian Affairs, subject to review by the Secretary of the Interior. You, as superintendent of the Riverside Agency, are directly responsible to the Commissioner of Indian Affairs.

(2) It is the policy of this administration to give to the Indians themselves, on each reservation, as large a voice in their own affairs as is feasible. To this end, you are directed to notify each of the reservations under your jurisdiction that a meeting shall be held, at which meeting an individual, or a committee, shall be chosen by majority vote of the adult members of the tribe or band in question, or the adult Indians entitled to vote on the reservation in question.

The individual or the committee chosen at such meeting on each reservation shall be entitled to speak for the tribe or band in all matters coming within the jurisdiction of the Government.

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(3) All Indians without exception are free to joint any organization whose purposes are lawful. But no authority shall be delegated to any organization of Indians other than the local tribe or band itself, organized for action through a democratic electoral procedure as indicated above. Any federation of reservations or of bands, to have recognition from the Government, must wait on the effective organization of the Indians on the several reservations as directed above.

(4) No part of the authority of the Government has been or will be delegated except under the conditions above stated. Any assertion of authority, and particularly of authority to conduct police activities, by any existing nongovernmental organization, is null and void. Particularly is it forbidden for Indians, calling themselves policemen, but not appointed by the Government, to use physical force on any California reservation. Such activity, if it continues, shall be treated as an obstruction of the work of the officers of the law, and prosecutions shall be commenced.

(5) There exist certain statutes giving an extremely broad power to the Commissioner of Indian Affairs, the Secretary of the Interior, and the President to forbid white persons from going onto Indian land and to forbid Indians from entering upon reservations other than their own. Severe penalties can be invoked. It is not the policy of this administration to employ these broad authorities at the present time. It is believed that ample means of correction exist in the statutes, of general application, which forbid and punish acts and conspiracies designed to obstruct the Government's work and to impede law enforcement.

(6) Finally, we desire you and your subordinates clearly to understand that you have been assigned to the Mission Indian Agency to represent the Government in building up the life and material well-being of the several tribes, and that you are clothed with the authority of the Government subject to the Commissioner of Indian Affairs, the Secretary of the Interior, and the President of the United States.

Yours truly,

JOHN COLLIER, *Commissioner.*

Approved August 14, 1933.

HAROLD L. ICKES,
Secretary of the Interior.

EXHIBIT B

[Telegrams]

WASHINGTON, D.C., *March 31, 1934.*

JOHN W. DADY,
Superintendent United States Indian Office,
Riverside, Calif.

Send by Army radio following information earliest possible moment: First. At elections were ballots counted on reservations and by whom? Second. What is grand total spokesmen and committee members and how many are federation men? Third. Does federation still assert police power on any reservation? Fourth. Have you actual proved cases present or past seizures individual Indian property by federation? If yes, supply details. Fifth. Have you actual evidence that federation officials or Willis discouraged Indians from participating in Emergency Conservation Work and how did they do it? Need this information for House hearing Tuesday.

COLLIER.

MISSION INDIAN AGENCY,
Riverside, Calif., December 19, 1933.

To the Election Judges:

Supplementing my letter of instructions mailed to you yesterday regarding the coming election for spokesmen and Indian committees on December 28, I am now enclosing a supply of ballots.

Please divide these with the judge serving with you on the election board.

It is also requested that copies of the ballots be posted at the community centers and other conspicuous places about the reservation.

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Regarding ballots received from voters by mail, please be sure and save the envelops the ballots come in as the envelops with the ballots should be forwarded to this office after the election is over

JOHN W. DADY, *Superintendent.*

MISSION INDIAN AGENCY,
Riverside, Calif., December 19, 1933.

To the Foremen and Assistant Foremen on Emergency Conservation Work:

This will be your authority to permit all of the men working under your supervision to go to the election polls on December 28, to vote for spokesmen and committees.

The men will not be charged for any loss of time on this account. No time however, should be wasted. The men should go to the polls and return to their work promptly.

If the worker is not working on his own reservation he can mail or send his ballot in a sealed envelop to the election judges.

JOHN W. DADY, *Superintendent.*

RIVERSIDE, CALIF., *April 2, 1934.*

JOHN COLLIER,
Commissioner of Indian Affairs, Washington, D.C.

Counting the ballots was requested in rules and done on reservation by election judges, then checked with census rolls in office by Clerk Perdew. See complete set of forms used and instructions sent you, Harper and Woehlke. Signed ballots necessary to check with census rolls. First election July 17, everything left to Indian people but because of factional differences I was requested to conduct second election and called same for December 28. See recent letter sent Messrs. Harper and Woehlke. Letters sent you reference first election and necessity of second election. Adam Castillo requested second election. Then he and federation leader under Willis' guidance interfered with second election. And about a month later, according to Indian leader Thomas Lucas, Adam Castillo held election of federation people as if it was a regular election. Not possible to determine accurately who are federation who are not, due to constant changes in individual feeling or due to pressure brought about by Willis and federation leaders. Seventeen spokesmen, 61 committeemen elected. As near as opinion of few men can determine, spokesmen are 6 federation, 9 nonfederation, 2 undetermined; committee members are 25 federation, 23 nonfederation, 13 undeterminable. Since your wire last fall, federation has not asserted police power. No known seizures since I arrived. Statements of seizures of house and cattle made by Gabriel Costo verbal, written statement by Anthony Majado of tribal money seizure sent Mr. Harper. Difficult to secure written statements due to intimidation by Willis and federation leaders. Interference by Willis and federation with Emergency Conservation Work at the start must be judged principally by results because federation meetings are secret. Special Officer Moore reported one case interference by Willis at large meeting at Mesa Grande; on same date, August 5, he reported to you by wire of interference created by Willis with his (Moore's) police work. Social worker reported interference with seamstress under Civil Works Administration, Jack Meyers reported stories spread that workers would be liable for slow service if they accepted emergency construction relief work. Henry Rieger, Emergency Construction Works project manager reported constant interference and inability to get information due to federation activities at the start of his program by both Willis and Prather starting same date referred to above, August 5. Have letter from spokesman and committee Morongo Reservation protesting delegation's claim they represent Mission Indians, also letter spokesman Cahuilla Reservation regarding collections by Willis and Collett.

JOHN W. DADY.

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INFORMATION ABOUT THE ELECTION FOR SPOKESMEN AND COMMITTEES

To the Indian people of the Mission Indian Agency jurisdiction.

DEAR FRIENDS: After discussing the matter with numerous individual Indians and many small groups, the need has been felt for an election of spokesmen and committees again. The first election called for was not thoroughly understood. Since then the helpful purpose of these committees and spokesmen has been explained and now a happier spirit of appreciation of their need exists. So many have claimed they were not permitted to vote, and the reports sent me in many cases would seem to support some of these claims, that rather than ask certain reservations to vote over again I have been urged by leaders to call for another election on all reservations; that I appoint the election judges; have the ballots prepared and set the rules for the election.

I am therefore calling for a new election of spokesmen and committees on all of the reservations for the 28th day of December between the hours of 10 a.m. and 4 p.m.

Committees and spokesmen properly elected will hold office from January 1 to December 31, 1934, and will receive written approval from the office. The spokesman will act as the chairman of the committee.

To be recognized, all the elections are to be held on December 28, during the hours set. If you wish to retain the spokesman and committee now tentatively acting you can do so by balloting for them again.

I ask you for election of honest, intelligent persons who are fair minded and well thought of, sober, and industrious. Voting for persons who belong to a particular society does not always result in having the best men elected. Many important questions will be decided by these spokesmen and committees so I ask you to select your best men regardless of society or relationship.

Every adult enrolled person of a reservation is entitled to vote for a spokesman and a committee for the reservation where he or she is enrolled.

The spokesmen and committee members must be residents of the reservation they are elected to serve.

To the Indian people of the Mission Indian Agency:

Rules for the election and names of election judges will be posted at community centers.

Blank ballots are being mailed to the election judges and additional copies are being distributed to our employees for distribution.

I earnestly request that you do not be influenced by white people or persons not of your own reservation. This is an election by and for the Indian people

Do exercise care and good judgment.

After 4 p.m. the election judges will count the ballots, make a report of their count, enclose the ballots and their report in a large envelop to be supplied for that purpose, seal it, and forward it to me by mail or messenger, to be checked.

I will have the results posted and will send a letter of approval; also authority to act.

Committees are to be composed of the spokesman and 2, 3, or 4 members, depending on the size of the reservation. The number of committee members will be mentioned in the rules for the election posted on your particular reservation.

On the advice of leaders it was decided to ask for election of 1 spokesman and 4 committee members of reservations with an enrollment over 100, 1 spokesman and 3 committee members of reservations with an enrollment over 25, and 1 spokesman and 2 committee members of reservations with an enrollment under 25.

The two election judges may assist those who do not write to fill out their ballots.

The election judges will be furnished with a copy of all enrolled adult members of the reservation they are appointed to serve.

Enrolled members of a reservation may mail their ballots in sealed envelops addressed to "Judges of Election .... Reservation."

These ballots will be checked against all ballots cast by voters in person so there will be no duplication.

Your friend,

JOHN W. DADY, *Superintendent.*

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OFFICIAL BALLOT

ELECTION OF SPOKESMEN AND COMMITTEES, DECEMBER 28, 1933

-------------------- RESERVATION

(Vote for one)

Spokesman--

(Vote for —)

Committee members:

By adult (21 years old or over on Dec. 28, 1933) enrolled member of -------- -------------------- Reservation.

(Sign here)

(The following letters were submitted for the record:)

THE AMERICAN INDIAN DEFENSE ASSOCIATION, INC.,
Riverside, Calif., March 13, 1934.

Hon. EDGAR HOWARD,
House of Representatives, Washington, D.C.

DEAR CONGRESSMEN HOWARD: In view of the charges made before the Committee on Indian Affairs, March 12, by Mr. Purl Willis, a representative of the Mission Indian Federation, I wish to make the following statement:

Mr. John W. Dady, superintendent of the Mission Indian Agency, has to my knowledge been in constant touch and in frequent conferences with Indian representatives of his jurisdiction. He has in fact conferred with Mr. Adam Castillo, president of the Mission Indian Federation, and on at least one occasion my husband, Dr. H. A. Atwood attended a conference between Mr. Dady and Mr. Castillo. Mr. Castillo has offered assurances of cooperation in the Government programs only to be adversely affected by ulterior influences thereafter.

On taking up his work at the Mission Agency, Mr. Dady urged each of the small reservations or rancherias in his jurisdiction to elect spokesmen voluntarily and without any influence exercised by him. This has been done and with very excellent results of cooperation between the agency and the Indians. When I left Riverside, February 1, more than 700 Indians were engaged in the emergency conservation work. I feel confident that Mr. Collier would regard the emergency conservation work at the Mission Agency one of the outstanding successes in the country. Mr. Dady has also instituted a home-building movement among the Indians of his agency. Under his plan materials costing $125 are being supplied to the Indians in order that they might build better homes in which to live. The finished homes have a valuation of $1,000 each. The women of the jurisdiction are similarly being stimulated as groups in the study of domestic science. Only four families were on the ration roll. These fine accomplishments could be due only to the excellent work as undertaken by Mr. Dady since he became superintendent.

The false charges given your committee constitute a malicious attack upon one of the most devoted, industrious, and successful superintendents in the Indian Service.

Sincerely yours,

STELLA M. ATWOOD,
Legislative Adviser.

INDIAN DEFENSE ASSOCIATION
OF CENTRAL AND NORTHERN CALIFORNIA,
San Francisco, March 26, 1934.

Hon. EDGAR HOWARD,
Chairman House Indian Affairs Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN HOWARD: On March 20 current I addressed to you a communication setting forth our association's objections to H.R. 7095, and purposely made no direct reference to the sponsors of the bill that the issue might not

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become clouded by what might well appear to you, from so great a distance, as a discussion of personalities. However, since vicious attacks are being made upon the present Superintendent of the Mission Indian Agency, Mr. John W. Dady, I believe it is incumbent upon me to make the following statement that you may be in a position to judge that the animus now directed against Mr. Dady had its inception long before his appointment to the Riverside Agency and would be directed against any appointee to that post.

To give you a fair picture it is necessary to go back to August 1931, when Mr. H. R. Prather, then a rather successful business man, not yet embittered by personal losses, asked our association to send a field representative to investigate "a condition that several of us are about to disclose on the Indian situation in San Diego and Riverside Counties." Mr. John Collier, then our national executive secretary, in November 1931 went to San Diego, impartially sized up the situation and refused to become involved in a situation bristling with personal animosity and lack of clear thinking. He did recommend to Commissioner Rhoads that a competent person be sent to San Diego to map out a program and iron out difficulties. Miss Mary G. McGair was assigned to that work, performed an outstanding piece of work in the face of great difficulties. Her report on San Diego is available in the Bureau of Indian Affairs. I should add, however, that the animus which both Mr. Prather and Mr. Willis had previously directed upon the then superintendent of the Mission Indian Agency, Mr. Charles Ellis, was immediately extended to include Miss McGair, and her work was hampered at every turn.

During that period I believed in the integrity of both Mr. Willis and Mr. Prather, deeming their tactics unintelligent, ill-advised but well-meaning. Subsequent events have forced me to realize that they are motivated by the most selfish of interests.

While Mr. Ellis was still superintendent of the Mission Indian Agency, Mr. Prather, on several occasions told me they were going to "get him", and would not rest until Mr. Purl Willis was appointed superintendent in his place. He stated that every Government employee of the Riverside Agency was there "on sufferance", could not remain at his or her post if they (Willis and Prather) put "thumbs down"; that they controlled the Indians absolutely and could, if they desired, "order" any Government employee off the reservations. All this was prior to the appointment of Mr. Dady.

When Mr. Collier became Commissioner of Indian Affairs, Mr. Prather with great persistence asked me, in the presence of my husband, Capt. George W. Barker, to intercede with Mr. Collier on his behalf and get him "a job"; he added that both he and Mr. Willis could run the Riverside Indian Agency and that no one else would be permitted to do so.

When it was made clear to them that no appointment in the Indian Service would be secured under the present administration—civil-service requirements would stand in the way, even though the Commissioner were agreeable—Mr. Willis and Mr. Prather entered into an alliance with F. G. Collett, long notorious for his exploitations of our California Indians under the pretense of their Court of Claims suit. At the request of our association, the Commissioner of Indian Affairs issued his letter of October 2, 1933, advising our Indians against making contributions. Mr. John W. Dady immediately circularized the Commissioner's letter throughout his jurisdiction, thereby increasing the enmity already engendered against him by the mere fact of his appointment. For your information, I attach both Mr. Collier's October 2, 1933, letter and copy of a circular issued thereon by Mr. F. G. Collett.

I will not impose on your time by a recital of the solicitation of funds from the Indians, particularly under the reforestation program, by Messrs. Willis, Prather, and Collett. Such information is already, doubtless, in your hands. But our association protests this misrepresentation, dishonestly made to the Indians by self-seeking persons, which cannot but keep the Indians in constant mental turmoil and confusion, thus making well-nigh impossible the operation of any program of rehabilitation which includes, as stressed by the administration, cooperation and self-government. It is impossible for any well-conceived plan of the Government to be fully successful as long as interested exploiters continue their activities. The Superintendent of the Mission Indian Agency, in the face of tremendous obstacles, has, in the short period of his encumbency performed an extremely commendable piece of work in behalf of the Mission Indians and could, if these disturbing elements could be removed, accomplish a great deal more.

Respectfully yours,

(Mrs.) RACHEL B. BARKER,
Executive Secretary Indian Defense Association of Central and Northern California.

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UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, October 2, 1933.

To the Indians in California:

By the act of May 18, 1928 (45 Stat. 602) Congress authorized the Attorney General of the State of California, without expense to the Indians, to bring suit in the Court of Claims against the United States in behalf of the California Indians. Suit was duly filed by the Attorney General of the State on August 14, 1929, and an amended petition filed March 14, 1932.

The act mentioned also authorized the Secretary of the Interior to prepare two rolls of the Indians in California, viz:

(*a*) A roll of "all Indians who were residing in the State of California on July 1, 1852, and their descendants now living"; i.e., living on May 18, 1928.

(*b*) A roll of all other Indians in California.

These rolls have been made and approved by the Secretary of the Interior, on May 16, 1933. Roll no. 1 contains the names of 23,585 Indians and roll no. 2 the names of 245 Indians. The first, or larger roll, containing 23,585 names, determines who are entitled to the benefits of this statute, and as shown by section 7 thereof, roll no. 1, is now closed for all purposes and no additional names can be added thereto.

Section 6 of the act provides in part: "The amount of any judgment shall be placed in the Treasury of the United States to the credit of the Indians of California and shall draw interest at the rate of 4 percent per annum and shall be thereafter subject to appropriation by Congress for educational, health, industrial, and other purposes for the benefit of said Indians, including the purchase of lands and building of homes, and no part of said judgment shall be paid out in per capita payments to said Indians."

As shown by the foregoing, any judgment in favor of the Indians will not be distributed to them per capita, but will remain in the Treasury of the United States, at interest, subject to expenditure for their benefit, under future authorizations by Congress, including the purchase of land and the building of homes thereon.

These matters are thus brought to your attention for the purpose of emphasizing that your interests in this matter are being protected by the Government, without expense to you; that the payment of any fees, dues, or contributions by you to anyone is wholly unnecessary; that you cannot and will not forfeit or lose any rights by failure or refusal on your part to pay any such fees, dues or contributions, no matter how earnestly solicited or urged by outsiders. Those who are now soliciting your money know the facts here stated; they know that they are asking your money for no object that is of use to yourselves. I desire to emphasize this feature of the matter and again repeat that the payment of any dues, fees, or contributions by individual Indians is wholly unnecessary and is but a waste of money by those who can ill afford to thus part with it.

JOHN COLLIER, *Commissioner.*

DECEMBER 29, 1933.

Auxiliary Officers and Members.

DEAR FRIENDS: At the Indian conference at San Diego Saturday and Sunday, December 16 and 17, the Indian leaders from the several reservations agreed that it was important to send a delegation of their people to Washington, D.C., as early as possible in January. It is probable that 2 of the Indian delegates will be chosen from southern California and the other 2 from the northern part of the State.

A delegation will go to Washington, D.C., as soon as sufficient funds can be raised for the expenses of 4 Indian delegates assisted by Pearl Willis and myself. Before these delegates leave California money must be raised for round-trip railroad and Pullman fares, meals, rooms, and other expense for the work in Washington. These expenses should include a payment to the attorneys in order that they may give your case the attention it needs. It is estimated that the delegates should be away from California 30 to 60 days and that all expense enumerated, including a payment to attorneys, will amount to about $5,000. To raise this money quickly it will be necessary for all Indian leaders to make a house to house canvass of their people. Some persons will be able to give as much as $25 while others will be able to pay a much less amount. Each person should make the largest payment possible so that these expenses can be raised quickly. It should be sent promptly to Indians of California, Inc., 681 Market Street, San Francisco.

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The Commissioner of Indian Affairs, John Collier, in his letter October 2 advised the Indians that fees, dues, and contributions from the Indians were not necessary. Does Mr. Collier know that the Constitution of the United States guarantees "the right of the people (including Indians) peacefully to assemble and petition the Government for redress of grievances"?

Can Mr. Collier persuade the Indians to accept blindly what he is willing to do for them? Does he own the Indians? Will they let him dictate to them as to how they shall use their own money? Does the Commissioner know that the Indians of California are citizens and have a right to organize, hire attorneys, to send delegates to Washington, D.C., and conduct their own business as they see fit? Does the Commissioner know that Congress has the power to change any law that is not fair and just to the Indians?

The Indians of California should send a delegation of Indians to Washington to explain to Mr. Collier their needs and to enlist his help to secure them. The delegation should appear before Members and committees of Congress and department heads to urge proper representation of their Court of Claims suit and a larger voice in the conduct of their own affairs in California.

Sincerely yours,

INDIANS OF CALIFORNIA, INC.,
F. G. COLLETT,
Executive Representative.

WASHINGTON, D.C., *March 20, 1934.*

HON. EDGAR HOWARD,
Chairman House Indian Affairs Committee, Washington, D.C.

DEAR MR. HOWARD: We desire to give you the following statement of facts having a bearing as to why the Mission Indians of California have been compelled to send Indian delegates to Washington that your committee and other officials might be properly informed as to conditions under which the Indians there are compelled to live.

For about 12 years, up until 1933, the Mission Indians, under former superintendent C. L. Ellis have been the subject of gross mistreatment and great suffering. Following 2 years' investigating and strong effort on part of county board of supervisors of San Diego County, in which the contentions of the Indians were found to be correct (that there was needless suffering and mistreatment on part of Bureau officials) the Senate Indian Affairs Committee made an investigation of several reservations in September 1932, and they also agreed that a new superintendent was needed at once along with many other reforms. A new agent was therefore named in July 1933.

When the Indians saw by the press that a new man was being sent from the East to take charge of the Mission Indians, they, through their president of their federation, Mr. Adam Castillo, sent the new man a letter of welcome and offered him their cooperation. This is the only Indian organization serving the various reservations—it is the reorganization of the old tribal councils, made up of the tribal officials of various reservations choosing a central body or federation. The new agent, Mr. John W. Dady, accepted the invitation, and thus the Indian leaders from practically every reservation of the 30 under his care, chosen by their fellow members went to expense of attending the conference. This was July 23, 1933, held in San Diego, Calif. The invitation named a number of important matters about which they asked for a conference with the new agent. Among these things they asked for a conference on the Court of Claims bill, the Indians having a voice in choosing bureau officials (as Mr. Collier had written them he approved); the building of an Indian hospital; allotment corrections; loan fund from which Indians might borrow; removal of undesirable Indian policemen, etc. The new agent came to the meeting, made a short talk (read it), refused to hear from the Indians on any of these matters, and left the meeting.

As a result of his quitting the meeting without any satisfactory explanation, the Indian leaders, who, in many cases, had gone to great expense to attend the conference, were sorely disappointed at the new agent. And they so expressed themselves in resolutions.

The breach, which had existed between the superintendent and the Mission Indians for many years, was therefore widened. Immediately following this meeting, one of the undersigned delegates, who had at the time introduced the new agent to the Indians at the request of the chairman, hoping to heal the breach, sent the agent a courteous and hopeful letter offering to assist in clearing the mess up, and asked for a personal conference. This was on July 25, 1933.

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The agent has never shown the ordinary courtesy to answer the offer to assist, but has in many instances and to many of the Indian leaders themselves, denounced this white friend (P. Willis) as an instigator and other serious, but false, charges.

Immediately following the conference in July, the new agent, began systematically to destroy the Indian's organization, the federation. For your information, let us here state, that the federation was the only Indian organization in California, we have learned, to whom the present Commissioner appealed in 1932, when he was making a national fight in behalf of the Indians before the Senate. Also, later, in April 1932, it is the one Indian organization in California to whom Mr. Collier appealed for help in securing his confirmation as Commissioner. We make this statement of fact to show you that the Mission Indian Federation was all the time the only Indian organization (and is today the same) meeting the needs for service to the Mission Indians. It was so recognized by the county board of supervisors, various investigating committees, the Senate committee, and others who have interested themselves.

The new agent refused to confer with the Indians, after he had accepted their invitation and received their cheering welcome. His attitude of antagonism and prejudice has increased as the months have gone by. He has attempted to force his own personal choice of spokesmen upon the Indians by forcing them to sign their names on ballots, which forced hundreds to not vote. He has continued the same policy used by former agent of having brutal, unsympathetic Indian policemen in charge of Government activities on many reservations, thus intimidating the Indians. There is no department where he has not exceeded former Agent Ellis in his mismanagement of his office. Our hopes are worse today than ever.

The Commissioner's office has been given copies of all correspondence referred to above, but we have received no hope or explanation of the agent's attitude. Therefore, on February 3, the Indians met in conference and decided to send delegates to Washington for conference. Along this line, we are therefore, giving you copy of letter addressed to the Commissioner on January 10, 1934, by the president of the federation, at the request of Indian leaders who had been in touch with the activities of the agent. This letter to the Commissioner was plain, frank, and carried the hopes of the majority of the Mission Indians. No reply has been received up to present time. Was there any wonder, then, that the Indian leaders decided to send delegates to Washington for a personal conference?

Also, on January 24, 1934, we addressed another letter to the Commissioner, announcing that we were coming to Washington and asked for cooperation in securing a hearing. No answer has been received from that letter. We are giving you copy of same.

Therefore, on February 3, at the general conference, Indian leaders unanimously passed resolutions asking that the superintendent be removed, these resolutions were supplemented by petitions signed by the spokesmen and committeemen, duly chosen to represent said reservations, asking proper officials to remove or transfer Mr. Dady, for the best interest of our Indian people. These have been given the Secretary of Interior by the undersigned.

Summary: The Mission Indians are entitled to a fair deal; they have never received justice at the hands of the new agent and his assistants. The Indians have done their full duty to all. Their only hope now is for the immediate removal or transfer of Supt. John W. Dady and certain of his assistants who have had a major part in the work of the past.

The new Superintendent must work with the Indian leaders, chosen by a majority vote.

Respectfully submitted.

ADAM CASTILLO.
PURL WILLIS.

[Copy of letter addressed to Mr. Collier]

SAN JACINTO, CALIF., *January 10, 1934.*

Mr. JOHN COLLIER,
Commissioner of Indian Affairs, Washington, D.C.

MY DEAR MR. COLLIER: Congress is now in session, and you probably already have the many reforms which you have always been advocating in behalf of the Indians.

The Mission Indian leaders have requested me as president of the Mission Indian Federation, representing a majority of all the Mission Indians of California, to ask of you for copy of the various bills or recommendations which you

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are planning to introduce in this session of Congress which may affect our welfare.

There are many matters to which we have given a lot of attention the past many years. For instance, the allotment laws, we believe, should be changed along the lines advocated by our federation and which had your support. Just what do you have in your plan that may affect the old allotment laws?

At the famous "Washington Conference on Indian Civil Rights" held January 15, 1933, the following program was unanimously agreed upon by practically every organization interested in the welfare of the Indians. At that time you were one of the leaders in this movement and approved the following:

Repeal of the espionage laws now resting on Indians.

Legislation penalizing the kidnaping of Indian children for boarding schools.

Legislation chartering the tribal councils and expanding the powers of the tribes.

Legislation setting up a recall of undesirable Indian Bureau officials by vote of the majority of the Indians resident on a given reservation.

The Mission Indians have a program which we would like to have the approval of your Office, and we will send you a copy of it if you desire. We have given this matter our best study and attention for the past several years and believe this is the time to advance our plan for the rehabilitation of the Mission Indians. Assuring you that it is the desire of the Mission Indian Federation to give the best cooperation in any move for the welfare of the Mission Indians, we are hoping to receive a prompt reply.

Respectfully,

ADAM CASTILLO.

[Copy of letter sent Mr. Collier]

JANUARY 24, 1934.

Hon. JOHN COLLIER,
Commissioner of Indian Affairs, Washington, D.C.

MY DEAR MR. COLLIER: Having been delegated and directed by the Mission Indians of California to go to Washington and appear before the Senate Indian Affairs Committee and other officials, on certain specific matters which we believe is for the welfare of our people, I have just addressed a letter to Senator Wheeler, asking for permission to appear before that body. I am enclosing you a copy of said letter.

The Mission Indians of California are not receiving fair or proper treatment at the hands of the new superintendent, John W. Dady, though we have in every honorable manner offered him our cooperation. The Indians are fearful, and have reason to believe, that the same old group of white Bureau employees, and also certain Indians, practically every one of whom are working under Mr. Dady, are directing the whole policy of the agent, apparently taking advantage of his inexperience with our people. His actions and orders all bear this out. He has not shown us ordinary human consideration, he has outdistanced former Agent Ellis in his mistreatment of Mission Indian leaders who are members of or even in sympathy with our federation. It is not the fault of the Indians; he has shown after 6 months in charge of us, that he has not the ability, sympathy, or understanding of his duties as our superintendent.

We will appreciate your cooperation and assistance to get us a hearing as requested. The hopes of the Mission Indians are blasted unless we get a fair hearing, and we shall come prepared to prove that we have not had a fair deal under Mr. Dady.

Hoping to have an opportunity to go into such matters as we believe for our best welfare with you, and other government officials, we are,

Respectfully,

ADAM CASTILLO,
President Mission Indian Federation.

[Copy of telegram to Castillo]

SAN JUAN CAPISTRANO, CALIF., *March 19.*

ADAM CASTILLO,
44 B Street, SW.

Collier absent at conference, Monahan, Siegel, and Woehike at conference only, Dady's spokesmen allowed to present opinions. Majority were against bill. Federation members not allowed to speak. Started petitions opposing

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bill on all reservations. Where do we mail them at Washington when you leave. Nobody understood explanation of bill, too complicated.

MARCUS H. FORSTER.

Telegram received Washington, March 20, 1934, 11:38 a.m.

"Whereas the Mission Indians are desirous of a plan of self-government: Be it therefore

"*Resolved*, That the Mission Indians, through their spokesmen, committees, and leaders, representing a majority of all the Mission Indians, urge and request the Commissioner of Indian Affairs to include in his program for the welfare of the Mission Indians the right for these Indians to recall such officials and employees of the Mission Indian Agency, Riverside, Calif., as may be the desire of the majority of the Indians under such agency or office, which plan and program was approved by Mr. John Collier in 1933 and included in a plan of rehabilitation of the Mission Indians themselves."

On motion duly made and seconded, and approved unanimously by those in conference held in San Diego, Calif., February 3, 1934, the above resolution was adopted.

ADAM CASTILLO.
MARCUS H. FORSTER.

SAN DIEGO, CALIF., *February 3, 1934.*

The following statement or memorandum concerning the Mission Indians of California is given with the approval of the Indian leaders representing a majority of the reservations, and is intended to be given to officials in Washington and any others who may be interested in knowing the truth about the Mission Indians:

In Orange, Riverside, San Bernardino, and San Diego Counties of southern California there are about 3,000 Mission Indians. They are located on reservations, principally in the more remote sections of San Diego and Riverside Counties. In addition there are more than 850 Indians located in the extreme southeastern part of Imperial County along the Colorado River near Yuma, Ariz.

In 1851–52 when the unratified treaties were made with the California Indians (now in the Court of Claims) southern California was the most densely populated of any Indian sections of the State. The Temecula and Santa Ysabel Treaties were made with the largest groups in the State. At that time there were more than 200,000 Indians in the State, and more than 20,000 of this number were in the present Mission Indian area.

MISSION INDIANS ALWAYS HAD TRIBAL RELATIONS

Proof that the Mission Indians of southern California have always had tribal relations—have had their local community or reservation and village governing body, and likewise the larger district chiefs and headmen—are in evidence in the very treaties themselves. It was through these chiefs, spokesmen, and headmen, that the Government messengers called upon the Indians to meet in treaty conference. Word was quickly sent to all Indian villages and their leaders called their tribal conferences and decided to accept the invitation of the Washington Government and meet and discuss the proposed treaties. Their headmen and leaders were therefore authorized and directed to enter the conferences with the United States Government commissioners. These leaders, representing the Mission Indians of 82 years ago, signed the treaties, and their signatures were accepted by the United States commissioners.

The Indians of southern California under the direction of their chiefs, headmen, and leaders—their duly chosen and acting tribal officers—carried out their part of the treaty agreement by forthwith moving onto the lands designated for them. They gave up the other lands, comprising most of the valleys and grazing lands in the southland. The Indians soon learned that the cattle and other things promised them under the treaties were not forthcoming, and their leaders in vain attempted to learn why the Government did not keep its promises.

CHIEF JOSE CAH-LAC (CALAC) SIGNED TREATIES

Among the Indian leaders signing the treaty made at the Indian village of Temecula in 1852 was Jose Cah-lac (Calac) representing the Potrero Reservation, now considered as part of the La Jolla Reservation. Chief Jose was an able

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leader and for many years continued his efforts to have the Government approve the treaties. There was present in 1852, at the time the treaties were signed by the Indians, another, but much younger leader, a nephew of the famous Chief Jose. This man was named Olegario Calac. At this time he was about 40 years of age. He had much ability and was called upon to explain to other Indians the conditions of the treaties.

CHIEF OLEGARIO CALAC GOES TO WASHINGTON

For more than 20 years the Mission Indians were persecuted and their lands and homes taken away. It seems that there was no protection for them. Thus in 1877 or 1878 Chief Olegario Calac was chosen by all the bands of the Mission Indians to proceed to Washington and lay before the officials the petition and plea of the Indians for protection and the return of their lands. Bearing the tribal authority of the Mission Indians, he came to Washington and was received by officials as such. After many conferences, at which promises were made to Chief Calac that the Government would forthwith meet their demands, he was asked to return to his people and tell them the White Father would give them their lands. Chief Calac was given an American flag—with 37 stars—and also presented with an enlarged picture of himself by Washington officials as evidence of their further promise of justice.

He returned to his people and met them at Rincon Reservation, where the flag was raised, and announced that soon there would be received papers confirming the verbal promises for justice to the Mission Indians. However, persecution was stronger than ever—more white settlers came to California and it was under the greatest handicap that the Indians were able to continue their reservation and district tribal relations. But they were kept, their reservation governing body has always functioned and likewise their larger organization serving the whole group. It has not, however, had the approval of the Government superintendent or Bureau officials. The Mission Indians seem to have been singled out by their officials who should have been assisting them, and strong attempts have continuously been made to destroy their tribal organizations.

TRIBAL ORGANIZATION RENAMED FEDERATION

It was in 1919 that the Mission Indian tribal organizations representing the various reservations in southern California met and strengthened their old organizations and renamed it the Mission Indian Federation. Chiefs, headmen, and Indian leaders from every reservation met in Riverside and discussed their welfare and methods to again try to have official Washington recognize their plea for justice. Their old treaties had been discovered a few years before (1906) where they had been hidden in the secret archives of the United States Senate after they had been rejected in 1852, and there seemed to be a good opportunity to have them ratified at this late date. It was decided to appear before proper officials and ask a hearing in behalf of the old treaties. The Mission Indian Tribal Council, represented in the newly reorganized Mission Indian Federation, began the task of soliciting white friends throughout the State and Nation for support of the Indians' plea for justice.

BUREAU OFFICIALS CONTINUE PERSECUTION

Immediately there arose the strongest opposition of the local superintendent of the Mission Indians and, with the power of his self-appointed policemen and other employees, persecution of those Indian leaders of the newly re-formed tribal council (the Federation) was doubled. The destructive allotment laws were later brought into use on certain reservations where the Federation appeared strongest. Many leaders were indicted under false and misleading charges, and their hopes seemed lost. In the face of all this opposition, however, tribal relations have been kept intact on every reservation, and likewise by the whole Mission Indian organization.

TRIBAL ORGANIZATION REQUESTS SENATE INVESTIGATION

It was the Mission Indian Federation which, upon the advice and instructions of Indian leaders, requested the investigation by the Senate Indian Affairs Committee, wherein they requested the removal or transfer of former superintendent, which was done. During this investigation it also developed that former field representative, who had been active against the Federation during special inves-

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tigation by the Bureau at the request of the county board of supervisors of San Diego County, was not the proper person to serve the Mission Indians. This was Miss McGair, now in the office of the Commissioner.)

NEW FEDERATION APPROVED COURT OF CLAIMS BILL

The tribal organization, represented in the new Mission Indian Federation, were in favor of the Court of Claims bill approved in 1928, and hoped that the long-delayed justice would at last come to their people. While they had preferred that their claims might be presented by their own attorneys, they did not oppose giving the attorney general of California the authority to act for them. During the last 6 years, since the bill was approved by Congress, no effort has been made to get the Tribal Council of the Mission Indians, through their Federation, to supply any information that might help establish their claims. In this the Mission Indians have been disappointed, for they felt they could have furnished much valuable evidence. They offered it to the attorney general.

On learning last July that a new superintendent was to replace Mr. Ellis, the various tribal organizations, sent delegates to a general conference, wherein they had offered their honest cooperation to the new agent, Mr. John W. Dady, and asked to discuss their problems, including the Court of Claims suit, with him. Mr. Dady refused and has not up to this time accepted said offer of cooperation.

PRESENT AGENT REFUSES TO MEET TRIBAL COUNCIL

The Mission Indians felt they were making an honest attempt to work with the new superintendent, as their letter of invitation (see in their magazine herewith, The Indian, for March 1934) verifies. In fact, the present attitude of the new superintendent, Mr. Dady, is more arrogant and intimidating than that of his predecessor, the Indians believe. He can never undo the great harm which he has already done to the Mission Indians during the last 8 months. Was there any wonder then, that the Mission Indians, through their reservation tribal councils, acting in what they believed for their best interests, in a general conference held on February 3, 1934, at San Diego, Calif., unanimously requested the Secretary of the Interior and Commissioner of Indian Affairs to remove or transfer Mr. John W. Dady, superintendent. Petitions signed by tribal councils and also resolution by the conference request such action

MR. COLLIER CALLS ON FEDERATION FOR SUPPORT

On February 26, 1932, when at the height of a bitter fight on the floor of the United States Senate over conditions under which certain Indians were living a very strongly worded petition making certain charges against former Interior officials as well as former Commissioner by "Mead Steele, delegate, Fort Peck Indians, Montana and John M. Green, delegate, Santee Sioux Indians, Nebraska. In the name of all Indians." Mr. Collier, as executive secretary of the American Indian Defense Association, urged and promptly received the endorsement of the Mission Indian Federation, through Adam Castillo, its president.

The petitions referred to related how the former high officials had not kept their promises made to the Indians of the Nation to give them certain powers and relief measures. It also recited how "the Bureau's continuing effort to destroy the tribal organizations," etc. "The signature of the Mission Indian Federation by Adam Castillo was attached to the tribal statement," at the request of Mr. Collier, showing that at that time, he recognized the federation as speaking for the tribal council of the Mission Indians, and which was a fact. Later, in September 1932, Mr. Collier urged "that the Mission Indians as now organized in the federation must be a central, component part of any local organization for Indian Service."

The facts above outlined and statements made and actually quoted from records show conclusively that the present Mission Indian Federation is now and has always been the tribal voice of the Mission Indians. Today, its members and supporters number more than 80 percent of all the Mission Indians. Down over the years, years of greatest persecution and suffering, probably unmatched by any other American Indians, the Mission Indians have continued their tribal relations, not only on reservation, but through their larger organization, their whole agency federation. Why not give credit where it is due? If they were worthy of recognition and appeal for needed support in 1932, when the Indians of the Nation were in the midst of a great struggle for justice, are they not entitled to a fair deal in 1934? But, such is not the case.

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MR. COLLIER CHANGES ATTITUDE ABOUT FEDERATION

On April 15, 1933, when it appeared that confirmation of Mr. Collier's appointment was blocked by prominent and powerful influences of the State of California, telegrams were rushed, urging further endorsement by the Mission Indian Federation, then in semiannual convention at Riverside, Calif. Friends went before the convention and explained the crisis which appeared if confirmation was not had, and the tribal council, represented in the federation, unanimously urged confirmation. Success was announced within 2 days and due acknowledgment given.

To those officials who do not know the history of the mistreatment of the Mission Indians over the years, one may here ask—just what are you driving at, in this tribal relation recital.

And this is the key to the reason why the Mission Indians have sent delegates some 3,000 miles to Washington to try and get misunderstanding cleared up. It was rather expected by the Mission Indians, that, even though a new superintendent be sent from the East to take charge of our people, since the same old group of employees of former agent was kept, including the same policemen, farmers, and others, an improved service should be expected. We knew that a prominent Senator who had investigated in 1932, urged the removal of all the old employees who had a hand in the prejudicial treatment of our people.

Soon the Indians knew, however, that certain employees were having a heavy hand in the work of the agent. The new agent appeared in the Los Angeles press, clearly showing that he was going to follow the former agent in his destructive methods to crush the one and only Indian organization reaching the various reservations. He began immediately to destroy the federation—the very organization to whom his superiors had appealed for help shortly before, and the one which had the endorsement of the senatorial committee itself. The agent refused to meet with the Indians as they requested, and discuss matters which seemed vital to their welfare.

THREATS AGAINST FEDERATION AND THEIR WHITE FRIENDS

Rumors and insinuations coming direct from certain Government employees carrying the alleged approval of the superintendent to the effect that the president of the federation, other members, and certain white friends of the federation, were to be arrested if they appeared on any reservation or attempted to hold meetings. The Indians from various reservations all understood who the officials meant. The agent appeared before white people in San Diego and other places and criticized certain white persons, who had been investigating conditions of the Indians under formal resolution of the board of supervisors of San Diego County, but upon being challenged that he was mistaken in the charges he made against this man (Purl Willis, deputy county treasurer of San Diego County) he would not allow him to be summoned to answer the charges.

It was also generally understood from Bureau employees that arrests would be made if Indians visited reservations other than their own. Soon there appeared a copy of a letter received from Washington, wherein the Commissioner called attention to the superintendent that—

"(5) There exists certain statutes giving an extremely broad power to the Commissioner of Indian Affairs, the Secretary of the Interior, and the President to forbid white persons from going onto Indian land and to forbid Indians from entering upon reservations other than their own. Severe penalties can be evoked. It is not the policies of this administration to employ these broad authorities at the present time. It is believed that ample means of correction exists in the statutes of general application, which forbid and punish acts and conspiracies designed to obstruct the Government's work and to impede law enforcement."

And thus, the new superintendent, practically charged the tribal officers of the Mission Indians with conspiracies against the United States Government. His actions toward the president of the federation and the white friend who has been so prominently and favorably interested in the welfare of the Mission Indians, bears out the statements he has made to the press and groups of white people and to the Indians, that the superintendent intends to crush the federation or anyone defending it.

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An unbiased investigation of the Mission Indians and their present federation, will verify that the federation is now and has all the time been the legally chosen and qualified voice of the Mission Indians. It is truly the tribal council of the Mission Indians, and as such should have been so recognized by the new superintendent last July, 1933. If legal elections, free from the strong arm of the Bureau and its employees, were held every month of the year, 80 percent of the Mission Indians would continue to reelect the same friendly council on each reservation.

UNFAIR ELECTIONS PROMOTED BY AGENT

The Mission Indians are very generally registered voters under the State and county laws of the State of California, and are, therefore qualified to participate in bona fide and legal elections. In such manner they have held their own tribal elections. However, Mr. Dady, after two or three attempts to control elections on certain reservations, called elections by designating that the Indians use a special ballot which he had prepared, wherein an Indian, after writing in the name of the choice for various positions, he was to sign his name on the bottom of the ballot, which was to be sent to Mr. Dady's office for his records. Naturally hundreds of Indians refused to participate in such elections. He has used other similar unfair methods to control the vote on reservations. This makes for division of Indian and official effort, and oftentimes such rifts cannot be healed in years. It is not the fault of the Indian people. Copy of "official ballot" is herewith attached.

Sound Indian policy would approve and uphold any group of Indians in their effort to promote their own welfare and harmony with officials as the Mission Indians have done. We believe that Congress has never attempted to take from any Indian tribe its inherent right to regulate its own reservation or tribal matters in the manner in which the Mission Indians have always handled theirs. It is their right today. The right of an Indian tribe to thus deal with the many matters affecting their tribe has repeatedly been upheld by the Federal Courts.

A SOUND, SIMPLE, AND DIRECT INDIAN REFORM NEEDED

Rather than promises or volumes of rules and regulations, constitutions and bylaws in a further attempt to curb the real development of the Indian, setting up an Indian court, judges, land commission, etc., etc., the Mission Indians desire legislation which would in a sound, sane, simple, and direct manner give the Indian real self-government. And our recommendation to accomplish this end is to immediately pass the necessary legislation. That will give the Indians an honest opportunity to recall or remove their superintendent or other Bureau employee under a truly democratic vote, of two-thirds of the adult members voting upon a reservation or reservations.

In the experience of the Mission Indians, practically every mistreatment or grievance of the Indian is directly caused by the fact that they have no voice in the appointment of their superintendent and other employees. This is, we believe, universally the case. Bureau employees will then realize they are working for the best interests of the Indian. The Indian has a voice in the selection of all public offices, from the President down to a school trustee; likewise he can and does vote on all bond issues in his locality. He does not, however, have anything to say about the official placed over him. No other injustice done the American Indian is quite so destructive to his welfare as this bureaucratic mismanagement. And make the rule for recall so simple that there will be no safeguard to assure the Federal employees their jobs can be perpetuated by some higher official in whose hands the final "say" is held. Let the test be, to earn and hold the confidence of the Indian by service. All agree that our Government has woefully mismanaged the affairs of the Indian; it has been costly not only to the Government, but more so the Red Man. Now, let him experiment with himself.

We, the undersigned delegates representing the Mission Indians of California, most respectfully urge that their petitions asking the removal of their present superintendent, Mr. John W. Daly, be acted upon favorably.

Respectfully submitted.

Adam Castillo,
Purl Willis,
Delegates.

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[Western Union]

SAN DIEGO, CALIF., *March 14, 1934.*

Hon. GEORGE BURNHAM,
Member of Congress, Washington, D.C.:

Adam Castillo on Saboba, his own reservation, was not elected on any committee or office. Anthony Majado was elected spokesman. Castillo and Purl Willis are disturbers of the peace of the Indians. What they say against Agent Dady who is a fine, well-meaning friend of the Indians, they said against Mr. Ellis, the former agent.

Mr. Dady employed 643 Indians, only 3 white engineers, and spent $325,000 out of P.W.A., E.C.W., C.W.A. for improvements for Indian reservations.

The complaints of Castillo and Willis against Agent Dady cannot be substantiated. Dady is successful in his work with Indians except for the interference of Castillo and Willis.

Please turn over to Indian Committee.

SAMUEL I. FOX,
Chairman Indian Affairs Committee, San Diego County.

SANTA ROSA INDIAN RESERVATION,
San Jacinto, Calif., March 16, 1934.

Hon. SAM L. COLLINS,
Indian Committee, House of Representatives, Washington, D.C.

HON. SIR: As duly elected spokesman of the Santa Rose Indian band of the Mission Indian Tribe, and in behalf of the Mission Indians of southern California. I wish to protest the derogatory statements made before the House Committee by Purl Willis against Superintendent John W. Dady which appeared in a news item in the Los Angeles Times, and in other papers, March 14, 1934.

In the first place I know Superintendent Dady never made the statement Purl Willis made that he was a "strong-arm man." Next, he is in no sense an autocrat. I have made many visits with him, acted as interpreter, and have been present during many discussions with my Indian people and know he has never shown any spirit but that of great friendliness and cooperation in everything he has said or done.

I know that Willis and his several followers do not represent the "entire Mission Indian Tribes of Southern California" whom he has gone to Washington to "plead" for. His trip to Washington is more for his own personal gain than it is to help the Indians. Evidently his trip has not been successful which has led to his blast against Superintendent Dady. I know many prominent business men of the highest integrity in San Diego, and they know Purl Willis and his methods, I am sure that the article mentioned above was entirely uncalled for. In making a statement in defense of Mr. Dady, a man who I know is sincere and a true friend of the Indians, and who is carrying out the policies of Mr. John Collier, Commissioner of Indian Affairs, who has gone along like another "Savior," I feel that I am only doing what is right and for the best interests of my Indian people. We do not often find a man of Mr. Dady's stamp.

We have waited for him all these many, many years and finally he is here to give the Indians the help they need. Oftentimes men of Willis' caliber jump in and stop smooth-running machinery for their own personal gain.

Heretofore, the Indian Office of the Department of the Interior never gave these Indians a chance. As soon as John Collier took office, I knew the man was sincere, because he worked for the Indians many years. Read Senate bill 2755 to see what Commissioner Collier is doing for the Indians; then read House bill 7095 and see what Willis, Collett, and his Indian followers are trying to do for "my people"—really themselves—3 percent on a probable award of $12,800,000 under Court of Claims case which is now being handled without cost to the Indians by the Attorney General of the State of California—see Attorney General Webb's report dated September 2, 1933, page 16. He was appointed Commissioner of Indian Affairs by our President, who seems to be in sympathy with the Indians also. In consequence of this I saw an opportunity to help my people. I feel that it is my duty to help my people although there are many things that I could do in the way of positions offered me in the athletic field that would pay quite well.

It is fortunate for the Mission Indians that Mr. Collier has sent a man out here like Mr. Dady to carry out the "new deal" for the Indians.

Very respectfully,

JOHN T. MEYERS,

(Chief Jack Meyers formerly with the New York Giants.)

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PALM SPRINGS, CALIF., *March 22, 1934.*

HON. SAM COLLINS,
Member of Congress, Washington, D.C.

FRIEND: We the undersigned members of the Aqua Caliente Band of Mission Indians of Palm Springs, Calif., hereby appeal to you for help and protection of our rights to maintain our reservation, water supply, hot springs, and our canyons from which we receive a little revenue, also our hot springs bring in a little income which helps us to live. We have heard that after the expiration of our patent on section no. 14 which we now live on, next year, that plans have been made to remove us to some other location out farther, out towards the sand wastes, desert. We have had it hard enough where we are now due to lack of domestic water. What few of us that can afford to pay can have water from the town water company. Some few years back the company made an agreement with some of the older members to grant them a permission to run their pipe line through certain sections of our reservation and in turn they were to repay with so many inches of water but they never kept their promise. We have taken up this matter with our present agent, Mr. Dady, but we are still waiting as we have done in the past. Our canyon which we use to pasture what few stock we have was almost taken away from us a few years ago. That was during Mr. Ellis's term as agent. We asked and pleaded with him to help us save our canyons for us but through our good white friends with their help we saved our canyons, not through the agent.

The airport was another deal where the agent, Mr. Ellis, made out the lease to the chamber of commerce here that after the lease was made out it was to be used for an airport only and all rental money was to be paid to us directly each year for a period of 5 years at $250 a year. It was a good thing to us but we could not see the joker in it. Many of the members could neither read nor write. After the signatures and thumb marks were completed they established saddle liveries on the airport property. We protested and took it up with Agent Ellis. We even sent a petition to the Department of Interior but we never got a reply nor did we ever get our money. Just since Mr. Dady has been in office did he tell us that there was something like $1,250 and some odd cents of our money in the treasury but it was to be used for developing our domestic water system but he will soon be there one year still we wait. These are just a few incidents that we are bringing forth of the treatment that is given us. We have selected our delegates to bring this and many other causes why we wish to have Mr. Dady removed from here. Our delegates are in Washington now. Our wish and desire is to have the entire reservation of ours correctly surveyed and have monuments erected to mark our section corners and to have a Presidential order extended indefinitely as this is our home where our forefathers have lived and died.

We hope and know that you will do all you can to help us out. Mr. Purl Willis and Mr. Adam Castillo our appointed delegates that know our situation very well will take this up before you. We are also opposed to the Wheeler-Howard bill, S. 2755, and also the majority of the other Missions Tribes are opposed to it.

Sincerely yours,

AQUA CALIENTE MISSION INDIANS,
PICO MANUEL,
MARCUS J. PETE, *Secretary.*

RAMON MANUEL,
BARISTO SOL,
C. P. SEGUNDO,
The Committee.

THE AMERICAN INDIAN DEFENSE ASSOCIATION, INC.,
Washington, D.C.

HON. EDGAR HOWARD,
Chairman Committee on Indian Affairs,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HOWARD: Since the submission of certain charges against the superintendent of the Mission Indian Agency, Mr. John W. Dady, to your committee by Mr. Purl Willis and others, representing the Mission Indian Federation, I have received a great many communications from Indians and other persons. As I understand that your committee will not be able to deal with this matter at a public hearing, may I send you this letter for the record, quoting from

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[Western Union]

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Member of Congress, Washington, D.C.:

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Chairman Indian Affairs Committee, San Diego County.

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San Jacinto, Calif., March 16, 1934.

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Indian Committee, House of Representatives, Washington, D.C.

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I know that Willis and his several followers do not represent the "entire Mission Indian Tribes of Southern California" whom he has gone to Washington to "plead" for. His trip to Washington is more for his own personal gain than it is to help the Indians. Evidently his trip has not been successful which has led to his blast against Superintendent Dady. I know many prominent business men of the highest integrity in San Diego, and they know Purl Willis and his methods, I am sure that the article mentioned above was entirely uncalled for. In making a statement in defense of Mr. Dady, a man who I know is sincere and a true friend of the Indians, and who is carrying out the policies of Mr. John Collier, Commissioner of Indian Affairs, who has gone along like another "Savior," I feel that I am only doing what is right and for the best interests of my Indian people. We do not often find a man of Mr. Dady's stamp.

We have waited for him all these many, many years and finally he is here to give the Indians the help they need. Oftentimes men of Willis' caliber jump in and stop smooth-running machinery for their own personal gain.

Heretofore, the Indian Office of the Department of the Interior never gave these Indians a chance. As soon as John Collier took office, I knew the man was sincere, because he worked for the Indians many years. Read Senate bill 2755 to see what Commissioner Collier is doing for the Indians; then read House bill 7095 and see what Willis, Collett, and his Indian followers are trying to do for "my people"—really themselves—3 percent on a probable award of $12,800,000 under Court of Claims case which is now being handled without cost to the Indians by the Attorney General of the State of California—see Attorney General Webb's report dated September 2, 1933, page 16. He was appointed Commissioner of Indian Affairs by our President, who seems to be in sympathy with the Indians also. In consequence of this I saw an opportunity to help my people. I feel that it is my duty to help my people although there are many things that I could do in the way of positions offered me in the athletic field that would pay quite well.

It is fortunate for the Mission Indians that Mr. Collier has sent a man out here like Mr. Dady to carry out the "new deal" for the Indians.

Very respectfully,

JOHN T. MEYERS,

(Chief Jack Meyers formerly with the New York Giants.)

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these communications which come from persons who are competent to give pertinent and valued comment on the matters in question.

First, I submit the opinion of certain non-Indians of high standing in California as to the general administration of the Mission Indian Agency by Superintendent Dady:

From Mrs. R. C. Black, chairman of the southern district Indian welfare committee of the General Federation of Women's Clubs, comes this testimonial:

"Referring to the unfavorable publicity Mr. Willis has been giving Mr. John W. Dady, superintendent of the Mission Indian Agency, at Riverside, I will say that Mr. Dady is truly honest, capable, and conscientious in all his dealings with the Indians and for them. No finer man can be found anywhere."

Mr. A. Muehleisen, a prominent business man of San Diego, Calif., says:

My personal investigations in our country disclose that Willis is advising the Indians to oppose and harass Mr. Dady and his administration who are putting over a real program of improving conditions for our Indians. This work is going forward in spite of Willis and his followers.

Mrs. Sara W. Riddle, California State chairman on Indian citizenship of the Daughters of the American Revolution comments as follows:

"We have been very grateful to have Mr. Dady here, for he has done so much in the short time he has been in office. We feel that this step he has taken toward self-government for the Indians is just the beginning of an era of great happiness and prosperity under his regime."

Dr. George P. Clements, manager of the agricultural department of the Los Angeles Chamber of Commerce, writes:

"The man Dady they (the leaders of the Mission Indian Federation) wish to dispose of has done the first and only outstanding constructive work among the Indians in the last 30 years. He should get a letter of commendation rather than complaint."

Second, I submit the opinion of several mission Indians which I have received.

Mr. Tomas Arviso, the elected spokesman of the Rincon Indian Reservation, writes me as follows:

"It is my desire to call your attention to the actions of one Mr. Purl Willis of San Diego, Calif. Through his efforts he keeps my people in constant strife and turmoil. He endeavors to make his living from the Indians who cannot afford to contribute to such a cause, as his present trip to Washington is made from such collections. To say that he is an agitator is putting it in mild form and something should be done to stop his actions before he causes a serious uprising among the Indians."

Mr. Ben Amago, president of the Mission Cooperative Society, in a long letter, writes as follows, referring to the meetings of Indians held by the Mission Federation:

"The meetings are held in secret, and all of its plans are made without the knowledge of the rest of us, and they advertise the fact that they represent all Indians. We naturally resent this.

"We have read from a Washington newspaper clipping charges brought against our superintendent, John W. Dady of the Mission Indian Agency, by Purl Willis.

"We wish to state that these charges are false and malicious.

"In the short time that Mr. Dady has been here, we have found him to be fair-minded and sincere in his desire to help the Indian. Mr. Dady is trying to build up the reservations rather than destroy them. He has continued to encourage us both industrially and socially and is encouraging Indian leadership."

Mr. Anthony C. Majado, the elected spokesman of the Saboba Indian Reservation, writes:

"Mr. Purl Willis is a white man. If Mr. Willis was kept off our reservation, we would live more in peace and harmony and not live the way we have been, divided into two factions.

"If these men were kept off our reservation, we would be more friendly and peaceful in settling our own affairs and accomplish more. These men hold meetings and collect money from our people they cannot afford to pay.

"There is never any accounting of the moneys collected, and our people do not know where it goes.

"In regard to Mr. Dady, our new superintendent. He is a very good man, has done his very best to help us.

"This is the first time we have had a man like Mr. Dady."

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Mr. Jack Meyers, "Chief Meyers" of the New York Giants, who is now the elected spokesman of the Santa Rosa Reservation wrote to Congressman Sam L. Collins, March 16, a letter, a copy of which he sent to me. In this letter, protesting against the charges made to your committee by Mr. Willis, he states:

"We do not often find a man of Mr. Dady's stamp. We have waited for him all these many, many years and finally he is here to give the Indians the help they need. Mr. Collier was appointed Commissioner of Indian Affairs by our President who seems to be in sympathy with the Indians also. I feel that it is my duty to help my people, although there are many things that I would do in the way of positions offered me in the athletic field that would pay quite well. It is fortunate for the Mission Indians that Mr. Collier has sent a man out here like Mr. Dady to carry out the 'new deal' for the Indians."

The question of money contributed enters into this matter prominently. I append the original of a letter from Mr. Ramon Carcia, reciting his experience in contributing his life savings and cattle to the Mission Federation. I have also before me a copy of an affidavit of John Gardner, an Indian, charging that he contributed to the federation out of the belief that he would lose his E.C.W. job if he did not. This affidavit is as follows:

MARCH 22, 1934.

Charles Hilemeyer collect from me $3 of Government money paid me. He told me if I did not pay they put me out of reservation. Charles said he would take this money to Willis. I pay because Charles son foreman, and I want to keep my job.

JOHN GARDNER.

Witness:
WILLIAM B. HILL.
OS. B. FRY.

The original of the affidavit is in the hands of the Indian Bureau.

The unanimity of opinion among these correspondents, both white and Indian, testifying to the good work being done by Superintendent Dady and to the methods and purposes of the present leadership of the federation indicates quite clearly that your committee was imposed upon. We feel that if your committee does not feel that this is the case, Superintendent Dady should be brought to Washington to lay the facts before your committee.

Respectfully submitted.

ALLAN G. HARPER, *Executive Secretary.*

MORONGO INDIAN RESERVATION,
Banning, Calif., April 5, 1934.

Mr. ALLEN HARPER,
Secretary Indian Defense Association,
Washington, D.C.

DEAR SIR: Hearing of some of the Mission Indian Federation's complaints in Washington, I want to tell my story.

Fourteen or fifteen years ago I was one of the few Indians who helped organize the Mission Indian Federation. Our organization was protesting the allotment of only 5 acres. At the time I had 55 acres of land under fence that I had improved, about 12 acres of orchard, alfalfa, and garden, and the rest dry farming. This organization promised to get our land back for us.

We took up collections from all parts of the country to send delegates to Washington.

Julio Norte was president, Juan Dela Cruse Norte was treasurer, M. Tibbet was our white leader, who was to take four or five Indian delegates to Washington.

After our collections were made, through lies or false statements our president and treasurer were discharged, and Adam Castillo was made president.

From the time I joined until the time I was put out of this organization I put in over $300 in cash and sold all my cattle to pay my dues and expenses to and from Riverside to attend their meetings. I am a very old man. I am blind. After all my money and cattle are gone they throw me out. I am just one of the many old folk who have lost their life savings in this organization. They have never done anything except fool the old people and from what I hear they are still fooling the people.

Why don't the Commissioner in Washington put a stop to this organization and make them give the old people their money back. They are hurting our

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entire tribe of Indians. I am making this statement on my own accord? I also wish to say that I, as well as many of the old folk I talk to, feel that the present Superintendent, Mr. Dady, is doing all he can for us and we have hopes for a bright future.

RAMON GARCIA.

Witness:
FRED HUDSON.
WILLIAM PABLO.

(THEREUPON THE COMMITTEE RESUMED ITS REGULAR HEARING FOR THE DAY)

The CHAIRMAN. We will now continue the hearing with reference to H.R. 7902. In this hearing I want to give preference to the presentation of matters by the Indians or their representatives. Does anybody desire to be heard now with reference to this bill?

Mr. PEAVEY. Mr. Chairman, it has been suggested to me that the delegation representing the Blackfeet thought their spokesman, Mr. Brown, here yesterday, did not reflect wholly the feeling and position of the whole delegation on this bill. I do not know that that is true, but that has been called to my attention. I suggest in order to clarify the situation that the chair call on Mr. Brown at this time, and if there is anybody in that delegation that holds a different opinion, that we might hear them.

Mr. WERNER. I asked Mr. Brown about it; he said that they were unanimous on it.

The CHAIRMAN. Are there any other members of the Blackfeet delegation present other than those who spoke or were spoken for yesterday?

Mr. WRIGHT HAGERTY. Yes, sir.

The CHAIRMAN. Do you desire to be heard?

Mr. HAGERTY. No; I do not, sir. Mr. Brown expressed my feeling.

The CHAIRMAN. Mr. Brown represents the sentiment of your people?

Mr. HAGERTY. Yes, sir.

The CHAIRMAN. Are there any other Blackfeet here who would like to be heard, or anybody in their behalf?

Let us proceed. If there are no other witnesses who desire to be heard now, I presume we ought to have the Commissioner speak.

Commissioner COLLIER. We have, of course, a great deal to present, but we do not want to prolong the hearings.

Mr. O'MALLEY. Do I understand that there is nobody else that desires to be heard either for or against this bill?

The CHAIRMAN. We have asked that question several times, and nobody has presented himself.

Mr. O'MALLEY. Just as a point of information, this committee now has spent some 35 or 40 hours in consideration of this bill, and I am anxious to find out when we can get into an executive session and discuss all that we have heard and decide what our further procedure under this bill will be.

The CHAIRMAN. The Chair would reply to that at any moment when the committee shall so order. I feel that if there are any representatives of any Indian tribe, they should be given every opportunity to be heard. I understand there are some representa-

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tives of some Oklahoma Indians here today who would like to be heard.

Mr. O'MALLEY. Of course, 3 months have now elapsed since the first introduction of the bill.

The CHAIRMAN. The Chair will be very happy to have this bill go to the reading stage at the first moment possible.

Mr. O'MALLEY. There was one other point, Mr. Chairman, on which I would like to be informed: I notice in the report that I was one of the members, according to the report, named on the subcommittee to meet with the Judiciary Committee. Is that correct?

The CHAIRMAN. I do not recall.

Mr. O'MALLEY. I have a copy of the report here, part 5. That was the nearest information that I had, reading the report.

The CHAIRMAN. I recall asking the gentleman from Wisconsin if he was a practicing attorney.

Mr. O'MALLEY. And I resented the accusation. My good colleague from Wisconsin accused me of being a practicing attorney. You see, I am in favor of the bill that prevents attorneys practicing while holding public office.

The CHAIRMAN. The gentleman, if he is not a practicing attorney, would probably not be appointed on that subcommittee, then, because it was a committee to confer with a like subcommittee from the Committee of the Judiciary.

Mr. WERNER. It is on page 178 of the printed report.

Mr. O'MALLEY. I am trying to clarify this, because reading the report was the first knowledge I had that I have been appointed to that subcommittee. I have been absent on account of illness a number of times.

Mr. WERNER. I think the committee was Mr. Murdock, Mr. Chavez, Mr. Ayers, Mr. Gilchrist, and Mr. Collins.

The CHAIRMAN. By the way, gentlemen, I think I should have announced that I have a message from our colleague, Mr. Collins, saying he was imperatively called to California, and that he would be back during the present week.

It has been suggested that the Oklahoma Indians desiring to be heard are here now. Gentlemen, if you desire to be heard, if you will come in we will give you an opportunity to be heard.

Mr. ROGERS. There are two Oklahoma Indians here that want to be heard on the bill, any time you are ready. They are here now.

The CHAIRMAN. Those Indians now desiring to speak for that particular Oklahoma tribe, will you please come forward now?

STATEMENT OF JESSE ROWLODGE, REPRESENTING THE CHEYENNE-ARAPAHO TRIBES

The CHAIRMAN. For whom do you speak?

Mr. ROWLODGE. I represent the Cheyenne-Arapaho Indians of Oklahoma.

The CHAIRMAN. You may proceed.

Mr. ROWLODGE. I want to present before this committee, Mr. Chairman, and gentlemen of the committee, the gist of the opinion of my tribe in the matter of this Wheeler-Howard bill as it stands at the present time. Mainly we are sent here as Cheyenne-Arapaho delegates of that reservation, not to express ourselves as to what we

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think of the bill, mostly, but to study the bill through this committee and the Committee of the Senate on Indian Affairs, and before the Department of the Interior on Indian affairs, and to study through our tribal attorney, who is a resident of this city, in order to be able to report back to our tribe on our return, and for the tribe to consider the bill with its modifications and amendments for their decision at a reasonable time after their consideration of the bill as we may report it, with the help of the available bulletins and proceedings of these meetings of the committees of both Houses.

I want to say that the Cheyenne-Arapaho Indians have expressed themselves and have had meetings almost every Saturday since the 20th of January discussing this bill, and I want to express to this committee that the Cheyennes and Arapahos as a whole are not either denouncing it or not at the present time accepting it as a whole. While as a matter of fact, they are in sympathy and they are in accord, and they like many of the features of the bill, especially that of the educational features of the bill and the employment feature of the bill, and to some extent the self-government features of the bill, because they have learned and they have experienced all along the years that the method of the allotment act has been somewhat detrimental to them in various ways, they feel that they have not been given the right chances as educated Indians to exercise their abilities that they learned in the schools that have been provided for by the Government. For those reasons they are somewhat at an attitude at this time that some of those features of the bill should be immediately exercised by the present administration by making various changes to somewhat prepare the Indians even before the bill becomes a law, if it should become a law.

Directing my remarks so far as the present features of the bill are concerned, there are not very many objections to parts of the bill on the part of the Indians, but they do want to know if it would be possible to make some changes whereby it would fit their needs and respond to their desires and wishes, so far as their rights are concerned, and they do want to make inquiries here and there of the features of the bill as it is presently drawn up.

One of those features of the bill which they want to know is, as best we can express it, this: In the event that they should colonize by accepting a colonization plan and draw a charter, and at a later time they should become dissatisfied and should want to sell back from the community, in order to withdraw, what status would the Indians be put in thereafter? Would they be reallotted or would they be just left to their own course? That is one of the questions that has affected the minds of a good many of the Indians.

I made the remark before the Senate Indian Committee last Saturday morning, and those records I would not like to repeat, that one of those questions raised by the Indians from time to time has been, would it be possible for them to continue their inheritance right or descendant right in the bill or whether a modification could be made to provide for that. As I stated, we are really here to learn, and not state so much our opinion, but to learn so that the Indians who gave us this authority could be advised upon our return as to the position of the Cheyenne-Arapaho delegation. But as a matter of fact, of course, as I stated before the committee, the landless Indians, who otherwise have nothing to live on and live by, and have

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no dependency from any source of income, being out of employment and having no chance of employment either in the Indian Service or in private enterprises, have expressed themselves, if possible, to discriminate themselves from the position of the landowner, and leave the landowner to do as he pleases with his rights, for the landless Indians who have disposed of their lands or who have had no chance of inheritance, or children who have recently been born since allotment and have no allotments, to take advantage of this law; and for that reason they are somewhat in favor of it.

This really is the scope of the feeling of the Arapahos and Cheyennes of Oklahoma, as far as I know, and I am the chairman of their tribal council as a combined tribe. I have sat and listened in and attended all their meetings, and have become somewhat versed as to their opinion.

That is all I want to say before the committee. I would like to have my old delegate here, Chief Ute Arapaho, express himself from the standpoint of the landowning Indians whom he has contacted himself with to know of their opinions. I will interpret for him to the best of my knowledge and ability.

STATEMENT OF UTE ARAPAHO, REPRESENTING THE CHEYENNE-ARAPAHO TRIBES

Mr. ROWLODGE. His name is Ute Arapaho, from the same reservation I am.

The CHAIRMAN. Let him go ahead. Explain to him the subject about which we desire to hear from him.

(The statement of Mr. Ute Arapaho was interpreted by Mr. Rowlodge.)

Mr. ROWLODGE. He says that he does not expect to dwell very long on the subject of this Wheeler-Howard bill. As he stated in the beginning, he said that he did not want to speak very long, but this point that he wants the committee to know is that when the proposed Wheeler-Howard bill was known to them, it was interpreted that the section in that bill provided that the landowner would give in his title and right to his allotments for the benefit of landless Indians, which, as a representative, he objects to.

He says further that it has been the thought of many of the older Indians to still hold their allotments for the right of inheritance of their descendants, to their sons and to their children and their grandchildren, is the way he states himself.

The opinion of the allottees who still own their lands is this, he says: They desire that they should be given the privilege to live as they now do, and this is the opinion of the landowners of the Arapahos. And he says in that connection a petition has been drawn by that tribe as landowners, and that petition he says he has in his possession, that he will file with the commission.

He says according to his opinion that this Wheeler-Howard bill should be submitted to the Indians and to the committees of Congress with long enough time for consideration in order that the Indians might be well advised as to its features; but according to his opinion and that of others, it seems like they are not given the chance of the time to discuss and consider it definitely enough to understand just its terms.

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Mr. O'MALLEY. In other words, he means to imply that there has been a very short time for the Indians to consider the bill and digest it and get its meaning?

Mr. ROWLODGE. Yes; that is what he means.

He says, "We realize that the Commissioner is undertaking this plan for his sympathy to the Indians, especially to the landless Indians, and if that be his attitude, if that be his purpose, it would seem very reasonable to the Indians as a tribe for the commissioner outright, in a way more simple, to tend to the landless Indians by providing them with lands for their means of living."

He says, "Where is the source of this money that will be used to purchase land for the landless Indians?" He says, "I am not clear on that." He says also that the Indians are somewhat in the dark yet as to the perpetual care and guardianship of these Indians who are to be provided with lands as landless Indians.

Mr. WERNER. He is not any more in the dark than are the members of this committee.

Mr. ROWLODGE. He says he is also instructed as a delegate for the land-owning Indians to find out, if possible, whether the Indians will have the right to object to this plan, if it becomes law, or whether they will be compelled to become charter community members. He says that is the main purpose that I am delegated here for, to find and know for the interests of the Indians whom I am representing.

Mr. WERNER. Ask him if he is a landowner.

Mr. ROWLODGE. He has an allotment.

Mr. WERNER. He still has it?

Mr. ROWLODGE. He said he still has his alllotment.

Mr. WERNER. And he wants to keep it and be able to bequeath it to his heirs?

Mr. ROWLODGE. He says, "Yes"; that is his desire.

Mr. O'MALLEY. Is it his understanding of the collectivist principle of this bill that if this bill passes and a majority of the Indians in that tribe vote for the charter, that his land will go into the common pool, as it were, and some of his individual rights will be transferred to the tribe as a whole in regard to that land? Is that his understanding of this bill?

Mr. ROWLODGE. That is his understanding, and this is his understanding, also; that they are to be compelled to pool their land.

Mr. O'MALLEY. Of course, I do not know whether there is any compulsion in this bill, legal compulsion, but, of course, there is more mental compulsion, propaganda of the things that I wanted.

Mr. ROWLODGE. That is his understanding, he says; and he says in addition to that that he feels he ought to have the same right as that of any white landowner, to be consulted and get his consent as to what his position is, what may be done with his land.

Mr. O'MALLEY. You tell him I agree with him.

Mr. PEAVEY. I would like to ask the chief if he feels satisfied with the way the questions and dealings pertinent to the Indian lands as they affect his tribe have been handled in the past.

Mr. ROWLODGE. He answers the question in this way. He says that he has been satisfied with the conditions and rules and regulations as governing under the present allotment laws and the present system.

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Mr. PEAVEY. That was not quite my question. What I want to know is whether or not he is satisfied with the way the Indian land holdings or the questions, all questions pertaining to the Indian land-ownership as it affects his tribe in the past years have been handled.

Mr. ROWLODGE. He says that he has been satisfied with that policy.

Mr. PEAVEY. In the past?

Mr. ROWLODGE. In the past.

Mr. PEAVEY. Then I would like to ask him this further question; if, under the terms of this bill, he and the other Indians of his tribe, who still hold their allotments, their land, were protected in the ownership and an additional $2,000,000 a year were furnished by the Government to reinvest the Indians, the landless Indians, with land, if he would have any objection to that provision of the bill.

Mr. ROWLODGE. He said he would be satisfied with the proposed law if it would include the inheritance rights of the descendants of the present allottees.

Mr. WERNER. How many landless Indians are there in your tribe?

Mr. ROWLODGE. I would not be able to give the figures very definitely, but out of between 2,700 and 2,800 Cheyenne-Arapahos, at least two-thirds of them are landless.

Mr. WERNER. Two-thirds of 2,800?

Mr. ROWLODGE. Yes, sir.

Mr. CHAVEZ. How have they become landless?

Mr. ROWLODGE. By various ways. They have been issued patents, they have been given the right to sell their inherited lands, and at one time the Government compelled the Indians, as far as I understand it, to sell lands where there were too many heirs, in lots of cases against their wishes, and some have been where lands have been bought for them from trust funds, funds under trust, and later it developed that they had to pay taxes; and they became in a position to lose their lands due to the fact that the courts did not uphold that regulation in the law.

Mr. WERNER. What is the value per acre of good land in that community?

Mr. ROWLODGE. Well, it would be rather hard at this time on account of the changes of conditions——

Mr. WERNER. The lowest price under present conditions?

Mr. ROWLODGE. Say about $10 an acre.

Mr. WERNER. $10 an acre is the lowest?

Mr. ROWLODGE. Yes.

Mr. WERNER. You say you have 1,800 landless Indians in your tribe?

Mr. ROWLODGE. About that, approximately.

Mr. WERNER. And if you gave them 80 acres of land, each of them, that would amount to 144,000 acres of land, at $10 an acre, which would be $1,440,000.

Mr. ROWLODGE. If it were all that class of land, it would not go very far.

Mr. WERNER. It would have to be the better class of land, if you are going to make a living on it?

Mr. ROWLODGE. You could hardly make a living on $10-an-acre land.

Mr. O'MALLEY. That is the lowest.

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Mr. ROWLODGE. We have lands there that are worth $50 or $60 an acre. That is good farming land.

Mr. WERNER. I want them to realize how false these hopes are; how far $2,000,000 will go in order to provide the landless Indians with land.

Mr. ROWLODGE. I think we have at least, as I understand the land conditions, four classes of land, the river-bottom lands, the uplands, second-bottom lands, and the ridge lands, that are worth hardly anything.

Mrs. GREENWAY. In connection with the subsistence homestead lands, the maximum in some cases is 2 to 3 acres, if the land is good, allowed for a farmer. That is agricultural land.

Mr. O'MALLEY. That is just to supply the farm with its needs.

Mr. STUBBS. That is irrigation land.

Mr. ROGERS. That would not even keep goats on there, 2 or 3 acres.

Mrs. GREENWAY. Yes; I think you are right about its being agricultural, but isn't it agricultural that is being discussed?

Mr. ROWLODGE. Some of our land is agricultural.

Mr. STUBBS. It is all dry farming.

Mr. ROGERS. It takes a big area to make anything.

Mr. WERNER. If you are going into diversified farming, what is it going to cost to supply the land?

Mr. ROWLODGE. Let me say now that we have three abandoned reservations, as was presented before this committee the other day, known as the "Seger School Reservation," which comprises about 2,140 acres altogether, with pasture and agricultural lands; then there is another reservation, known as the "Hammon Reservation," which is also abandoned, but I do not know the acreage of that reserve; and we have another abandoned reservation, which is known as the "Cantonment," which has at least almost, I would say, about a section or so, that had some improvements on it. The Indians discussed among themselves, if they accepted the plan submitted by the Commisioner under this Wheeler-Howard policy, to take as their community centers for the landless Indians those preferably.

Mrs. GREENWAY. Mr. Commissioner, is the experiment that is being made in Sacaton unique? Is it repeated elsewhere? I mean, it is such a wonderful and interesting and successful thing.

Commissioner COLLIER. It is one of the projects where the Indians are really pretty much——

Mrs. GREENWAY. They are independent.

Commissioner Collier. They are independent. I would say that at Fort Belknap in Montana the experiment has been carried one stage further. The case of Fort Belknap is extremely interesting, of how the Indians have managed to circumvent the difficulties of the allotment system within which they live. The Pimas will undoubtedly develop along that line if they have to.

Mrs.GREENWAY. I think we all think the Sacaton experiment is one of the most beautiful and successful pictures, where each Indian is first of all given day's work while they work on the very place that will eventually be their own. Then they become the owners, and they are carried with enough money until the ditches are in and the crop is in.

Commissioner COLLIER. Yes; of course, the Sacaton demonstration, if you call it such, is too young to have proved out on the eco-

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nomic side, owing to the collapse of the cotton market and to the large investment. More in the nature of a demonstration would be this Rocky Boy case that was recited yesterday, and the Fort Belknap case, where they have been able to start out with smaller investments, and have actually paid as they went, so that there has been no Federal investment, except a current one, and liquidated. But the Pimas will do that if you give them time enough.

The CHAIRMAN. Is that all?

Mr. CHAVEZ. You say there are 1,800 Indians now landless?

Mr. ROWLODGE. That is what we figure, as close as we can estimate at the present time.

Mr. CHAVEZ. Did they all at one time have allotments?

Mr. ROWLODGE. Not all of them.

Mr. CHAVEZ. What proportion?

Mr. ROWLODGE. Say about a third of the landless had the advantage of the allotment.

Mr. CHAVEZ. All right. On every occasion the circumstances of losing the allotment are what you have recited?

Mr. ROWLODGE. Yes, sir.

Mr. CHAVEZ. Sometimes they are forced by the Government to sell their land?

Mr. ROWLODGE. Yes, sir.

Mr. CHAVEZ. Of course, there were some, also, that would not progress anywhere, no matter where they were; they were the unthrifty kind?

Mr. ROWLODGE. Yes. They were really incompetent to take upon themselves the responsibility of handling their own affairs in such a sudden, compulsory way.

Mr. CHAVEZ. With reference to the landed Indians in the Arapahos, do they make a living out of the allotments as given to them by the Government now?

Mr. ROWLODGE. A few of them do. Most of the allotments that are still held by the allottees are under lease through the Government offices.

Mr. CHAVEZ. Through the Government offices?

Mr. ROWLODGE. Yes; which is the only means by which they are living. They have no other income or sources of revenue.

Mr. CHAVEZ. But if I understand the chief correctly, through your interpretation, he means that the landed Indian as now existing in your reservation is willing to take his chances of making a living that way?

Mr. ROWLODGE. Yes, sir.

Mr. CHAVEZ. And he also wants the right that if he does make his living that way, he wants to have his children go along after he dies?

Mr. ROWLODGE. Yes, sir.

Mr. CHAVEZ. He is opposed to having the tribe as a whole own the property?

Mr. ROWLODGE. Opposed.

Mr. CHAVEZ. Opposed to having a tribal holding?

Mr. ROWLODGE. Yes.

Mr. O'MALLEY. He desires to continue as an individual.

Mr. CHAVEZ. What is your opinion, would he be able to compete with the surrounding neighbors? Can he keep up his share of responsibility?

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Mr. ROWLODGE. My opinion is this, that he can fare along pretty well under the guardianship of the Government as expressed in the set-up, but it has left the question of whether he can or not in the event that the trust periods that will expire were discontinued as to the competent Indians.

Mr. CHAVEZ. That is all.

Mr. PEAVEY. Both yourself and the chief have expressed fear that this bill may deprive the now land-owning Indian of his right, title, and interest by putting them into a communal undertaking. Is that not true?

Mr. ROWLODGE. Yes; that is our representation before this committee.

Mr. PEAVEY. Is this not true also, that of those land-owning Indians now left in these tribes, there would not be scarcely one of them owning land today if it were not for the restrictions imposed by Congress, preventing them from having their lands sold by the Government or anybody else; is that not true?

Mr. ROWLODGE. Yes, that is a fact.

Mr. PEAVEY. So that unless there is a bill of this nature passed, and unless Congress were to continue to protect you in that respect, you would in the natural course of events practically all of you lose your land in the next few years to come, under the present allotment system?

Mr. ROWLODGE. Yes, sir.

The CHAIRMAN. Any other questions?

Mr. ROWLODGE. I want to say this, that we have refrained from dwelling on any reference to the court in this bill, due to the fact that we have not felt prepared to dwell on that feature of the bill at the present time. However, we do know that to begin with, in the event that this communization plan becomes workable, there should be a police control of the community, and that the set-up would require, due to the fact that it requires the police duties, that there should be some court of some kind over Indian minor crimes. That is the extent that the opinions have been expressed by the tribes.

Mr. HILL. The Yakima delegation had a conference with Commissioner Collier last evening, and they were urged to study the bill, and they are doing so. One of the delegation asked if he could ask a few questions regarding some provisions on pages 27 and 34.

The CHAIRMAN. We would be glad to hear him.

Mr. HILL. Joe Dann.

STATEMENT OF JOE DANN, REPRESENTING THE YAKIMA TRIBES

Mr. DANN. Mr. Chairman and friends, as delegates from the Yakima Reservation, we are authorized by the tribe to oppose this bill on the condition that they were opposed to losing their private individual ownership of property in the way of lands and allotments; that they were satisfied with the present situation of individual ownership. Even though how humble to us, how little the profit was, they were satisfied. They were opposed to the bill whereby their lands would eventually come into community ownership.

Yesterday, while we were discussing other matters with the Commissioner, he told me and our delegation if the Wheeler-Howard bill would pass, it would not affect our agricultural lands, the home lands

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where we have our homes. We did not have the bill along with us. There was none to be had. I told him this, in a certain part of the bill, page 29, section 5, lines 3 to 6——

Mr. WERNER. What bill have you?

Mr. ROGERS. That is the committee print.

Mr. WERNER. The committee print is not before us. We cannot consider the committee print.

Mr. DANN. It is the same in the other?

Mr. WERNER. No; it is not.

Mr. DANN. It is not on the same page, but it has the same wording.

Mr. WERNER. Same language exactly?

Mr. DANN. Yes.

Mr. DIAMOND. In title 3, section 5.

Mr. O'MALLEY. We have had under consideration H.R. 7902, as introduced February 12.

Mr. DANN. Section 5 on Indian lands. I do not know what section it is in yours.

Mr. CHAVEZ. Page 29 of the committee print.

Mr. HOWARD. Page 27 of the original bill.

The CHAIRMAN. Let me suggest, Mr. Hill, we cannot hear him more than about 5 minutes. If you will have the gentleman ask his question——

Mr. DANN. I am coming to the question.

Mr. HILL. He said he has just a few questions to ask.

Mr. DANN. Just two questions I am going to ask. He explained it to us, under this bill we would have the power to will our property so that it would not be complicated in the future. If complicated, it would eventually go to the community plan and become community holdings. Under this, the Yakima delegation were instructed from the tribe to oppose this bill on that basis. If you can find it in this section that the power is given to the Indian to will his property, give it, transfer it, keep it from getting complicated—what little knowledge we have, and reading what we have, we understand it differently. We understand that the power is not there.

Mr. O'MALLEY. It is absolutely prevented, according to the terms of this provision.

Mr. DANN. That is the way we understand it.

Mr. WERNER. That is the way it reads.

Mr. DANN. That is all I have to say on that.

Mr. HILL. Could that be explained at this time? The Commissioner said that they could devise and will it.

Commissioner COLLIER. Should I do so now?

The CHAIRMAN. Yes.

Commissioner COLLIER. The plan as embodied in the new bill and in the Department's proposed amendments distinguishes between agricultural land and forest and grazing land, on the other hand. As explained to the delegation yesterday, it contemplates that agricultural land, so long as it does not have to be subdivided, it is not feasible to subdivide it any more, that land shall remain undisturbed, not only in the case of the living allottee, but in the case of his heirs. That is on page 34 of the bill. It is clearly set down, beginning on line 9, page 34. I am speaking of the committee print, because the question is directed to the Department's proposed amendments. The earlier draft did not distinguish between the different types of

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land, and caused the title to all land to pass to the tribe after the death of the owner presently entitled.

It developed in all the Congresses that the individuals recognized a sharp distinction between agricultural land which can be operated or rented or otherwise used in small parcels, and forest or grazing land, which cannot be used in small parcels. If we turn back to page 29, which the delegate was just reading from——

Mr. O'MALLEY. Mr. Commissioner, before we go back there, I would like to ask a question. This provides—and the committee print on page 34 from lines 9 to 14—that the land can be partitioned among the heirs, but the wording of that gives that right to partition it among the heirs entirely to the Secretary, within his discretion. If he decides that the partitioning of the land would not impair the beneficial use of the land, there is no limitation upon the Secretary's power there. He is the absolute authority to decide whether or not this land shall be partitioned.

Commissioner COLLIER. That is correct.

Mr. O'MALLEY. Upon the basis of whether it will not impair the use of all the land.

Commissioner COLLIER. The discretion is solely in him now, as under the existing law with respect to heirship lands. That is the existing law. I am sure the committee is going to want to consider whether that discretion should not be limited by a discretion vested in the tribal council, whether there ought not to be a concurrence.

Mr. O'MALLEY. As it is worded it is entirely discretionary.

Commissioner COLLIER. That is only the heirship provision of the 1910 act, which was embodied in the existing allotment act. I know that the Department would be very willing to have that discretion restricted in some way.

Mr. O'MALLEY. In other words, the elimination of the non-right to devise or bequeath land, that restriction is relaxed only so far as giving the Secretary the discretion to partition? Under the wording of this you can say no, that this particular Indian could not——

Commissioner COLLIER. Just as under existing law, just as under the existing allotment act. As I say, the Department would be perfectly willing to have that altered, so that his discretion would not be final. It would have to be a concurrent thing with the action of the tribal governing body, or handled in some other way.

Mrs. GREENWAY. Suppose an Indian decides that he would like to dispose of his land, sell it and go out and participate as a citizen out of the tribe.

Commissioner COLLIER. He would have to sell to the community, to the tribe, to the Indians. He could not sell it to whites.

Mrs. GREENWAY. He could not sell it to anyone else?

Commissioner COLLIER. Not whites.

Mrs. GREENWAY. Then, going back to this particular paragraph on page 34, suppose an Indian dies and has a large family, and it is left arbitrarily to the Secretary of the Interior to divide his land amongst his heirs, and the division becomes one of such small sections with lots of children, that no one section is an adequate unit for support, what happens then?

Commissioner COLLIER. I can best answer that by stating how it is now, first. That happens continuously under the existing allotment system. The heirs multiply until they cannot, any one of

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them, use the land because they are too numerous. The existing act directs that under such a condition the land shall be sold, and it has been sold. Millions of acres have been sold in that way. The Department has endeavored to retard the action of that mandate by postponing the sales, and instead of that it rents the land, and the heirs are paid each a rent amounting to his share in the total yield of a piece of land, until the time comes when the administrative cost becomes inordinate, and then they can compel a sale. That is how it works now.

Now, how would it work under this system? Under this system when the point is reached where the subdivision becomes impracticable, the effect of the language is that the land would be sold to the community, to the Indian community, and the heirs would obtain, if you put it in the simplest language, a lien upon the community income equal to the rental yield of their share of that allotment. Thereby, in other words, the land would never be sold except in the community, and they would have a perpetual lien upon the rental yield.

Mrs. GREENWAY. Seeing that picture as you bring it right up to the death of the original owner, and the distribution of the land after his death, in whichever way would be practical from the standpoint of the earning capacity of the land—it could be rented by the tribe or to the tribe—what becomes of that group of young members of the family from the point of view of earning their living?

Commissioner COLLIER. The only way to meet that problem of a multiplying population—that is what this is——

Mrs. GREENWAY. That is exactly what I mean.

Commissioner COLLIER. There are only three ways. One is migration of some of them, one is the more intense and diversified use of such land as exists, and the third is the acquisition of more land. That is a problem that exists in the nature of things, and it can only be done in one of those three ways. The surplus population has to go somewhere else, or else they have to find a more productive way to use what they have, or else they have to get more land.

In the Navajo government we are facing the thing right squarely at this moment. There is pending a bill which will result in consolidating and slightly increasing the Navajo holdings, but there can be no possibility of continuing to add land to the Navajo Reservation to keep pace with the growth of the Navajo population in the years to come. It cannot be done. The Navajos, therefore, will have to choose between two choices as a tribe and as individuals. If they are going to go on under their present economy, then a large number of their young people have to move out, migrate.

Mrs. GREENWAY. Then does a bill of this kind fit them for that migration, to go into the world?

Commissioner COLLIER. Precisely. It is intended to do that.

The other thing in the Navajo system is, they must conserve their existing land and make better use of it. They can conserve it, they can build it up, they can get a great deal more production out of that land than they are getting now. But even at that, the time will come when the saturation point will be reached when the human carrying capacity of that, even developed to its peak of production, will be exceeded; and then there cannot be any choice. The tribe will then face this kind of a situation: It cannot go on acquiring indefinitely

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larger areas and taking them off the tax rolls. They cannot do that. If it wants to do so, it can do as you and I can do, it can go on and buy new land and pay taxes on that land—nobody will object—or it can decide that it has to find a way to place its young folks out in the world, some of them. And it is our business to provide a practical education to that end. We are trying to do it. We think we are doing it better than we used to. This bill does add a very definite advantage there, that it enables us to give them professional and technical and engineering training, through which they can go out in the world. We can not give them that now.

I do not want to leave an unanswered question.

Mrs. GREENWAY. I think you have been very fair. I thank you.

Commissioner COLLIER. I have not yet really answered the more difficult part of his question.

Mr. WERNER. Before the time expires, I desire to make a motion. The motion is that when we adjourn today, we adjourn to meet on May 9 at 10:30, for the further consideration of H.R. 7902, and S. 2874.

The CHAIRMAN. The motion will be held in abeyance.

Mr. CHAVEZ. Mr. Chairman, may I ask the Commissioner one question?

You suggested something about the Navajo Reservation, a bill we have before us. I think that probably will be reported out today, or if not, the next meeting. That is with reference to the Indian allotments that would be outside that reservation. Is it possible for the State government of New Mexico to get some of those lands eventually under the tax roll?

Commissioner COLLIER. You mean those that would be allotted outside the reservation?

Mr. CHAVEZ. There would be quite a few of them, and still be outside the reservation.

Commissioner COLLIER. I see nothing to prevent that ultimately. Of course, presently they are in the status of tax-exempt lands.

Mr. CHAVEZ. Yes.

Commissioner COLLIER. But that is up to Congress.

Mr. CHAVEZ. And when they acquire land either by purchase or by patent outside of that reservation, that will also be subject to taxation?

Commissioner COLLIER. That is what they themselves contemplate.

Mr. DE PRIEST. Mr. Commissioner, do the Indians officially understand this bill well enough to render an intelligent decision on it or not?

Commissioner COLLIER. My answer, Mr. De Priest, is that many of them do. A great many of them do. It is quite evident from the testimony given today that some of them are still confused. They either do understand it and cannot decide on its merits, or they cannot understand it yet.

I would be glad, as a matter of fact, to offer for the record at this time the result of the Indian actions to date. I think when those compiled figures are taken in conjunction with the voluminous records of the Indian congresses, it will be clear that the Indians have a pretty good understanding of the bill—not all its technical elaborations, but of its essential principles. I think they have. I think they have shown a remarkable grasp of a difficult situation.

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Mr. De Priest. You have visited quite a few Indian congresses this year?

Commissioner Collier. Yes; I attended, I think, nine of them.

Mr. De Priest. Do you think they would be influenced by the mere fact you were there?

Commissioner Collier. As a rule, they did not act at that time. The delegates acted when they got home, either through the tribal council actions or through referendums called. Of course, the only way to answer that would be to ask you to read the proceedings. My own thought about that thing is very positive. But I do believe that you will find we gave an objective and fair picture of the bill, that we did all we could to draw out the difficult questions.

Mr. De Priest. I am not trying to criticize you; I know that.

Commissioner Collier. That is the only way I can answer that. Of course, for the Commissioner to come and talk to them—I do not mean myself at all, but I mean the Commissioner—and say that he believes in something, has a persuasive influence.

Mr. De Priest. No question about that at all.

Commissioner Collier. But I do not think you can read the transactions as they are typed up, a half a million words of them, and not see that the Indians have stubbornly and very ably presented their questions, their doubts, their objections; and then they went home and they kept on considering the matter. I think that the Indians are better informed about this legislation than the mass of the population generally is about important legislation.

Mr. De Priest. May I ask you another question? Is it practical to report this bill out shortly? Do you think we ought to give any more time to consider it?

Commissioner Collier. The President has expressed his view about it. What I would say is this. There are certain things we need quickly. We need the money with which to buy the land that must be bought. Now is the time when prices are low. The Indians are in great need and great poverty. We need that money.

We need the credit fund very badly. All the Indians need the credit fund, all those who are trying to make their way in agriculture and industry.

Emphatically we need some other features of the bill. If we are going to make progress in our announced purpose of enabling Indians to take over their own jobs, we have got to be enabled to create a special civil service list for Indians. This bill allows it.

I do not say that all parts of this bill should be considered as emergency matters, but that some parts of it should. I said yesterday that the court feature, while I believe there is a real problem there that sooner or later Congress must solve, yet we have no feeling that that is an emergency, of importance comparable to the land situation or to the credit.

Mr. De Priest. You would suggest drafting a separate bill?

Commissioner Collier. It could be done in a separate bill. It depends on whether or not the committee is prepared to give enough time now to work out a satisfactory court section. If not, we are perfectly willing to have them postpone that.

Mr. De Priest. Congress will be adjourning in another 4 or 5 weeks, you know.

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Commissioner COLLIER. There are parts of this bill that should not be delayed any longer than necessary. The poverty of the Indians is quite desperate. It is so great that when we get the figures, people find it hard to credit them.

Mr. CHAVEZ. Is that general?

Commissioner COLLIER. No; but especially among these landless Indians and within these broken up allotted areas; that is where the great poverty is.

Mr. CHAVEZ. As a general rule, of course, I realize, Mr. Commissioner, our Indians—I am talking now of Mrs. Greenway's Indians and my Indians, so they are our Indians—you do not classify the Indians of New Mexico or Arizona among the so-called "landowners" as in other States?

Commissioner COLLIER. With a few exceptions, no; but there are in your case some situations, tribal cases. The Picuris and Zias are in great poverty. But in general; no. And in Arizona, I understand the Pueblos are just beginning to use their own money to buy land. That is not in this bill at all. They have the money. But in Arizona, as far as I know, there is practically no need for more land, except for this running out of the Navajo boundaries. There is no agitation among the Indians for more land. They do need the credit. They need it badly. In the case of the Pimas, the Pimas have been the favorite tribe. We have extended over a half a million dollars of credit to the Pimas.

Mrs. GREENWAY. Mr. Commissioner, I would like to ask one more question, which I should have asked a few minutes ago. Instances have been brought to me by wards of the Government, where their property is very, very valuable, either from oil or mines, or one thing and another. They would have no right under this law to sell that land to any but the tribe, and the tribe have no way to buy that land except through the Government. It would be just like the Government going out and trying to buy huge oil lands at terrific extravagance, and then they would have nothing left to do but to go into the oil business.

Commissioner COLLIER. The oil and mineral properties are unaffected by this bill. They are expressly excluded from this bill. We are concerned with the surface use of the land.

Mrs. GREENWAY. These people with really valuable land have absolutely no right to sell it except to the tribe, and if the tribe cannot buy it, they are just——

Commissioner COLLIER. That would be outside of this act. Under existing law, unless the trust period has terminated, they cannot sell. When it is terminated they can sell. I am speaking now of these valuable subsurface lands.

Mrs. GREENWAY. Yes.

Commissioner COLLIER. This bill is not intended to deal with those mineral and oil properties, because we are concerned with getting the surface lands so that Indians can make a living on them. We have excluded that question from the bill.

Mr. ROGERS. I want to say something in connection with what the Commissioner said. Possibly his idea and his thought are worth more than mine. He made a statement that many of the Indians understand this bill. Now, I am convinced that very few of the Indians who have endorsed the bill understand it. Neither do very

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many of them that oppose the bill understand it. Maybe the reason they oppose it is because they do not understand it. I am convinced that that is the case, from the communications that have come to me.

In addition to that, I am convinced of this: Unless the Indians are much more intelligent than the Members of the House here are, they do not understand it because every day numbers of Members ask me about this bill. They do not understand it; they have read it but they do not understand what it is going to do. In fact, most of the members of the committee here do not understand what it will do. I just wanted the record to show that I am convinced that the Indians do not understand what this bill will do. It is not because they are ignorant, either.

Commissioner Collier. I think they understand it the same way the Black Feet did.

Mr. Peavey. I think the record ought to show the facts that the Commissioner referred to a moment ago, as to the official tribal actions on this bill.

Mr. Rogers. That is what I am getting at. Most of the actions that have been taken were probably taken without an understanding of the measure.

Mr. O'Malley. This bill has been explained to the Indians, and it has been explained to us, but the Indians, like the members of the committee, I think, including myself, have no analogy in applying a comparison between a community established under the principles set out under this bill, and their communities that they now live in under the allotment system. There is no place in this country where either the members of the committee or the Indians can see how a proposition of collectivism such as is proposed for the Indians in a communal village has worked out. In other words, this is an experiment.

We know that in Russia under the Soviets or collectivist villages they have a system which puts all the land in the community. I do not know whether that has been so successful. As far as I can find from my study of it, it gets right back again to the human elements with which we have to deal. Some villages are making a little money and some are starving to death.

Mr. Peavey. I renew my request that I do not see how this committee can go behind the tribal actions of the Indians within their own reservations under their own council, not at the conferences or congresses called by the Department at all, but within their own reservations. They have taken those actions, and they have sent them here to us.

Mr. Rogers. Yes; and many of them have been opposed to the bill. Many of them have been for it.

Commissioner Collier. As far as we have the facts, with the circumstances of each known to the Department here, purely for information I would like to offer this for the record.

Mr. Rogers. The Indians have not studied this any longer than we have.

The Chairman. Gentlemen, we have left Mr. Hill's witness standing on his feet.

Mr. Rogers. Here is what I want to get into the record, that the Indians do not understand this bill well enough to make a decision on it at this time, neither do I think the Members of Congress do.

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Mr. DE PRIEST. You and I agree.

Mr. O'MALLEY. That makes three of us in agreement.

Mr. CHAVEZ. I want to hear from this gentleman either now or at any other time, the way he sees fit to give it to us.

The CHAIRMAN. My suggestion is that we continue this hearing tomorrow. There are certain persons that want to be heard, and certainly as a matter of courtesy we want to hear from the Department in the matter after all these other witnesses have testified.

Mr. DE PRIEST. I am thoroughly convinced, like my colleagues over there, that the Indians do not understand this bill. I am thoroughly convinced they acted because they thought the Department wanted them to act. I am thoroughly convinced they have not had time enough to get acquainted with it. They have had the bill only since February 14.

Mr. CHAVEZ. If we had the time and Congress would agree to it, the best thing that could happen for this bill——

Mr. DE PRIEST. I would like to see a committee appointed to go out and investigate the whole thing.

Mr. CHAVEZ. Go out on the land, but we do not have the time.

Mr. DE PRIEST. You will have time this summer to do it. This is a question that is very serious to the Indians. It may not be to us, but it is very serious to them. We should not rush any legislation through that might be detrimental to them.

Mr. PEAVEY. I move we adjourn.

Mr. DE PRIEST. I second the motion.

Mr. WERNER. I have a motion already made.

Mr. O'MALLEY. I second Mr. Werner's motion.

The CHAIRMAN. A motion to adjourn is always in order. The motion of Mr. Werner was not a motion to adjourn.

Mr. ROGERS. Mr. Chairman, this is a parliamentary inquiry: After a motion is put and seconded, is it possible to continue discussion and hold that motion in abeyance, have any discussion except on that motion?

Mr. DE PRIEST. The gentleman can withdraw his motion.

The CHAIRMAN. The motion would now be pending.

Mr. PEAVEY. Mr. Chairman, I understand the gentleman from South Dakota's motion was to adjourn.

Mr. WERNER. To adjourn to a certain date.

Mr. PEAVEY. I move to amend that motion, that the committee adjourn to meet tomorrow morning to continue the hearings on this bill.

Mr. O'MALLEY. On the amended motion of my good colleague from Wisconsin, there are some of the members of the committee, I think—I know that I am included—that would like to have a little time to spend with our other committees, give the other committees we are on some of our time. Those committees are entitled to the time and our people whom we represent are entitled to some of our time on those other committees. We have consumed more than 40 hours in hearings on this bill. Last night I tallied up the amount of time we have put in here. We have been here almost every other day for about 3 weeks. I think we ought to have a little recess to digest all we have heard, if for no other reason.

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Mrs. GREENWAY. I regret to say that no matter how much I would like to stay here, I have to be absent for a day or two on some things which are pending immediately.

Mr. ROGERS. I have another committee meeting tomorrow.

The CHAIRMAN. The question will occur now on the amendment to the motion offered by Mr. Werner. The pending amendment is that the committee should now adjourn until 10 o'clock tomorrow morning for further hearing.

(A vote was taken.)

The CHAIRMAN. The noes appear to have it. The noes have it. The question now occurs on the motion of the gentleman from South Dakota that the committee adjourn until May 9.

Mr. DE PRIEST. That is on the hearing of this bill?

Mr. WERNER. This bill (H.R. 7902) and the Senate bill dealing with the question of the alternate (lump sum) budget.

Mrs. GREENWAY. May I say that I hope very much that on May 9 Mr. Hill's representative can be here.

Mr. HILL. If I may be heard on this motion, but I understand the motion to adjourn cannot be discussed?

The CHAIRMAN. But if you adjourn to a time certain, it can be discussed.

Mr. HILL. I want to say we have been talking for years about helping the Indians. Now we have a chance to do something and we are going to put this thing off and off. I am in favor of going on from day to day and considering this bill and getting done with it. I am going to oppose the motion to adjourn until the 9th.

Mr. ROGERS. We did a lot of work while the gentleman was gone.

Mr. HILL. It does not seem that way. You haven't got anywhere.

The CHAIRMAN. The question will now occur upon the motion of the gentleman from South Dakota, but may I suggest to him he has moved that the committee shall adjourn to a date certain, naming the next regular meeting day of our committee. May I suggest that he might make it a day earlier, because we have a number of little things here that ought to be cleaned up on our regular calendar.

Mr. WERNER. Several of the committee members will not be here before Wednesday, the 9th. Some of us desire to be absent.

The CHAIRMAN. The Committee meets on the 9th anyhow.

Mr. O'MALLEY. That is one of the advantages of the motion of the gentleman from South Dakota, that the regular day of the committee meeting is the day he selected for us to hear further on this bill.

The CHAIRMAN. The question will now occur upon the original motion by Mr. Werner that the committee shall adjourn until May 9. What hour?

Mr. WERNER. At 10:30.

Mr. CHAVEZ. May I make an inquiry? Do I understand the motion to be that when we adjourn we adjourn to a particular date? But that is not the regular motion to adjourn the meeting?

The CHAIRMAN. No.

Mr. CHAVEZ. I wanted to report a bill out if I had a minute after this. Is your motion that when we adjourn we adjourn until a definite date?

Mr. WERNER. Yes.

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Mr. CHAVEZ. But you are not making a motion now to adjourn to a definite date. You are making a motion that when we adjourn today——

Mr. WERNER. When we adjourn we adjourn to a definite date, and I will accede to the request of the chairman to meet on Tuesday, the 8th of May.

The CHAIRMAN. Without objection the motion shall be so amended, that when the committee adjourn, it will be to meet on Tuesday, May 8, at 10 o'clock in the morning, for further hearing on this.

Mr. WERNER. For further hearing on this bill.

(A vote was taken on the motion.)

The CHAIRMAN. The motion appears to prevail.

(The committee then proceeded to consideration of other business.)

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READJUSTMENT OF INDIAN AFFAIRS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

PART 8

Printed for the use of the Committee on Indian Affairs

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REAJUSTMENT OF INDIAN AFFAIRS

FRIDAY, MAY 4, 1934

House of Representatives,
Committee on Indian Affairs,
Washington, D.C.

A subcommittee of the Committee on Indian Affairs and a subcommittee of the Committee on the Judiciary this day met jointly in the committee room of the Committee on Indian Affairs, Capitol, at 10:30 a.m., Hon. Dennis Chavez presiding, for further consideration of H.R. 7902.

STATEMENT OF JOHN COLLIER, COMMISSIONER OF INDIAN AFFAIRS

Mr. Chavez. The committee will please come to order. We have met this morning for further consideration of title IV of H.R. 7902, which refers to the Court of Indian Affairs. I think that the best way to proceed would be to get a statement at the outset from Mr. Collier, the Commissioner of Indian Affairs, with reference to the necessity of such a court from the viewpoint of the Commissioner of Indian Affairs.

Mr. Collier. What I shall say will be from the layman's viewpoint only. Gentlemen are here from the office of the Solicitor of the Department of the Interior to talk about the legal phases of this matter. I wish to make a statement as to why this title was prepared. First, I wish to explain that title IV, while it does link in at certain points with other parts of the bill, is largely independent of the other parts of the bill; and it could be eliminated without any material change in the remainder of the bill. It was put forth because there was a condition that needs to be met in this or some other legislation. That situation I can briefly state.

Altogether there are approximately 70,000 square miles of Indian lands held in trust by the Government, and on that land or on that Indian country very little law is operating. In the field of conduct there are a few major crimes which may be brought into the Federal court and the United States court has jurisdiction. Such crimes are murder, arson, rape, incest. With respect to all other matters of conduct the Federal court has no jurisdiction. Likewise the State courts are entirely without jurisdiction; and no judicial machinery has been created by the Congress for handling these miscellaneous matters, which may be serious, such as kidnaping. No court has jurisdiction over kidnaping or poisoning on the land to which I have referred, unless the victim of the poisoning dies, and so on.

To meet that situation, two devices have been used in the past. In the first place, where tribes have preserved their ancient tribal

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organization and customs they handle these matters in their own ways. They adjudicate such matters. In a great many Indian reservations—more than half of them—the tribal relations have been dissolved, and elsewhere the tribal customs are so vague that nobody knows what they are; and at those places the Indian Office has stepped in and set up an administrative tribunal, which may consist of the superintendent of the reservation or a couple of Indians appointed by the Commissioner, and who receive $11 each a month. There is nothing else like these tribunals in the country. They are not courts of record. Attorneys are not present; jury trials do not exist. They do not operate under a code of crimes at all. There are innumerable regulations that have not been codified.

Mr. McKeown. They are not reduced to writing?

Mr. Collier. They are not reduced to writing. There are many of these, and that means arbitrary action; and from their action there is no appeal to any court. The Indian may appeal to the Secretary of the Interior; but how much chance has he? The Secretary of the Interior always sustains the action of the superintendents of the reservations. Obviously, the Indians cannot come to Washington to present their sides of difficulties. That condition has resulted in tyrannical abuses and it has the opposite tendency, because no administration is going to do much through that kind of operation. There is a storm of public opinion connected with this; and the effect is that we are lax and loath to do anything. This causes a sort of anarchistic condition. For years it has been apparent that some kind of jurisdictional court must be created; that definitions of crimes and misdemeanors must be adopted. To cure this situation we have brought to you this provision. The situation becomes particular anomalous in certain areas. In the allotted countries, for instance, you will find a parcel of land which is Indian country and to which the jurisdiction of the State court does not extend, and next to it will be a parcel of white land. This has resulted in conditions of great grief to whites as well as to Indians.

Added to that is the fact that the Indian lands do not pay taxes; therefore the local courts, insofar as they might assert jurisdiction, are loath to do it, because the Government is not contributing anything to the cost of these courts; nobody else is contributing, and it creates an attitude of indifference among the local courts. Insofar as Federal courts have jurisidction, we have cases in Federal courts where the Indians live hundreds of miles from the places of sitting of the courts; they are all non-English-speaking, and it is practically out of the question to get into the Federal courts successfully. The courts are impatient of cases that are peculiar in their setting and require interpreters, and so forth.

Mr. McKeown. And the Indian is slow in his progress and time does not mean anything to me. When he is supposed to be some place at 9 o'clock, if he gets there at any time before noon, that is all right with him; but the court calls a case at the time for which it is set, and dashes it off.

Mr. Collier. Yes; the case is likely to be pushed off the calendar. I am not indicating that this title meets this problem completely, but the problem has to be solved some time or other.

I would add this item of information explanatory of title IV. To get at the question of law and order from the local end, we feel that

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minor offenses, petty offenses, such as are dealt with by municipal ordinances, should be handled by a sort of local court. It should be a court such as a magistrate's court and set up by the Indians themselves.

Mr. McKEOWN. It might be something like the commissioner connected with the United States Park Service who hears cases dealing with minor infractions of regulations governing our National Parks, such as traffic violations.

Mr. COLLIER. Yes. That has been brought forth in previous legislation. I think that matter applies in some places and in other places it might not apply. In some parts of the country, as in the chairman's country, we have compact communities with intricate custom and laws affecting the conduct of individuals and the maintenance of ditches, say. Those are extraordinarily law-abiding people, but the codes of customs under which they make adjudications, which customs everybody accepts, are complicated and to the outsider rather obscure. They are getting along perfectly well through their own local courts today. A United States commissioner would have to become a learned man before handling that kind of situation, without making himself a bull in a china closet.

Mr. McKEOWN. We could have those men in only such places as they are needed. We might have some commissioner, not necessarily a United States commissioner, invested with this jurisdiction.

Mr. COLLIER. Whose jurisdiction might be extended to only a certain magnitude; and they have an appeal privilege to some other court. That mechanism has been put before the Congress successively for years by the Department and the welfare bodies interested in the Indians, but nothing along that line has been effected. Perhaps it should be done now. In many areas the convenient way and the effective way of dealing with these minor offenses would be to have local courts chosen by the Indians and to carry out what everybody desires in that area.

Mr. McKEOWN. In cases of that character would you want a provision that one selected should be approved by the Secretary of the Interior, in order to properly safeguard the selection of competent men?

Mr. COLLIER. In those areas what they do is make their own selection, and they get along pretty well in doing it. The trouble is that there is no appeal in cases of injudicious or tyrannical action.

Mr. McKEOWN. Do you think it wise to include any provision that the judge shall be selected by the local people of that vicinity and be approved by the Secretary of the Interior?

Mr. COLLIER. This bill in title I deals with self-government of Indian tribes and provides that an Indian community which has a solid geographical area may have a court and enforce laws through the court. The restriction on that is not in having the Secretary approve the choice of judges but in the appeal to the Court of Indian Affairs or to a special court or a United States Court, if no special court is created.

Mr. McKEOWN. Do not the Federal courts as a rule try to divest themselves of all Indian matters either for lack of interest or on account of technicalities?

Mr. COLLIER. It is my impression that they do. Senator Wheeler says that they do not in his country. However, that is the tendency in the West.

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Mr. CHAVEZ. Along those lines I wish to say that I have written letters to 28 or 30 Federal judges through the country and replies are commencing to come in. I have one from Judge John H. McNary, of the District of Oregon, which says:

PORTLAND, OREG., *April 27, 1934.*

Hon. DENNIS CHAVEZ,
House of Representatives, Washington, D.C.

DEAR SIR: The Wheeler-Howard bill, relating to the establishment of a Federal court to handle Indian affairs, would, in my judgment, result in a saving to the Government of a large amount of money in this district Here the Indians live quite a distance from the place of holding court, which necessarily makes trials in which they are involved expensive.

I can see no objection to any of the provisions of the above-mentioned bill.

Yours truly,

JOHN H. MCNARY.

Mr. CHAVEZ. The next letter is from Judge Kennedy, of the District of Wyoming. He says:

UNITED STATES DISTRICT COURT,
DISTRICT OF WYOMING,
Cheyenne, Wyo., April 26, 1934.

Hon. DENNIS CHAVEZ,
Care of House of Representatives, Washington, D.C.

DEAR SIR: I have your letter enclosing copy of bill relating to the regulation of Indian affairs, which letter suggests a reply.

I think that every Federal district judge, speaking from a selfish standpoint, would welcome the thought of being relieved of the perplexing problems arising in connection with the rights of the American Indian. In the middle western country especially, this feature has been no small part of the duties placed upon the Federal courts. I have made no sufficient study of the problems perhaps to speak authoritatively, and yet I have had a rather indefinite idea concerning the future of the American Indian, that it rests eventually in his assimilation into our civilization. Any plan, therefore, which has for its object a sort of restoration of tribal conditions works in the opposite direction. It is undoubtedly true that the Indian has been exploited at the hands of the White race, but this is probably due to a laxity of administration rather than any inherent fault in the present system.

I have no desire to oppose in any way the adoption of any theory which the Congress may think best for the Indian, but simply advance the idea which has appeal to me as being the ultimate aim of any remedial legislation. In Oklahoma in particular, large numbers of the Indian race have taken their place in the business and social affairs of that State. I am,

Very truly yours,

T. BLAKE KENNEDY.

Mr. CHAVEZ. These United States judges are trying to get away from this Indian business. Only one, who is Judge Bourguin, of Montana, would continue under the present set-up.

Next is the letter of Judge Bourguin. It says:

DEPARTMENT OF JUSTICE,
UNITED STATES DISTRICT COURT, MONTANA,
April 25, 1934.

Hon. DENNIS CHAVEZ, M.C.,
House of Representatives, Washington, D.C.

MY DEAR SIR: Answering yours in re H.R. 7902, even at this late day it is imperative to safeguard the Indian (1) for his own sake; (2) to remedy his wrongs; (3) for the good of the Nation. I doubt, however, if a new court will contribute much to those ends. Courts are courts, new or old, however labeled, and the present courts are as well able to administer justice to Indians as will be any new one. In fact, litigation by Indians or caused by them is not extensive nor likely to be. He is a pretty good citizen. New names or instrumentalities for old as a rule find psychological favor, but in the end work no better. As I soon cease judicial activity, no personal convenience affects my judgment.

With high regard, I am, respectfully yours,

JOHN M. BOURGUIN.

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Mr. COLLIER. There are other things that need attention. For example, the transfers of determination of probate matters to this proposed court. It institutes a corps of public defenders of Indians and other items. However, those can be better explained by the attorneys who are here for that purpose. I merely wanted to get the administrative purposes before you, which cause us to be interested in this title.

Mr. CHAVEZ. I think it would be better to hear from Mr. Fahy, the Assistant Solicitor of the Department of the Interior.

STATEMENT OF CHARLES FAHY, ASSISTANT SOLICITOR, DEPARTMENT OF THE INTERIOR

Mr. CHAVEZ. Mr. Fahy.

Mr. FAHY. In discussing the court features of this bill perhaps it would be well to review the situation at the present time with reference to jurisdiction of the State and the Federal courts with relation to the Indians; in other words, to show what the present situation is and the difficulties of that situation, which gave rise to the present provisions in the bill, as a remedy. First, as to the State courts: The Constitution provides that there is vested in the Federal Government the power to regulate commerce with the Indian tribes, which is the same grant of power to regulate interestate commerce. That is to say, such is within the Federal jurisdiction and not with the States' jurisdiction.

Mr. MCKEOWN. Have you investigated the authorities to learn whether or not that is limited to tribes in tribal relations, or does it apply to individuals as well?

Mr. FAHY. It applies to individuals as well as to relations with the tribes as tribes. That was decided in the case of *United States* v. *Holiday* (3 Wall. 409); and in the case *United States* v. *Forty-three Gallons of Whisky* (188 U.S.). The effect of that decision is that commerce with Indian tribes includes commerce with members of the tribes even off reservations. That is the same legal principal under which commerce with foreign nations is regulated, including the power of the Congress to regulate commerce with foreign nationals as distinguished from nations.

In other words, in the regulation of commerce with, say France, the Congress is not confined to regulation with it as a nation, but it may go further and regulate commerce between individuals of this country and individuals of foreign nations within the commerce clause of the Constitution.

Mr. MCKEOWN. I am asking these questions from a friendly rather than a combative standpoint.

Mr. FAHY. I understand that.

Mr. MCKEOWN. You have made a study of this matter and I have not. Is there any decision of the Supreme Court in regard to this matter, wherein the Indian has been freed from the guardianship of the United States?

Mr. FAHY. Where he is unrestricted?

Mr. MCKEOWN. Yes; free from the guardianship of the Government, and made so by the Congress.

Mr. FAHY. The Federal power would still govern such Indians.

Mr. MCKEOWN. I was wondering whether or not this provision of the Constitution still reaches that class. I agree with you that

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affects the individual citizen if he is still a member of a tribe. The question occurs to me whether or not that extends to an individual who has been released by the Congress from the guardianship of the Government. Would it still apply to him?

Mr. FAHY. I do not think it would. Ordinarily, the release from guardianship would terminate the tribal relations. I do not know whether that is true in each case. He might continue to be a member of the tribe and to live in the customs of Indian life.

Mr. McKEOWN. I remember that the Supreme Court held in one case that if he was liberated from guardianship Congress was without power to reimpose restrictions and in a later case, which I cannot recall by name, the court seemed to incline to the holding that it was within the power of the Congress to reimpose restrictions upon any new property that might come into possession of the Indian through the United States. In other words, we could find an Indian who had long been discharged from guardianship and who was in bad shape, and the Government could buy for him some land and put him upon it and on the new property, acquired by reason of that effect of the Government, the Government might reimpose restrictions.

Mr. FAHY. I think you are correct as to that. I do not believe, however, that such would come within the same provision that I was talking about.

Mr. McKEOWN. I agree with you.

Mr. FAHY. The commerce clause or the commerce powers.

Mr. McKEOWN. Yes.

Mr. FAHY. There is, in addition to the power of the Federal Government, granted through the commerce clause, a power with respect to Indians, which is sometimes referred to as a plenary or inherent power, because of the peculiar relation of the Indian to the United States. The Government has consistently taken the position that it is under the obligation to care for the Indians as dependents. That might properly and appropriately be called a political power.

Mr. McKEOWN. I am asking these questions for information. These considerations will confront us on the floor of the House, and I will not have time to look them up, and I know you have already looked them up.

Mr. FAHY. I thoroughly understand. In the case of the *United States* v. *Ramsay* (271 U.S. 467), it was held that the Congress possesses the broad power of legislating for protection of the Indians wherever they may be within the territory of the United States.

Back in the early history of the Supreme Court, in the case of *Worcester* v. *Georgia* (6 Pet., 515), it was held that a State had no constitutional power to regulate either the conduct of tribal Indians or the conduct of its own citizens toward such Indians, where the acts occurred in Indian country, which has been construed to include restricted individual lands as well as unallotted tribal lands. In that case an attempt of the State of Georgia to regulate the conduct of its citizens in Indian country was held unconstitutional, as an interference with the power vested in the Congress by the Constitution to regulate commerce with foreign nations, among the several States, and with the Indian tribes. In other words, the Supreme Court in that case held that, although the matter involved was the conduct of a

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non-Indian on an Indian reservation, the State court had no jurisdiction.

I can make that clear by giving an analogy that is more familiar to all of us. Under the commerce clause the power to regulate interstate commerce is within the Federal Government exclusively. Under the same clause the regulation of relations of non-Indians and Indians is within the Federal Government. It was on that theory that the Supreme Court decided in that case that, even though the non-Indian was involved, the subject matter involved was exclusively within the Federal power.

Mr. McKeown. In other words, it held that while the noncitizen might be under the jurisdiction of the court, from the standpoint of person, yet where he operated was within the jurisdiction of the Federal court.

Mr. Fahy. Within the jurisdiction of the Federal court alone. It is interesting to observe that that decision was rendered so far back in the development of our constitutional law that the State of Georgia refused to abide by it; but the decision remained and it has been consistently followed ever since. It is a matter of States' rights versus Federal rights.

That really states existing law with respect to the power of the State in governing the relation of the citizens of the State with Indians on Indian reservations. The State does have jurisdiction over the conduct of Indians off reservations. The State also has jurisdiction over some acts of non-Indians within Indian reservations. That is, however, limited. This bill would not take away any jurisdiction in those respects which the States now have.

Mr. McKeown. You say that is a limited jurisdiction. Can you give us a concrete case where the State court would have jurisdiction on an Indian reservation?

Mr. Fahy. In a case where the offense did not affect the Indians; where it was not conduct with the Indians.

Mr. McKeown. Such as a case wherein two white men might get into a fight on an Indian reservation?

Mr. Fahy. Yes; or where a white man, if you can iamgine his doing it, did something on an Indian reservation which did not in any way involve the Indians. It is the relationship with the Indians that is within the Federal power.

Mr. Murdock. Suppose there is no relation between the non-Indian and the Indian upon the Indian reservation?

Mr. Fahy. And the thing the non-Indian does does not affect the Indian?

Mr. Murdock. You have told us that the State courts have a limited jurisdiction upon Indian reservations. Can you give us an example of that limitation?

Mr. Fahy. I have stated the limitation. If the act does not affect the Indians in any way.

Mr. Murdock. In all matter of that character the State courts have jurisdiction within the Indian reservations?

Mr. Fahy. Yes; and this bill would not change that situation. The State court, as has been suggested, has jurisdiction over its own citizens who, for example, may engage in a controversy and it results in one or both of them committing a crime on the Indian reservation. The State court has jurisdiction in such case.

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Mr. McKeown. Such as if a white man should steal something from another white man on an Indian reservation.

Mr. Fahy. Yes; or where a white man assaults another white man upon an Indian reservation.

Mr. Chavez. I know several cases where that has taken place and the State courts have taken jurisdiction.

Mr. Fahy. If, in the commission of a crime or carrying on of certain conduct, something occurs which affects the Indians of a tribe or an individual Indian, that crime or offense might come within the Federal jurisdiction; but if it is limited to something that happened between non-Indians upon an Indian reservation, and does not involve the Indians in any way, even though it occurred on an Indian reservation, the State courts have jursidiction; and this bill does not change that situation.

Then we turn to the situation with respect to Federal jurisdiction in dealing with the Indians. I refer to the matter of jurisdiction itself. Section 217, title 25, United States Code, provides that "except as to crimes the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country." But section 218, just following that, provides that, "The preceding section shall not be construed to extend to crimes committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively." We have seen the limited character of the jurisdiction of State courts, then over on the Federal side the results of those two sections shows that an Indian might murder another Indian, for example, in the Indian country on the reservation and there would be no criminal offense, not even a Federal law, applicable; and in that state of the law a case of murder did so arise.

In the case of *Ex Parte Crow Dog* (109 U.S. 556), the United States Supreme Court held that this section prevented the United States court from prosecuting an Indian for the murder of another Indian, committed on an Indian reservation. In other words, Congress at that time had left solely to the tribal governments themselves the regulation of crimes and all offenses within the reservations with respect to Indians themselves. Because of the shock which the country and the Congress suffered as a result of that situation, which was so vividly called to their attention, the Congress passed the act of March 3, 1885, section — (23 Stat.L. 385), which, with an amendment, became section 328 of the United States Criminal Code of 1910, and is now section 548 of title 18 of the United States Code. That is the beginning of the Federal Government moving into the regulation of crime where Indians themselves were involved on Indian reservations. This section provides for the prosecution in the Federal courts of Indians committing, within Indian reservations, any of the eight specifically mentioned offenses of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, and larceny.

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In 1932 Congress added the offenses of incest and robbery to this list and provided that as used in said section the offense of rape shall be defined in accordance with the laws of the State in which the offense was committed. Under the old statute, although rape was included, a case arose and it was held that it did not involve statutory rape. When I was practicing law in the State of New Mexico certain Indians went to the district attorney and filed a complaint that they had been assaulted by other members of the tribe. The accused were arrested and brought to trial; but assault not being one of these crimes enumerated, the Federal court held that it had no jurisdiction and threw out the case. The same thing happened in connection with a case of statutory rape; and that is the situation today. The Federal court itself has no jurisdiction except in these defined crimes.

It is obvious that there are many things not covered either by the jurisdiction of the State courts or the jurisdiction of the Federal courts. There is a large gap in the correction and regulation of law and order on Indian reservations and in the relations of Indians and non-Indians. I will enumerate some things not covered, with respect to Indians themselves on Indian reservations. Ordinary assault and the various sex offenses are merely typical examples of wrongs that may be committed with impunity by an Indian on an Indian reservation, provided only he selects an Indian victim. Other offenses which may be mentioned, to which no State or Federal laws now have application, and over which no State or Federal court now has any jurisdiction, are: Embezzlement, kidnaping, poisoning if the victim does not die, obtaining money under false pretenses, blackmail, libel, forgery, trespass, mayhem, bribery, killing of another's livestock, setting fire to prairie or timber, use of false weights and measures, carrying concealed weapons, gambling, disorderly conduct, pollution of water supplies, and other offenses against public health.

Again, there is no proper or thought-out regulation of domestic relations. The United States Supreme Court in the case of *United States* v. *Quiver*, 241 U.S. 605, which was a case of adultery, said: "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." As I have said, one or two of those crimes have been added since that decision; but, in general, the situation is the same. In other words, the Congress has heretofore left entirely to the tribes the regulation of all matters, except those major crimes, and all matters of marriage and divorce. Indians may marry and become divorced at pleasure.

Mr. CHAVEZ. Speak with reference to the jurisdiction of State courts over domestic matters.

Mr. FAHY. Mr. Chavez, as I view that, the situation is this: The State courts have, as you know, taken jurisdiction where an Indian has come into a State court and filed suit for divorce; but it is a serious question whether or not the State court has jurisdiction over divorce.

Mr. CHAVEZ. I know that happens.

Mr. FAHY. Yes; it does happen.

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Mr. McKeown. Do the States have jurisdiction to enforce the law relative to marriage ceremony?

Mr. Fahy. Not on the reservations; no.

Mr. McKeown. I lived under an Indian government for a while where they had Indian courts relative to divorce and marriage, but we found that property rights had to be determined by the customs in regard to marriage. We finally had to go back to that. The courts held that common-law marriages were legal among the noncitizens, still the common law did not reach the Indian situation, and they were forced to hold that tribal laws and customs governed.

Mr. Fahy. The tribal laws and customs are the common law of the Indians. That is the only place that those matters are now governed, within the tribal laws and customs.

Mr. McKeown. There is a great difference between tribal laws and customs and the common law.

Mr. Fahy. Yes. In some communities, probably among the Pueblos of New Mexico, those matters are fairly well regulated; but it is breaking down more and more there and it has already broken down where the tribes do not lead a strong community life as they do among the Pueblos.

Mr. McKeown. It will be disastrous to them in the end. When they accumulate property there will be much confusion. I remember one case in my judicial experience where there was a tribal custom among the Seminoles that the Seminole holding property should hand his property down to a Seminole, and a Seminole had married a Creek women and the children of that marriage were enrolled as Creeks, but one of his daughters married a Seminole and their children were enrolled as Seminoles. It was necessary to pass the property through the grandchild because it was enrolled as a Seminole. It is very necessary that something be done about that. That was the hardest thing I ever tried to do judicially.

Mr. Fahy. The committee will readily see that a great many things may be done, crimes and offenses may be committed, and yet there is no law to touch them. These include not only marriage life, family life, domestic relations, as we call them, but serious crimes against the public. There is a void where the State laws do not cover the situation and the power is within the Federal Government, yet the Federal Government has not exercised the power to cover the situation. Somebody has expressed the theoretical thought, though it is not entirely true, that the Indian reservations, so far as law itself is concerned, are just places where one may do almost anything and be beyond the pale of the law. It is to the credit of the Indians that matters have not gone farther than they have, considering the state of the laws.

This bill is designed to begin a correction of that impossible situation; first, by creating through the chartered community minor courts of the Indians themselves to regulate community matters; and, second, by the court of Indian Affairs which regulates, with appellate jurisdiction from it to another court and in some cases original jurisdiction. It would take from the court of Indian Affairs some of the jurisdiction of the present United States courts. On that objection might be made that the district courts are better able to handle the matters involved than would the creation of a separate court, and therefore there should be justification to the committee for the creation of a separate court. Mr. Chavez has read the views of some of the United States district

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judges. I want to add some reasons why there should be a separate court as set up in this proposed act. First, the Federal courts are in many cases located at considerable distances from the locality where the offense takes place. It is not good administration to have the Indians taken great distances for preliminary hearings, trials, or to serve short sentences; such action is also uneconomical.

Again, the procedure in the Federal district courts is highly technical and formal and in many cases Indians do not understand the proceedings, or great difficulty is experienced in making them understand. Those courts, which are designed primarily for the enforcement of special Federal laws and for the handling of civil cases between citizens of different States wherein the amount in dispute is at least $3,000, are especially unsuited for the ordinary, every-day cases that arise on an Indian reservation. The district courts of the United States are to the Indians more or less foreign. They do not feel that they are their courts.

Again, the sessions of the Federal court at a given place of holding court are not sufficiently frequent to handle appropriately the lesser offenses, such as misdemeanors. Where Indians are unable to obtain bail, manifestly it would be unfair to hold them for long periods before trial; and it would not be advisable to release them pending trial, and then rearrest them a long time subsequently, try them, and, if guilty, confine them. In such lesser offenses the trial should come promptly, and if punishment is necessary, that should come within a reasonable time after the commission of the offense.

The following quotation is from a report of the subcommittee of the Senate Committee on Indian Affairs under date of April 19, 1932:

> There exists no adequate Federal machinery and it cannot be provided without very great expense. Offenses committed by Indians on Indian reservations are very often committed several hundred miles away from the seat of the Federal courts.

The following is from the report known as the "Meriam Report" on law and order on Indian reservations of the Northwest, which report is embodied in the hearings of the subcommittee of the Senate Committee on Indian Affairs, at page 14137, part 26.

> No greater error can be committed than to assume that a simple change of the legislation by Congress placing the Indian population under the State jurisdiction will automatically lead to the application to them of the laws of the State and Nation. No greater harm to Indian morality and self-respect can result than through the careless abandonment of Federal guardianship and supervision, to local authorities either unable to unwilling to accept the burden.

Report on law and order on Indian reservations of the Northwest, supra, page 14210.

I think that anybody who has lived in a community in which there are a great many Indians within any particular State knows that the State laws are not enacted with special reference to the problems of the Indians, which is natural enough. The Indian problem is primarily a Federal problem and the State legislatures seldom are concerned with problems relating to the Indians. It is a problem which the State does not desire to have turned over to it.

Being within the Federal province and the Federal Government thus far having left so many places untouched in the application of law to the Indians, especially with respect to crimes and domestic relations, this bill is designed to remedy that in two ways: first, by

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subparagraph (d), page 6 of the bill before the subcommittee, giving the chartered community power to establish courts for the enforcement and administration of ordinances of the community, which courts shall have exclusive original jurisdiction over all offenses of, and controversies between, members of the chartered community, under the ordinances of such community, and jurisdiction exclusive or nonexclusive over all other cases arising under the ordinances of the community, and shall have power to render and enforce judgments, criminal and civil, legal and equitable, and to punish violations of local ordinances by fine not exceeding $500, or, in the alternative, by imprisonment for a period not exceeding 6 months, or such lesser maximum penalty as may be fixed by charter.

Then the pending bill sets up, on page 41, a court of Indian affairs, the jurisdiction of which is set forth in section 3, title IV, page 42. The Department of Justice has suggested the following amendment to subparagraph 1 of section 3, page 42, so that the subparagraph would read as follows:

Of all prosecutions for crimes against the United States which are punishable under any law restricted in application to Indian country or to territory within the exclusive jurisdiction of the United States.

Mr. CHAVEZ. What is the difference?

Mr. FAHY. Instead of all prosecutions for crimes against the United States, as the section reads now, this amendment would limit jurisdiction to prosecutions for crimes which have special reference to Indians or the Indian country.

Mr. MCKEOWN. They retain what jurisdiction they have under that amendment, of a felony case, for example.

Mr. FAHY. And they retain jurisdiction, for example, over counterfeiting on an Indian reservation. They would not hold on to jurisdiction over those crimes which under existing law have been especially made applicable to Indian country; but there are crimes against the United States which have no special application to Indian country.

Mr. MCKEOWN. Such as issuing or altering United States money, violation of the postal laws.

Mr. FAHY. Yes. I think the Department of Justice has good ground for urging that proposed amendment.

Mr. MCKEOWN. I have no objection to that. The Department reserves to itself what we call crimes against the Government.

Mr. FAHY. Yes.

Mr. MCKEOWN. Such crimes as are against the Government of the United States as distinguished from crimes against persons or property.

Mr. FAHY. Yes. This amendment would limit the jurisdiction of the court set up under this act to those kinds of cases which under present law if you file an indictment against the Indian you would have to allege that the crime occurred within the Indian country.

Mr. MCKEOWN. Would you say that it occurred in an Indian country or an Indian community?

Mr. FAHY. I do not believe so; because the words "Indian country" have been so fairly defined judicially that it is probably just as well to retain them.

Mr. MCKEOWN. Here you are setting up something new in American law, and something that did not exist at the time the words

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"Indian country" came into legislation. I am wondering whether it would be necessary to say "Indian country" or "chartered community" in order to cover this particular thing. "Indian country" has a well-defined legal significance, and grew into legislation before the time when we had this new innovation.

Mr. FAHY. I see your point.

Mr. McKEOWN. I think that in conferring jurisdiction to the court you should not take a chance by leaving it out. I know what you want; but we must remember the action of these courts in construing criminal law—they are very strict and technical.

Mr. FAHY. That is covered at page 39 of the House bill. Section 16 provides that—

The Secretary of the Interior is authorized to proclaim new Indian reservations on lands purchased for the purposes enumerated in this Act, or to add such lands to the jurisdiction of existing reservations. Such lands, so long as title to them is held by the United States or by an Indian tribe or community, shall not be subject to taxation, but the United States shall assume all governmental obligations of the State or country in which such lands are situated with respect to the maintenance of roads across such lands, the furnishing of education and other public facilities to persons residing thereon, and the execution of proper measures for the control of fires, floods, and erosion, and the protection of the public health and order in such lands, and the Secretary of the Interior may enter into agreements with authorities of any State or subdivision thereof in which such lands are situated for the performance of any or all of the foregoing functions by such State or subdivision or any agencies or employees thereof authorized by the law of the State to enter into such agreements, and for the payment of the expenses of such functions where appropriations therefor shall be made by Congress.

That would require administrative action, I believe.

Mr. McKEOWN. In a criminal prosecution the court will scan it with an eye dealing not with presumptions, but rather to give it a strict construction; and I am wondering whether it would do any harm.

Mr. FAHY. I do not think it would.

Mr. McKEOWN. Let us go back to page 6 of the bill. I am not familiar with the bill. Is there a provision that these rules and regulations shall have the effect of ordinances; and is there a provision requiring approval by the Secretary of the Interior?

Mr. FAHY. There is no requirement that every ordinance must be approved by the Secretary of the Interior. Section 4 provides the definition, qualification, or limitation of any powers which may be granted, in any manner deemed necessary or desirable.

Mr. McKEOWN. It has been the legislative policy of the Congress in dealing with Indian tribes that whatever is passed shall be approved by the Secretary of the Interior. For many years that has been the uniform practice. I am wondering whether this is not a wise provision. I am just throwing it out as a suggestion, and I do not make an argument for it, because I do not know. In the past when we have left it to the Indian tribes to make rules and regulations of their own, before they became effective, we required that the rules and regulations must be approved by the President or the Secretary of the Interior.

Mr. FAHY. This bill does carry out that principle to this extent: No specific powers are granted by the bill itself. Section 4 merely provides that the Secretary of the Interior may grant certain chartered powers and that he may qualify those powers.

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Mr. McKEOWN. That is in the organic charter.

Mr. FAHY. But one of the qualifications might well be that ordinances of certain types should be subject to the approval of the Secretary of the Interior. Many Indians feel that there are many matters in dealing with which they should be given final say and not have to go through the red tape of securing approval of all their decisions.

Mr. McKEOWN. This court is presumed to be a statutory court?

Mr. FAHY. Yes. That point has been raised. It is not a constitutional court. It is a statutory or legislative court. It seems to us that there is no longer any question of the power of the Congress to create such a court.

Mr. McKEOWN. I just want to show that it is not intended to be a constitutional court, because we will meet severe opposition over the question of a constitutional court. On the one side the Congress might lose power to abolish the court; and we might be setting up a court that would be a barnacle on the Government. It is not a constitutional court.

Mr. MURDOCK. In all matters coming within the jurisdiction of the court contemplated in this bill are the Indians limited to that court, and denied access to any other court? That is a question suggested the other day.

Mr. FAHY. When it is a matter wherein the State court now has jurisdiction, the State court retains jurisdiction, and the jurisdiction is concurrent, but not exclusive. On other matters specifically mentioned as within the jurisdiction of the new court, the present jurisdiction of the Federal district court is limited, and the jurisdiction is placed in this court and taken away from the Federal courts.

Mr. MURDOCK. Is any constitutional question involved there?

Mr. FAHY. In limiting the present jurisdiction of United States District Courts?

Mr. MURDOCK. Yes. That particular question is going to be raised.

Mr. FAHY. There cannot be a limitation to the jurisdiction of a United States district court which it has by virtue of its being a constitutional court.

Mr. McKEOWN. However, the Supreme Court has held that there is a very limited scope within which the United States district courts are constitutional courts. There are very many considerations involved in contemplating the jurisdiction of Federal courts. Some of those things are strictly matters of the will and pleasure of the Congress expressed in statutes, except certain inherent rights that exist by reason of things they can do because the Congress gives them jurisdiction. For instance, in equity there are certain inherent rights, but Congress could say the United States courts shall not have jurisdiction in equity cases.

Mr. FAHY. We do not believe that we are taking away any jurisdiction of United States district courts by reason of their being constitutional courts.

Mr. McKEOWN. I take it that it is your purpose to have concurrent jurisdiction with the State courts.

Mr. FAHY. Yes.

Mr. McKEOWN. I am wondering whether a great deal of opposition to this bill could not be removed by giving to this Indian court ap-

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pellate jurisdiction in all matters affecting Indians, from the State courts, rather than to remove the State. Would it not probably remove a great deal of opposition and still accomplish the purpose of the Bureau of Indian Affairs, which, I think, is a noble purpose, and having in mind that your purpose is to see to it that the Indians have a fair deal in courts touching their property as well as their personal rights, if we provide that any Indian, or the Department of the Interior in his behalf, could appeal from any order affecting the property of a restricted Indian to that Court of Indian Affairs for a final determination?

I am wondering whether that would remove a great deal of possible trouble. In my State we have laws providing for the adjudication of estates of deceased Indians. The matter goes into a probate court for adjudication. There is no question in my mind as to the constitutionality or the power of the Congress to make this provision that in the adjudication of the estate of an Indian that the Indians, or the Department, in their behalf, may appeal to this Court of Indian Affairs from the orders of a probate court in my State. If there were a feeling that justice had been done in the State court, neither the Indian nor the Department would want to carry the matter further; but if, on the other hand, if the Indian, or the Deparment in his behalf, wished to try the case in the Court of Indian Affairs he or they could remove it to that court. In the Oklahoma constitution we granted the Congress power to regulate Indian matters in the State of Oklahoma.

Mr. FAHY. Section 20, page 40, provides that—

> The provisions of this Act shall not be construed to prevent the removal of restrictions on taxable lands of members of the Five Civilized Tribes nor operate to effect any change in the present laws and procedure relating to the guardianship of minor and incompetent members of the Osage and Five Civilized Tribes, but in all other respects shall apply to such Indians.

Mr. COLLIER. Does that affect probate?

Mr. FAHY. No.

Mr. MCKEOWN. I do not think that there is any doubt that my sympathies have always been with the Indian people. I went among them as a young man and lived among them and they were very gracious to me; and they have always been great friends of mine, as I have always been their friend. In view of the fact that you are in this bill transferring from the Bureau to this Court of Indian Affairs the question of determining heirs and matters touching upon property of the Indians, I thought it might be well to think about making a special provision about this matter. I am offering that as a suggestion; and I hope you will think it over.

Mr. COLLIER. That brings up a parallel matter that has been bothering me. At present the determination of heirs, outside of the State of Oklahoma, is carried out by the Indian Office, at a cost of about $70,000 a year, which we collect back from the heirs. If the entire function is transferred to the court, does that court have to set on this heirship or does it have an administrative force like we have?

Mr. MCKEOWN. I would handle it through masters. Let masters appointed by the court do that.

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Mr. Chavez. It is getting late and we shall have to adjourn for the day. Mr. Reeves, chief counsel of the Office of Indian Affairs, is with us. Have you anything to tell us about this matter, Mr. Reeves?

Mr. Reeves. It is entirely within the hands of the Congress to say where the power to determine heirs shall lodge, whether in the State courts, the Secretary of the Interior, or this new Court of Indian Affairs. At an earlier period the Supreme Court pointed out that in the then state of legislation no court had jurisdiction. In the case of the Five Civilized Tribes, the Congress conferred jurisdiction upon State courts in 1908, and it conferred jurisdiction upon State courts in the case of the Osages in 1912. As to other Indians, the jurisdiction is in the Secretary of the Interior, and it is an exclusive jurisdiction from which the Supreme Court says there is no appeal. The Indians have had occasion to complain frequently because there was no tribunal to which they could go and they were not satisfied with the finding of the Secretary of the Interior. They had no redress; no place to which they could turn for a review. The purpose of this bill is to transfer that jurisdiction from the Secretary of the Interior to this special Court of Indian Affairs so that the Indians would have a friendly court and one to which they could turn and one from which there would be an appeal under section 6, page 44, of the bill. It is a matter of policy for the Congress to determine. It can transfer this jurisdiction from one place to another at will.

Mr. Chavez. By direction of the Chairman of the Committee on Indian Affairs the reporter will insert at this point sundry communications submitted by various groups or tribes of Indians and by interested organizations containing certain suggestions and amendments relative to this bill.

(The communications referred to are here printed, as follows:)

Statement of Sam Lapointe, Chairman of the Rosebud Sioux Council and Chairman of the Sioux Nation Council

Since a petition protesting against H.R. 7902 was filed in the committee hearings yesterday morning, I think it is proper that we should be heard from the majority side of this question.

This petition was signed by a few Indians of my reservation. There are approximately 6,200 Indians on the Rosebud Reservation, and we took a referendum vote a few days ago. The results were over 2 to 1 in favor of this bill.

This referendum was not taken on the bill as it was drafted originally, but was on the explanation and full understanding of the amended bill printed by this committee. In order that this bill might be fully understood by our people, I translated H.R. 7902 fully in the Sioux language, almost word for word, phrase for phrase, section by section, with small explanatory notes, so that the Indians could read the bill in their own language, and the same was published by the Santee Normal Press, at Santee, Nebr. The same is now in the hands of the people, and it was after all these explanations had been made that this referendum vote was taken.

After we returned from the Rapid City congress, a 3-day council was held at which time the delegates who went to Rapid City explained the bill and all that they had learned fully at the congress, and then later the chairman, with others, went from district to district and held meetings, and the last 3 days before the referendum vote meetings were held at various places.

It is safe to say that the result of the referendum vote was the people's own will and understanding of the bill.

We do have quite a bit of opposition, but not from the Indians mainly; only from certain white people. We have real-estate people and merchants living on the reservation. We have cattlemen holding large leases in Indian country, and you can readily see the reasons for their opposition. It is all for selfish interests. These people who object, the cattlemen, the storekeepers, and real-

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estate people, have practically made their living off of these Indians, and they see in this bill that if the Indians go into these incorporated communities there is no reason why these Indians could not go into businesses of their own under the cooperative system, open up cooperative stores and other businesses and go into cooperative marketing of all their products, such as cattle, hogs, farm products; and these business men of the Indian country see the possibilities of this bill. That is one reason why they object to it. These real-estate men have been deriving large incomes from handling Indian land sales by buying cheap land and selling it at higher prices, and thereby realizing large profits, and that is going to get away from them. The big cattlemen lease large tracts of land from the Indians at very cheap rates. Now, they see where they will lose that cheap land and may have to pay higher prices. That is why they are against this bill. The missionaries oppose this bill, yet I cannot see why they should. Some say that if this bill goes through, the church's real estate holdings will be queered. Others say that if this bill goes through the church will lose control of the Indians and that the Indians will go back 50 or 100 years into paganism, heathenism and savagery.

They show to me very much lack of faith in their converts, and I am sorry to see it. The Indian of today will never give up his religion in the Christian faith. This is not a work of a few days, but it is a work of years, and they are not liable to give up their religion just on account of H.R. 7902.

I wish to state further as to why we are in favor of H.R. 7902. The Rosebud Indians of South Dakota originally had 6 big counties, 2 in Nebraska and 4 in South Dakota. They gave up Knox County for the Santee Sioux, later on gave up Boyd County for the Ponca Indians, which left 4 large counties. In 1904 Inspector McLaughlin negotiated for Gregory County, and after many councils the land was opened for settlement to be passed out of Indian hands. In 1908 the same thing happened at Tripp County, and in 1912 Melette County went the same way. Now we have only one county left, Todd County, and there are more white people landholders in the county today than Indians. The whole county is so checkerboarded that no one block of land is big enough for any one man to make a living on stockraising. Where the Indian had all this vast range to depend on in years past, where he used to herd large numbers of cattle and horses and ship out cattle and horses every year for his source of income, today that is all lost; his land is all gone; his stock is all gone; he has no income today, excepting what he gets from the Government, which is not very much.

There is a source of income that a few have from the leases of what land is left, individually owned, which does not bring in large incomes. The reason that the Indian cannot get a satisfactory price for the land that he leases is that he has to deal as a single individual with the large cattle owners, and if he won't lease his land at a very low price, they can lease the surrounding land and have their cattle trespass on his land unless he goes to the expense of enclosing his land with a fence.

Under the title of self-government, I wish to say just a few words. The Indians have been under the Indian Bureau for years, so that today we have become a dependent people, whereas in years gone by we were at one time a self-governing people. We did not have to wait to be told to do everything; but now under the present system, we have lived so long depending on others that we have lost our power to think for ourselves, sometimes called initiative. This bill is to save the Indian before he is entirely lost. Under this bill we see the possible chance for him to get on his feet, think for himself, plan for his own future, take himself out from under the control of others, and try to develop that pride in his race, that national feeling, and by so doing, he may in time become a part, a citizen, of this great country of ours, under which he is nothing but a ward today.

I want to say a few more words as to the educational facilities granted in this bill. The Government school system for years has only provided for the grades under high school, very seldom has it gone above the sixth grade. In fact, the rules and regulations were that when an Indian child is 18 years of age he is through school, just when he should be in school and realize what he has learned. In later years high-school grades were provided in some of our schools, but so far no provisions for college or higher education have been made. This bill provides for higher education, specializing in professions such as doctors, lawyers, engineers, and many other branches of study and we see a possible chance for the future education of generations to come. We further realize that the educated Indian is the hope of his race. Having these things in mind, we favor the educational title under this bill.

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Title 4, providing for a Court of Indian Affairs, while it is good, it is not so important, and I can see no reason for rejecting it and I will say that we are in favor of that title also.

One thing that the Indians have been doubtful about is whether this bill will interfere in their claims against the Government of the United States, but in the amendments it clearly states that it shall not "impair or prejudice" any claims against the United States and I cannot see where any Indian will object to that any more.

THE AMERICAN INDIAN DEFENSE ASSOCIATION, INC.,
Washington, D.C.

Hon. EDGAR HOWARD,
Chairman Committee on Indian Affairs,
House of Representatives, Washington, D.C.

DEAR SIR: The American people have demonstrated in recent years a steadily increasing desire to make a just and generous settlement with their Indian fellow citizens. This has been reflected in Congress by the intensive consideration which has been given to the problem by the Committees on Indian Affairs. The disposition on the part of both great parties to eliminate political consideration has been a development of which the American people approve and for which the Members of Congress deserve just praise. The general good will which prevails everywhere toward the Indian makes it possible, with unanimous public approval, to substitute in 1934 a square deal for the raw deal which the American Indians have received. In a sense, the Wheeler-Howard bill, now before you, is at once an expression of that desire to make restitution and a culmination of the study and thought which has been given the problem by you and many others.

The departmental bill (S. 2755, H.R. 7902) crystallizes in legislative form the fundamentals of a solution which have been dictated by the facts revealed in the investigations of recent years. A mere recapitulation of its essential features shows the truth of this statement.

1. In its self-government provisions, the bill basically provides a mechanism (the adjustable charter) by means of which a developmental policy may be applied to the Indians as a substitute for the present paternalism of the Indian Office. The bill recognizes the elementary fact that the Indians will never enter the life of the Nation on a level of decency and honor, and that they will never go forward until they are extended power as well as responsibility for their own welfare and destiny. In providing the practical instrumentalities of organization, the bill gives them power which is at present denied to them as an inferior race, incapable of advancement.

2. The bill provides an organic structure of law under which, in the years ahead, the absolutism and machinery of the Indian Bureau may be diminished and ultimately reduced to a shadow of its present ever-growing bulk.

3. The bill recognizes that the old land system of allotment is a dismal failure. In its place, it provides for the consolidation of forestry and grazing lands (five-sixths of the whole of Indian landholdings) into contiguous blocks which can be economically operated and exploited by the Indian themselves. This will displace the present pauperizing influence of petty leasing which compels a steadily decreasing standard of living and an increasing atrophy of industry and character.

4. The bill recognizes that the Government has an obligation to the great mass of landless Indians who have, through no fault of their own, been reduced to that condition, and it does the magnanimous thing by providing them with a chance for independent self-help while at the same time being protected from further spoliation.

5. The bill makes wise provision against the dissipation of Indian tribal lands and other capital assets. It ends the unjust and immoral practice of using tribal funds and capital assets against the wishes of the Indians. It likewise puts a final end to the practice of saddling the Indian with reimbursable debts in which they have heretofore had no choice.

6. The bill provides a credit system without which any hope for economic rehabilitation would be futile.

7. The bill in its educational features makes adequate provision, for the first time, for Indian higher education, and it expressly directs that Indians shall be trained to positions of responsibility and leadership among themselves.

8. The bill sets up an Indian civil service, without which it is only pious, wishful thinking to urge that the Indians be given a chance in the Indian Service.

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9. Though not absolutely essential to the main purposes, the special Court of Indian Affairs takes a first step in the direction of bringing order out of the present chaos of law enforcement on the Indian reservations of the country—a reform which Congress should not long delay in solving.

Upon these essentials, which make up the substance of the pending legislation, it is inconceivable that there could be any disagreement. The main lines of reform are dictated by the cold reality of facts which cannot be disproved or set aside. There are details of execution in the bill upon which an honest division of opinion is only natural and desirable. Such differences are of minor importance and should offer no insuperable bar to a speedy and unanimous agreement.

SUGGESTED AMENDMENTS

With the purpose of offering constructive criticism, the American Indian Defense Association submits below several recommendations by which we believe the bill could be improved and clarified.

(NOTE.—Page and section references are to the "Committee Print" of the House Committee on Indian Affairs.)

I. *Clarification of bill in regard to the purpose of organized Indian communities.*—Discussion and debate of the pending legislation since its introduction has revealed some uncertainty as to the ultimate result which would ensue, particularly in those States where the Indians are diffused among the white population and are to an extent a part of the white life around them. It has been pointed out by some that the creation of Indian chartered communities would run counter to the political subdivisions of the States wherein some Indians are living; that there would be a conflict between chartered communities and the other subdivisions of local government which would lead to the disfranchisement of the Indians. This criticism raises questions which should not be left to inference from the provisions of the bill. The pertinent sections of the bill should be clarified so as to leave no doubt as to the policy Congress would be laying down by its enactment.

This applies particularly to title I, sections 3 and 4, which we interpret to mean that a flexible machinery of organization shall be available to the Indians under charters in terms which reflect the particular economic, social, and political status in which they are situated.

An examination of the purposes for which Indians may receive charters shows four general types of organization.

(1) For simple organization of Indians, as Indians and wards of the Government, in order that they may erect a responsible and recognized body to deal with Congress and the Indian Bureau.

(2) For the taking over and administering of those service functions which are now conducted by the Indian Bureau (some of which may be of the public service character).

(3) For economic purposes—incorporation, credit union, stock association, etc.

(4) For the establishment and operation of municipal government functions.

In granting a charter, the Secretary would be guided by several factors, and it is likely that no two charters would be alike. The conditions surrounding a group of Indians would dictate to a large degree what kind of powers would be extended. The consolidation of Indian land holdings, provided in title III, is not necessarily synonymous with the extension of municipal or governmental powers. Such consolidation might be for economic ends only, for the Indian could actually live in a regularly established community of whites, yet operate a joint-stock association on land which is some distance removed in space from their domicile.

We submit the following propositions which should be worked into the bill in order to give it greater clarity:

(1) That the Secretary shall not grant to an Indian community any powers which will disrupt any presently existing political subdivision of any State.

(2) That where a body of Indians are given municipal governmental powers, the State or other political subdivision is relieved of all responsibility for the maintenance of public services.

(3) That in the allotted areas, consolidations of lands shall not work to remove any presently existing State jurisdiction.

II. *Withdrawal from an Indian community.*—Reference is made to title I, section 3, lines 20–24 on page 4. By the terms of this section, a charter must, among other things, guarantee "the right of any member to abandon the community and to receive some compensation for any interest in community assets thereby relinquished." To guard against hasty and ill-advised action which might later be regretted, we recommend that the right of withdrawal be conditioned upon the consent of the Secretary of the Interior.

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III. *Appeal from local community courts.*—Reference is made to title I, paragraph (d), line 23, on page 6 and to title IV, section 6, line 12 on page 44. The bill provides that appeal from the local courts to the Court of Indian Affairs may be had only in case of fines of at least $200 or imprisonment for at least 6 months.

These conditions of appeal are, we believe, too stringent. They should be lowered, at least in the beginning, so as to erect a greater safeguard against the possible abuse of power by the native courts and thus protect the Indian from a serious deprivation of his rights. The unreviewable power to impose a fine up to $200 would, like taxation, be a power to destroy, because of the very low earnings of Indians generally. The Meriam Survey Commission in 1928 compiled annual per capita incomes on 65 Indian jurisdictions. Its finding showed that at only 22 jurisdictions out of the total did Indians have annual earnings greater than $200 per person. Of these 22 jurisdictions, 13 averaged $200 to $300, 7 averaged $300 to $500, and only 2 averaged over $500. Sixteen jurisdictions averaged less than $100 and 27 averaged $100 to $200. (See pp. 449–450.)

For these reasons, we recommend that the right of appeal be given from a penalty involving a fine of more than $50 or imprisonment for more than 30 days.

IV. *Ratification of charters.*—Reference is made to title I, section 15, paragraph (e), on page 21 which defines the "three-fifths vote" required for ratification of a charter and the "three-fourths vote" required for proposal or ratification of amendments.

Although the same section of the bill gives the Secretary of the Interior discretionary power to set aside a vote which is less than two-fifths of the total eligible vote, we do not believe that there is any real guarantee in the bill that the acceptance or amendment of a charter shall be sufficiently representative of the population affected. One of the most important results to be achieved by the self-government proposed in the legislation is the training in citizenship which life under the chartered community will afford. That the charter be ratified or changed by only a small minority seems to us an extremely undesirable condition. This possibility could be prevented by amending this section so as to make a vote valid only if the total number of ballots cast is at least 50 percent of the total eligible vote in the area for which a charter has been drawn.

V. *Removal of Indian Service employees.*—Reference is made to title I, section 4, paragraph (h), lines 15–17 on page 8 which enumerates as one of the powers which may be delegated to a chartered community the power to "compel" the transfer of unsatisfactory Indian Service employees; and to title I, section 5, second paragraph, beginning on line 20, page 10, which further provides for the exercise of this power under rules presented by the Commissioner of Indian Affairs.

We believe that the power to compel the transfer of undesirable employees would have certain bad effects. It would tend to make employees political in the exercise of their duties in order to evade censure or transfer. This would be particularly baneful in the technical fields such as medicine, agricultural extension work, etc. The law as now written would break down the morale of the employees, and it is doubtful if able and more desirable persons could be induced to enter or remain in the Service under such conditions. It would be a too ready implement in the hands of the chronically critical. On the other hand, the Indians should have a means of protesting against incompetent and unfit field employees. This could be accomplished by these amendments.

(1) Strike out "compel" in line 15, page 8, and substitute "request".

(2) Strike out the second paragraph of section 5, beginning on line 22 and substitute the following:

"Any Indian community shall have the power to request the transfer from the community of any persons employed in the administration of Indian Affairs within the territorial limits of the community. Upon the receipt of such request accompanied by formal charges setting forth the reasons therefor, the Commissioner of Indian Affairs shall institute an investigation which shall include taking the testimony of the employee concerned and of the governing body of the Indian community. The record of such investigation, together with the Commissioner's findings thereupon, shall be transmitted to the governing body of the community. If, in the opinion of the Commissioner, the charges are substantiated and serious, he shall forthwith transfer the said employee from the territorial limits of the Indian community and if the charges warrant, he shall remove said employee from the Indian Service."

In the above recommendations, numbered II, III, IV, and V, the American Indian Defense Association is in agreement with the National Association on

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Indian Affairs, Inc., and the General Federation of Women's Clubs. Our association has not yet conferred with the other groups on no. I.
Respectfully submitted.

THE AMERICAN INDIAN DEFENSE ASSOCIATION, INC.
ALLAN G. HARPER, *Executive Secretary.*

COMMENTS OF THE INDIAN RIGHTS ASSOCIATION ON THE COLLIER LAND SELF-GOVERNMENT BILL (S. 2755, H.R. 7902)

THE FUTURE OF THE INDIANS

Whether we wish it to be so or not, whether we encourage or discourage it, the amalgamation of the Indian with the white race in the United States is in process. In many sections it has already gone for. In others it has hardly begun and we may look forward to certain sections being predominantly Indian for several generations. But these areas of Indian strength cannot indefinitely withstand the general forces that are working, even if they should desire to do so.

The Merian Survey Report states very aptly and concisely the need for us to give every consideration possible to the Indian culture and mode of life and at the same time to face the practical social and economic situation of the Indians:

"The object of work with or for the Indians is to fit them either to merge into the social and economic life of the prevailing civilization as developed by the whites or to live in the presence of that civilization at least in accordance with a minimum standard of health and decency. The first of these alternatives is apparently so clear on its face as to require no further explanation. The second, however, demands some further explanation.

"Some Indians proud of their race and devoted to their culture and their mode of life have no desire to be as the white man is. They wish to remain Indians, to preserve what they have inherited from their fathers, and insofar as possible to escape from the ever-increasing contact with and pressure from the white civilization. In this desire they are supported by intelligent, liberal whites who find real merits in their art, music, religion, form of government, and other things which may be covered by the broad term 'culture.' Some of these whites would even go so far, metaphorically speaking, as to enclose these Indians in a glass case to preserve them as museum specimens for future generations to study and enjoy, because of the value of their culture and its picturesqueness in a world rapidly advancing in high organization and mass production. With this view as a whole if not in its extremities, the survey staff has great sympathy. It would not recommend the disastrous attempt to force individual Indians or groups of Indians to be what they do not want to be, to break their price in themselves and their Indian race, or to deprive them of their Indian culture. Such efforts may break down the good in the old without replacing it with compensating good from the new.

"The fact remains, however, that the hands of the clock cannot be turned backward. These Indians are face to face with the predominating civilization of the whites. This advancing tide of white civilization has as a rule largely destroyed the economic foundation upon which the Indian culture rested. This economic foundation cannot be restored as it was. The Indians cannot be set apart away from contacts with the whites. The glass-case policy is impracticable." (The Problem of Indian Administration by Meriam and Associates; Institute for Government Research; Studies in Administration; Johns Hopkins Press, 1928, pp. 86–87.)

In a report on law and order in the Pueblos made at the request of the Government by the Institute for Government Research, Miss Mary Louise Mark, professor of sociology at the Ohio State University, says of the Pueblo group who have probably a more firmly entrenched system of government, social and religious life, than any other Indians:

"Much of the present pressure toward change of customs and institutions comes to the Pueblos from the inevitable participation of these tiny societies in the larger society about them. In their economic life, for example, an independent existence is as impossible for them as for an American village. They have their part in a world-wide economic organization; they prosper if it prospers and suffer when it fails to function; they must adapt themselves to it if they are to survive. The fact of change is not in itself disturbing. These Indians have demonstrated their powers of adaption. The danger is rather that the rate of

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change may be too rapid to permit of adjustment." (From an unpublished report on "Law and Order in the New Mexico Pueblos", ch. 3, pp. 25–26.)

All friends of the Indians should look forward to and work for complete civil liberty, political responsibility, and economic independence of Indians. However, they will need for a considerable time, varying in different localities and situations, the protection and tutelage afforded by guardianship; but this does not mean permanent guardianship and wardship. We should not hold such a goal before Indian people. They and we must look toward the time when they will contribute to the support of government and maintain themselves economically without special aid or consideration (as a racial group) from any government. No other aim shows respect for Indians or will develop self-respect within themselves.

THE PRESENT PROBLEM

Through contacts of the Indian and white civilizations and particularly through the encroachments of the white, certain highly unsatisfactory conditions have developed for which we should seek correction.

1. Over the period of rapid expansion and settlement of the West much land passed out of Indian ownership. A chart recently prepared in the Indian Office shows the Indians owned 155,600,000 acres of land in 1881. By 1887 disposal of surplus and ceded lands [1] had reduced their total holdings to 136,394,000 acres. From 1887 to 1933 (Indian Office chart) Indian land losses have totaled 89,000,000 acres. Of this total amount, about 67,000,000 or 75 percent has, been the ceded and surplus lands. It is our opinion that, in the face of the migration of whites into the West and their "land hunger" during the period in question, it would have been impossible for the Government to have held for the Indians the large areas owned by them in 1887. For a great deal of this ceded and surplus land the Indian tribes were paid.

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Of the total of approximately 40 million acres of land allotted to Indians, 22 million is listed as "alienated"; that is, patents in fee have been granted to the individual owners and much of this has been sold; there are no figures available as to the amount of such sales. However, through the working out of the Allotment Act with its amendments and the way it has been administered, much land has been disposed of by the Indians and many Indians have been left without suitable land for their use.

Perhaps the brief explanation below may help to understand the way allotment has worked out.

The tendency of Indians to choose for their allotments those sections lying along streams or wooded land and leave the remainder for white settlement acted to break up the solidarity of their land holdings.

Amendments to the General Allotment Act beginning with one in 1902 to permit heirs of a deceased allottee to sell the ancestors' allotment, with the approval of the Secretary of the Interior, speeded up the alienation of Indian land holdings. The climax was perhaps reached in the act of 1906 authorizing the Secretary of the Interior to issue a patent in fee to any Indian whom he deemed competent to manage his or her own affairs; the act of 1906 which removed restrictions on alienation of all allotted lands held by mixed-blood Indians of the White Earth Reservation; and the act of 1908 which removed restrictions from the lands of all Indians of the Five Civilized Tribes of Oklahoma, of less than one-half Indian blood, and of all but the homestead of Indians enrolled as half or more than half, but of less than three-quarters Indian blood; it also provided that the death of any Indian allottee of the Five Civilized Tribes removed the restrictions on alienation of his land. Mention should be made in this connection also of the Competency Commissions of Secretary of the Interior Franklin K. Lane of about 1917–19 that actually forced patents in fee on Indians.

The allotment policy was intended primarily for farming land but the growing official enthusiasm for it led to the allotment of grazing land and even of forest land, the latter certainly not intended by the authors of the act of 1887.

Special acts of Congress opened the way for the loss by the Indians of great areas of valuable timber land, particularly in Minnesota.

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[1] Some agreements and acts provided that surplus lands in excess of allotment requirements, should be ceded to and paid for by the United States, all Indian title to such lands being extinguished. These lands are classed as "ceded."

Other agreements and acts provided that surplus lands should be opened for entry under United States land laws, the equitable title remaining in the Indian tribe until payments should be completed; the United States acting as trustee for disposal of these lands. These lands are classed as "opened for settlement."

No segregated records of areas of these classes of "surplus" lands are available.

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As indicated above the working out of allotment with the method of administration of Indian land inheritance has caused much grazing and some forestry lands to become divided up into uneconomic units.

2. As has been pointed out by Commissioner Collier the Indians need a sound and adequate system of credit. The reimbursable system of credit was late in getting started and was often administered badly. There was also lacking the necessary educational and developmental program along agricultural and industrial lines that has recently been emphasized. Credit should not be confined to particular groups as is provided by this bill in making it available only to chartered communities.

3. In an effort to protect the property interests of Indians, as was practically inevitable, a bureaucracy has been built up, centering at Washington, which has tended to deprive them of political and economic responsibility needed for their self-development.

4. Through the contact of white and Indian cultures the old tribal control has broken down. Indians under Federal jurisdiction are not subject to State laws. Federal courts deal only with 10 major crimes. Most Indian offenses are of a nature not covered by the Federal law, so that there is no provision for the administration of law and order in the field of greatest need. Moreover, this problem must largely be handled as one of education, as we point out in more detail later.

THE IMMEDIATE PROGRAM

Although there are wide variations from one Indian group to another we feel that for clarity in consideration and for aid in planning Indians may be divided into those (1) living on unallotted reservations, largely in the Southwest, and (2) those which have been allotted and where there has been considerable infiltration of white population. There are probably a few allotted Indians that may be classed in the first group, e.g., the Pima.

1. The reservations into which there has been no considerable movement of whites, because of their segregation, offer possibilities for a large degree of self-government. This has rightly been increasingly developed over the past 4 or 5 and more years. The Navajo Tribe is the outstanding example of this, with its development of community chapter organizations following in the line of the so-called "five-year plan" used in other sections of the Indian country. We believe these developments can be carried much further without new legislation. Certainly their situation presents no urgent need for specific legislation in this present session of Congress. Experience will make clearer the form of legislation needed.

2. Allotted reservations. Most of these reservations are so divided up and whites and Indians are so interspersed that Indian communities for self-government seem artificial and impractical. Indians and whites in these localities enjoy almost daily contact in business, educational, and social relations.

In many cases the majority of Indians are mixed-blood. It seems just as unfair to expect the young people of such groups to be happily set off in Indian self-governing bodies as it seems to expect older Indians to suddenly take on the ways of white people. Such a move seems a real injustice to a major part of a group that have already largely made their adjustment to a new scheme of things.

Toward the solution of the land and economic problems of this latter group we urge concentration of effort along four definite lines:

1. Establishment by Congress of a fund to be used for the purchase of the most urgent cases of heirship land, this fund to be added to annually for a time; land thus purchased to be held in trust by the government for the respective tribes and to be used by those members of the tribe who most need it and will make good use of it. The Secretary of the Interior is to be commended for his present policy of selling "heirship" lands only in cases where such procedure is unavoidable.

There will always be unavoidable cases both in living as well as in "heirship" allotments that may need special action. The door should not be completely closed by law. It is a problem for administrative discretion. Possibly the purchase of "heirship" lands with "tribal funds", with the permission of the tribe, should also be authorized.

2. Already the experiment of subsistence homesteads is being tried with Indian groups. This may offer a satisfactory method of rehabilitation for a number of landless Indians who will be particularly benefited by a closer community life.

3. The continued formation of cooperative associations. This would apply primarily to those sections where the chief use of the land should be for grazing.

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There are also a few instances where such a plan for forest lands would be practicable. Livestock associations (e.g. as at Fort Hall and Fort Belknap) should be encouraged where Indians would pool their land for use so that it can be economically handled. It may be that time and experience will indicate that they should be encouraged to also pool title to their lands but such a drastic step immediately seems to us unnecessary and likely to lead to confusion and controversy. This plan seems to us to be one of building from the bottom up, according to economic need and with an opportunity for natural development toward self-government which will manifest itself instead of being superimposed.

4. Law and order. A very careful study of this question has been made in a selected area of the central northwest by Miss Mary Louis Mark, of the sociology department of Ohio State University, Ray A. Brown, professor of law of the University of Wisconsin, and Henry Roe Cloud, now superintendent of Haskell Institute, under the direction of Lewis Meriam of the Institute for Government Research. We go into this quite fully later in this discussion.

AS TO THE BILL

Title I

1. As indicated in the foregoing statement there is much of good in the general purpose of this title. It seems, however, entirely too inclusive in its scope. One of the primary difficulties of Indian legislation in the past has been its tendency to treat all Indians alike.

Although the bill is urged in the name of self-government, many of its features are inimical to that end. The real governmental authority is handed over by Congress to the Secretary of the Interior and the Commissioner of Indian Affairs. (See secs. 2, 3, 4 (1st par.), 7, 8, 9, 10, 11, 12, 13, 14.) No real responsibility is imposed on Indians. No civil liability can be enforced against any Indian community or its members. (See sec. 11.)

2. Holding before Indians an ideal of permanent guardianship for them by the Government is bad. It is destructive of human character. Also the ideal of permanent freedom from taxation is a vicious one.

3. Much in way of development of self-government is possible through administrative action without further legislation.

4. Although there has been much attention given the bill in the Indian country, almost daily reports are coming in indicating that Indians have seen new angles to the proposed legislation and are still confused by it, and many are opposed to it.

5. Mr. Lansdale, probably the most able personnel administrator ever in the Indian Office, said at the National Conference of Social Work in Philadelphia in May 1931:

"I see no hope for solving this appalling social situation by legislation. I have little faith in legislation—at least to do more than arrange the setting for the human performance. It is true that we can only correct some of the basic factors mentioned above by legislation; but it will have to come through patient work along very broad lines, and the human beings caught up in the scheme must be helped in the meantime. I am also convinced that some of the legislative and administrative factors are so deeply intrenched and so ineradicably ensnarled that only a benevolent dictator could ever straighten them out.

"I also have little faith in our making any large accomplishments in this area through mass programs. I think that has been one of our troubles—the Indian business has been subjected to too many schemes for universal salvation. We are not going to make all Indians farmers. We are not going to get all of them into wage-earning jobs in cities. We are not going to make all of them stalwart citizens through a system of education. We are going to accomplish nothing spectacular or on a grand scale in Indian work in the Northwest." (Proceedings of the National Conference of Social Work, Philadelphia, 1932. University of Chicago Press; p. 612.)

The machinery proposed is vague and indefinite. Such vital features as the method of selection of officials, terms of office, powers and duties of officials, finances, definition of the obligation of individuals to the community, and means of enforcing authority are not prescribed by the bill, but may be, or may not be, included in the charter by the Secretary of the Interior. (See sec. 4.)

6. The statements that the acceptance of the plan by the Indians is optional should be considered in connection with the fact that large appropriations to be made by the bill would by its terms go only to chartered communities and these advantages have been emphasized by Indian Service people talking to the Indians.

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If they don't accept a charter they are not to receive benefits from the proposed appropriations. We feel that the credit proposed by the bill should be available to all Indians because whether chartered or not they are equally in need.

7. As already stated, there is need on the part of the Indians for a workable credit system. However, the granting of credit to Indians should not be bound up with their acceptance of a chartered form of community as is provided in this bill.

8. Provisions for taking appointments out from under civil service regulations would be a backward step; this would place an unnecessary burden upon the Commissioner and perhaps reflect on the ability of Indians to qualify. It may be possible, however, that modifications in the forms of examinations should be adapted to the Indians' needs.

9. If the machinery set up by the bill proves inpracticable, as we think it will, the problem of Indian administration will then be worse than it is today because of rights and immunities that will have become vested in helpless corporate entities, to get rid of which will be difficult.

Title II

The importance of Indian education cannot be too greatly emphasized.

Approve Section 1, with the following amendment: Beginning in line 8, page 25, strike out "whenever the beneficiary shall have," etc., to end of paragraph. Insert instead "according to rules and regulations as the Secretary of the Interior may prescribe." The provision that repayment must be begun at time of any employment seems too inflexible.

Section 2. We have no objection to this section but we think it may well be eliminated as unnecessary in view of powers already granted the Commissioner of Indian Affairs.

Title III

Indian Lands. Instead of this we propose a separate bill providing:

1. Appropriation for the purchase of—

(a) Heirship lands to be held in trust by the Government for the respective tribes and to be used by those members of the tribe who most need it and will make good use of it. Land to be classified into natural units and cooperatives organized for use of such land.

(b) Suitable lands for "subsistence homesteads" if sufficient money cannot be obtained from the Subsistence Homesteads division of the Department of Interior for such needs.

2. Use of "tribal funds" subject to approval of the tribe for the purchase of "heirship lands" for the use of Indians born too late to be alloted

3. The task of classification of Indian grazing and the remaining forest land into natural units (as suggested in sec. 6 of this title) should be undertaken, and the formation of cooperative associations for the use of such land should be encouraged.

Title IV

Court of Indian Affairs: Instead of this title we recomend a bill along the line of the one outlined in the report on the law and order study made by the Institute for Government Research and published in part 26 of the Indian Senate Committee Survey of Conditions of the Indians in the United States (1932). The report begins on page 14137. Their suggested bill begins on page 14242. A valuable Brief Summary of Recommendations is given in chapter I on pages 14137–14142. This bill and recommendations are based on a careful study by experts. They see the question of Indian law and order as primarily an educational rather than disciplinary problem and have outlined their program accordingly. See exhibits A and B.

The subheadings under the chapter on Brief Summary of Recommendations are significant. They are:

Two Classes of Reservations.
Class 1. Indians under State Law Administered by State Courts.
Class 2. Indians under State Law Administered by Federal Agencies.
Division into Two Classes by Administrative Action.
The Judges of the Special Court of Indian Offenses.
Necessity for a Code of Minor Offenses.
Need of Trained Investigators in Indian Cases.
Marriage and Divorce under State Law.
Special Provision for Delinquent Minors.

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Need for a Director of Law and Order Administration.
Need for a Director of Reservation Social Sevice.
Reasons for These Recommendations.

Title V

Having taken the position that title I and III of the bill should be discarded or entirely rewritten it may seem to be unnecessary to comment on the safeguards proposed in title V. However, if the bill should be seriouly considered for enactment in something near its present form we would urge the amendment given below.

SEC. 1. Amend as follows: Strike out in line 14 the words "3 months" and insert "3 years."

A time limit of 3 months is entirely too short to allow Indians to consider whether they wish to become a part of such a scheme as outlined in the bill.

SEC. 2. No specific objections.

SEC. 3. No specific objections.

INDIAN RIGHTS ASSOCIATION,
By JONATHAN W. STEERE, *President.*

EXHIBIT A

LAW AND ORDER ON INDIAN RESERVATIONS OF THE NORTHWEST

[A report by a committee organized under the auspices of the Institute for Government Research of the Brookings Institution consisting of Ray A. Brown, professor of law, University of Wisconsin; Mary Louise Mark, professor of sociology, Ohio State University; Henry Roe Cloud, president of the American Indian Institute; Lewis Meriam, staff, Institute for Government Research. Submitted to the Senate Committee on Indian Affairs, June 30, 1932]

CHAPTER 1. BRIEF SUMMARY OF RECOMMENDATIONS

At the request of the Commissioner of Indian Affairs the Institute for Government Research has made a special study of the question of law and order on Indian reservations in the Northwestern and Western States. The States covered were Wisconsin, Minnesota, the Dakotas, Montana, Washington, and Oregon. The study was made by a committee of three consisting of Ray A. Brown, professor of law at the University of Wisconsin; Miss Mary Louise Mark, professor of sociology at Ohio State University; and Henry Roe Cloud, president of the American Indian Institute. Mr. Lewis Meriam, of the regular staff of the Institute for Government Research, has served as a consulting member of the committee.

As a result of this study the committee desires to present first the following brief summary statement of its major recommendations. In so doing it wishes to state clearly and specifically that these recommendations do not apply to the States of Arizona and New Mexico where conditions are not comparable with those in other States. The institute is at present making another study of the situation among the Pueblos of New Mexico.

Two classes of reservations.—For practical administrative purposes the reservations, or parts of reservations in Wisconsin, Minnesota, the Dakotas, Montana, Washington, and Oregon may be divided into two broad classes.[1]

Class 1. Indians under State law administered by State courts.—The first class consists of those reservations or parts of reservations where the degree of advancement of the Indians, their proximity to white communities, the attitude of white communities toward the Indians, and other similar factors indicate that, if the Secretary of the Interior or the Commissioner of Indian Affairs is properly authorized by law and provided with suitable assistance and appropriations, it would unquestionably be practicable and advantageous to develop a system of Federal and State cooperation whereby the restricted Indians in these communities shall be made subject to the State laws governing crimes and misdemeanors administered by State courts.

The study confirms a view commonly held that to make such an experiment a success the Federal Government will have to contribute to the costs of having the State courts administer the criminal law among untaxed Indian wards of the Federal Government. Unless the Federal Government is prepared to con-

[1] From such information as the committee possesses it is believed that conditions in California, Nebraska, Idaho, Wyoming, Utah, and possibly Nevada are such that the recommendations here made would be applicable in these States also.

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tribute, the local white communities will resent being taxed for the costs of administering the criminal law for Indian wards. Even if they were required by law to do it, they would probably evade the law by practical nonobservance, punishing Indians only in extreme cases and permitting the great bulk of Indian offenses to go entirely unnoticed. The local communities, too, would not be willing to supply for Indians the added service they need in the process of education and adjustment. To make the experiment a success the Federal Government will have to contribute. Unless such financial cooperation is provided, an act of Congress placing restricted Indians under the State law administered by State courts would be detrimental rather than advantageous to the Indians. Through the inaction of the State authorities the law would be brought into disrepute. Local antagonism would be aroused if the problem of law enforcement among restricted Indians was simply dumped on the State without a fair attempt of the Federal Government to cooperate.

Class 2. Indians under State law administered by Federal agencies.—The second class consists of those reservations or parts of reservations where one or more factors, such as the degree of advancement of the Indians, their remoteness from organized white communities, the sentiment of white communities toward the Indians, or the unwillingness of white communities to incur any expense toward the administration of criminal law among ward Indians, make cooperation between the Federal Government and the State and local authorities impracticable. To meet the needs of the Indians in reservations of this class, the Secretary of the Interior or the Commissioner of Indian Affairs should be authorized by law to establish special courts of Indian offenses. The special court should consist of one trained magistrate, with qualifications similar to those required for a juvenile court judge in a progressive community, and one or more Indian associate judges. As will be explained at length later, the trained magistrate could serve several reservations and need not be in residence and give full time to any one reservation. A fundamental purpose of these courts should be to educate the Indians in the laws regarding crimes and misdemeanors of the States in which they reside. It is, therefore, recommended that these special courts of Indian offenses shall apply the law of the State wherein they are located, with authority to inflict fines or equivalent penalties of not exceeding $100, and to imprison for not to exceed 3 months, in respect to those offenses, for the violation of which the State law permits of the above as minimum penalties. For all offenses for which the minimum penalty prescribed by State law is a fine of more than $100 or imprisonment for more than 3 months, the special court of Indian offenses shall serve only as a committing agency, and the jurisdiction to try the case shall be vested initially in the United States district court.[1] The judges of the courts of Indian offenses and of the United States district court shall be authorized in their discretion to impose in Indian cases a lesser but not a greater penalty than is provided by the State law, and in any case to use probation, suspended sentence, or parole. It is further recommended that, to protect the constitutional rights of the Indians, any Indian may, on motion, have his case transferred from the administrative special court of Indian offenses to the United States court which shall apply the criminal law of the State wherein the Indian resides again with the provision that the court may in its discretion apply a lesser but not a greater penalty than that established by State law or use probation, suspended sentence, or parole. The special court of Indian offenses should, moreover, on its own motion be authorized to transfer a case to the United States courts. The trained magistrate should have the authority of a United States Commissioner to bind over offenders to await trial in the United States court under the State law with a similar modification in penalties.

Division into two classes by administrative action.—We are of the opinion that it is neither necessary nor desirable that Congress should specify exactly what Indians shall be made subject to the State law administered by State courts and what Indians shall be subject to the State law, administered by special courts of Indian offenses, administratively established. We believe it

[1] The suggestion has been made that if the United States district attorney or the judge of the United States district court, after investigating the case, does not regard it of sufficient gravity to warrant initial trial in the United States district court, the judge of the district court may remand the case to the special court of Indian offenses for initial trial. Such a provision would enable the judge of the United States court to keep out of that court the initial trial of cases he considers of minor consequence. If such a suggestion is adopted, the act defining the jurisdiction of the special court of Indian offenses should contain a provision giving it jurisdiction over such cases as may be remanded to it by the district court. Possibly this right to remand should be restricted to offenses for which the minimum penalty under State law is a fine of not over $500 or imprisonment for not over 1 year, or both.

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will be sufficient if Congress provides suitable administrative machinery in the Indian Office, specifically authorizes the establishment of the special courts of Indian offenses, and empowers the Secretary of the Interior or the President of the United States by proclamation at any time, with the approval of the proper authorities of the State, to declare the Indians in a given reservation or part of a reservation subject to the State law to be administered by the State courts. In other words, Congress would provide that in the specified States the Indians shall be subject to the State law applied by the special court of Indian offenses and the United States district court, unless and until, by agreement with the State concerned, the Indians on a given reservation or part of a reservation are by proclamation made subject to the State courts.

The principle that an Indian can by appropriate administrative action be removed from the exclusive jurisdiction of the United States and be made subject to State law administered by State courts has already been recognized by Congress in the allotment laws. That is what happens when by administrative action an Indian is declared competent. What is here proposed is that the same principle be applied to all Indians within a given area when the Secretary of the Interior and the proper authorities of the State concerned are in agreement that the needs of the Indians can adequately be met in that way.

The adoption of such a principle permits of treating this whole matter of bringing the Indians of these States under State law administered by State courts properly as a problem of education and adjustment both of the Indians and of the white communities. It permits of working the thing out gradually, one might even say experimentally, by a process of negotiation and contract between the Federal Government and the States.

The judges of the special court of Indian offenses.—The Secretary of the Interior or the Commissioner of Indian Affairs should have authority, subject to the civil-service law, to appoint the judges of the special court of Indian offenses and determine the reservations, or parts thereof, over which they shall have jurisdiction. The persons selected as judges should be lawyers with social training and interests, who would be regarded as equipped for the duties of juvenile court judge in a progressive white community, or social workers with juvenile court or probation experience and the necessary training in law. To secure persons with these qualifications, with due regard to economy, it may be necessary and desirable in some instances to give one judge jurisdiction over an entire large reservation or a group of smaller reservations and to have him hold court at different places as needed or in accordance with a fairly definite schedule. In other instances a judge may be appointed for a single reservation, devoting only a portion of his time to his Federal duties.

The study of the existing courts of Indian offenses, which are almost always presided over by elderly judges of Indian blood, generally full bloods, necessitates the conclusion that these judges alone could not well apply State law or themselves educate the Indians to prepare for the ultimate transition to State law. It is believed, however, that it is highly desirable that the Indians themselves participate in the work of the special court of Indian offenses through one or more Indian associate judges, either appointed administratively or preferably elected by a duly constituted tribal council. The Indian associate judges would perform a useful, perhaps necessary, function as Indian advisers to the new type of judge herein recommended, especially in dealing with older Indians and in interpreting the Indian point of view and Indian customs. The association of Indian judges with the white judge of the type herein recommended would have great educational value for all concerned, the white judge, the Indian associate judges, and the Indian community as a whole. In those instances where the new type of judge serves on a circuit and is not in continuous residence the law-enforcement officers on the reservation, with the approval of the superintendent and his advisers on law and order matters, could present petty cases involving no serious points to the Indian associate judges for final action, if these judges should decide to take final action without waiting for the special judge.

In other cases the reservation officials could present the case to the Indian associate judges for preliminary action if they deemed it advisable to have the offender held in custody for a hearing by the special judge and his Indian associates. It should be noted, however, that such confinement pending trial will rarely be necessary, for in most instances the offender can be released to appear on the appointed court day. When cases are held for the special judge it is the opinion of the committee that the Indian associate judges should serve only as advisers to the special judge. In most instances the special judge and

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his Indian advisers will probably be in agreement, but in cases of disagreement the opinion of the legally trained professional judge should prevail, subject to an appeal or transfer of the case to the United States district court.

The relationship of the agency superintendent to the present Indian judges has been the subject of criticism because undoubtedly the reservation superintendents have in some instances influenced the Indian judges. The superintendents have often had a major part in the selection, appointment, and continuance of the present Indian judges. Under the proposed plan the reservation superintendent, an administrative official, would have no authority whatsoever over the decision of the judges of the special court of Indian offenses. He could not reverse the decision or modify it. Naturally and normally the professional judge of the special court, acting like a juvenile-court judge, would discuss the case with the reservation superintendent and others who have knowledge of the situation and would give due consideration to his point of view and his recommendations, but the decision would be his own not subject to review or dictation by the reservation superintendent.

Necessity for a code of minor offenses.—As many of the offenses committed by Indians are of the minor character usually covered by municipal and township ordinances and not by State laws, and as such organized governmental units do not exist on many Indian reservations, the Secretary of the Interior should prepare and submit to Congress for enactment a code of misdemeanors to apply in these instances only, when the offense is not defined or punishable by State law. Without this the State laws would not be sufficiently comprehensive to cover the problem of Indian misbehavior. The Indians and their white neighbors should, however, where feasible, be encouraged and aided in organizing townships under the State law, so that the community can adopt its own code of ordinances governing misdemeanors. Aiding the Indians in this field should be one of the duties of the director of law and order administration of the Indian Service, a position recommended and discussed in a subsequent section.

Need of trained investigators in Indian cases.—In order that the judicial machinery, whether the State courts or the special courts of Indian offenses, may properly accomplish the tasks placed upon them, there should be on each reservation one or more trained workers whose duties would be (1) to make a through social investigation of all the facts regarding the Indian offender and his family and his environment and report them to the court; (2) on the request of the judge to advise him regarding the course of action to be taken; and (3) to serve as probation officer for Indians placed on probation or given a suspended sentence. On the one or two large reservations where conditions are bad the trained worker might conceivably give all his or her time to cases before the court. On smaller reservations the work on court cases would be only a part of the worker's duties; the balance of the time would be given to preventive family and community work designed primarily to correct situations before they ever result in a case that necessitated court action.

Marriage and divorce under State law.—Closely concerned with the law-and-order problem is the subject of marriage and divorce. The investigators are unanimous in recommending that on all the reservations in the States covered, Indians, marrying after the date of passage of an act of Congress so providing, shall be subject to the marriage and divorce laws of the State wherein they reside and that actions for divorce or annulment be brought in the State courts. Unions entered into prior to the passage of such an act that would have been recognized as legal prior to its passage shall be regarded as binding and shall be dissolved by annulment or divorce only through action in the State courts. To make this recommended legislation on marriage and divorce effective it will be necessary for the Government to maintain on each reservation the trained workers mentioned in a preceding paragraph, and it will also be necessary in some instances for the Government to supply legal aid to Indians to enable them to secure divorces or annulments in the State courts. The judges of the special courts of Indian offenses herein suggested should not have jurisdiction to grant divorces or annulments. These special courts should, however, have authority to determine, as a matter of fact, whether an Indian couple is or is not married. When in the opinion of the judge of the special Indian court a divorce is the solution of the case before him he may so advise either or both parties to the marriage and if legal aid appears necessary so advise the Commissioner of Indian Affairs.

Special provision for delinquent minors.—The study reveals the need of special provisions for dealing with delinquent boys and girls and of those who are living under conditions that will tend to make them delinquent. The provision for

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the care of such children is now inadequate. Reservation superintendents often try to have them sent to nonreservation boarding schools because the superintendents cannot do anything for them on the reservations. The boarding-school superintendents often send them back to the reservations because it is difficult to handle them in an institution designed primarily for normal children. In some instances the strict rules and discipline of boarding schools have been justified on the ground that some of the more difficult children can be managed in no other way. Neither the reservation nor the boarding school operated for normal children is the proper place for the really delinquent children. They require special care and treatment.

Although it is manifest that definite steps should be taken to provide for the thorough study of such cases and, if necessary, for proper places for the detention and training of neglected and delinquent Indian youth, the specific solution of the problem cannot be given offhand. Some States have institutions willing and prepared to accommodate additional Indian inmates. Others are either unwilling or unable to assume the burden. In such cases it will doubtless be necessary to provide clinical facilities and special training schools within the Service. Whether on individual reservations cooperation with the State or the establishment of such separate institutions is desirable must depend on subsequent administrative investigation of the situation at that reservation.

Insofar as possible the law of the State in which the Indians reside should be applied in dealing with cases of delinquent, dependent, and defective children because of the simplicity and the educational value of such a procedure. If the State law is found inadequate or inapplicable to the Indian juvenile cases, the Indian Service should exercise its own powers as guardian of the Indian minors. It is believed that the State law governing adoptions should be followed in legal adoption cases.

If the special court of Indian offenses commits a delinquent minor for a long period of treatment and training, we believe the Indian or his next friend should have the unquestionable right to have the case transferred to the United States district court, where the recommendations of the special court of Indian offenses will be reviewed. The decree for the commitment in a contested case will then come, if it is issued, from the judicial and not from the administrative branch of the Government. Where the State courts are administering State laws for the restricted Indians, the procedure for committing juvenile delinquents will be in accordance with the State law. The act should, however, authorize both the Federal courts and the State courts to commit Indian juvenile delinquents to the care and custody of the Commissioner of Indian Affairs, who will have the duty of making adequate provision for them.

Need for a director of law and order administration.—To assist in dividing the Indian reservations into classes 1 and 2, in establishing cooperation with the State courts in class 1, and the system of special Federal tribunals for Indian offenses in class 2, and to provide facilities for the proper treatment of delinquent minors, the Secretary of the Interior or the Commissioner of Indian Affairs would require the services of a competent, socially minded, and trained lawyer with the necessary assistants. Such an official would be required by a careful field investigation, involving both a study of the Indian residents of a given reservation and of their white neighbors, to recommend whether such reservation should be placed in class 1 or class 2. If the former alternative seemed desirable, he would have the duty of ascertaining for that reservation the particular type of Federal and State cooperation desirable, whether the grant of financial aid in a lump sum, the providing of special officers such as deputy sheriffs or probation officers, or the payment of sums to reimburse for special services rendered. In reservations in class 2 he would determine whether a single magistrate should be secured for that reservation, or whether it should be included in a circuit, what provision should be made for Indian associate judges, and, in conjunction with the director of social-service work, the type of probation, family case work, service, and clinical facilities to be established.

Need for a director of reservation social service.—To develop the reservation social, family, and community work on the reservations and to tie it into the correctional, educational, and developmental activities in the Indian Service, the Commissioner of Indian Affairs needs on his headquarters staff one well trained and experienced social case worker or administrator of social case work of outstanding ability with the necessary assistants. It is believed that if the headquarters staff could be strengthened by a well-trained, socially minded lawyer who could be primarily concerned with the legal, judicial, and administrative aspects of the enforcement of law and the maintenance of order on Indian reservations

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working in cooperation with a well-trained, experienced organizer and administrator of family and community workers, an effective agency could be developed for solving the law and order problem on Indian reservations.

Reasons for these recommendations.—A brief statement of the reasons which underlie these recommendations should, perhaps, be presented.

In the area covered by this study the old Indian culture has almost entirely disappeared. The old Indian form of government has gone, tribal authority has broken down, Indian customs and Indian laws are no longer effective. They cannot be restored because the economic basis upon which they rested has been largely destroyed. For these Indians the only way ahead is gradual absorption into or adjustment to the dominant white civilization.

The task of helping the Indians to become adjusted is educational. In the matter of law and order the lesson they have to learn is to know, respect, and observe the laws of the State in which they reside that relate to crimes and misdemeanors, and marriage and divorce. To help them learn the lesson they need able and understanding teachers.

The criminal courts of the States are not generally equipped for educational work. It is not their general function to be educators. In many instances the judges and the law-enforcement officials would not regard their task as educational. The exceptional ones who see the need for educational and developmental work among the Indians rarely have the time and the assistance needed for such work. Merely making Indians subject to State law administered by State courts will not solve the problem. Although the substantive law and the methods of administering the criminal courts are an important part of the problem, they are only a part. More important is the part that relates to education and adjustment and this is the part that the Federal Government must supply because the States cannot be expected to supply it primarily for untaxed Indian wards of the National Government or for fee-patent Indians whom local authorities feel have been wished on them by the National Government.

Examination of the offenses committed by the Indians discloses that very rarely are they of the type from which society must protect itself. They are not commonly offenses of violence or offenses against property. They are not commonly offenses where the victims of the offenders or their relatives might demand retributive justice. They are mainly offenses where the chief injury the Indians do is to themselves or their own families, offenses such as drunkenness, disorderly conduct, or sex offenses. Rarely are the sex offenses crimes of violence, like rape. Ordinarily they are offenses where the man and woman both consent but fail to recognize the rights and interests of others

Important among the causes of Indian offenses are lack of interests, boredom, poverty, and family and community degeneration. Courts and laws can, of course, punish but they are not, unsupplemented, the agencies to remove causes in the great bulk of Indian cases. To remove causes the situation calls for agencies of other types, educational agencies. The Indian men need employment in tasks which will enlist their interests and give them something to do with their time that will help them make a living and enable them to gain a position in their community. Recreation is of marked importance. Drunkenness and even sex offending may result from an absence of something else to do for recreation. Family degeneration calls for long and patient efforts toward family regeneration. The system adopted by the Federal Government should fit into its entire program for advancing the social and economic condition of the Indians.

Exhibit B

Chapter 9. A Suggested Bill Embodying the Recommendations of the Report

BRIEF TITLE

The Indian law and order act of 193–, an act to provide a body of substantive law and a system of judicial administration to apply to restricted Indians, wards of the United States on certain Indian reservations.

DESCRIPTIVE TITLE

An act to apply to the Indian wards of the United States upon Indian reservations outside the States of Oklahoma, Arizona, and New Mexico, and the Territory of Alaska such laws of the States and of the localities wherein they dwell

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as apply to marriage, divorce, adoption, juvenile delinquency, crimes, and misdemeanors, to establish a code of minor crimes and misdemeanors to be applied to said Indians in those cases where such minor crimes and misdemeanors are not covered by State law or by laws and ordinances lawfully adopted by local governmental units, to establish or provide an appropriate system of judicial administration to apply said body of law to the Indian wards of the Government, and in general to provide for a better system for the administration of law and maintenance of order on Indian reservations.

ENACTING CLAUSE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as "the Indian law and order act of 193–".

DEFINITIONS

SEC. 2. That unless otherwise specifically qualified, the following words when used in this act shall have the meaning assigned to them in this section.

The word "Indian" shall mean a restricted Indian ward of the United States still subject to the acts of Congress specifically pertaining to Indians and to the rules and regulations made in pursuance thereof.

The word "reservation" shall mean an Indian reservation, or a distinctive part of an Indian reservation, excepting reservations or other Indian land in the States of Arizona, New Mexico, and Oklahoma, and in the Territory of Alaska. It shall also include any other land the fee title to which is held in trust by the United States as guardian for an Indian or for a group, band, or tribe of Indians, and any land occupied by Indians which cannot be conveyed by said Indians without the consent of the United States. The term shall be construed to include all lands, waters, highways, roads, and bridges lying within the exterior boundaries of the reservation regardless of whether the title to said property is in the United States, the Indian tribe, a restricted Indian, or the heirs of a restricted Indian, or whether it is in a fee-patent Indian, or any other person, agency, or government.[1]

The word "State" shall mean a State of the Union or any legally constituted subdivision thereof such as a county, township, or municipality. The term "State law" shall include the laws or ordinances of any county, township, municipality, or other legally constituted subdivision.

INDIANS MADE SUBJECT TO THE SUBSTANTIVE LAW OF THE STATE WHEREIN THEY RESIDE

SEC. 3. The Indians on an Indian reservation shall be subject to the substantive law of the State wherein said reservation is located with respect to marriage, divorce, adoption, juvenile delinquency, and all crimes and misdemeanors. *Provided, however,* That any court or tribunal having jurisdiction over a restricted

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[1] The object of this sentence in the definition is to make the restricted Indians wards of the United States subject to the provisions of this act in respect to any offense committed within the exterior boundaries of an Indian reservation. The constitutionality of such a provision has, so far as we have been able to determine, never been passed upon. The question is whether the United States can assume jurisdiction over its Indian wards who commit offenses on parts of an Indian reservation, title to which has passed from the United States. Such parts of the reservation may be (1) Indian allotments, the Indian owner of which has been issued a patent in fee; (2) lands which have been sold to non-Indians; (3) land conveyed to States for highways and bridges or over which an easement has been granted; and (4) land conveyed to railroads or other public-service enterprises for their right of way or over which an easement has been granted.

In those jurisdictions where, under the terms of this act, a cooperative agreement can be entered into between the National Government and the State and local government, the situation will present no difficulties. Difficulty will only arise when the National Government acting alone must provide for the maintenance of law and order among the Indians on Indian reservations. It has seemed to the committee that in these more remote, more sparsely settled, more backward reservations, it would be extremely unfortunate if the jurisdiction of the United States could not extend to the restricted Indian who commits an offense within the exterior boundaries of the reservation and yet upon a small parcel of land or a right of way or bridge that has passed from the control of the United States. To be more specific, the proposed special court of Indian offenses should have general jurisdiction over these Indians. It would indeed be unfortunate if it could not have jurisdiction over the restricted Indian who is charged with drunkenness on a State right of way within the exterior bounds of the reservation or over restricted Indians who are charged with sex irregularities where the overt act was committed on an Indian allotment to which a fee patent has been issued so that the fee to the land is no longer in the United States. Such a situation would prevent the special court of Indian offenses from dealing effectively with the problem of law and order on Indian reservations. It would mean that the State or county would have to take jurisdiction over the restricted Indians if the offense was committed on such parts of the reservation. If the provision contained in this sentence is believed by the Congress to be constitutional it should be left in the act, as it would greatly simplify and improve the administration of the act. If the Congress does not believe it constitutional it should, of course, be removed.

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Indian in accordance with this act and finding said Indian guilty may in its discretion impose a lesser penalty than the minimum established by the law of said State, if in the judgment of said court or tribunal the restricted Indian should not be justly held accountable to the same degree as an ordinary citizen because the said restricted Indian is ignorant of the law, has followed Indian law or custom, or has acted in accordance with what said Indian believed were his or her legal rights, and in any case may use probation, parole, or suspended sentence. Sections 328 and 329 of the act entitled "An act to codify, revise, and amend the penal laws of the United States (35 Stat. L. 1151), are hereby repealed, with respect to the States carrying them out, and henceforth Indians charged with offenses of the nature covered by this act shall be subject to the substantive law applicable to offenses of like nature in the State wherein the offense was committed.

A CODE OF MINOR CRIMES AND MISDEMEANORS PROVIDED

SEC. 4. In the absence of substantive law of the State providing penalties for certain offenses the Indians on any reservation shall be subject to arrest and conviction for any of the following offenses: Drunkenness, whether or not disorderly; driving an automobile while under the influence of intoxicants; possessing or selling intoxicants; reckless driving; disorderly conduct; disturbing the peace; use of language tending to promote a fight; malicious slander; carrying concealed weapons; intentionally aiming a gun, whether loaded or not, at another not in self-defense or in the discharge of an official duty; assault and assault and battery, whether or not a disturbance of the public peace; resisting an officer; adultery and/or fornication, whether or not said adultery or fornication be committed secretly and without circumstances of scandal or public disorder, and for the offense of adultery it shall be sufficient for the guilt of both parties that either party is married; seduction of a woman of previous chaste character; lewd and liscivious behavior; prostitution; maintaining a nuisance; desertion or nonsupport of wife, child, or children, legitimate or illegitimate; suffering, encouraging, or contributing to the delinquency of a minor; cruelty to a minor; neglect or abuse of a minor; neglecting or refusing to require the attendance of a child at school; cruelty to an animal; malicious mischief; malicious destruction of property; taking or using the property of another without permission; larceny; fraud in the sale or purchase of commodities of general and necessary use; obtaining money under false pretenses; receiving stolen property knowing it to be stolen. In the absence of any State or local law providing specific penalties for these enumerated offenses a duly authorized court or tribunal finding an Indian guilty of any of these specified offenses may impose a penalty not greater than a fine of $100 or imprisonment for a period of more than 3 months in jail. The court or tribunal may, however, place an Indian found guilty of one to these specified offenses on probation or under suspended sentence for a period not exceeding 1 year.

COOPERATION BETWEEN STATE AND NATION IN JUDICIAL ADMINISTRATION WHERE POSSIBLE

SEC. 5. The Secretary of the Interior, through the Commissioner of Indian Affairs, shall have a study made of the conditions on each reservation and in the communities adjacent thereto to determine the practicability and possibility of arriving at a cooperative agreement with the appropriate State authorities whereby the substantive law as established in sections 3 and 4 of this act may be judicially administered by the duly established courts of the State in which the reservation is located. No such cooperative agreement that involves any new or not already authorized expenditure of the funds of the United States or of any Indian tribe shall be entered into until the money to carry out such an agreement has been appropriated by Congress. The Secretary of the Interior is, however, hereby specifically authorized to submit to Congress estimates for expenditures necessary and desirable for entering into and carrying out a cooperative arrangement with the State whereby the State will perform for the United States the service of providing judicial administration of the laws governing family relations, juvenile delinquency, crimes and misdemeanors in the cases of Indian wards of the National Government. Such a proposed agreement may also provide for cooperation in law enforcement, in prosecution of cases, in care of convicted defendants or juvenile delinquents, and in the provision of investigation, probation, and parole service. Cases of juvenile delinquency shall not be included in such agreements, except where the proceedings would be conducted in accordance with standards of juvenile court administration acceptable to the Secretary

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of the Interior. Any agreement so entered into shall provide that any or all fines or cost collected from Indians for offenses committed on the reservation shall be credited to the account of the United States.

No agreement shall contain any provision for the payment by the United States or any tribe of Indians or any restricted Indians of any fees on the basis of Indians arrested, tried, convicted, fined, or imprisoned, but this prohibition shall not be construed to prevent the use of statistics showing the volume of work done by the State in arriving at a fair agreement for the financial contribution to be made by the United States or the Indian tribe, nor prevent the payment, at the regular rates applicable to all persons, for the support of an Indian prisoner while in a local jail or other place of detention. Agreements shall be entered into only for a fiscal year or a part of a fiscal year ending June 30 in each year and shall specify that the Secretary of the Interior or the Congress of the United States reserves the right to terminate the agreement at the end of any fiscal year. Where an agreement has been entered into in accordance with the provisions herein contained and the apprpriation by the United States necessary to give effect to the agreement has been made and has become available, restricted Indians thus provided for shall be tried in the courts of the State in accordance with the procedure of those courts subject to the provisions as to penalties contained in section 3 of this act so long as said agreement remains in force. If such an agreement is not renewed, either in the original or in a modified form, the Secretary of the Interior shall provide for the administration of the law among the restricted Indians involved in accordance with the subsequent sections of this act.

At any time in the future when the Secretary of the Interior finds that such a cooperative agreement between the United States and the authorities of a State is possible, he is hereby authorized to include estimates for the necessary expenditures therefor in the Budget submitted to Congress.

PROVIDING A SPECIAL COURT OF INDIAN OFFENSES WHERE COOPERATION IS IMPRACTICABLE

SEC. 6. On any Indian reservation where the Secretary of the Interior finds at any time it is impossible or impracticable for any reason to enter into such a cooperative agreement with the State as is defined in section 5, he shall cause to be established a special court of Indian offenses. This special court of Indian offenses shall consist of a chief magistrate and one or more Indian associate judges. The chief magistrate shall be selected in accordance with the civil-service law and shall have such character, personality, and knowledge of and experience in law and social work and human relationships as the United States Civil Service Commission deems necessary to qualify him for a position of juvenile court judge or judge of a court of domestic relations in a progressive white community. The chief magistrates shall have such compensation as may be fixed on the basis of their duties and responsibilities by the Federal Personnel Classification Board. Insofar as practicable, the Secretary of the Interior shall arrange the several reservations in circuits so that one professional chief magistrate may serve as many reservations as possible. The number of Indian associate judges on any reservation shall be determined by the Secretary of the Interior. The Indian associate judges shall be elected by a duly constituted tribal council and where two or more distinct tribes are represented on a reservation in any considerable numbers each tribe shall be entitled to elect one judge. The amount of their compensation shall be fixed by the Commissioner of Indian Affairs.

The special court of Indian offenses on any reservation shall have original jurisdiction over Indians charged with crimes and misdemeanors under the law of the State wherein the reservation is located, provided the minimum penalty for such crimes and misdemeanors under said law does not exceed a fine of $100 or imprisonment for 3 months, or both, and it shall likewise have jurisdiction over all minor crimes and misdemeanors established in section 4 of this act and over minor Indians alleged to be delinquent, neglected, dependent, physically handicapped, or mentally deficient, as hereinafter provided. If either the minimum amount of fine or the minimum period of imprisonment is within said limits, the special court of Indian offenses shall have jurisdiction. The special court of Indian offenses may impose for any such offense such penalty as is established by law not in excess of a fine of $100 or imprisonment for 3 months or probation or suspended sentence for a period not to exceed 1 year. If a heavier penalty is authorized by law and the chief magistrate of the special court of

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Indian offenses believes a heavier penalty ought to be inflicted or in event of failure of said court to arrive at a judgment he is hereby given the power of United States commissioner as provided in the statutes and law of the United States to order the arrest and the commitment of such Indian for trial before the United States district court of the district in which said reservation is located. Said chief magistrates are hereby given the powers of commissioner of the United States district court as provided in the statutes and laws of the United States to issue warrants for the arrest and for search and seizure for all persons and/or in all cases arising within any Indian reservation within the jurisdiction of such chief magistrate.

The special court of Indian offenses shall also have jurisdiction in civil disputes between restricted Indians, provided the amount claimed does not exceed $250 and the title to real property is not involved.

The chief magistrate of the said court of Indian offenses shall, subject to the approval of the chief of the division of Indian justice provided in section 10 of this act, provide the rules of procedure of said court and for the times of meeting thereof; provided, however, that no person shall be tried by said court except upon due and adequate notice to the offense of which he is charged, and that the person so charged shall be entitled to a public hearing, to cross-examine the witnesses against him and to present witnesses and be heard in his own defense; provided, however, that in cases involving minors or where the interests of decency and of the public morals require, the chief magistrate may provide for a private hearing. Subject to the like approval of the executive head of the section of Indian justice, said rules may further provide for special hearings by the aforementioned Indian associated justices, provided that no judgment of said associate justices shall be final and conclusive without the approval of the aforesaid chief magistrate. In all other cases the judgment shall be determined by the majority vote of the judges of said court.

UNITED STATES COURTS GIVEN JURISDICTION OVER MORE SERIOUS OFFENSES AGAINST STATE LAW AND OVER APPEALS FROM THE SPECIAL COURT OF INDIAN OFFENSES

SEC. 7. With respect to any reservation where the Secretary of the Interior finds it impossible for any reason to enter into such a cooperative agreement with the State, as provided in section 5 of this act, the United States district court of the district in which said reservation is located shall have original jurisdiction over all offenses against the law of the State committed on said reservation by an Indian, except such offenses as would constitute juvenile delinquency under State law, provided the minimum penalty for such offense established by the law of the State exceeds both a fine of $100 and imprisonment for a period of more than 3 months. The United States district court shall also have jurisdiction to try any Indian charged with a lesser offense provided the case is transferred to said court by the magistrate of the special court of Indian offenses or provided an Indian sentenced by the special court of Indian offenses to a fine of more than $25 or to imprisonment for a period of more than 20 days asks to have his case transferred to the United States district court. A restricted Indian sentenced by the special court of Indian offenses to a fine of more than $25 or to imprisonment for more than 20 days is hereby given the right, upon his or her request, to have his or her case transferred to said United States district court, where it shall be tried de novo.

The United States district court having jurisdiction over the cases of Indians as herein established shall, subject to section 3 of this act, apply the substantive law of the State in which the crime is committed or the code of minor crimes and misdemenaors provided in section 4 of this act.

UNITED STATES COURTS GIVEN AUTHORITY TO REMAND CERTAIN CASES TO SPECIAL COURT OF INDIAN OFFENSES

SEC. 8. If an Indian is charged with having committed on a reservation an offense which brings his or her case within the original jurisdiction of the United States District Court, as defined in section 7 hereof, and if after investigation and report by the officers of said court the judge of said court decides that the case can best be tried initially by the special court of Indian offenses, he may remand the case for initial trial to the special court of Indian offenses, provided the minimum penalty for the offense established under the law of the State is not both more than a fine of over $500 or imprisonment for a period of over 1 year. The special court of Indian offenses is hereby given jurisdiction over the trial of such

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cases as may be remanded to it by the United States district court in accordance with this section, and in such cases it may sentence an Indian found guilty to a fine of not exceeding $200 or to imprisonment for a period not to exceed 6 months, provided said sentence is not in excess of the minimum established by the law of the State, or may place on probation or parole for a period not to exceed 2 years. In remanded cases where the minimum penalty under the law is below a fine of $200 or imprisonment for a period of 6 months, the special court of Indian offenses may impose a sentence not in excess of the minimum under the law of the State. In all cases thus remanded for trial in the special court of Indian offenses the restricted Indian, if found guilty, shall have the right to have his case transferred to the United States District Court where it shall be tried de novo.

PROVISION FOR SPECIAL TREATMENT OF JUVENILE DELINQUENTS

SEC. 9. For any reservation where the Secretary of the Interior finds it possible to enter into a cooperative agreement with the State for the administration of justice among adult Indians, but cannot in accordance with section 5 of this act include in said agreement cases of juvenile delinquency, it shall be the duty of the Commissioner of Indian Affairs to establish a special Indian juvenile court. Insofar as possible he shall so arrange that one of the magistrates of the special court of Indian offenses on circuit shall serve as the judge in said special Indian juvenile court, but if such arrangement is not feasible, he shall designate the best qualified employee of the reservation to serve as the judge of said court.

The special court of Indian offenses and special Indian juvenile courts are hereby given jurisdiction over cases of minor Indian children who are themselves wards of the United States Government and who are charged with being delinquent, neglected, without suitable parental care or guardianship, physically handicapped, or mentally deficient. Such courts shall also have authority to determine the paternity of children born out of wedlock. The proceedings of said courts in dealing with juvenile cases shall be informal and shall be conducted in accordance with regulations prescribed by the Commissioner of Indian Affairs, based upon accepted standards of juvenile-court work insofar as they can be applied to the cases herein provided for. The judges shall use such methods as they deem expedient to determine the facts in the cases and shall insure that the parents or next of kin of any such child shall be advised of the proceedings and have opportunity to be heard. The case of any minor above juvenile-court age, as defined by the law of the State in which the reservation is located, committing an offense punishable under State law by a fine of not more than $100 and imprisonment of more than 3 months shall be held for trial in the courts which would have, in accordance with this act, jurisdiction over adult Indians. If the special court of Indian offenses or the special Indian juvenile court finds that the welfare of the child and its best interests would be served by removal of the child from the care and custody of its parents or next of kin, the court shall commit said child, for a period not to exceed the child's minority, to the care and custody of the Commissioner of Indian Affairs: *Provided*, That the child, his parents, or his next of kin may appeal from such an order to the United States district court provided in section 7, which shall hear the case de novo. The Commissioner of Indian Affairs is hereby authorized and directed to arrange for suitable provision for the care and custody of neglected, delinquent, dependent, or mentally deficient Indian children either in foster homes or in institutions operated by the United States Indian Office, or, under contract, in suitable institutions maintained or provided by other governmental or private agencies or in suitable foster homes.

It shall be the duty of the Commissioner of Indian Affairs so to provide that all Indian children committed to his care under the terms of this act, and insofar as possible all Indian children brought before the courts, shall be thoroughly examined to determine their physical, mental, and social needs, and the care and treatment provided for them shall be based upon the results of such examinations.

Any agreement entered into with any State in accordance with section 5 of this act may provide that State courts may commit minor Indians who are found to be neglected, dependent, delinquent, or mentally or physically defective, in accordance with the juvenile laws of the State, to the care and custody of the Commissioner of Indian Affairs for a period not to exceed their minority and the Commissioner of Indian Affairs shall make provision for their care in the manner set forth in the two preceding paragraphs of this act.

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A DIRECTOR OF LAW AND ORDER ADMINISTRATION PROVIDED

SEC. 10. To aid the Secretary of the Interior and the Commissioner of Indian Affairs in carrying out the terms of this act, the Commissioner of Indian Affairs is hereby authorized and directed to establish in the Indian Office a suitable administrative organization which shall be under the immediate direction and supervision of a competent lawyer of character and reputation experienced in the work of juvenile courts or courts of domestic relations who shall be selected in accordance with the Civil Service Act and whose salary shall be fixed in accordance with the Classification Act of 1923 as amended. He shall be provided with such assistance as may be necessary, and he shall be immediately and primarily responsible for developing and supervising the system of judicial administration on Indian reservations as provided for in this act.

PROVISION FOR SOCIAL WORKERS ON RESERVATIONS AND FOR A DIRECTOR OF SOCIAL WORK

SEC. 11. The Commissioner of Indian Affairs is hereby authorized and directed to provide for Indian reservations herein referred to the services of competent agents with training and experience in social work to carry on preventive social work with families and children, and investigation and supervision of Indian offenders dealt with by special Indian course, United States district courts, or State courts under the provision of this act. Such agents may be employed jointly by the United States Indian Office and the State and work both with Indians and other persons in the community, and may be designated as probation and parole offiders by State courts under the terms of agreements with State authorities herein authorized. Such employees when employed exclusively by the United States Government shall be subject to the civil-service law and shall be compensated in accordance with the Classification Act of 1923 as amended.

To assist the Commissioner of Indian Affairs in planning and directing such activities on the reservations and in cooperation with State and local subdivisions designed to remove the causes of delinquency and to develop a sound family and community life and in selecting suitable socially trained agents for this work the Commissioner of Indian Affairs is hereby authorized and directed to employ a director of social work who shall be a person of character and reputation trained and experienced in work with families or communities. Said director of social work shall cooperate with the lawyer provided in section 9 in developing the social work in the courts given jurisdiction over the offenses of Indians under this act and shall aid the Commissioner of Indian Affairs in developing on the several reservations an adequate service designed to prevent Indian delinquency and to advance the moral and social conditions of the Indians. Said person shall be selected in accordance with the civil service act and shall be provided with the necessary assistance. The salary of said person shall be fixed in accordance with the Classification Act of 1923 as amended.

INDIANS MADE SUBJECT TO MARRIAGE AND DIVORCE LAWS OF THE STATE WHEREIN THEY RESIDE

SEC. 12. One year after the passage of this act all Indians on the reservations to which this act applies shall be subject to the marriage and divorce laws and the adoption laws of the State wherein they reside. Actions for divorce, separation, or annulment or for legal adoption shall be brought in the courts of the States wherein the Indians reside. Nothing herein contained shall be construed to make illegal a union which was in existence prior to 1 year after the date of the passage of this act and which would prior to the passage of this act have been recognized as a valid union. No child, the issue of such a union, shall be held illegitimate because of anything herein contained.

The act of February 28, 1891, chapter 338, section 5, 26 Statutes at Large 795, is hereby amended as follows: *Provided*, That said act shall not apply to the issue of such cohibitation born more than 2 years after the date on which this act takes effect, but such issue shall inherit according to the laws of the State wherein such land is located.

The special court of Indian offenses is hereby given authority to determine in any case arising within its jurisdiction whether any union in existence prior to one year after the passage of this act was a valid union. If it finds the union was valid it shall be treated as a marriage in accordance with State law and after one year from the passage of this act such unions shall not be legally dissolved

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except through the death of one of the parties or appropriate legal action in the courts of the State.

Where under the provisions of this act the restricted Indians are placed under the State law administered by State courts in pursuance of an agreement between the United States Government and the Government of the State or one of its subdivisions, the agreement shall provide for a mutually satisfactory manner of determining the validity of unions involving restricted Indians entered into before 1 year from the date of the passage of this act.

The Commissioner of Indian Affairs is hereby authorized to include in his estimates for appropriations a fund for the legal aid of restricted Indians who are without funds to protect their interests in case of divorce, separation, or annulment in the State courts, or who are in need of legal assistance in other cases dealt with by State courts: *Provided*, That legal aid shall be given only on the recommendation of the social agents provided in section 11. The Commissioner of Indian Affairs may provide such legal aid through the services of a competent Government employee, a legal aid organization, or a private agency.

Experience of Cooperative Cattle Associations at Fort Belknap Reservation Submitted by the Commissioner of Indian Affairs

The experience of Indians in the cooperative economic enterprises which Indian communities might undertake under the terms of the Wheeler-Howard bill is indicated by the following statements furnished by the cattle associations of the Fort Belknap Indian Reservation.

The following statement has been received from the oldest of the Fort Belknap associations, the Lodge Pole Indian Cattle Association:

Lodge Pole is situated about 40 miles south of Harlem on the Fort Belknap Indian Reservation, among the northern foothills of the Little Rocky Mountains.

A little subagency is the headquarters for the farm agent, Roy L. Pearl, an Indian Service employee, who is directing with success the agricultural and stock-raising activities among the 65 or 70 Indian families living along the northern and eastern portions of the Little Rocky Mountains. During the past few years the progress made by these Indians along the lines of better living, home improvement, and stock raising speaks for itself. It has been very gratifying, and the Indians themselves are largely responsible for this achievement.

* * * * * * *

These Indians have worked out an extension program, and with willing cooperative efforts from the Indians in the work, along with the extension agent, very satisfactory results have been achieved.

We have two organizations for the promotion of our mutual benefit: The Lodge Pole Women's Club is an organization conducted by the Indian women of the district. The program of this club is a cooperative extension work in agriculture, home economics, and home demonstration and is under the direction of the officers and the extension agent. The progress made by the club and the results achieved during the past year have been gratifying.

For the general welfare of our cattle industry, the Indian cattlemen of Lodge Pole have organized themselves into an association known as the Lodge Pole Indian Stockmen Association, for the promotion of the cattle industry and for the benefit of the owners in its management.

The Indians of Lodge Pole are stockmen. They know good cattle, like good cattle, and raise good cattle. The Lodge Pole district of the Fort Belknap Indian Reservation is a stockman's paradise. The high and rough hills of the northern and eastern portions of the Little Rocky Mountains provide ideal conditions for the summer months, with an abundance of grass, water, deep coulees, and Chinook Winds is an ideal range for the winter season. Several streams with 2 cold and 2 warm, and clear as a crystal, traverse different parts of the range, and with every piece of bottom into alfalfa, the hay question for this group of stockmen is settled. Very little, if any, of the hay is being sold.

This range consists of individual, State, and tribal lands that the association pays a yearly grazing fee of 10 cents per acre. Funds for the operation of the association are raised by an assessment levied by the board of directors on each head of stock grazed on the association range.

I might say right here that this range is enclosed with a good stock fence and prohibits the running of any but registered bulls, with the completion of good stock corrals and a bull pasture.

This association might well be taken as a model by range stockmen anywhere.

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This advancement is made through a willing cooperation between the Indian stockmen and the Superintendent, through Extension and Forestry employees.

MARK R. FLYING,
Secretary-Treasurer Lodge Pole Indian Cattle Association.

The foregoing statement was prepared in the fall of 1933. A supplementary statement of recent date follows:

FORT BELKNAP RESERVATION,
Lodge Pole, Mont.

Nestled under the northern crest of the Little Rocky Mountains, which have an altitude of some 6,700 feet, with its sparkling streams of nature's purest waters, buffalo grasses, and rugged hills, is the home of our Hereford cattle, the best cattle on earth.

Some three snows ago, out of troubled mists in the economic life of our reservation, came to us a man in the person of M. J. Johnson, extension agent, to pave the way out of these incertain (uncertain) conditions, and be a life, in the great commonwealth.

Mr. Johnson, Superintendent Shotwell, and others arranged for a meeting with us, which was well attended; the purpose was to organize a stock association. Not anticipating a move of this kind, with the experience we have had in the past, found us just saying, "Too good to be true." However, with a series of meetings and much discussion and explanation, we merged ourselves into a stock association, to be known as "Lodge Pole Stock Association", with a membership of 52, a fenced area of 17,885 acres, 800 head of cattle, and 160 head of horses. The financial status O.K. We are progressing. By the end of 1934 will find us much advanced and an outstanding leader in the industrial world as a stock association in this Northwest. I feel justified in saying the Department has solved the everlasting problem, Indian efficiency.

This association is managed by its own officers, all Indians, but is watched by the Department. But we look forward to that time when Uncle Sam will get tired of watching us so much and leave us to our own affairs—when we can say we can.

The Indian nature is the natural; his calling is to the open spaces; that is why he is a stockman. Much praise we must give to those on the part of the Department: L. W. Shotwell, superintendent; M. J. Johnson, extension agent, now of New Mexico; Mr. Bolen, extension agent; Roy Peal, farmer, for being active in building and causing the possibilities that lies for this body in the future.

Don't know what they think about us. But seems though they think we will work them out of a job, under the Wheeler-Howard bill, by our big chief, J. Collier, Commissioner. I look forward to that time when we will have this entire reservation covered with Indian cattle.

Concluding my remarks on the Lodge Pole Stock Association to those on behalf of the Department of Indian Affairs—we must be together, work together, play together; by so doing, we will understand one another and reach that goal on time.

JOHN F. HEALY.

The successful experience of the Lodge Pole Indian Cattle Association inspired a second district of the Fort Belknap Indian Reservation to undertake a similar program. The following statement submitted by the Milk River Livestock Association and signed by Louie Ell indicates the program of this association:

"This is my opinion toward our newly organized program. Whole-heartedly, I think this is the greatest opportunity that ever came to us Indians. The cattle industry is the only chance I can see that brings to us any means of self-support. As we all know, from past experience, we cannot make a go of farming; everyone has tried and failed. Whereas, if we can raise these high-grade Hereford cattle, it will be only a matter of a few years until they bring us out of our hardship and poverty. I don't think there is anyone more interested than I am in keeping up the good work of our program. I only hope that our board of directors and the agency officials won't lack in their efforts to make this a successful program. In our past meetings we have discussed a few things, and I am very well satisfied with the results. Cooperation with our directors and officials is the only means of us ever reaching the goal we are striving for.

"I don't think it will be many more years until the Federal Government will turn us loose and make us follow the same path as the whites. While this great opportunity is in existence, why not take it? In the past few days I've heard a party stating that the Government was taxing us too much to raise our stock. This party was very sorry in buying reimbursable cattle, stating that they just

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held him down and wasn't making any progress. To my theory, I think the officials should take these said cattle and turn them over to the ones that are interested in building up our association.

"The time is at hand when every person should pay his way. The days of getting things for nothing are gone. And I think a person is very foolish to think otherwise. The time is coming when we will have to pay for everything we own. We must try and be prepared when that time comes. And the only hopes I can see is to build up our livestock industry. This reservation is an ideal stock country, and I can't see where we will fail if we just all get up and try.

"The next step is the upkeep of our fences. There should be line riders for this purpose all throughout the season. As we are newly started and lack funds to hire any help, it is necessary to voluntarily do this work. There should be range riders as well as line riders. What I mean by range riders is, there should be someone riding among the cattle and keeping the bulls from pairing up with one certain bunch of cattle, keeping them scattered out in proportion to the herd. There are possibilities of cattleg etting bogged in bog holes; and also from my past experience with cattle, I find that now and then a critter will be found with a dry bone fastened in its throat. The cause is from a lot of times, cattle will roam around and run across a pile of dry bones and naturally they take it for salt and go chewing on it. If a "critter" is not found in time, it will become exhausted and death will follow. To avoid this cause, there should be salt placed throughout the entire lease at watering places.

"In regard to range and line riding, I am ever ready to assist in riding and taking care of our stock, regardless of how much riding there is to be done. I will work in the interest of our organization and not only for myself. And do sincerely hope each and every member of our organization will do the same.

"Trusting all our members will uphold our program and try to make this a successful as well as a paying industry, I am, * * *."

The third district of the Fort Belknap Indian Reservation, the Hayes district, has not yet established a livestock association of its own but plans for the establishment of such an association are being seriously discussed and the following letter indicates the attitude of the Indians of this district toward Indian management of grazing matters.

FORT BELKNAP RESERVATION,
Hays, Mont., April 6, 1934.

Mr. WILL R. BOLEN,
Fort Belknap Agency, Harlem, Mont.

DEAR MR. BOLEN: To comply with your wish, I will with a few words give the history of cattle raising on the Fort Belknap Reservation.

When the Indians moved on this reservation in the year 1889, their chief owned each one 100 to 200 head of cattle and also some of the Indians owned some head of cattle. Their agent who was in office in the year 1904, was a member of a cattle corporation, whose cattle brand was 10; this number was easily changed to 1 D; their cattle began to disappear; besides, the Indians were forbidden to brand their own calves. When the Indians became aware of the disappearance of their cattle, they, in order to get some little benefit from it, began to slaughter them. Soon, scarcely any Indian cattle could any more be seen. Afterwards, it was officially recommended to the Indians that a tribal herd would be a very profitable investment for them. The tribal herd was bought and after some years, when the Indians with reason suspected mismanagement of their cattle herd, it was sold; there was a shortage of 500 heads and besides they were in debt for it into the amount of $71,000. After going through such discouraging experience and knowing that we ourselves will be fully able to take care of our cattle we request and insist that the management of our cattle be altogether left to us and that no agent and no white employee may ever be allowed to interfere in any way with our cattle. We know our reservation much better than any white man or white employee; we know where the cattle should be during summer or during winter and we know that hay must be provided; we are very much interested in the improvement of our cattle. We will purchase registered bulls, and we know when the bulls should be removed from the cattle, or be with them in order to safeguard the calves against the dangers of the cold winter. There is wide and good grazing range between the Little Rockies and the Milk River, and which will be much improved by the contemplated construction of water holes, and will not be fenced in by the owners of this land, provided that the management of the livestock be altogether left to the Indians themselves, and that the Indian council exclusively appoint their cattle herders.

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If the granting of this our request is included in the Wheeler and Howard bill, this bill will be agreeable to us; if this our request will not be granted, the bill does not mean for us self-government.

Sincerely yours,

STEVEN BRADLEY.

The cooperative activities at the Fort Belknap Indian Reservation were largely modeled upon the experience of the Fort Hall Indian Cattlemen's Association, the first large venture in Indian cooperative management of cattle and grazing lands. The following statement made some time ago by Superintendent Wooldridge is still a substantially accurate description of the organization and achievements of the Fort Hall Indian Cattlemen's Association.

EXPERIENCE OF FORT HALL INDIAN STOCKMEN'S ASSOCIATION

The following account of the origin and achievements of the cattle association at the Fort Hall Reservation is submitted by Superintendent Fred Gross.

For various reasons the cattle industry among the Indians was not making satisfactory progress from 1914 to 1921. There was unrest due largely to sheepmen coming into the country. Dry seasons made feed short. Hard winters reduced cattle numbers. Poor bulls produced inferior calves. Nothing but grade bulls had been used up to this time. General hard times seemed to prevail. These conditions caused some of the leading Indian cattlemen to take stock of their situation. After making some investigation and having numerous conferences the matter of forming an Indian stockmen's association was taken up with the superintendent, Mr. Donner, who is now in charge of one of the large reservations in Arizona. Mr. Donner gave the Indians some good advice and he entered into the situation with the Indians and helped them to solve their difficulty. Ralph W. Dixey, one of the leading Indian citizens and cattlemen of the reservation, was well acquainted with some of the members and officials of the Eastern Idaho Grazing Association, a sheep company. The idea of forming an Indian stockmen's association was gotten from this company. A copy of the company's constitution and bylaws was procured and studied. This was used as a guide in forming what is now the Fort Hall Indian Stockmen's Association. The sheep company's constitution and bylaws were changed to suit the needs of the Indian association. The Indians, therefore, organized their association in 1921. Since then their constitution and bylaws have been amended twice. Practically all Indian cattle owners became members of this association, there being about 142 members.

The very first thing the officers did was to purchase some purebred bulls of the Hereford type. Two car loads were bought on time and paid for in the fall. In order to do this a special assessment was levied and paid by the members. These were the first purebred bulls placed with the Indian cattle after 33 years of progress and difficulty in the cattle industry. This was the real beginning of a better class of cattle and a decided step forward in the cattle industry of the Fort Hall Reservation. That was 10 years ago, in 1921. Since then purebred Hereford bulls have been purchased eight different times. Some of the bulls were bought up here in Montana and judging from remarks being made by the Indians the bulls bought up here were the best they have had up to the present time.

During the past 10 years the association has come through two hard winters The last winter started on November 13 and lasted for 4 solid months with deep snow on the ground and severe weather throughout that time. Yet the cattle losses were practically nil, due to the fact that the Indians prepared for it. This goes to prove that the association is well founded and actually makes advancement. About 35 purebred bulls were bought in 1930, and 22 were purchased this year. The reimbursable fund is used for this purpose. The officers of the association sign the agreements which are payable in four equal annual payments.

Now that we have reached the present time it will interest you to know something about how this organization is officered and how it handles its business. An annual meeting is held in the early spring each year. All members of the association and others interested in the cattle industry are invited to be present. Last spring a lunch was served by the home-economics girls of the boarding school, the association paying for the food furnished. The president presides at all meetings, and in his absence the vice president acts. The presiding officer makes a report of the activities and progress of the organization for the past year at annual meetings. He also outlines the work of the ensuing year and gives sound advice and suggestions to those assembled. The treasurer gives a report

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There are also a few instances where such a plan for forest lands would be practicable. Livestock associations (e.g. as at Fort Hall and Fort Belknap) should be encouraged where Indians would pool their land for use so that it can be economically handled. It may be that time and experience will indicate that they should be encouraged to also pool title to their lands but such a drastic step immediately seems to us unnecessary and likely to lead to confusion and controversy. This plan seems to us to be one of building from the bottom up, according to economic need and with an opportunity for natural development toward self-government which will manifest itself instead of being superimposed.

4. Law and order. A very careful study of this question has been made in a selected area of the central northwest by Miss Mary Louis Mark, of the sociology department of Ohio State University, Ray A. Brown, professor of law of the University of Wisconsin, and Henry Roe Cloud, now superintendent of Haskell Institute, under the direction of Lewis Meriam of the Institute for Government Research. We go into this quite fully later in this discussion.

AS TO THE BILL

Title I

1. As indicated in the foregoing statement there is much of good in the general purpose of this title. It seems, however, entirely too inclusive in its scope. One of the primary difficulties of Indian legislation in the past has been its tendency to treat all Indians alike.

Although the bill is urged in the name of self-government, many of its features are inimical to that end. The real governmental authority is handed over by Congress to the Secretary of the Interior and the Commissioner of Indian Affairs. (See secs. 2, 3, 4 (1st par.), 7, 8, 9, 10, 11, 12, 13, 14.) No real responsibility is imposed on Indians. No civil liability can be enforced against any Indian community or its members. (See sec. 11.)

2. Holding before Indians an ideal of permanent guardianship for them by the Government is bad. It is destructive of human character. Also the ideal of permanent freedom from taxation is a vicious one.

3. Much in way of development of self-government is possible through administrative action without further legislation.

4. Although there has been much attention given the bill in the Indian country, almost daily reports are coming in indicating that Indians have seen new angles to the proposed legislation and are still confused by it, and many are opposed to it.

5. Mr. Lansdale, probably the most able personnel administrator ever in the Indian Office, said at the National Conference of Social Work in Philadelphia in May 1931:

"I see no hope for solving this appalling social situation by legislation. I have little faith in legislation—at least to do more than arrange the setting for the human performance. It is true that we can only correct some of the basic factors mentioned above by legislation; but it will have to come through patient work along very broad lines, and the human beings caught up in the scheme must be helped in the meantime. I am also convinced that some of the legislative and administrative factors are so deeply intrenched and so ineradicably ensnarled that only a benevolent dictator could ever straighten them out.

"I also have little faith in our making any large accomplishments in this area through mass programs. I think that has been one of our troubles—the Indian business has been subjected to too many schemes for universal salvation. We are not going to make all Indians farmers. We are not going to get all of them into wage-earning jobs in cities. We are not going to make all of them stalwart citizens through a system of education. We are going to accomplish nothing spectacular or on a grand scale in Indian work in the Northwest." (Proceedings of the National Conference of Social Work, Philadelphia, 1932. University of Chicago Press; p. 612.)

The machinery proposed is vague and indefinite. Such vital features as the method of selection of officials, terms of office, powers and duties of officials, finances, definition of the obligation of individuals to the community, and means of enforcing authority are not prescribed by the bill, but may be, or may not be, included in the charter by the Secretary of the Interior. (See sec. 4.)

6. The statements that the acceptance of the plan by the Indians is optional should be considered in connection with the fact that large appropriations to be made by the bill would by its terms go only to chartered communities and these advantages have been emphasized by Indian Service people talking to the Indians.

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If they don't accept a charter they are not to receive benefits from the proposed appropriations. We feel that the credit proposed by the bill should be available to all Indians because whether chartered or not they are equally in need.

7. As already stated, there is need on the part of the Indians for a workable credit system. However, the granting of credit to Indians should not be bound up with their acceptance of a chartered form of community as is provided in this bill.

8. Provisions for taking appointments out from under civil service regulations would be a backward step; this would place an unnecessary burden upon the Commissioner and perhaps reflect on the ability of Indians to qualify. It may be possible, however, that modifications in the forms of examinations should be adapted to the Indians' needs.

9. If the machinery set up by the bill proves inpracticable, as we think it will, the problem of Indian administration will then be worse than it is today because of rights and immunities that will have become vested in helpless corporate entities, to get rid of which will be difficult.

Title II

The importance of Indian education cannot be too greatly emphasized.

Approve Section 1, with the following amendment: Beginning in line 8, page 25, strike out "whenever the beneficiary shall have," etc., to end of paragraph. Insert instead "according to rules and regulations as the Secretary of the Interior may prescribe." The provision that repayment must be begun at time of any employment seems too inflexible.

Section 2. We have no objection to this section but we think it may well be eliminated as unnecessary in view of powers already granted the Commissioner of Indian Affairs.

Title III

Indian Lands. Instead of this we propose a separate bill providing:

1. Appropriation for the purchase of—

(a) Heirship lands to be held in trust by the Government for the respective tribes and to be used by those members of the tribe who most need it and will make good use of it. Land to be classified into natural units and cooperatives organized for use of such land.

(b) Suitable lands for "subsistence homesteads" if sufficient money cannot be obtained from the Subsistence Homesteads division of the Department of Interior for such needs.

2. Use of "tribal funds" subject to approval of the tribe for the purchase of "heirship lands" for the use of Indians born too late to be alloted

3. The task of classification of Indian grazing and the remaining forest land into natural units (as suggested in sec. 6 of this title) should be undertaken, and the formation of cooperative associations for the use of such land should be encouraged.

Title IV

Court of Indian Affairs: Instead of this title we recomend a bill along the line of the one outlined in the report on the law and order study made by the Institute for Government Research and published in part 26 of the Indian Senate Committee Survey of Conditions of the Indians in the United States (1932). The report begins on page 14137. Their suggested bill begins on page 14242. A valuable Brief Summary of Recommendations is given in chapter I on pages 14137–14142. This bill and recommendations are based on a careful study by experts. They see the question of Indian law and order as primarily an educational rather than disciplinary problem and have outlined their program accordingly. See exhibits A and B.

The subheadings under the chapter on Brief Summary of Recommendations are significant. They are:

Two Classes of Reservations.
Class 1. Indians under State Law Administered by State Courts.
Class 2. Indians under State Law Administered by Federal Agencies.
Division into Two Classes by Administrative Action.
The Judges of the Special Court of Indian Offenses.
Necessity for a Code of Minor Offenses.
Need of Trained Investigators in Indian Cases.
Marriage and Divorce under State Law.
Special Provision for Delinquent Minors.

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Need for a Director of Law and Order Administration.
Need for a Director of Reservation Social Sevice.
Reasons for These Recommendations.

Title V

Having taken the position that title I and III of the bill should be discarded or entirely rewritten it may seem to be unnecessary to comment on the safeguards proposed in title V. However, if the bill should be seriouly considered for enactment in something near its present form we would urge the amendment given below.

Sec. 1. Amend as follows: Strike out in line 14 the words "3 months" and insert "3 years."

A time limit of 3 months is entirely too short to allow Indians to consider whether they wish to become a part of such a scheme as outlined in the bill.

Sec. 2. No specific objections.

Sec. 3. No specific objections.

Indian Rights Association,
By Jonathan W. Steere, *President.*

Exhibit A

LAW AND ORDER ON INDIAN RESERVATIONS OF THE NORTHWEST

[A report by a committee organized under the auspices of the Institute for Government Research of the Brookings Institution consisting of Ray A. Brown, professor of law, University of Wisconsin; Mary Louise Mark, professor of sociology, Ohio State University; Henry Roe Cloud, president of the American Indian Institute; Lewis Meriam, staff, Institute for Government Research. Submitted to the Senate Committee on Indian Affairs, June 30, 1932]

Chapter 1. Brief Summary of Recommendations

At the request of the Commissioner of Indian Affairs the Institute for Government Research has made a special study of the question of law and order on Indian reservations in the Northwestern and Western States. The States covered were Wisconsin, Minnesota, the Dakotas, Montana, Washington, and Oregon. The study was made by a committee of three consisting of Ray A. Brown, professor of law at the University of Wisconsin; Miss Mary Louise Mark, professor of sociology at Ohio State University; and Henry Roe Cloud, president of the American Indian Institute. Mr. Lewis Meriam, of the regular staff of the Institute for Government Research, has served as a consulting member of the committee.

As a result of this study the committee desires to present first the following brief summary statement of its major recommendations. In so doing it wishes to state clearly and specifically that these recommendations do not apply to the States of Arizona and New Mexico where conditions are not comparable with those in other States. The institute is at present making another study of the situation among the Pueblos of New Mexico.

Two classes of reservations.—For practical administrative purposes the reservations, or parts of reservations in Wisconsin, Minnesota, the Dakotas, Montana, Washington, and Oregon may be divided into two broad classes.[1]

Class 1. Indians under State law administered by State courts.—The first class consists of those reservations or parts of reservations where the degree of advancement of the Indians, their proximity to white communities, the attitude of white communities toward the Indians, and other similar factors indicate that, if the Secretary of the Interior or the Commissioner of Indian Affairs is properly authorized by law and provided with suitable assistance and appropriations, it would unquestionably be practicable and advantageous to develop a system of Federal and State cooperation whereby the restricted Indians in these communities shall be made subject to the State laws governing crimes and misdemeanors administered by State courts.

The study confirms a view commonly held that to make such an experiment a success the Federal Government will have to contribute to the costs of having the State courts administer the criminal law among untaxed Indian wards of the Federal Government. Unless the Federal Government is prepared to con-

[1] From such information as the committee possesses it is believed that conditions in California, Nebraska, Idaho, Wyoming, Utah, and possibly Nevada are such that the recommendations here made would be applicable in these States also.

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tribute, the local white communities will resent being taxed for the costs of administering the criminal law for Indian wards. Even if they were required by law to do it, they would probably evade the law by practical nonobservance, punishing Indians only in extreme cases and permitting the great bulk of Indian offenses to go entirely unnoticed. The local communities, too, would not be willing to supply for Indians the added service they need in the process of education and adjustment. To make the experiment a success the Federal Government will have to contribute. Unless such financial cooperation is provided, an act of Congress placing restricted Indians under the State law administered by State courts would be detrimental rather than advantageous to the Indians. Through the inaction of the State authorities the law would be brought into disrepute. Local antagonism would be aroused if the problem of law enforcement among restricted Indians was simply dumped on the State without a fair attempt of the Federal Government to cooperate.

Class 2. Indians under State law administered by Federal agencies.—The second class consists of those reservations or parts of reservations where one or more factors, such as the degree of advancement of the Indians, their remoteness from organized white communities, the sentiment of white communities toward the Indians, or the unwillingness of white communities to incur any expense toward the administration of criminal law among ward Indians, make cooperation between the Federal Government and the State and local authorities impracticable. To meet the needs of the Indians in reservations of this class, the Secretary of the Interior or the Commissioner of Indian Affairs should be authorized by law to establish special courts of Indian offenses. The special court should consist of one trained magistrate, with qualifications similar to those required for a juvenile court judge in a progressive community, and one or more Indian associate judges. As will be explained at length later, the trained magistrate could serve several reservations and need not be in residence and give full time to any one reservation. A fundamental purpose of these courts should be to educate the Indians in the laws regarding crimes and misdemeanors of the States in which they reside. It is, therefore, recommended that these special courts of Indian offenses shall apply the law of the State wherein they are located, with authority to inflict fines or equivalent penalties of not exceeding $100, and to imprison for not to exceed 3 months, in respect to those offenses, for the violation of which the State law permits of the above as minimum penalties. For all offenses for which the minimum penalty prescribed by State law is a fine of more than $100 or imprisonment for more than 3 months, the special court of Indian offenses shall serve only as a committing agency, and the jurisdiction to try the case shall be vested initially in the United States district court.[1] The judges of the courts of Indian offenses and of the United States district court shall be authorized in their discretion to impose in Indian cases a lesser but not a greater penalty than is provided by the State law, and in any case to use probation, suspended sentence, or parole. It is further recommended that, to protect the constitutional rights of the Indians, any Indian may, on motion, have his case transferred from the administrative special court of Indian offenses to the United States court which shall apply the criminal law of the State wherein the Indian resides again with the provision that the court may in its discretion apply a lesser but not a greater penalty than that established by State law or use probation, suspended sentence, or parole. The special court of Indian offenses should, moreover, on its own motion be authorized to transfer a case to the United States courts. The trained magistrate should have the authority of a United States Commissioner to bind over offenders to await trial in the United States court under the State law with a similar modification in penalties.

Division into two classes by administrative action.—We are of the opinion that it is neither necessary nor desirable that Congress should specify exactly what Indians shall be made subject to the State law administered by State courts and what Indians shall be subject to the State law, administered by special courts of Indian offenses, administratively established. We believe it

[1] The suggestion has been made that if the United States district attorney or the judge of the United States district court, after investigating the case, does not regard it of sufficient gravity to warrant initial trial in the United States district court, the judge of the district court may remand the case to the special court of Indian offenses for initial trial. Such a provision would enable the judge of the United States court to keep out of that court the initial trial of cases he considers of minor consequence. If such a suggestion is adopted, the act defining the jurisdiction of the special court of Indian offenses should contain a provision giving it jurisdiction over such cases as may be remanded to it by the district court. Possibly this right to remand should be restricted to offenses for which the minimum penalty under State law is a fine of not over $500 or imprisonment for not over 1 year, or both.

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will be sufficient if Congress provides suitable administrative machinery in the Indian Office, specifically authorizes the establishment of the special courts of Indian offenses, and empowers the Secretary of the Interior or the President of the United States by proclamation at any time, with the approval of the proper authorities of the State, to declare the Indians in a given reservation or part of a reservation subject to the State law to be administered by the State courts. In other words, Congress would provide that in the specified States the Indians shall be subject to the State law applied by the special court of Indian offenses and the United States district court, unless and until, by agreement with the State concerned, the Indians on a given reservation or part of a reservation are by proclamation made subject to the State courts.

The principle that an Indian can by appropriate administrative action be removed from the exclusive jurisdiction of the United States and be made subject to State law administered by State courts has already been recognized by Congress in the allotment laws. That is what happens when by administrative action an Indian is declared competent. What is here proposed is that the same principle be applied to all Indians within a given area when the Secretary of the Interior and the proper authorities of the State concerned are in agreement that the needs of the Indians can adequately be met in that way.

The adoption of such a principle permits of treating this whole matter of bringing the Indians of these States under State law administered by State courts properly as a problem of education and adjustment both of the Indians and of the white communities. It permits of working the thing out gradually, one might even say experimentally, by a process of negotiation and contract between the Federal Government and the States.

The judges of the special court of Indian offenses.—The Secretary of the Interior or the Commissioner of Indian Affairs should have authority, subject to the civil-service law, to appoint the judges of the special court of Indian offenses and determine the reservations, or parts thereof, over which they shall have jurisdiction. The persons selected as judges should be lawyers with social training and interests, who would be regarded as equipped for the duties of juvenile court judge in a progressive white community, or social workers with juvenile court or probation experience and the necessary training in law. To secure persons with these qualifications, with due regard to economy, it may be necessary and desirable in some instances to give one judge jurisdiction over an entire large reservation or a group of smaller reservations and to have him hold court at different places as needed or in accordance with a fairly definite schedule. In other instances a judge may be appointed for a single reservation, devoting only a portion of his time to his Federal duties.

The study of the existing courts of Indian offenses, which are almost always presided over by elderly judges of Indian blood, generally full bloods, necessitates the conclusion that these judges alone could not well apply State law or themselves educate the Indians to prepare for the ultimate transition to State law. It is believed, however, that it is highly desirable that the Indians themselves participate in the work of the special court of Indian offenses through one or more Indian associate judges, either appointed administratively or preferably elected by a duly constituted tribal council. The Indian associate judges would perform a useful, perhaps necessary, function as Indian advisers to the new type of judge herein recommended, especially in dealing with older Indians and in interpreting the Indian point of view and Indian customs. The association of Indian judges with the white judge of the type herein recommended would have great educational value for all concerned, the white judge, the Indian associate judges, and the Indian community as a whole. In those instances where the new type of judge serves on a circuit and is not in continuous residence the law-enforcement officers on the reservation, with the approval of the superintendent and his advisers on law and order matters, could present petty cases involving no serious points to the Indian associate judges for final action, if these judges should decide to take final action without waiting for the special judge.

In other cases the reservation officials could present the case to the Indian associate judges for preliminary action if they deemed it advisable to have the offender held in custody for a hearing by the special judge and his Indian associates. It should be noted, however, that such confinement pending trial will rarely be necessary, for in most instances the offender can be released to appear on the appointed court day. When cases are held for the special judge it is the opinion of the committee that the Indian associate judges should serve only as advisers to the special judge. In most instances the special judge and

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his Indian advisers will probably be in agreement, but in cases of disagreement the opinion of the legally trained professional judge should prevail, subject to an appeal or transfer of the case to the United States district court.

The relationship of the agency superintendent to the present Indian judges has been the subject of criticism because undoubtedly the reservation superintendents have in some instances influenced the Indian judges. The superintendents have often had a major part in the selection, appointment, and continuance of the present Indian judges. Under the proposed plan the reservation superintendent, an administrative official, would have no authority whatsoever over the decision of the judges of the special court of Indian offenses. He could not reverse the decision or modify it. Naturally and normally the professional judge of the special court, acting like a juvenile-court judge, would discuss the case with the reservation superintendent and others who have knowledge of the situation and would give due consideration to his point of view and his recommendations, but the decision would be his own not subject to review or dictation by the reservation superintendent.

Necessity for a code of minor offenses.—As many of the offenses committed by Indians are of the minor character usually covered by municipal and township ordinances and not by State laws, and as such organized governmental units do not exist on many Indian reservations, the Secretary of the Interior should prepare and submit to Congress for enactment a code of misdemeanors to apply in these instances only, when the offense is not defined or punishable by State law. Without this the State laws would not be sufficiently comprehensive to cover the problem of Indian misbehavior. The Indians and their white neighbors should, however, where feasible, be encouraged and aided in organizing townships under the State law, so that the community can adopt its own code of ordinances governing misdemeanors. Aiding the Indians in this field should be one of the duties of the director of law and order administration of the Indian Service, a position recommended and discussed in a subsequent section.

Need of trained investigators in Indian cases.—In order that the judicial machinery, whether the State courts or the special courts of Indian offenses, may properly accomplish the tasks placed upon them, there should be on each reservation one or more trained workers whose duties would be (1) to make a through social investigation of all the facts regarding the Indian offender and his family and his environment and report them to the court; (2) on the request of the judge to advise him regarding the course of action to be taken; and (3) to serve as probation officer for Indians placed on probation or given a suspended sentence. On the one or two large reservations where conditions are bad the trained worker might conceivably give all his or her time to cases before the court. On smaller reservations the work on court cases would be only a part of the worker's duties; the balance of the time would be given to preventive family and community work designed primarily to correct situations before they ever result in a case that necessitated court action.

Marriage and divorce under State law.—Closely concerned with the law-and-order problem is the subject of marriage and divorce. The investigators are unanimous in recommending that on all the reservations in the States covered, Indians, marrying after the date of passage of an act of Congress so providing, shall be subject to the marriage and divorce laws of the State wherein they reside and that actions for divorce or annulment be brought in the State courts. Unions entered into prior to the passage of such an act that would have been recognized as legal prior to its passage shall be regarded as binding and shall be dissolved by annulment or divorce only through action in the State courts. To make this recommended legislation on marriage and divorce effective it will be necessary for the Government to maintain on each reservation the trained workers mentioned in a preceding paragraph, and it will also be necessary in some instances for the Government to supply legal aid to Indians to enable them to secure divorces or annulments in the State courts. The judges of the special courts of Indian offenses herein suggested should not have jurisdiction to grant divorces or annulments. These special courts should, however, have authority to determine, as a matter of fact, whether an Indian couple is or is not married. When in the opinion of the judge of the special Indian court a divorce is the solution of the case before him he may so advise either or both parties to the marriage and if legal aid appears necessary so advise the Commissioner of Indian Affairs.

Special provision for delinquent minors.—The study reveals the need of special provisions for dealing with delinquent boys and girls and of those who are living under conditions that will tend to make them delinquent. The provision for

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the care of such children is now inadequate. Reservation superintendents often try to have them sent to nonreservation boarding schools because the superintendents cannot do anything for them on the reservations. The boarding-school superintendents often send them back to the reservations because it is difficult to handle them in an institution designed primarily for normal children. In some instances the strict rules and discipline of boarding schools have been justified on the ground that some of the more difficult children can be managed in no other way. Neither the reservation nor the boarding school operated for normal children is the proper place for the really delinquent children. They require special care and treatment.

Although it is manifest that definite steps should be taken to provide for the thorough study of such cases and, if necessary, for proper places for the detention and training of neglected and delinquent Indian youth, the specific solution of the problem cannot be given offhand. Some States have institutions willing and prepared to accommodate additional Indian inmates. Others are either unwilling or unable to assume the burden. In such cases it will doubtless be necessary to provide clinical facilities and special training schools within the Service. Whether on individual reservations cooperation with the State or the establishment of such separate institutions is desirable must depend on subsequent administrative investigation of the situation at that reservation.

Insofar as possible the law of the State in which the Indians reside should be applied in dealing with cases of delinquent, dependent, and defective children because of the simplicity and the educational value of such a procedure. If the State law is found inadequate or inapplicable to the Indian juvenile cases, the Indian Service should exercise its own powers as guardian of the Indian minors. It is believed that the State law governing adoptions should be followed in legal adoption cases.

If the special court of Indian offenses commits a delinquent minor for a long period of treatment and training, we believe the Indian or his next friend should have the unquestionable right to have the case transferred to the United States district court, where the recommendations of the special court of Indian offenses will be reviewed. The decree for the commitment in a contested case will then come, if it is issued, from the judicial and not from the administrative branch of the Government. Where the State courts are administering State laws for the restricted Indians, the procedure for committing juvenile delinquents will be in accordance with the State law. The act should, however, authorize both the Federal courts and the State courts to commit Indian juvenile delinquents to the care and custody of the Commissioner of Indian Affairs, who will have the duty of making adequate provision for them.

Need for a director of law and order administration.—To assist in dividing the Indian reservations into classes 1 and 2, in establishing cooperation with the State courts in class 1, and the system of special Federal tribunals for Indian offenses in class 2, and to provide facilities for the proper treatment of delinquent minors, the Secretary of the Interior or the Commissioner of Indian Affairs would require the services of a competent, socially minded, and trained lawyer with the necessary assistants. Such an official would be required by a careful field investigation, involving both a study of the Indian residents of a given reservation and of their white neighbors, to recommend whether such reservation should be placed in class 1 or class 2. If the former alternative seemed desirable, he would have the duty of ascertaining for that reservation the particular type of Federal and State cooperation desirable, whether the grant of financial aid in a lump sum, the providing of special officers such as deputy sheriffs or probation officers, or the payment of sums to reimburse for special services rendered. In reservations in class 2 he would determine whether a single magistrate should be secured for that reservation, or whether it should be included in a circuit, what provision should be made for Indian associate judges, and, in conjunction with the director of social-service work, the type of probation, family case work, service, and clinical facilities to be established.

Need for a director of reservation social service.—To develop the reservation social, family, and community work on the reservations and to tie it into the correctional, educational, and developmental activities in the Indian Service, the Commissioner of Indian Affairs needs on his headquarters staff one well trained and experienced social case worker or administrator of social case work of outstanding ability with the necessary assistants. It is believed that if the headquarters staff could be strengthened by a well-trained, socially minded lawyer who could be primarily concerned with the legal, judicial, and administrative aspects of the enforcement of law and the maintenance of order on Indian reservations

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working in cooperation with a well-trained, experienced organizer and administrator of family and community workers, an effective agency could be developed for solving the law and order problem on Indian reservations.

Reasons for these recommendations.—A brief statement of the reasons which underlie these recommendations should, perhaps, be presented.

In the area covered by this study the old Indian culture has almost entirely disappeared. The old Indian form of government has gone, tribal authority has broken down, Indian customs and Indian laws are no longer effective. They cannot be restored because the economic basis upon which they rested has been largely destroyed. For these Indians the only way ahead is gradual absorption into or adjustment to the dominant white civilization.

The task of helping the Indians to become adjusted is educational. In the matter of law and order the lesson they have to learn is to know, respect, and observe the laws of the State in which they reside that relate to crimes and misdemeanors, and marriage and divorce. To help them learn the lesson they need able and understanding teachers.

The criminal courts of the States are not generally equipped for educational work. It is not their general function to be educators. In many instances the judges and the law-enforcement officials would not regard their task as educational. The exceptional ones who see the need for educational and developmental work among the Indians rarely have the time and the assistance needed for such work. Merely making Indians subject to State law administered by State courts will not solve the problem. Although the substantive law and the methods of administering the criminal courts are an important part of the problem, they are only a part. More important is the part that relates to education and adjustment and this is the part that the Federal Government must supply because the States cannot be expected to supply it primarily for untaxed Indian wards of the National Government or for fee-patent Indians whom local authorities feel have been wished on them by the National Government.

Examination of the offenses committed by the Indians discloses that very rarely are they of the type from which society must protect itself. They are not commonly offenses of violence or offenses against property. They are not commonly offenses where the victims of the offenders or their relatives might demand retributive justice. They are mainly offenses where the chief injury the Indians do is to themselves or their own families, offenses such as drunkenness, disorderly conduct, or sex offenses. Rarely are the sex offenses crimes of violence, like rape. Ordinarily they are offenses where the man and woman both consent but fail to recognize the rights and interests of others

Important among the causes of Indian offenses are lack of interests, boredom, poverty, and family and community degeneration. Courts and laws can, of course, punish but they are not, unsupplemented, the agencies to remove causes in the great bulk of Indian cases. To remove causes the situation calls for agencies of other types, educational agencies. The Indian men need employment in tasks which will enlist their interests and give them something to do with their time that will help them make a living and enable them to gain a position in their community. Recreation is of marked importance. Drunkenness and even sex offending may result from an absence of something else to do for recreation. Family degeneration calls for long and patient efforts toward family regeneration. The system adopted by the Federal Government should fit into its entire program for advancing the social and economic condition of the Indians.

Exhibit B

Chapter 9. A Suggested Bill Embodying the Recommendations of the Report

BRIEF TITLE

The Indian law and order act of 193–, an act to provide a body of substantive law and a system of judicial administration to apply to restricted Indians, wards of the United States on certain Indian reservations.

DESCRIPTIVE TITLE

An act to apply to the Indian wards of the United States upon Indian reservations outside the States of Oklahoma, Arizona, and New Mexico, and the Territory of Alaska such laws of the States and of the localities wherein they dwell

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as apply to marriage, divorce, adoption, juvenile delinquency, crimes, and misdemeanors, to establish a code of minor crimes and misdemeanors to be applied to said Indians in those cases where such minor crimes and misdemeanors are not covered by State law or by laws and ordinances lawfully adopted by local governmental units, to establish or provide an appropriate system of judicial administration to apply said body of law to the Indian wards of the Government, and in general to provide for a better system for the administration of law and maintenance of order on Indian reservations.

ENACTING CLAUSE

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act may be cited as "the Indian law and order act of 193–".

DEFINITIONS

SEC. 2. That unless otherwise specifically qualified, the following words when used in this act shall have the meaning assigned to them in this section.

The word "Indian" shall mean a restricted Indian ward of the United States still subject to the acts of Congress specifically pertaining to Indians and to the rules and regulations made in pursuance thereof.

The word "reservation" shall mean an Indian reservation, or a distinctive part of an Indian reservation, excepting reservations or other Indian land in the States of Arizona, New Mexico, and Oklahoma, and in the Territory of Alaska. It shall also include any other land the fee title to which is held in trust by the United States as guardian for an Indian or for a group, band, or tribe of Indians, and any land occupied by Indians which cannot be conveyed by said Indians without the consent of the United States. The term shall be construed to include all lands, waters, highways, roads, and bridges lying within the exterior boundaries of the reservation regardless of whether the title to said property is in the United States, the Indian tribe, a restricted Indian, or the heirs of a restricted Indian, or whether it is in a fee-patent Indian, or any other person, agency, or government.[1]

The word "State" shall mean a State of the Union or any legally constituted subdivision thereof such as a county, township, or municipality. The term "State law" shall include the laws or ordinances of any county, township, municipality, or other legally constituted subdivision.

INDIANS MADE SUBJECT TO THE SUBSTANTIVE LAW OF THE STATE WHEREIN THEY RESIDE

SEC. 3. The Indians on an Indian reservation shall be subject to the substantive law of the State wherein said reservation is located with respect to marriage, divorce, adoption, juvenile delinquency, and all crimes and misdemeanors. *Provided, however*, That any court or tribunal having jurisdiction over a restricted

[1] The object of this sentence in the definition is to make the restricted Indians wards of the United States subject to the provisions of this act in respect to any offense committed within the exterior boundaries of an Indian reservation. The constitutionality of such a provision has, so far as we have been able to determine, never been passed upon. The question is whether the United States can assume jurisdiction over its Indian wards who commit offenses on parts of an Indian reservation, title to which has passed from the United States. Such parts of the reservation may be (1) Indian allotments, the Indian owner of which has been issued a patent in fee; (2) lands which have been sold to non-Indians; (3) land conveyed to States for highways and bridges or over which an easement has been granted; and (4) land conveyed to railroads or other public-service enterprises for their right of way or over which an easement has been granted.

In those jurisdictions where, under the terms of this act, a cooperative agreement can be entered into between the National Government and the State and local government, the situation will present no difficulties. Difficulty will only arise when the National Government acting alone must provide for the maintenance of law and order among the Indians on Indian reservations. It has seemed to the committee that in these more remote, more sparsely settled, more backward reservations, it would be extremely unfortunate if the jurisdiction of the United States could not extend to the restricted Indian who commits an offense within the exterior boundaries of the reservation and yet upon a small parcel of land or a right of way or bridge that has passed from the control of the United States. To be more specific, the proposed special court of Indian offenses should have general jurisdiction over these Indians. It would indeed be unfortunate if it could not have jurisdiction over the restricted Indian who is charged with drunkenness on a State right of way within the exterior bounds of the reservation or over restricted Indians who are charged with sex irregularities where the overt act was committed on an Indian allotment to which a fee patent has been issued so that the fee to the land is no longer in the United States. Such a situation would prevent the special court of Indian offenses from dealing effectively with the problem of law and order on Indian reservations. It would mean that the State or county would have to take jurisdiction over the restricted Indians if the offense was committed on such parts of the reservation. If the provision contained in this sentence is believed by the Congress to be constitutional it should be left in the act, as it would greatly simplify and improve the administration of the act. If the Congress does not believe it constitutional it should, of course, be removed.

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Indian in accordance with this act and finding said Indian guilty may in its discretion impose a lesser penalty than the minimum established by the law of said State, if in the judgment of said court or tribunal the restricted Indian should not be justly held accountable to the same degree as an ordinary citizen because the said restricted Indian is ignorant of the law, has followed Indian law or custom, or has acted in accordance with what said Indian believed were his or her legal rights, and in any case may use probation, parole, or suspended sentence. Sections 328 and 329 of the act entitled "An act to codify, revise, and amend the penal laws of the United States (35 Stat. L. 1151), are hereby repealed, with respect to the States carrying them out, and henceforth Indians charged with offenses of the nature covered by this act shall be subject to the substantive law applicable to offenses of like nature in the State wherein the offense was committed.

A CODE OF MINOR CRIMES AND MISDEMEANORS PROVIDED

SEC. 4. In the absence of substantive law of the State providing penalties for certain offenses the Indians on any reservation shall be subject to arrest and conviction for any of the following offenses: Drunkenness, whether or not disorderly; driving an automobile while under the influence of intoxicants; possessing or selling intoxicants; reckless driving; disorderly conduct; disturbing the peace; use of language tending to promote a fight; malicious slander; carrying concealed weapons; intentionally aiming a gun, whether loaded or not, at another not in self-defense or in the discharge of an official duty; assault and assault and battery, whether or not a disturbance of the public peace; resisting an officer; adultery and/or fornication, whether or not said adultery or fornication be committed secretly and without circumstances of scandal or public disorder, and for the offense of adultery it shall be sufficient for the guilt of both parties that either party is married; seduction of a woman of previous chaste character; lewd and liscivious behavior; prostitution; maintaining a nuisance; desertion or nonsupport of wife, child, or children, legitimate or illegitimate; suffering, encouraging, or contributing to the delinquency of a minor; cruelty to a minor; neglect or abuse of a minor; neglecting or refusing to require the attendance of a child at school; cruelty to an animal; malicious mischief; malicious destruction of property; taking or using the property of another without permission; larceny; fraud in the sale or purchase of commodities of general and necessary use; obtaining money under false pretenses; receiving stolen property knowing it to be stolen. In the absence of any State or local law providing specific penalties for these enumerated offenses a duly authorized court or tribunal finding an Indian guilty of any of these specified offenses may impose a penalty not greater than a fine of $100 or imprisonment for a period of more than 3 months in jail. The court or tribunal may, however, place an Indian found guilty of one to these specified offenses on probation or under suspended sentence for a period not exceeding 1 year.

COOPERATION BETWEEN STATE AND NATION IN JUDICIAL ADMINISTRATION WHERE POSSIBLE

SEC. 5. The Secretary of the Interior, through the Commissioner of Indian Affairs, shall have a study made of the conditions on each reservation and in the communities adjacent thereto to determine the practicability and possibility of arriving at a cooperative agreement with the appropriate State authorities whereby the substantive law as established in sections 3 and 4 of this act may be judicially administered by the duly established courts of the State in which the reservation is located. No such cooperative agreement that involves any new or not already authorized expenditure of the funds of the United States or of any Indian tribe shall be entered into until the money to carry out such an agreement has been appropriated by Congress. The Secretary of the Interior is, however, hereby specifically authorized to submit to Congress estimates for expenditures necessary and desirable for entering into and carrying out a cooperative arrangement with the State whereby the State will perform for the United States the service of providing judicial administration of the laws governing family relations, juvenile delinquency, crimes and misdemeanors in the cases of Indian wards of the National Government. Such a proposed agreement may also provide for cooperation in law enforcement, in prosecution of cases, in care of convicted defendants or juvenile delinquents, and in the provision of investigation, probation, and parole service. Cases of juvenile delinquency shall not be included in such agreements, except where the proceedings would be conducted in accordance with standards of juvenile court administration acceptable to the Secretary

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of the Interior. Any agreement so entered into shall provide that any or all fines or cost collected from Indians for offenses committed on the reservation shall be credited to the account of the United States.

No agreement shall contain any provision for the payment by the United States or any tribe of Indians or any restricted Indians of any fees on the basis of Indians arrested, tried, convicted, fined, or imprisoned, but this prohibition shall not be construed to prevent the use of statistics showing the volume of work done by the State in arriving at a fair agreement for the financial contribution to be made by the United States or the Indian tribe, nor prevent the payment, at the regular rates applicable to all persons, for the support of an Indian prisoner while in a local jail or other place of detention. Agreements shall be entered into only for a fiscal year or a part of a fiscal year ending June 30 in each year and shall specify that the Secretary of the Interior or the Congress of the United States reserves the right to terminate the agreement at the end of any fiscal year. Where an agreement has been entered into in accordance with the provisions herein contained and the apprpriation by the United States necessary to give effect to the agreement has been made and has become available, restricted Indians thus provided for shall be tried in the courts of the State in accordance with the procedure of those courts subject to the provisions as to penalties contained in section 3 of this act so long as said agreement remains in force. If such an agreement is not renewed, either in the original or in a modified form, the Secretary of the Interior shall provide for the administration of the law among the restricted Indians involved in accordance with the subsequent sections of this act.

At any time in the future when the Secretary of the Interior finds that such a cooperative agreement between the United States and the authorities of a State is possible, he is hereby authorized to include estimates for the necessary expenditures therefor in the Budget submitted to Congress.

PROVIDING A SPECIAL COURT OF INDIAN OFFENSES WHERE COOPERATION IS IMPRACTICABLE

SEC. 6. On any Indian reservation where the Secretary of the Interior finds at any time it is impossible or impracticable for any reason to enter into such a cooperative agreement with the State as is defined in section 5, he shall cause to be established a special court of Indian offenses. This special court of Indian offenses shall consist of a chief magistrate and one or more Indian associate judges. The chief magistrate shall be selected in accordance with the civil-service law and shall have such character, personality, and knowledge of and experience in law and social work and human relationships as the United States Civil Service Commission deems necessary to qualify him for a position of juvenile court judge or judge of a court of domestic relations in a progressive white community. The chief magistrates shall have such compensation as may be fixed on the basis of their duties and responsibilities by the Federal Personnel Classification Board. Insofar as practicable, the Secretary of the Interior shall arrange the several reservations in circuits so that one professional chief magistrate may serve as many reservations as possible. The number of Indian associate judges on any reservation shall be determined by the Secretary of the Interior. The Indian associate judges shall be elected by a duly constituted tribal council and where two or more distinct tribes are represented on a reservation in any considerable numbers each tribe shall be entitled to elect one judge. The amount of their compensation shall be fixed by the Commissioner of Indian Affairs.

The special court of Indian offenses on any reservation shall have original jurisdiction over Indians charged with crimes and misdemeanors under the law of the State wherein the reservation is located, provided the minimum penalty for such crimes and misdemeanors under said law does not exceed a fine of $100 or imprisonment for 3 months, or both, and it shall likewise have jurisdiction over all minor crimes and misdemeanors established in section 4 of this act and over minor Indians alleged to be delinquent, neglected, dependent, physically handicapped, or mentally deficient, as hereinafter provided. If either the minimum amount of fine or the minimum period of imprisonment is within said limits, the special court of Indian offenses shall have jurisdiction. The special court of Indian offenses may impose for any such offense such penalty as is established by law not in excess of a fine of $100 or imprisonment for 3 months or probation or suspended sentence for a period not to exceed 1 year. If a heavier penalty is authorized by law and the chief magistrate of the special court of

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Indian offenses believes a heavier penalty ought to be inflicted or in event of failure of said court to arrive at a judgment he is hereby given the power of United States commissioner as provided in the statutes and law of the United States to order the arrest and the commitment of such Indian for trial before the United States district court of the district in which said reservation is located. Said chief magistrates are hereby given the powers of commissioner of the United States district court as provided in the statutes and laws of the United States to issue warrants for the arrest and for search and seizure for all persons and/or in all cases arising within any Indian reservation within the jurisdiction of such chief magistrate.

The special court of Indian offenses shall also have jurisdiction in civil disputes between restricted Indians, provided the amount claimed does not exceed $250 and the title to real property is not involved.

The chief magistrate of the said court of Indian offenses shall, subject to the approval of the chief of the division of Indian justice provided in section 10 of this act, provide the rules of procedure of said court and for the times of meeting thereof; provided, however, that no person shall be tried by said court except upon due and adequate notice to the offense of which he is charged, and that the person so charged shall be entitled to a public hearing, to cross-examine the witnesses against him and to present witnesses and be heard in his own defense; provided, however, that in cases involving minors or where the interests of decency and of the public morals require, the chief magistrate may provide for a private hearing. Subject to the like approval of the executive head of the section of Indian justice, said rules may further provide for special hearings by the aforementioned Indian associated justices, provided that no judgment of said associate justices shall be final and conclusive without the approval of the aforesaid chief magistrate. In all other cases the judgment shall be determined by the majority vote of the judges of said court.

UNITED STATES COURTS GIVEN JURISDICTION OVER MORE SERIOUS OFFENSES AGAINST STATE LAW AND OVER APPEALS FROM THE SPECIAL COURT OF INDIAN OFFENSES

SEC. 7. With respect to any reservation where the Secretary of the Interior finds it impossible for any reason to enter into such a cooperative agreement with the State, as provided in section 5 of this act, the United States district court of the district in which said reservation is located shall have original jurisdiction over all offenses against the law of the State committed on said reservation by an Indian, except such offenses as would constitute juvenile delinquency under State law, provided the minimum penalty for such offense established by the law of the State exceeds both a fine of $100 and imprisonment for a period of more than 3 months. The United States district court shall also have jurisdiction to try any Indian charged with a lesser offense provided the case is transferred to said court by the magistrate of the special court of Indian offenses or provided an Indian sentenced by the special court of Indian offenses to a fine of more than $25 or to imprisonment for a period of more than 20 days asks to have his case transferred to the United States district court. A restricted Indian sentenced by the special court of Indian offenses to a fine of more than $25 or to imprisonment for more than 20 days is hereby given the right, upon his or her request, to have his or her case transferred to said United States district court, where it shall be tried de novo.

The United States district court having jurisdiction over the cases of Indians as herein established shall, subject to section 3 of this act, apply the substantive law of the State in which the crime is committed or the code of minor crimes and misdemenaors provided in section 4 of this act.

UNITED STATES COURTS GIVEN AUTHORITY TO REMAND CERTAIN CASES TO SPECIAL COURT OF INDIAN OFFENSES

SEC. 8. If an Indian is charged with having committed on a reservation an offense which brings his or her case within the original jurisdiction of the United States District Court, as defined in section 7 hereof, and if after investigation and report by the officers of said court the judge of said court decides that the case can best be tried initially by the special court of Indian offenses, he may remand the case for initial trial to the special court of Indian offenses, provided the minimum penalty for the offense established under the law of the State is not both more than a fine of over $500 or imprisonment for a period of over 1 year. The special court of Indian offenses is hereby given jurisdiction over the trial of such

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cases as may be remanded to it by the United States district court in accordance with this section, and in such cases it may sentence an Indian found guilty to a fine of not exceeding $200 or to imprisonment for a period not to exceed 6 months, provided said sentence is not in excess of the minimum established by the law of the State, or may place on probation or parole for a period not to exceed 2 years. In remanded cases where the minimum penalty under the law is below a fine of $200 or imprisonment for a period of 6 months, the special court of Indian offenses may impose a sentence not in excess of the minimum under the law of the State. In all cases thus remanded for trial in the special court of Indian offenses the restricted Indian, if found guilty, shall have the right to have his case transferred to the United States District Court where it shall be tried de novo.

PROVISION FOR SPECIAL TREATMENT OF JUVENILE DELINQUENTS

SEC. 9. For any reservation where the Secretary of the Interior finds it possible to enter into a cooperative agreement with the State for the administration of justice among adult Indians, but cannot in accordance with section 5 of this act include in said agreement cases of juvenile delinquency, it shall be the duty of the Commissioner of Indian Affairs to establish a special Indian juvenile court. Insofar as possible he shall so arrange that one of the magistrates of the special court of Indian offenses on circuit shall serve as the judge in said special Indian juvenile court, but if such arrangement is not feasible, he shall designate the best qualified employee of the reservation to serve as the judge of said court.

The special court of Indian offenses and special Indian juvenile courts are hereby given jurisdiction over cases of minor Indian children who are themselves wards of the United States Government and who are charged with being delinquent, neglected, without suitable parental care or guardianship, physically handicapped, or mentally deficient. Such courts shall also have authority to determine the paternity of children born out of wedlock. The proceedings of said courts in dealing with juvenile cases shall be informal and shall be conducted in accordance with regulations prescribed by the Commissioner of Indian Affairs, based upon accepted standards of juvenile-court work insofar as they can be applied to the cases herein provided for. The judges shall use such methods as they deem expedient to determine the facts in the cases and shall insure that the parents or next of kin of any such child shall be advised of the proceedings and have opportunity to be heard. The case of any minor above juvenile-court age, as defined by the law of the State in which the reservation is located, committing an offense punishable under State law by a fine of not more than $100 and imprisonment of more than 3 months shall be held for trial in the courts which would have, in accordance with this act, jurisdiction over adult Indians. If the special court of Indian offenses or the special Indian juvenile court finds that the welfare of the child and its best interests would be served by removal of the child from the care and custody of its parents or next of kin, the court shall commit said child, for a period not to exceed the child's minority, to the care and custody of the Commissioner of Indian Affairs: *Provided*, That the child, his parents, or his next of kin may appeal from such an order to the United States district court provided in section 7, which shall hear the case de novo. The Commissioner of Indian Affairs is hereby authorized and directed to arrange for suitable provision for the care and custody of neglected, delinquent, dependent, or mentally deficient Indian children either in foster homes or in institutions operated by the United States Indian Office, or, under contract, in suitable institutions maintained or provided by other governmental or private agencies or in suitable foster homes.

It shall be the duty of the Commissioner of Indian Affairs so to provide that all Indian children committed to his care under the terms of this act, and insofar as possible all Indian children brought before the courts, shall be thoroughly examined to determine their physical, mental, and social needs, and the care and treatment provided for them shall be based upon the results of such examinations.

Any agreement entered into with any State in accordance with section 5 of this act may provide that State courts may commit minor Indians who are found to be neglected, dependent, delinquent, or mentally or physically defective, in accordance with the juvenile laws of the State, to the care and custody of the Commissioner of Indian Affairs for a period not to exceed their minority and the Commissioner of Indian Affairs shall make provision for their care in the manner set forth in the two preceding paragraphs of this act.

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A DIRECTOR OF LAW AND ORDER ADMINISTRATION PROVIDED

SEC. 10. To aid the Secretary of the Interior and the Commissioner of Indian Affairs in carrying out the terms of this act, the Commissioner of Indian Affairs is hereby authorized and directed to establish in the Indian Office a suitable administrative organization which shall be under the immediate direction and supervision of a competent lawyer of character and reputation experienced in the work of juvenile courts or courts of domestic relations who shall be selected in accordance with the Civil Service Act and whose salary shall be fixed in accordance with the Classification Act of 1923 as amended. He shall be provided with such assistance as may be necessary, and he shall be immediately and primarily responsible for developing and supervising the system of judicial administration on Indian reservations as provided for in this act.

PROVISION FOR SOCIAL WORKERS ON RESERVATIONS AND FOR A DIRECTOR OF SOCIAL WORK

SEC. 11. The Commissioner of Indian Affairs is hereby authorized and directed to provide for Indian reservations herein referred to the services of competent agents with training and experience in social work to carry on preventive social work with families and children, and investigation and supervision of Indian offenders dealt with by special Indian course, United States district courts, or State courts under the provision of this act. Such agents may be employed jointly by the United States Indian Office and the State and work both with Indians and other persons in the community, and may be designated as probation and parole offiders by State courts under the terms of agreements with State authorities herein authorized. Such employees when employed exclusively by the United States Government shall be subject to the civil-service law and shall be compensated in accordance with the Classification Act of 1923 as amended.

To assist the Commissioner of Indian Affairs in planning and directing such activities on the reservations and in cooperation with State and local subdivisions designed to remove the causes of delinquency and to develop a sound family and community life and in selecting suitable socially trained agents for this work the Commissioner of Indian Affairs is hereby authorized and directed to employ a director of social work who shall be a person of character and reputation trained and experienced in work with families or communities. Said director of social work shall cooperate with the lawyer provided in section 9 in developing the social work in the courts given jurisdiction over the offenses of Indians under this act and shall aid the Commissioner of Indian Affairs in developing on the several reservations an adequate service designed to prevent Indian delinquency and to advance the moral and social conditions of the Indians. Said person shall be selected in accordance with the civil service act and shall be provided with the necessary assistance. The salary of said person shall be fixed in accordance with the Classification Act of 1923 as amended.

INDIANS MADE SUBJECT TO MARRIAGE AND DIVORCE LAWS OF THE STATE WHEREIN THEY RESIDE

SEC. 12. One year after the passage of this act all Indians on the reservations to which this act applies shall be subject to the marriage and divorce laws and the adoption laws of the State wherein they reside. Actions for divorce, separation, or annulment or for legal adoption shall be brought in the courts of the States wherein the Indians reside. Nothing herein contained shall be construed to make illegal a union which was in existence prior to 1 year after the date of the passage of this act and which would prior to the passage of this act have been recognized as a valid union. No child, the issue of such a union, shall be held illegitimate because of anything herein contained.

The act of February 28, 1891, chapter 338, section 5, 26 Statutes at Large 795, is hereby amended as follows: *Provided*, That said act shall not apply to the issue of such cohibitation born more than 2 years after the date on which this act takes effect, but such issue shall inherit according to the laws of the State wherein such land is located.

The special court of Indian offenses is hereby given authority to determine in any case arising within its jurisdiction whether any union in existence prior to one year after the passage of this act was a valid union. If it finds the union was valid it shall be treated as a marriage in accordance with State law and after one year from the passage of this act such unions shall not be legally dissolved

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except through the death of one of the parties or appropriate legal action in the courts of the State.

Where under the provisions of this act the restricted Indians are placed under the State law administered by State courts in pursuance of an agreement between the United States Government and the Government of the State or one of its subdivisions, the agreement shall provide for a mutually satisfactory manner of determining the validity of unions involving restricted Indians entered into before 1 year from the date of the passage of this act.

The Commissioner of Indian Affairs is hereby authorized to include in his estimates for appropriations a fund for the legal aid of restricted Indians who are without funds to protect their interests in case of divorce, separation, or annulment in the State courts, or who are in need of legal assistance in other cases dealt with by State courts: *Provided*, That legal aid shall be given only on the recommendation of the social agents provided in section 11. The Commissioner of Indian Affairs may provide such legal aid through the services of a competent Government employee, a legal aid organization, or a private agency.

Experience of Cooperative Cattle Associations at Fort Belknap Reservation Submitted by the Commissioner of Indian Affairs

The experience of Indians in the cooperative economic enterprises which Indian communities might undertake under the terms of the Wheeler-Howard bill is indicated by the following statements furnished by the cattle associations of the Fort Belknap Indian Reservation.

The following statement has been received from the oldest of the Fort Belknap associations, the Lodge Pole Indian Cattle Association:

Lodge Pole is situated about 40 miles south of Harlem on the Fort Belknap Indian Reservation, among the northern foothills of the Little Rocky Mountains.

A little subagency is the headquarters for the farm agent, Roy L. Pearl, an Indian Service employee, who is directing with success the agricultural and stock-raising activities among the 65 or 70 Indian families living along the northern and eastern portions of the Little Rocky Mountains. During the past few years the progress made by these Indians along the lines of better living, home improvement, and stock raising speaks for itself. It has been very gratifying, and the Indians themselves are largely responsible for this achievement.

* * * * * * *

These Indians have worked out an extension program, and with willing cooperative efforts from the Indians in the work, along with the extension agent, very satisfactory results have been achieved.

We have two organizations for the promotion of our mutual benefit: The Lodge Pole Women's Club is an organization conducted by the Indian women of the district. The program of this club is a cooperative extension work in agriculture, home economics, and home demonstration and is under the direction of the officers and the extension agent. The progress made by the club and the results achieved during the past year have been gratifying.

For the general welfare of our cattle industry, the Indian cattlemen of Lodge Pole have organized themselves into an association known as the Lodge Pole Indian Stockmen Association, for the promotion of the cattle industry and for the benefit of the owners in its management.

The Indians of Lodge Pole are stockmen. They know good cattle, like good cattle, and raise good cattle. The Lodge Pole district of the Fort Belknap Indian Reservation is a stockman's paradise. The high and rough hills of the northern and eastern portions of the Little Rocky Mountains provide ideal conditions for the summer months, with an abundance of grass, water, deep coulees, and Chinook Winds is an ideal range for the winter season. Several streams with 2 cold and 2 warm, and clear as a crystal, traverse different parts of the range, and with every piece of bottom into alfalfa, the hay question for this group of stockmen is settled. Very little, if any, of the hay is being sold.

This range consists of individual, State, and tribal lands that the association pays a yearly grazing fee of 10 cents per acre. Funds for the operation of the association are raised by an assessment levied by the board of directors on each head of stock grazed on the association range.

I might say right here that this range is enclosed with a good stock fence and prohibits the running of any but registered bulls, with the completion of good stock corrals and a bull pasture.

This association might well be taken as a model by range stockmen anywhere.

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This advancement is made through a willing cooperation between the Indian stockmen and the Superintendent, through Extension and Forestry employees.

MARK R. FLYING,
Secretary-Treasurer Lodge Pole Indian Cattle Association.

The foregoing statement was prepared in the fall of 1933. A supplementary statement of recent date follows:

FORT BELKNAP RESERVATION,
Lodge Pole, Mont.

Nestled under the northern crest of the Little Rocky Mountains, which have an altitude of some 6,700 feet, with its sparkling streams of nature's purest waters, buffalo grasses, and rugged hills, is the home of our Hereford cattle, the best cattle on earth.

Some three snows ago, out of troubled mists in the economic life of our reservation, came to us a man in the person of M. J. Johnson, extension agent, to pave the way out of these incertain (uncertain) conditions, and be a life, in the great commonwealth.

Mr. Johnson, Superintendent Shotwell, and others arranged for a meeting with us, which was well attended; the purpose was to organize a stock association. Not anticipating a move of this kind, with the experience we have had in the past, found us just saying, "Too good to be true." However, with a series of meetings and much discussion and explanation, we merged ourselves into a stock association, to be known as "Lodge Pole Stock Association", with a membership of 52, a fenced area of 17,885 acres, 800 head of cattle, and 160 head of horses. The financial status O.K. We are progressing. By the end of 1934 will find us much advanced and an outstanding leader in the industrial world as a stock association in this Northwest. I feel justified in saying the Department has solved the everlasting problem, Indian efficiency.

This association is managed by its own officers, all Indians, but is watched by the Department. But we look forward to that time when Uncle Sam will get tired of watching us so much and leave us to our own affairs—when we can say we can.

The Indian nature is the natural; his calling is to the open spaces; that is why he is a stockman. Much praise we must give to those on the part of the Department: L. W. Shotwell, superintendent; M. J. Johnson, extension agent, now of New Mexico; Mr. Bolen, extension agent; Roy Peal, farmer, for being active in building and causing the possibilities that lies for this body in the future.

Don't know what they think about us. But seems though they think we will work them out of a job, under the Wheeler-Howard bill, by our big chief, J. Collier, Commissioner. I look forward to that time when we will have this entire reservation covered with Indian cattle.

Concluding my remarks on the Lodge Pole Stock Association to those on behalf of the Department of Indian Affairs—we must be together, work together, play together; by so doing, we will understand one another and reach that goal on time.

JOHN F. HEALY.

The successful experience of the Lodge Pole Indian Cattle Association inspired a second district of the Fort Belknap Indian Reservation to undertake a similar program. The following statement submitted by the Milk River Livestock Association and signed by Louie Ell indicates the program of this association:

"This is my opinion toward our newly organized program. Whole-heartedly, I think this is the greatest opportunity that ever came to us Indians. The cattle industry is the only chance I can see that brings to us any means of self-support. As we all know, from past experience, we cannot make a go of farming; everyone has tried and failed. Whereas, if we can raise these high-grade Hereford cattle, it will be only a matter of a few years until they bring us out of our hardship and poverty. I don't think there is anyone more interested than I am in keeping up the good work of our program. I only hope that our board of directors and the agency officials won't lack in their efforts to make this a successful program. In our past meetings we have discussed a few things, and I am very well satisfied with the results. Cooperation with our directors and officials is the only means of us ever reaching the goal we are striving for.

"I don't think it will be many more years until the Federal Government will turn us loose and make us follow the same path as the whites. While this great opportunity is in existence, why not take it? In the past few days I've heard a party stating that the Government was taxing us too much to raise our stock. This party was very sorry in buying reimbursable cattle, stating that they just

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held him down and wasn't making any progress. To my theory, I think the officials should take these said cattle and turn them over to the ones that are interested in building up our association.

"The time is at hand when every person should pay his way. The days of getting things for nothing are gone. And I think a person is very foolish to think otherwise. The time is coming when we will have to pay for everything we own. We must try and be prepared when that time comes. And the only hopes I can see is to build up our livestock industry. This reservation is an ideal stock country, and I can't see where we will fail if we just all get up and try.

"The next step is the upkeep of our fences. There should be line riders for this purpose all throughout the season. As we are newly started and lack funds to hire any help, it is necessary to voluntarily do this work. There should be range riders as well as line riders. What I mean by range riders is, there should be someone riding among the cattle and keeping the bulls from pairing up with one certain bunch of cattle, keeping them scattered out in proportion to the herd. There are possibilities of cattleg etting bogged in bog holes; and also from my past experience with cattle, I find that now and then a critter will be found with a dry bone fastened in its throat. The cause is from a lot of times, cattle will roam around and run across a pile of dry bones and naturally they take it for salt and go chewing on it. If a "critter" is not found in time, it will become exhausted and death will follow. To avoid this cause, there should be salt placed throughout the entire lease at watering places.

"In regard to range and line riding, I am ever ready to assist in riding and taking care of our stock, regardless of how much riding there is to be done. I will work in the interest of our organization and not only for myself. And do sincerely hope each and every member of our organization will do the same.

"Trusting all our members will uphold our program and try to make this a successful as well as a paying industry, I am, * * *."

The third district of the Fort Belknap Indian Reservation, the Hayes district, has not yet established a livestock association of its own but plans for the establishment of such an association are being seriously discussed and the following letter indicates the attitude of the Indians of this district toward Indian management of grazing matters.

FORT BELKNAP RESERVATION,
Hays, Mont., April 6, 1934.

MR. WILL R. BOLEN,
Fort Belknap Agency, Harlem, Mont.

DEAR MR. BOLEN: To comply with your wish, I will with a few words give the history of cattle raising on the Fort Belknap Reservation.

When the Indians moved on this reservation in the year 1889, their chief owned each one 100 to 200 head of cattle and also some of the Indians owned some head of cattle. Their agent who was in office in the year 1904, was a member of a cattle corporation, whose cattle brand was 10; this number was easily changed to 1 D; their cattle began to disappear; besides, the Indians were forbidden to brand their own calves. When the Indians became aware of the disappearance of their cattle, they, in order to get some little benefit from it, began to slaughter them. Soon, scarcely any Indian cattle could any more be seen. Afterwards, it was officially recommended to the Indians that a tribal herd would be a very profitable investment for them. The tribal herd was bought and after some years, when the Indians with reason suspected mismanagement of their cattle herd, it was sold; there was a shortage of 500 heads and besides they were in debt for it into the amount of $71,000. After going through such discouraging experience and knowing that we ourselves will be fully able to take care of our cattle we request and insist that the management of our cattle be altogether left to us and that no agent and no white employee may ever be allowed to interfere in any way with our cattle. We know our reservation much better than any white man or white employee; we know where the cattle should be during summer or during winter and we know that hay must be provided; we are very much interested in the improvement of our cattle. We will purchase registered bulls, and we know when the bulls should be removed from the cattle, or be with them in order to safeguard the calves against the dangers of the cold winter. There is wide and good grazing range between the Little Rockies and the Milk River, and which will be much improved by the contemplated construction of water holes, and will not be fenced in by the owners of this land, provided that the management of the livestock be altogether left to the Indians themselves, and that the Indian council exclusively appoint their cattle herders.

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If the granting of this our request is included in the Wheeler and Howard bill, this bill will be agreeable to us; if this our request will not be granted, the bill does not mean for us self-government.

Sincerely yours,

STEVEN BRADLEY.

The cooperative activities at the Fort Belknap Indian Reservation were largely modeled upon the experience of the Fort Hall Indian Cattlemen's Association, the first large venture in Indian cooperative management of cattle and grazing lands. The following statement made some time ago by Superintendent Wooldridge is still a substantially accurate description of the organization and achievements of the Fort Hall Indian Cattlemen's Association.

EXPERIENCE OF FORT HALL INDIAN STOCKMEN'S ASSOCIATION

The following account of the origin and achievements of the cattle association at the Fort Hall Reservation is submitted by Superintendent Fred Gross.

For various reasons the cattle industry among the Indians was not making satisfactory progress from 1914 to 1921. There was unrest due largely to sheepmen coming into the country. Dry seasons made feed short. Hard winters reduced cattle numbers. Poor bulls produced inferior calves. Nothing but grade bulls had been used up to this time. General hard times seemed to prevail. These conditions caused some of the leading Indian cattlemen to take stock of their situation. After making some investigation and having numerous conferences the matter of forming an Indian stockmen's association was taken up with the superintendent, Mr. Donner, who is now in charge of one of the large reservations in Arizona. Mr. Donner gave the Indians some good advice and he entered into the situation with the Indians and helped them to solve their difficulty. Ralph W. Dixey, one of the leading Indian citizens and cattlemen of the reservation, was well acquainted with some of the members and officials of the Eastern Idaho Grazing Association, a sheep company. The idea of forming an Indian stockmen's association was gotten from this company. A copy of the company's constitution and bylaws was procured and studied. This was used as a guide in forming what is now the Fort Hall Indian Stockmen's Association. The sheep company's constitution and bylaws were changed to suit the needs of the Indian association. The Indians, therefore, organized their association in 1921. Since then their constitution and bylaws have been amended twice. Practically all Indian cattle owners became members of this association, there being about 142 members.

The very first thing the officers did was to purchase some purebred bulls of the Hereford type. Two car loads were bought on time and paid for in the fall. In order to do this a special assessment was levied and paid by the members. These were the first purebred bulls placed with the Indian cattle after 33 years of progress and difficulty in the cattle industry. This was the real beginning of a better class of cattle and a decided step forward in the cattle industry of the Fort Hall Reservation. That was 10 years ago, in 1921. Since then purebred Hereford bulls have been purchased eight different times. Some of the bulls were bought up here in Montana and judging from remarks being made by the Indians the bulls bought up here were the best they have had up to the present time.

During the past 10 years the association has come through two hard winters The last winter started on November 13 and lasted for 4 solid months with deep snow on the ground and severe weather throughout that time. Yet the cattle losses were practically nil, due to the fact that the Indians prepared for it. This goes to prove that the association is well founded and actually makes advancement. About 35 purebred bulls were bought in 1930, and 22 were purchased this year. The reimbursable fund is used for this purpose. The officers of the association sign the agreements which are payable in four equal annual payments.

Now that we have reached the present time it will interest you to know something about how this organization is officered and now it handles its business. An annual meeting is held in the early spring each year. All members of the association and others interested in the cattle industry are invited to be present. Last spring a lunch was served by the home-economics girls of the boarding school, the association paying for the food furnished. The president presides at all meetings, and in his absence the vice president acts. The presiding officer makes a report of the activities and progress of the organization for the past year at annual meetings. He also outlines the work of the ensuing year and gives sound advice and suggestions to those assembled. The treasurer gives a report

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of the finances for the past year. The secretary keeps the minutes of all meetings. The superintendent and other agency officials usually attend these meetings and help in any way they can to make them successful. Talks are made by Indians and employees. Election of officers takes place at the annual meetings. This is done by ballot. Ralph W. Dixey was made president of the association for the first 10 years of its life. To him is due a great deal of credit for the success of the organization. Mr. Dixey is not the largest cattle owner but he has about 350 head and he is a leader on the reservation, although he is of the mixed blood. Joseph Thorpe is the president of the association this year, Mr. Dixey having been defeated for this office for the first time in its history. Mr. Thorpe, also of the mixed blood, is the largest individual cattle owner on the reservation at the present time. His herd numbers close to 650 head.

The officers of the association consist of a president, a vice president, a secretary, and a treasurer. There is also a board of directors made up of the officers and 5 other members, making a total of 9. The board members are also elected by ballot. The board appoints an executive committee of three of its members, the president being one of the committee. This committee handles business of a minor nature. The president signs and approves all bills paid by the association. The board of directors conducts the major business items. The meetings are all conducted in an orderly and businesslike manner.

No one is barred from the association so long as he owns one critter and agrees to abide by the constitution and bylaws of the organization.

The association employs one head rider and several subordinate riders to look after the stock on the range from spring till fall. These men check up on trespassing stock, help to vaccinate for blackleg, assist in rounding up cattle and branding, distribute salt, and help in all branches of the work. The riders are Indians of the full blood, while the officers of the organization are mainly of the mixed blood. The board of directors is quite evenly divided between mixed and full blood.

During the past year association members sold over $55,943.67 worth of cattle. In addition to this, individual sales were made from time to time as conditions warranted.

During the past year the association receipts for herd and range and other items amounted to $15,188.94. The association pays rent on nearly 60,000 acres of allotted grazing land at the rate of $20 for each 160-acre allotment. There is perfect harmony between all landowners and Indian stockmen at the present time, and steady advancement is being made. The total expenses of the association for the past year were $14,851.40, including a payment of $1,000 on bulls purchased on the reimbursable plan. The assessment against each head of stock last year was $2.75. Calves born in the fall and winter are not taken into consideration for assessment purposes.

The Fort Hall Indian Stockmen's Association is a going concern. It has been and is successful. The officers and directors function with harmony. The association is a great help to the superintendent in administering the livestock activities and to the Indians of the reservation from an economic standpoint. Practically all members are also farmers. They grow and cut the most of the hay required for their needs. They provide a market for much hay produced by other Indians. Instead of the Government issuing beef, the association provides meat for the Indians in many different ways. There is cooperation between farmers and stockmen, and the result is there is little suffering during the winter months.

The bulls are separated from the she stuff and cared for separately through the winter period and turned out on the range later in the spring than the other stock to avoid winter calves as much as possible. A splendid calf crop is in evidence this year.

Two round-ups are made each year. One will take place the last 5 or 6 days of this month. At this round-up calves will be branded and castrated, and stock to be sold at the July 1 sale will be cut out. The next round-up takes place in the late fall when each individual owner takes his stock to the feedyard, which is usually his farm home. At this time some branding is done and such other work as might have been overlooked at the earlier round-up.

This year several watering holes were developed. Large troughs were built at the agency and then taken to the hills by agency truck. Several agency employees, including the farmers, the extension agent, and the superintendent went with members of the association and did this work. Six such watering places were dug out, fenced, and troughs installed this spring. This is an important activity, and it has been undertaken for the first time on this reservation.

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What this association has done can be accomplished by Indians of other jurisdictions. The Fort Hall Reservation is somewhat divided geographically and a small group of Indians live in a more distant part known as "Bannock Creek". These Indians have formed an association much after the plan of the Fort Hall organization. This association is in its infancy, but it is coming along very nicely, and it is expected that success will follow. There are but few Indians on the Fort Hall Reservation owning sheep. The total number of sheep is approximately 3,500. This spring steps were taken to associate the owners with the hope that the sheep industry may be developed and made as successful and useful as the cattle industry.

There is no question but that livestock associations among Indians of the various cattle-raising States can be made successful. As shown in these remarks it cannot be done over night. It takes time and patience. There are many trials and obstacles to overcome. There is no good reason why sheep owners cannot achieve the same measure of success that the Fort Hall cattlemen have attained. An association enables every Indian to have from one to many head of stock. It enables every Indian to operate a farm and to develop a home. It gives the Indian a market for his hay. It enables every Indian to spend more of his time at home. The cost of operation is reduced to a minimum for the individual.

Constitution and Bylaws Fort Hall Indian Stockmen's Association Adopted at Fort Hall, Idaho, 1921

CONSTITUTION

Article I

Section 1. The name of this association shall be the Fort Hall Indian Stockmen's Association.

Article II

Section 1. The purpose for which this association is formed is to promote and protect the stock industry on the Fort Hall Reservation; to encourage the raising of a better grade of stock and prohibit the running of any but registered bulls with the herds; to encourage all Indians owning stock to raise and put up enough hay for winter feed; to assist in the sale, removal, or extermination of all ponies weighing less than 700 pounds and all stallions weighing less than 1,000 pounds; to work in harmony with the white stockmen having leases on the Fort Hall Indian Reservation and to assist them and the Indians to keep within the designated boundaries on their respective ranges; to work with the agency stockman in the management of the stock industry, and to assist and cooperate with the superintendent in the protection of the range and the arrest and conviction of anyone committing any depredation whatsoever which is in violation of the regulations pertaining to the stock industry.

Article III

Section 1. Any person who is an Indian belonging to Fort Hall Indian Reservation and who owns five or more head of stock on the reservation may become a member of the association by signing the constitution and bylaws and paying the initiation fee provided for in the bylaws.

Article IV

Section 1. The business affairs of the association shall be managed by a board of directors consisting of a president, vice president, secretary, and treasurer and five other directors, who shall be chosen from the active members of the association.

Sec. 2. The officers and other members of the board of directors shall be elected annually at the anunal meeting of the association or as may be hereafter provided for in the bylaws of the association. They shall serve until their successors are duly elected. The following are the names of the persons who have been appointed and who constitute the board of directors to serve during the year 1921:

Ralph Dixie, president; Charlie Diggie, vice president; Joe Thorpe, secretary; Thomas Cosgrove, treasurer; Archie Jimmie, director; Jim. F. Peter, director; Alex. Watson, director; Jimmie Sequint, director; Hubert Tetoby, director.

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A majority of the board of directors shall constitute a quorum and members must vote at the meetings of the board in person. Proxies may not be used at such meetings.

SEC. 3. The board of directors shall transact the general business of the association and each and every act of the board shall be binding upon the association and each and all of the members thereof; provided, that before the board may act in any matter that may require a payment by any member of the association of a sum in excess of $— per head of stock, authority for such action must be given by the association at the annual meeting or at a special meeting.

Article V

SECTION 1. The association may also, at the annual meeting or at a special meeting, levy assessments for any purpose contemplated by this constitution. Such assessments shall have the same force and effect as if levied by the board of directors.

SEC. 2. Members shall be assessed upon the number of stock they own and which are run on the reservation, and the board of directors shall determine the number of stock of each member to be affected by the assessment.

Article VI

SECTION 1. Any officer of the association authorized to receive or disburse money for or on behalf of the association may be required to give the association such bond for the proper discharge of his duties as the association may require.

SEC. 2. All disbursements of the funds of the association must be made by check.

Article VII

SECTION 1. Amendments to the constitution of the association may be made only at the annual meetings of the association. A majority vote of the active members in good standing shall be necessary to amend the constitution. Voting by proxy at the election of members of the board of directors or on amendments to the constitution will not be permitted.

Article VIII

SECTION 1. No business of the association shall be transacted at any meeting unless a quorum is present. A quorum shall consist of a majority of the active members of the association in good standing at the time of the meeting. Except upon amendments to the constitution, a majority vote, when a quorum is present, shall carry. Unless a member is in good standing he shall not be entitled to vote or to be elected to office. A member shall not be considered to be in good standing unless he shall have complied with all the requirements adopted by or on behalf of the association under the constitution and bylaws thereof.

SEC. 2. Each active member in good standing shall be entitled to one vote.

BYLAWS

Article I

SECTION 1. The principal office of the association and its place of business shall be the Fort Hall Agency.

SEC. 2. The annual meeting of the association shall be held on the thrid Saturday of February of each year at 1 o'clock, at the office of the Fort Hall Agency.

SEC. 3. Special meetings may be called by the president or a majority of the board of directors, when in the opinion of the superintendent there are matters of sufficient importance requiring attention to justify such action. The secretary shall post notices of such meetings at the agency office and the district offices of the farmers at least for 2 weeks before the date of such meeting. No business shall be transacted at a special meeting except as stated in the notice calling the same unless the members in good standing present at the meeting give their unanimous consent thereto.

SEC. 4. Except as otherwise provided in the constitution and the bylaws any business of the Association may be transacted at any meeting at which a quorum is present.

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Article II

SECTION 1. The officers of the association and the board of directors shall be elected by ballot andinstalled at the annual meeting of the association or at a special meeting and shall hold office until the next annual meeting after their election or until their successors are duly elected and installed. Vacancies shall be filled by election.

SEC. 2. The duties of the respective officers shall be those usually incident to such offices and as defined by the bylaws.

Article III

SECTION 1. It shall be the duty of the president to preside at all meetings, to supervise the work of the association, and direct the work of its officers. He shall approve and countersign all checks for the expenditure of money for the association and shall perform all the duties that devolve upon such office.

SEC. 2. The vice president shall perform all the duties of the president in the absence of the president or in event of his inability to act.

SEC. 3. It shall be the duty of the secretary to conduct the correspondence of the association; to keep all records; to make and turn over to the association a list of all assessments ordered by the association or the board of directors; and to collect from the members the assessments made and issue receipts therefor.

SEC. 4. It shall be the duty of the treasurer to keep an accurate record of all funds received and disbursed for the association and shall perform all the duties that usually devolve upon such office. He shall sign all checks and vouchers for disbursing the funds of the association and funds received by him, and the vouchers shall show for what purpose such moneys are paid. He shall submit a written report to the association at the annual meeting giving account of the business transactions of the association of the year just closed, amounts received, and disbursed, for whom and on what account received, and for what purposes paid out.

Article IV

SECTION 1. For the purpose of providing for incidental expenses, an initiation fee of 25 cents shall be charged. The annual dues of each member of the association shall be the sum of 2 cents per head payable on or before December 1 of each year.

SEC. 2. Members who violate any of the bylaws or the rules and regulations of the association may be expelled from membership after a hearing by the board of directors. Members may withdraw from the association at any time they wish if, after a hearing before the board of directors, they feel that they have not been justly treated, provided that all obligations in the association have been satisfactorily settled. The board of directors may restore any expelled member at such time as they feel that the expelled member will abide by the rules and cooperate with the association.

SEC. 3. If a member sells or otherwise ceases to own any stock, his membership will automatically cease.

SEC. 4. If, for a period of 3 years, a member who has 8 head of stock or less and does not show a reasonable increase in his herd, he shall be called before the board of directors and required to give a reason why he has not been able to increase his holdings. If the explanation is not satisfactory he shall be expelled from the association until such time as he can show a satisfactory increase.

SEC. 5. All members are to conform with the regulations in regard to the sale, trade, or otherwise disposing of stock. They must have a permit from the superintendent of the reservation or such employee as may be authorized by him to issue permits in his name, describing the animal and the brand, with the name of the owner who is selling, slaughtering, or otherwise disposing of the animal. The object of the permit is to enable the office to keep an accurate record of the cattle and to permit of their disposal or slaughtering only when justified.

Article V

SECTION 1. The association will pay a reward of $50 to any person producing information that will lead to the conviction of any person illegally killing or otherwise disposing of cattle belonging to the Indians of the Fort Hall Reservation.

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Article VI

SECTION 1. Amendments to the bylaws may be made only at the annual meeting or at a special meeting called specifically for that purpose by a majority vote if a quorum is present.

Article VII

SECTION 1. The order of business at any meeting of the association shall be as follows:

1. Call to order.
2. Roll call and ascertainment of standing of members.
3. Ascertainment of a quorum.
4. Reading of minutes of last meeting.
5. Unfinished business.
6. Consideration of reports of scretary-treasurer, and auditing committee.
7. Reading of communications.
8. Report of board of directors.
9. Reports of special committees.
10. Reports of standing committees.
11. Regular business, including offering and discussion of resolutions.
12. Election of officers, by ballot.
13. Installation of new officers.
14. Admission of new members.
15. Appointment of committees.
16. Adjournment.

We, the undersigned, members of the Fort Hall Indian Stockmen's Association, agree to support the constitution and bylaws.

FORT HALL INDIAN STOCKMEN'S ASSOCIATION

History.—The areas used by the association were set aside in 1897 before allotments were made, when all the Indians had cattle. After the allotting of lands in 1911 and 1912, a period of readjustment followed and in 1914 the cattle owners began paying grazing fees to the allottees for use of their land, at so much per head per annum, according to the number of cattle owned by each Indian cattle owner. This arrangement was the forerunner of the Fort Hall Indian Stockmen's Association.

In 1922 the Fort Hall Indian Stockmen's Association was organized with a membership of 167 cattle owners, for the purpose of developing the cattle industry among the Indians of this reservation. In 1926 the association was reorganized and adopted a set of bylaws. Since 1922 the association has had an average membership of 150, representing about 6,500 head of cattle.

In 1927 the Bannock Creek Stockmen's Association was organized, along similar lines as the Fort Hall Association, with a membership of 20, representing an average holding of about 600 head. The two associations operate independently. The Bannock Peak reserve was set aside for the use of the Bannock Creek Association without charge.

Finances.—Members of the Fort Hall Association are assessed $1.50 to $2.85 per head of cattle owned per year, to pay the rent of the range used by the association and other expenses. Aside from these assessments, fees collected for trespassing and grazing fees on the range are placed to the credit of the organization. The association has a cattle range consisting of 69,600 acres on which they pay a rental of 12½ cents per acre, except for 6,460 acres of tribal land on which no rent is paid. The Fort Hall bottoms, consisting of about 9,000 acres of tribal land provides winter range to members of both associations without cost.

Trespassing.—The association has four range riders who patrol the range in the summer months and keep a look-out for trespassers. The reservation stockman also assists in this work. Trespassers are charged $1 per head per day for cattle and one-half cent per head per day for sheep.

Winter feeding.—Most members of the association feed their stock on their ranches during the winter, but quite a large number of them winter and feed on the Fort Hall bottoms, where any Indian of the reservation is entitled to put up hay and run his cattle without charge. No outside stock is permitted to range on these bottom lands.

Bulls.—Bulls are bought cooperatively by the members of the association, or rather, are purchased by the association as a whole. As circumstances dictate, lots of bulls are selected by a committee of the stockmen. These are run with

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the herd during the summer and fall months, being separated from the herd and fed during the winter. These bulls are all purebred Herefords, either registered or eligible to registration. They are branded with a number indicating the year of purchase so that check can be kept on ages of bulls in service. Quality of bulls used has been very good and steers sold for beef at the annual sales would be a credit to any herd. Reimbursable money is used for the purchase of these bulls

Neither the Fort Hall nor the Bannock Creek Association is incorporated.

Statements Concerning the Wheeler-Howard Bill by Anthropologists

(Submitted by the Commissioner of Indian Affairs)

In the course of the work of the Bureau of Indian Affairs, in an effort to carry out the stated Indian policies of the Department of the Interior, a questionnaire was submitted to the leading students of American Indian life. It was felt that the Bureau might well profit in the execution of its policies by the years of intimate contact spent by these disinterested anthropologists with diverse Indian tribes. That questionnaire, dated November 20, 1933, sought specific information on such phases of Indian life (e.g., education, self-government, operation of the allotment system) as were pertinent to the problems dealt with in the pending Wheeler-Howard bill. Excerpts from the replies to the questionnaire, grouped under four headings—land, self-government, education, and comments on Indian policy—follow.

I. LAND

A. *Evils under the present system.*—Prof. Franz Boas of Columbia University whose chief occupation for approximately 40 years has been the study and recording of American Indian life, writes:

"As far as my general experience goes, one of the greatest difficulties that has arisen is due to the fact that all Indians were accustomed to living in fairly large groups and that they had an intense social life. Owing to the allotment system the cohesion of the tribes has been broken and the isolation is keenly felt."

Dr. John R. Swanton, of the Bureau of American Ethnology, Smithsonian Institution, from his familiarity with the Indians of the Gulf area—British Columbia, and Alaska, in particular—writes:

"In ancient times an American tribe provided all of its members with food, clothing, and shelter, insofar as there was any to grant. The possession of land was a wholly minor concern, and problems involving the ownership of land rarely required the attention of the council. Our own attempts to substitute land for a living fails to attain its object because there is no insistence that land shall be used to furnish a living with the addition of labor, instead of being sold outright."

Prof. Ralph Linton, of the University of Wisconsin, writes of the Comanche Indians:

"All the older and more responsible Indians were much worried at the time of my visit by the fact that they expected the agency prohibition on the sale of land by individuals to be lifted within the next 2 or 3 years. They said that if this sale was permitted, the land would be lost. A drunken Indian will sign anything and rarely wins in a local court. They are anxious to have the present arrangement continued."

Mr. Alfred W. Bowers from his first-hand study of the Mandans, Hidatsas, and Arikaras, writes:

"I think the whole system of private lands within the Fort Berthold Reservation a mistake. Under the old system, land was tribal. An individual family owned the land only so long as proper use was made of it. I am referring to garden plots. The family kept the use of the land so long as they wished, but once it was permanently abandoned, another could take it over. Today private ownership has been introduced. I am not certain of what changes should be made for the fullest benefits, for these problems of land ownership are so complex. I do feel, however, that a distinction should be made between farm land and range land and that a large tribal herd should be built up. This would entail establishing firm tribal control and rigid adherence to the laws which the tribe would dictate to its members. With a man at the head as superintendent of the agency with a full grasp of the ultimate aims, I think much fine work could be done. It would give the people new interests and should make fine progress since the people think collectively, not individually.

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"The most serious handicap to this program is the presence of white landholders within the reservation. The tribe should get possession of this land as soon as possible. Unfortunately, these white settlers got control of some of the finest farm lands for they were better informed of the value of western lands. In the future, should these Indians win a suit over land rights, payment should be made in lands, not money."

Prof. Martha Warren Beckwith, of Vassar College, who also is familiar with the Mandans and Hidatsas, and in addition the Dakota Sioux, writes:

"At first these allotments were made inalienable within the blood family group, but soon, under pressure from white settlers and with Government concurrence, the agents were advised to allow sales of land, often to undersirable white men. Thus a single generation acting for its own self-interest might dissipate the whole family allotment and leave their descendents landless. On the other hand, inheritable land often accumulated in the hands of a surviving heir who inherited from various branches of a family, so that an individual, especially one from weak family stock, might become the owner of more land than he needed.

"Moreover the various schemes devised by the best meaning of agents and carried out with the fullest good will in theory by the Indians themselves to increase the individual's means of livelihood on his remote farm by the raising of cattle, pigs, sheep, have ended in failure. The scheme is one which works with the small white farmer with his solitary habits of attention to the detail of his own farming venture, but is alien to the social habits of the Indian. To him, property is merely the means for the satisfaction of immediate wants, not only of his own but of those of his fellows. He is lonely in his isolation and disinclined to the strict attention necessary to the formation of a herd. The fencing problem is a matter of constant friction. Moreover, his whole family connection expect to live off the thrifty man. If he follows the strict individualistic pattern, he is held up by his own group as unethical in conduct and his pattern of thrift, which would be applauded if it resulted in benefit to the whole community and would bring him honor and a leading position in his tribe, is thus lost to the community. If he is generous after the old Indian tradition, he must work without reward for the idle members of his relationship group.

"The old Indian way of communal living, the Hidatsa and Mandan in fairly settled villages, the Dakota in mobile camps, avoided these difficulties. The old community life was well knit and controlled by tribal authority."

Dr. Cora Du Bois, from her knowledge of the Indians of northern California, writes:

"In California the reservation system was largely a failure because officials failed to take account of the strong localism of the native tribelets. The California Indian is characterized by a deep attachment to a restricted local landscape and the small familiar group of people inhabiting it. Any attempt to remove them from their familiar landscape is bound to be unsatisfactory. On the other hand, the attempts in California to make Indians self-dependent citizens through the granting of fee patents has been thoroughly ruinous. The Indians themselves realize that citizenship in this sense creates a series of liabilities with no perceptible permanent benefits which they are interested in, or capable of, using. Property held by individuals is soon alienated because (1) they cannot or will not meet taxes, (2) they have no interest in agriculture which was foreign to their aborginal economic life, or else the land is unsuitable for agriculture, (3) ready cash for automobiles, drink, or ephemeral luxuries is a ready temptation.

"An ideal solution in California would be a series of small inalienable tracts of land which offer adequate resources in their vegetable foods, basketry materials, fule, etc. If possible relaxation of hunting and fishing privileges should be afforded."

Mr. Oliver La Farge has lived for years among the Indians of the Southwest and has written of their life. His comments on particular tribes of the Southwest are of importance:

"*Navajo.*—In the main the habits of shifting residence, made necessary by the shepherd life, are directly contrary to the allotment system. It must eventually be arranged for these Indians to own the grazing rights, at least, of large blocks of land, and to have free passage from summer to winter grazing districts.

"What is of importance here is that, where the Indians live surrounded by nonrestricted land, they deal with unlicensed and uncontrollable trades, and have not the remedy against malpractices which is possible against those of licensed traders of Indian land.

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"*Hopis.*—But the ownership of the Hopi land, as such, is consisdered to lie in the whole tribe, and not in any individuals or groups. Hopi agriculture could be carried on under a system of small allotments, but is better off under its present system. Hopi grazing could not be allotted, save in the manner in which the national forests allot grazing rights over various areas; formal allotment by parcels of land would be entirely unsuitable.

"*Jicarilla Apaches.*—These Indians received allotments on the older (northern summer grazing) part of their reservation many years ago. Why they were allotted one cannot imagine, as they were people of essentially Plains Indians hunting-nomad culture, placed on land so high and so cold that serious agriculture is impossible upon it. The average Indian would starve to death on his allotment.

"At present the allotments are entirely restricted. I do not know whether there is any provision for removing such restrictions in the future, but, if so, they should be canceled indefinitely. As a herding people, they roam over much of the allotted area, treating it as communal land, although they tend individually to make their headquarters on their allotments. This is a tendency, rather than an established practice.

"The presence of allotments on the northern part of the reservation threatens endless trouble in the future. Already the heirs to some of these parcels are numerous, and will become more so as the tribe, from decreasing, continues to increase. Anything that can be done to throw these lands back into the common tribal holding or to exchange them for life tenures of selected, small building sites adjacent to small areas favorable to what little agriculture can be practiced there, should be done. All timber, particularly, should be vested in the tribe as a whole.

"*Tewa Pueblos.*—Ownership of the rights to use land depend upon the performance of certain communal tasks, such as maintaining the main irrigation ditch (Acequia Madre), and may occasionally be lost through abandonment. The ownership is heritable, and may be sold or exchanged. The situation closely approximates true ownership, but is not so. The ultimate title lies in the tribe, and in a crisis, the tribe can resume it."

Dr. John P. Harrington, of the Bureau of American Ethnology, has also worked among the Indians of the Southwest. His comment on the allotment system is significant:

"The assembly and individual sense of justice are equally inportant factors in guiding the allotment and working of land. As stated above, the idea of land-holding was everywhere that of holding property communally. The idea of settling Indians on individual holdings is as totally un-Indian as it is repugnant to the Indian. It was started as an attempt to break up the tribes and allocate Indian families among whites and foreigners, and it has been a miserable failure from the first."

B. Experience and advantages in cooperative use of land.—Prof. Marth W. Beckwith looks forward to a new life for the Indians:

"Placed in village communities with outlying farms cared for communally, with proceeds shared communally, stock raised in herds as a common venture, a water supply for each where the Indian love of personal cleanliness which was in old days a religious and therapeutic duty could be satisfied and a water supply for house and garden be available, especially freed from exploitation by the whites and taught to depend upon his own resources within the reservation so far as possible, the Indian would be in a far better way to develop an interesting and successful culture which would enrich our American life."

Dr. John R. Swanton, of the Smithsonian Institution, goes back in Indian history:

"In ancient times the question of landownership as we know it had no meaning for the Southeastern Indians.

"The idea of using land ownership as a means of extorting values from others was practically nonexistent in North America, unless perhaps among those commercial-minded people on the North Pacific coast. Then, too, there was practically no private ownership of land by individuals within the town, tribe, or group, merely a use ownership of such a portion as one might choose to occupy for his house or hunting camp. Improvements were sometimes paid for, land never.

"Today, some of our groups of Indians are practically landless as wholes, some own land in the same way as their neighbors, white and colored, and some are in plots communally held in which space is made for as many as possible, and the vital statistics of such groups generally keep the population down to the plot."

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Dr. John P. Harrington tells of the traditional attitude of the Indians of the Southwest toward land and property:

"All land was considered to be communally owned in primitive times. The assembly had authority to locate families and apportion food products. A family lived at a certain place and had its food rights, pertaining to vegetal products, hunting, fishing, and shell-fishing. The fair distribution of these rights depended upon individual ideas of fairness as well as on the guidance of a tribal council.

"Property was inherited in families. It was a deep-seated Indian idea that one should not acquire too much property. The idea was that all should live poor and after the same fashion of life.

"All property and all activities of the individual were supposed to be for the tribal good."

Referring to the experience of the Zuni Indians in economic cooperation, Dr. F. H. Roberts, of the Bureau of American Ethnology, writes:

"I do not believe that the Zuni consider land in the same sense that we do. They think not so much of direct personal ownership, but regard it rather in the light of the right of use."

Mr. F. W. Hodge, of the Southwest Museum, Los Angeles, Calif., writes:

"At Zuni, as elsewhere, there is no individual ownership of land, but a man has the right to cultivate any unoccupied land for his own use. I have known of cases where farms were cultivated on shares, and several instances where, on the decease of the occupant, his son continued possession and cultivation without question. Abandonment of land leaves it free for occupany by any one."

The Eastern Cherokee of North Carolina have had a long history of successful cooperation in the use of land. Mr. William H. Gilbert, Jr., of the University of Chicago, writes:

"Land is owned by the band, but is leased out to individual families as members of the band. The use of the land may be inherited by the children of the leasee provided they conform in qualifications to the specifications for membership prescribed. Misbehavior may alter one's ability to acquire holdings. The band council cannot prevent the buying and selling of leases or the improvements on land. The result of this policy is a huge increase in the holdings of some, almost white, individuals, and a decrease in size and desirability of the holdings of the purer bloods."

Prof. A. L. Kroeber, of the University of California, who is one of the outstanding authorities on the Indians of California and the Southwest and Dr. Cora Du Bois, also of the University of California, both write of the Indians of northern California:

Professor Kroeber: I believe that among these tribes a system of a large number of small reservations would have worked out pretty satisfactorily under intelligent administration. Instead, however, the Indians of most of this area were left wholly unprovided for, the exception being in Round Valley and Tule River. Here the most diverse Indians were dumped together, contrary to the practices of most Eastern reservations which were normally confined to a tribe, or a part of a tribe, or at most two tribes.

"Over the rest of the area, where there were no reservations, an attempt was made about 30 years ago to purchse small local holdings for the Indians. On the whole, this plan has been all to the good. Some of the tracts, as you know, are pretty worthless for making a living; but even these have taken a number of families in each case out of the squatter class. On the whole my impression is that these little scattered resevations or subreservations would continue to do most good if they were not allotted in severalty. I am basing this on the assumption that the function of these tracts in most cases is comparable to that of a game refuge, rather to provide the Indians with a living.

"To or three groups of Pomo in Mendocino County years ago scraped together enough money to buy three little tracts, which in part at least they operated collectively. I do not know whether this still holds, but it is of interest as showing what might have been done if our Government had not been committed to the policy of turning the Indians into an imitation white man."

Dr. Du Bois: "From my opportunities to observe Indians on and off reservations, I feel strongly that the reservation system has great potentialities for the protection of Indian economic interests from the depredations of white neighbors. In addition the reservation system should be able to foster a gradual adjustment to American modes of life as well as the preservation of those native values which are compatible with white society and which may still be saved."

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II. SELF-GOVERNMENT

A. *Evils under the present system.*—Regarding the evils of excessive Government supervision, Mr. Alfred W. Bowers, from his knowledge of the Mandans, Hidatsas, and Arikaras, writes:

"I feel that there is too much supervision from the office and that the government representatives too often take the attitude that the Indian is an inferior being unable to think for himself. There should be more intimate cooperation between the Government officials and the Indians. Until the Indian understands fully and is in accord with what is being done for him, I think matters will continue to drift as they have in the past.

"Today there is no social group within the tribe whose duty it is to see that the welfare of the tribe is protected. Personally I believe that both the native chieftainship and police order could be restored and the obligation for wholesome living put back onto the people themselves. I see no hopes for wholesome advancement so long as the responsibility lies with the Government and the people are unaware of the ends to be attained.

"With the destruction of the buffalo, discouragement of native agricultural techniques, together with the numerous losses of the crops introduced by the whites, the Indian has frequently been thrown onto charity. The result is that individual and group initiative has been destroyed so that there is little need of native leaders; therefore there was nothing to measure a man by, so the last 50 years has not seen the development of a single outstanding leader."

Professor Beckwith, too, feels that past Government policy has had a deleterious effect, both moral and physical, upon the Indians as individuals:

"Not only do the inequalities in the distribution of land suggest the advantages of a communal pattern, but also the results obtained from the system of distribution of individual pensions as wards of the Government or of sometimes huge sums which come to a tribe as a result of the winning of a long-standing law suit, as happened to the Mandan-Hidatsa group just before one of my visits. Such moneys are distributed to adult members of the group to be squandered by him as he elects, so far as I could see, without any regard for his unfortunate descendants. Under a communal pattern such moneys would be used as a fund to provide works advantageous to the whole community.

"The whole system of wardship seems to be based upon the immediate economic transfer of such money allotments out of the hands of the Indians upon the reservation and into those of the white salesman outside of it.

"However neat and well regulated the agency center may appear, so far as the living conditions upon the agency are concerned for the Indians themselves there are to be observed few of those public improvements which might be expected under the paternal control of the most highly mechanized civilization in the world. There is here in Dakota a flat, almost treeless, country surrounded by rivers. The Indians' houses are built of wood, when it would seem as if brickmaking developed on the reservation would bring house-building within the resources of the reservation itself. The digging of wells is left to chance or to personal initiative. In a country of precarious rainfall no large waterworks have been planned for irrigation. Even the ferrying across rivers dividing one part of the reservation from another is left to a white company at an extortionate charge for carriage, a toll which falls upon the individual Indian.

"In some way the Indian should be made to gain value as an individual. He can do this only by a sense of pride in his group. In the old days, on plots of land side by side along the borders of the village, the Indian women planted and harvested their corn. Today they go to the store and buy corn flakes put up in pound packages at exorbitant prices. In old days Indian boys and girls were taught to be of use in exactly those ways in which life would make demands upon them. I was unable to find on any reservation that I visited an Indian woman able even if willing, to do laundry passably well. Every Indian who can afford it owns a car, but I observed no attempt to give each youth mechanical training necessary to make his own small repairs."

B. CAPACITY OF INDIANS

Dr. F. H. Roberts, of the Bureau of American Ethnology, and Mr. F. W. Hodge, of the Southwest Museum, Los Angeles, both have lived among the Zuni Indians. Their comments on the capacity of the Zuni Indians for self-government, both past and future, follow.

Dr. Roberts: "I think that the governing bodies would be competent to deal with things in general. However, I believe that a certain amount of education

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of the younger people with particular emphasis on the fact that their local organizations were worthy of respect, would be advantageous. The white man's attitude that anything Indian is 'no good' has had a rather bad effect on the younger people and has militated against their full cooperation in tribal affairs."

Mr Hodge: "I may say that, for Zuni, the civil governing body functions well. As the priesthood consists of men highly respected because of their religious nature and their desire to promote the commonweal, the civil officers rarely fail to give satisfaction to the community, lest they be removed from office. Sometimes governors and their tenientes remain in office for several years. Their decisions are respected. Often squabbles over petty matters are amicably adjusted by the governor.

"Among the Pueblo Indians generally community work, like the clearing of irrigation ditches, is ordered and directed by the Governor and is regarded by all as necessary to the tribal welfare.

"The Pueblo Indians, as now governed, progress at least as well as most white communities. With their increased dealings with white people, most of whom, as ever, regard the Indians as fair game, an honest and intelligent supervisor of Indian tribal affairs should guide them in the economic utilization of their lands, the management of agricultural machinery, and the cooperative marketing of their products."

Dr. Elsie Clews Parsons, of New York, says of Pueblo competency and experience in self-government:

"I believe that the present social organization is quite competent to deal with all these matters (in answer to question 10 of questionnaire) except the management of agricultural machinery (the introduction of machinery has been at times opposed by the hierarchy) and the cooperative marketing of agricultural and other products.

"Secular communal tasks such as irrigation, road-clearing, etc., are in the hands of the governor and staff. A large part of the communal work is ceremonial and is conducted by the societies."

Dr. John P. Harrington, who has also worked among the Indians of the Southwest, discusses the Pueblo forces of government:

"Among the Pueblos, imposition of tasks is carried out by quite an elaborate system of officials. Among the more westerly tribes, the chief or assembly had messengers, known by a special Indian name, who imposed tasks and acted as supervisors.

"In my opinion, the tribal assemblies are adequately competent to manage and conduct all the activities enumerated above with justice and success. I believe it would initiate a new era in American Indian life if the old native tribal communal ownership of land can be at once reinstated, along with a wholesome revival of social and religious activities, which will be a sure accompaniment.

"Then enforcement of law was executed by messengers of the assembly. There were no jails, but they almost immediately effected punishment, which varied as the seriousness of the crime varied with each group, assured an unusually orderly community."

Mr. William H. Gilbert, Jr., described the activities of the Eastern Cherokees, who have had a measure of self-government for many years:

"The decisions of the council are generally enforced by local opinion and the marshal assisting the chief. The community is proud of its self-government even though its jurisdiction is strictly limited to land questions and questions of membership in the band. Factional controversies are not marked.

"The council may lease out timber, water power, and mining rights to nonmembers of the tribe. Considerable revenue was realized during the World War in this way.

"The council aids local communities in enterprises such as bridge-building, telephone-lines construction, and road-building through donating materials of construction and perhaps the salaries of skilled labor for the project."

Mr. Oliver La Farge described the activities and governing forces of certain tribes of the Southwest:

"Navajos.—However, that may be, the present Navajo Council is effective and well established, and must be regarded as the true government of the tribe, with the local chapters standing to it in a relation similar to that of New England townships to their State governments.

"This council is highly respected by the Navajos, and deservedly so. Its decisions carry much greater weight than could be derived from its power to enforce them, which is virtually nil.

"*Hopi.*—The force of tradition and custom, and the still powerful religious sanctions give the village chiefs great influence and no slight respect even among those who are opposed to them.

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"*Jicarilla Apaches.*—Outstanding individuals are respected, and there is a general attitude which would be favorable to the development of organized leadership."

Mr. Harold Colton, director of the Museum of Northern Arizona, from his intimate experience with the Hopi, writes of their sanctions for law and order, and their growing capacity for self-government:

"Individual disputes not related to property are left to the individual to be settled. Public opinion is a power for law and order. Force is seldom required. The governing bodies are weak because public opinion is strong. A man does not wish to lose his or her reputation for honesty, generosity, hospitality, or fairness. A man with a bad reputation is boycotted. He has no credit and cannot do business. Hopis on the reservation do not drink, murder is very rare, violence is almost unknown.

"There has been growing up an organization called the 'Hopi Association,' made up of young educated Hopis. They have formed a representative assembly, and have established chapters in each pueblo. I feel that this organization can develop into a real governing force in the various communities. I also feel that the Hopi Association, through its chapters, should undertake communal tasks, management of machinery, managing a community house, cooperative marketing of agricultural and other products, sanitary questions, water development, etc.

"Out of the Hopi Association and its chapters a new town council could be formed with initiative to deal with civic questions, and a central assembly to handle tribal matters."

Further comment on Hopi Indian competency is made by Dr. Fred Eggan, of the University of Chicago:

"*Hopi.*—In my judgment the Hopi are entirely competent to deal with these problems (law and order) provided they are given adequate protection on the reservation."

Prof. A. L. Kroeber writes of Indian competency in general and of the pueblos in particular:

"The Pueblos, of course, furnish perhaps the strongest case for collective administration, since these groups had to a large extent succeeded in maintaining their collective rights, and therewith a tribal attitude. This is not inconsistent with their recognizing clan and family ownership of farm lands since time immemorial. They are undoubtedly the happiest, and in their way most successful in proportion as they maintain communal identity.

"In answer to the question, 'In your judgment, are the present governing bodies, or any other representative organizations, competent to deal with—

"'1. Economic matters affecting the community. Yes.

"'2. Economic utilization of tribal lands. Yes.

"'3. The allocation and redistribution at death of land rights. Yes.

"'4. The imposition of communal tasks. Yes.

"'5. The management of agricultural machinery. Perhaps.

"'6. The cooperative marketing of agricutural and other products. No.

"'7. The construction and care of community buildings and improvements. Yes.'

"This holds for all Indians I know of, if given community self-government.."

Prof. Byron Cummings, of Arizona, from his knowledge of the Navajo, Hopi, Pima, Papago, Apache, and Paiute Indians, writes of the forces for law and order:

"In every case coming under my observation all concerned seem to consider the decision of the council, whether it be clan, village, or tribal, as final, and peacefully abide by their conclusions.

"Public opinion seems the great corrective force among them. If allowed to control their own affairs, there would be little need of policemen or jails.

"The spirit of fraternal interest in the welfare of every member of a clan, village, or tribe, seems to be the controlling force. Greed seems largely eliminated and the gods are asked to bless all. The head man is the father and the councillors their elder brothers. Our methods of governmental control have not improved this spirit.

"In my judgment, as already indicated, if we should build upon the Indian's tribal, clan, and village spirit and undertake to perpetuate it, we should see far better results and greater justice manifest. The Indian is capable and able to control his affairs and hold the lawless in check. Why not give him the responsibility instead of treating him as an irresponsible ward or a chattel?"

Below follow brief comments on the capacity of particular Indian tribes for self government.

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Dr. Gladys A. Reichard of Barnard College, who has lived among the Navajo Indians:

"The Navajo delegates and officers of the local councils have shown great ability and with the proper guidance from whites with perspective, could take over the entire government of their tribes satisfactorily."

Prof. Robert H. Lowie, University of California, who has worked for many years among the Crow Indians:

"I think the number of progressive and educated Crows is now sufficient to let them take charge of tribal affairs of the type referred to. They take an active part in Montana political campaigns and use such means of publicity as the Associated Press."

Dr. Cora Du Bois, University of California:

"The present experiment in self government under the supervision of the Indian Bureau which is being made on the Klamath Reservation holds excellent possibilities for self-respecting autonomy."

Dr. Alexander Lesser, of Columbia University, familiar with the Pawnee and Wichita, writes of the Pawnees:

"With proper expert legal and technical advice, I believe these two councils working cooperatively and as checks upon one another are capable of handling all tribal affairs. In form and method of administration they preserve from the past a measure of traditional demonratic control of tribal affairs which with proper stimulation can be developed. The older Pawnee would I think definitely favor giving full authority to such councils, subject perhaps to tribal veto when decisions are arbitrary or objectionable. Contrary to popular belief, the older Pawnee Indians are fully aware of the real issue involved in Pawnee tribal welfare. These old Indians if given proper legal advice, even if their decisions are not subject to veto by the Government, are in no sense likely to dissipate tribal resources."

Several general comments on the value and feasibility of local self-government for the Indians are of interest in the light of the subsequently proposed Wheeler-Howard bill.

Prof. Martha Beckwith, Vassar College:

"It would seem as if, under a communal form of organization the actual legislative power might be vested as of old in a group of responsible Indian leaders. But they would have to be chosen, not as they are today and as they were under the old Indian pattern from the elders of the tribe, but from the mature and fully educated Indians trained to understand the civilization of the whites but also in sympathy with Indian tradition."

Dr. W. C. McKern, Public Museum, Milwaukee (re competency of Indians to deal with economic matters):

"Just about as competent, I should say, as is the average body governing white men, but possibly inclined to be more honest and appreciative of serious responsibility."

Dr. Cora Du Bois, University of California:

"Governing control could be achieved only through small democratic groups which select their own leaders to deal with Indian Bureau officials. Any appointment from the outside in these small groups would meet with hostility and distrust. Appointments from the outside of chiefs, where chiefs are so much a matter of general approval, would only breed dissension."

Prof. Ralph G. Beals, University of California:

"It is my feeling that the effort to utilize the remnants of tribal feeling through communal activities and to initate a larger degree of self-government and self-reliance, which means a larger degree of self-respect, has great possibilities for preserving, on the one hand, the native values of aboriginal life, and on the other, creating a body of self-respecting and useful citizens rather than helpless wards. It is, however, a task which will in many cases be very difficult, particularly with Indians whose tribal organization has been badly disrupted."

III. EDUCATION

In the matter of education, there appears to be unanimity of opinion. The anthropologists urge a reorganization of the educational system to fit the background and needs of the Indian children, a policy which up to the present has not been consistenly pursued by the Department.

Prof. Franz Boas, of Columbia University, writes:

"In my judgment it is very difficult at the present time to find anyone who is well prepared for dealing with the practical problems of Indian life for the reason that no positions of this kind were ever open to anyone who had ever studied

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anthropology. In my opinion the best plan that could be followed at present would be to establish a school in which Indian teachers could be made familiar with the social and economic problems that confront them. I understand that some very inadequate attempts of this kind were made in the Southwest, but from what I can learn from the conduct of the work, they were practically useless. Similar training would be required for the nurses and the agency physicians. I do not believe that any of these would need to be scientific anthropologists, but they ought to have a clear understanding of the needs of the Indians.

"Another difficulty in the education of the Indians is based on the assembling of a great many children in large schools. Owing to the desire to conduct such schools economically, the children are taught what might be called 'factory methods' in the conduct of the household and in trades, which are utterly useless when they go back home. The education of each particular group ought to be adjusted in such a way that they can become a connecting link between the tribe and the white population.

"I merely repeat a commonplace if I state that the contempt of customs and beliefs of the Indians which is instilled in the young is one of the elements that must be overcome. The feeling of inferiority, which is general, is undoubtedly a strong contributing element in bringing about that the Indians are liable to become shiftless proletarians."

Mr. Washington I. Endicott, from his knowledge of the Navajo and Zuni Indians, writes:

"I believe from observation if Indian children could be in more cases taught by Indians who understand, feel, and realize the psychology of the Indian, there would be greater progress.

"White teachers, unfortunately and too often, approach the work from an imaginary position of superiority, antagonize the students, who experience a feeling of repulsion, and not only waste their own talents but squander the money of the Government."

Mr. Alfred W. Bowers, a student of the Mandan, Hidasta, and Arikara Indians, urges:

"I believe that Indian children should have access to a good short book which reviewed the history of their people as related by the old people of the tribe. We must awaken to the fact that they have had a different history than we have and that they have the right to their own traditions. I once suggested this to persons having to do with the education of the Indian and was surprised at the expression of horror. Sociologically, we are treading on unsound ground so long as we pursue our present course. To be sure we shall ultimately exterminate the last vestiges of their customs and beliefs, if we choose, but I seriously doubt if, in an enlightened Christian society such as we boast of, it is worth the price of our own honor. The issue is whether we want to continue Western European militaristic tactics and educate by force or whether we should analyze the issues presented in each reservation in the United States, building our social structure as the Indian demonstrates such desire to avail himself of the benefits presented to him. Their society, like our own, has been in the process of change and will continue to change. If ever there was need of a liberal, intelligent program for the Indian reservations, it is today."

IV. COMMENTS ON POLICY

Below are statements by distinguished anthropologists with regard to the general policy of the Bureau of Indian Affairs. In all the replies to the questionnaire, no anthropologist felt constrained, by virtue of his intimate knowledge of particular Indian tribes, to disapprove the stated policy of the Bureau.

Dr. H. Scudder Mekeel, of Harvard University:

"I am heartily in sympathy with what you evidently have in mind, and am anxious to hear more about it. The problem you are up against is a severe one, and both my interest in the American Indians and my practical knowledge of modern conditions prompts me to offer any help I may be able to give."

Mr. Harold Colton, of the Museum of Northern Arizona:

"I think the Bureau is attacking the question of the future of the tribe from the right angle, and I will be glad to assist you in any way that I can."

Prof. Roland B. Dixon, of Harvard University:

"I am very glad that the investigation you are making is under way, and hope that it may aid in bringing about better economic conditions among some of the tribes."

Dr. Alexander Goldenweiser of the University of Oregon:

"Instead I want to say with emphasis that you may count on my sympathy and, if opportunity arises, cooperation in whatever plans you may have in mind

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in dealing with the complex and tragic problem of our Indians. I have long been accustomed to think that the best thing a competent and humane administrator could do in this matter was to compose an eloquent and heart-felt obituary, seeing, so I thought, that nothing could save the situation, at least let us make their last hours as dignified and gentle as possible. I am, however, beginning to change my mind, perhaps, after all, true idealism and a thorough-going familiarity with all aspects of the Indian problem might result in a miracle. Should this indeed prove possible I should hate to be a mere onlooker."

Dr. Leonard Bloomfield of the University of Chicago:

"I am very glad to see from your circular of November 20 (which reached me yesterday) as well as from other indications, that you are taking an enlightened interest in the welfare of the Indians."

Prof. A. L. Kroeber of the University of California:

"I consider the point of view which is raised by your question fundamentally right. The question ought, of course, to have been raised 50 years ago. In that case I believe that a much happier adjustment would have been reached than most of our Indians now have. Redress is probably still possible in some instances; but too late in others."

Dr. John R. Swanton of the Bureau of American Ethnology:

"The above material is presented by historian and observer who professes no knowledge of the technique of administration, but would be very glad to see our Indian friends started along the road toward permanent and substantial prosperity."

Mr. George Herzog of Yale University:

"I very much welcome the plan of your office of making a survey of the Government's policy of land allotments to individual Indians, and of inviting the anthropologists of this country to place their data at the disposal of this survey."

Dr. A. I. Hallowell of the University of Pennsylvania:

"My field work has all been done among Canadian Indians, but I am in hearty sympathy with the aims of your inquiry."

Dr. Cora Du Bois of the University of California:

"I have the greatest respect for the complexity of the task which you have undertaken and wish you every success in it."

Dr. Frank Speck of the University of Pennsylvania:

"Trusting that you will be convinced of my interest in the conservation policy you have inaugurated in the affairs of the poor Indian minorities who have been so superficially represented in the confusion and haste of administration in the past, I remain, etc."

SAN DIEGO, CALIF., *May 18, 1934.*

Hon. EDGAR HOWARD,
Chairman House Committee on Indian Affairs,
Washington, D.C.:

Whereas the Wheeler-Howard bill contains the principles of self-government for chartered Indian communities, makes generous provision for educating talented Indians in the services and professions related to the Government and economy of Indian communities, provides for the extension of credit facilities to Indians, puts an end to the allotment system, enunciates the principle of land classification designed to return grazing and forest lands to community holdings of workable size: Therefore be it

Resolved, That the California Conference of Social Work at its annual meeting this date at San Diego endorses the Wheeler-Howard bill and urges prompt and favorable action upon it by Congress that its benefits be made immediately available to the Indians of the United States.

ANITA ELDRIDGE, *Executive Secretary.*

DURANT, OKLA., *May 8, 1934.*

Hon. EDGAR HOWARD, M.C.,
Washington, D.C.

DEAR CONGRESSMAN HOWARD: Herewith are enlosed copies of resolutions favoring passage by the Congress of the Wheeler-Howard Indian Rights bill. These resolutions have been passed at the meetings duly advertised and well attended by the Indians in Battiest community, northern McCurtain County; Latimer County, and southern LeFlore County.

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Trusting that you will give due consideration to these expressions of the attitude of the Indians attending these meetings and hoping that you will find it appropriate to favor the passage of the Wheeler-Howard bill, I am.

Respectfully yours,

BEN DWIGHT,
The Principal Chief of the Choctaw Nation.

I. CHOCTAW MEETING IN NORTHERN M'CURTAIN COUNTY, BATTIEST, OKLA., APRIL 17, 1934

At a meeting of Choctaw Indians in this area, the convention on this date expresses the wish that the Wheeler-Howard bill be passed and that the Indians here assembled give their support to said bill and urge its enactment into law.

I. W. WINSHIP, *President.*
CHIMON BAKER, *Secretary.*

II. CHOCTAW MEETING, LATIMER COUNTY, WILBURTON, OKLA., APRIL 27, 1934

A convention of Choctaw Indians assembled at Wilburton, Latimer County, April 27, 1934, and expressed themselves almost unanimously as being in favor of the Wheeler-Howard bill. It should also be stated that there were present at this meeting Choctaws, Chickasaws, and Cherokees from various places in the three Indian nations. The Wheeler-Howard bill was discussed both in English and Choctaw.

I certify that the above is a true statement of the action of said meeting.

BEN DWIGHT.

III. RESOLUTION ADOPTED AT CHOCTAW MEETING, SOUTHERN LEFLORE COUNTY, TALIHINA, APRIL 28, 1934

That it be the wish of the Choctaw people assembled in convention at Talihina, April 28, 1934, that the Wheeler-Howard bill be passed with amendments making possible the following: (a) To extend the jurisdiction of a community organization over the territory comprised within the boundary lines of old Choctaw Nation; (b) to give the Choctaw Tribe the right to reject, by a majority vote, the said bill within 4 months after passage by the Congress; (c) to guarantee the continuation of the tribal office of the Principal Chief.

M. V. WOODS, *Chairman.*
G. G. WADE, *Secretary.*

I certify that the above is a true statement regarding the action at the respective meetings.

BEN DWIGHT.

DURANT, OKLA.,
April 24, 1934.

Hon. EDGAR HOWARD, M.C.,
Washington, D.C.

DEAR CONGRESSMAN HOWARD: Herewith are enclosed copies of resolutions, favoring passage by the Congress of the Wheeler-Howard Indian Rights bill. These resolutions have been passed at meetings duly advertised and well attended by the Indians in Atoka, Haskell, Pittsburg, and northern McCurtain Counties.

Trusting that you will give due consideration to these expressions of the attitude of the Indians attending these meetings and hoping that you will find it appropriate to favor the passage of the Wheeler-Howard bill, I am,

Respectfully yours,

BEN DWIGHT.

I. ATOKA COUNTY INDIAN MEETING, ATOKA, OKLA., APRIL 17, 1934

Pursuant to a call to the Indians of Atoka County, a meeting was held on April 17, 1934, at Atoka, Okla.

And said convention was recorded as being unanimously in favor of the Wheeler-Howard Indian rights bill and recommended that it be passed.

HENRY BOND, *Chairman.*

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II. HASKELL COUNTY INDIAN MEETING, STIGLER, OKLA., APRIL 19, 1934

Motion by Davis Folsom that this convention of Haskell County Indians endorse theWheeler-Howard Indian rights bill and urge the Oklahoma delegatoin to support said bill.

We certify that the above resolution was duly passed by said convention.

W. G. STIGLER, *Chairman.*
GEO. W. SCOTT, *Secretary.*

III. MEETING OF INDIANS AT M'CURTAIN, HASKELL COUNTY, OKLA., APRIL 19, 1934

I certify that said meeting voted unanimously in favor of the Wheeler-Howard bill.

BEN SWIGHT.

IV. SMITHVILLE, M'CURTAIN COUNTY, OKLA., APRIL 20, 1934

The Indians in northern McCurtain County met at Smithville, April 20, 1934, and all present voted affirmatively on the question of approving the Wheeler-Howard Indian rights bill. The meeting also commended Commissioner Collier for his earnest efforts on behalf of the Indains.

ISOM THOMAS, *Secretary.*

VI. PITTSBURG COUNTY INDIAN MEETING, MCALESTER, OKLA., APRIL 21, 1934

Resolved by the Choctaw citizens of Pittsburg County, Okla., in mass convention assembled at McAlester, Okla., on April 21. 1934, that the Wheeler-Howard Indian rights bill has our unqualified approval, that we urge Congress to pass it, and that each member of the Oklahoma delegation in Congress be requested to vote for the passage of the bill.

We hereby certify that the above resolution was passed unanimously at the above meeting.

C. B. BASCOM, *Chairman.*
H. W. ANDERSON, *Secretary.*

STATE OF OKLAHOMA,
County of Bryan, ss.

I, Ben Dwight, do certify that advance notices of the above meetings were carried in the daily and weekly papers of the respective counties and that in addition thereto written and oral notices of said meetings were communicated to Indians living in the various communities in said counties.

That the Wheeler-Howard bill was explained in both the Choctaw and English languages (excepting the meeting at McCurtain) and that full discussion (pro and con) of said bill was permitted and stimulated.

That correct statements regarding the actions taken by the respective meetings are hereinbefore transcribed.

BEN DWIGHT,
Principal Chief of The Choctaw Nation.

Subscribed and sworn to before me at Durant, Okla., this 24th day of April 1934.

[SEAL] FRANK L. DYER, *Notary Public.*

My commission expires September 8, 1936.

ANADARKO, OKLA., *May 10, 1934.*

To the Honorable Committee of Indian Affairs of the House of Representatives:

The Caddo Tribe of Indians in Oklahoma have held many councils concerning the Wheeler-Howard bill, one with the Commissioner, two with the superintendent, and several of the tribe before and after the amendments to the bill, and the business committee present this as the view of the tribe.

I. The tribe is almost unanimously opposed to the self-government and community features of the bill set out in titles I and III.

II. The tribe is almost unanimously in favor of the educational features and training of Indians for the various services of government, and preparation for their social, economic, and civic life. We favor the enlargement of boarding

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schools so they will offer a course equal to a high school course; and give a chance for special college and university training for those who enter the professions and lines of business which demand it.

III. The Caddo Tribe is in hearty sympathy with any movement which will provide lands and homes for landless Indians, and any other equipment which will make better living for their families.

IV. As we do not favor the Indian community, we see no necessity for the Court of Indian Affairs, and we think that the present State and Federal courts, and examiners, and other officers provide the services which this court undertakes to give.

V. We favor the policy of protecting the lands of Indians, by prohibiting the further sale of such lands. As fast as possible all Indians as they become competent should be given control of the use and rentals of their lands.

We favor the extension of trust period of Indians incapable of handling their own lands for a period of 25 years or until they are adjudged competent to take charge of them.

Lands should be sold only to Indians or for their use.

We respectfully submit this as the opinion of our tribe.

Very truly,

Chas. E. Adams, Principal Chief; Malcolm Hazlitt, William Franck, J. D. Inkanish, Robt. Thomas, Fritz Hendrix, Harry Edge, R. W. Dunlap, Stanley Edge, Thomas Keyes, Jesse Carter, Henry Inkanish, members of Caddo Business Committee.

THE MISSISSIPPI CHOCTAW INDIAN FEDERATION,
Walnut Grove, Miss., May 19, 1934.

The Honorable Senators, PAT HARRISON, HUBERT D. STEPHENS, and Congressmen ROSS A. COLLINS, WALL DOXEY, W. M. WHITTINGTON, JOHN E. RANKIN, JEFF BUSBY, WILLIAM M. COLMER, and RUSSELL ELLZEY.

DEAR SIRS: The Mississippi Choctaw Indian Federation, with an adult membership of about 400 organized under a written constitution, has in a number of meetings, and with the help of white friends, studied and discussed the Howard-Wheeler Indian bill. We believe the passage of this bill would greatly help our people; that it would inspire new hope, encourage and create incentives for a more self-sustaining and independent citizenship among our people.

Wherever applicable provisions of this bill have been explained to the Choctaw Indians they have readily endorsed them. The chief and secretary have been instructed to ask that you support and work for the passage of this bill, for which we assure each of you the deep gratitude and sincere appreciation of all the Mississippi Choctaw Indians.

EDD WILLIS, *Chief.*
JOE CHITTO, *Secretary.*

BURT, MICH., *May 19, 1934.*

Hon. EDGAR HOWARD,
Washington, D.C.

DEAR SIR: At a meeting of Saginaw County Indians held May 14, 1934, the Wheeler-Howard bill was discussed, and it was unanimously voted to ask for its adoption. We feel that this is a small measure of justice to us, in view of the fact that many plans have been adopted and carried out for the relief of farmers, tradesmen, and others.

We hope that the Indian will not be forgotten, and we urgently request that it be passed.

Very truly yours,

JOSEPH HART, *Chairman*
(And 27 others).

NORFOLK, VA., *May 19, 1934.*

CONGRESSMAN HOWARD,
Chairman House Indian Affairs Committee, Washington, D.C.

DEAR SIR: Recently I received a committee print of the bill you are sponsoring in reference to Indian self-government, also a copy of the minutes of the proceedings of the Conference for the Indians of the Five Civilized Tribes of Oklahoma. I read both of these articles very closely and with much interest.

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On May 15–18, the Great Council of Virginia of the Improved Order of Red Men and Degree of Pocahontas met in this city to hold their annual session. I presented the body of the bill to a gathering of representatives and past officers of the first-mentioned body. The matter was referred to the legislative committee, who in turn made this recommendation:

"We, the legislative committee, do hereby recommend that this great council go on record as approving and supporting the Howard Indian bill on Indian self-government.

"That the great chief of records write a letter to this effect to all the Cogressmen of this State and urge their full support in the passage of this bill.

"That each tribe and council engage in the same procedure."

The resolution was then presented for the vote and it passed without question or a dissenting voice or vote. At this meeting there were about 150 members present from all over the State, also a few national officers. The Degree of Pocahontas then received the resolution and passed upon it in the same manner as the Red Men.

It has been a pleasure to work for the interests of the Indian in this case. I can be in a position to offer my help to you in any matter that is of a benefit to the Indian.

Trusting that the bill will pass, I am,

Sincerely yours,

JACKSON F. LAMONTE.

PETITION

We, the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians of Michigan, have studied the Wheeler-Howard Indian rights bill now before Congress, and feel that it will be of great benefit to our race. We wish you to support it and do everything possible to have it made a law.

ELIJAH ELK, *Chairman*,
DAN BENNETT,
SOLOMON STRONG, *Committees*,
JOHN JACKSON, *Secretary*,
AARON J. SHAW, (And 115 others).

JAY, OKLA., *May 18, 1934.*

Hon. EDGAR HOWARD,
Chairman House Committee on Indian Affairs,
Washington, D.C.

DEAR MR. HOWARD: The entire membership of the Eastern Emmigrant and the Western Cherokees, legally organized under the State of Oklahoma, comprising 9,492, including men, women, and children, heartily endorse the pending Wheeler-Howard Indian rights bill.

We ask you to do everything you can to have this legislation enacted before the expiration of the present session of Congress.

This is the only legislation that gives the Indians a permanent home and stops the allotment system, gives the rising generation a home that they call their own. All the Cherokee Indians in the eastern part of Oklahoma are in favor of the earliest enactment of the said Wheeler-Howard Indian rights bill. We certainly thank the present administration for the interest and work that they are doing for the helpless Indians.

Respectfully,

C. F. BUZZARD,
Chairman for the Organization.
S. W. PEAK,
Secretary for the Organization.

PROTEST OF THE WICHITA AND DELAWARE INDIANS AGAINST THE PASSAGE OF THE WHEELER-HOWARD BILLS (S. 2755, H.R. 7902)

THE WICHITA NATION ASSOCIATION,
Anadarko, Okla., May 7, 1934.

To the Honorable Members of the House and Senate:

We, the members of the Wichita and Delaware Tribes of Indians, gathered in council at Camp Creek, 6 miles north of Anadarko, Okla., May 7, 1934, adopt

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the following resolution, protesting against the passage of the Wheeler-Howard bills (S. 2755 and H.R. 7902) and bringing the Wichitas and Delawares under its provisions.

We desire to express our appreciation to the Commissioner of Indian Affairs and the Secretary of the Interior for the interest that they are taking in behalf of all the Indians of the United States and particularly for the interest they are taking in the Wichitas and Delawares.

We recommend that the trust period on our trust land be extended for a period of 50 years and carry with it a nonsalable-land provision.

We appreciate and greatly sympathize with all landless Indians and respectfully petition and ask the Government to do something for the landless Indians to the end that they may be well and better taken care of and provided for.

We, therefore, the Wichita and Delaware Indians, would much prefer to have our affairs looked after in the future as they have been in the past, rather than to have enacted the proposed legislation (S. 2755 and H.R. 7902) as we cannot see that it would be to our advantage or welfare to have said bill become a law.

Respectfully submitted.

COMMITTEE ON RESOLUTION,
WILLIAM COLLINS,
Chairman.
JOHN ROSE,
WILLIAM MACK EXENDINE,
Members.

(Sent to Congressman Johnson.)

CALVIN COLLEGE,
Grand Rapids, Mich., May 15, 1934.

The Honorable Mr. HOWARD:

A few days ago we became aware of the Wheeler-Howard bill, having to do with the Indians of this land.

We are not failing to recognize that there are very many valuable suggestions and provisions in this bill; but besides these, there are also provisions of which we cannot approve, and for this reason perhaps you would appreciate our opinion.

It appears to us that the intention of the bill to sponsor the perpetuation of Indian religious traditions and customs as living modes of faith is highly objectionable. In the first place, the Government is never in its place when it attempts to take in its hands the religious training of any people. Secondly, does it not appear overbearing on the part of the Government practically to determine for the Indian the type of religion which is to be his? Thirdly, why should the government of a Christian nation prefer for the Indian his own superstitious religion to Christianity itself?

We do not mean to state that the entire bill is to be overthrown; many parts of it are very good. But if the Wheeler-Howard bill is to become law, we must respectfully request you to consider the striking out of the word "tradition" on page 24. First, because the minds of our Indian children should not be more polluted with these traditions than they already are; and secondly, it is unconstitutional that the Government shall provide money for religious instruction.

Signers of this petition are a few of the members of our Mission Society.

Urgently yours,

CALVIN COLLEGE MISSION SOCIETY.

HOUSE OF REPRESENTATIVES,
Washington, D.C., April 10, 1934.

Hon. EDGAR HOWARD,
House of Representatives, Washington, D.C.

MY DEAR COLLEAGUE: At the suggestion of Hon. Victor Griffin, Chief of the Quapaw Tribe of Indians, who live in my district, I am respectfully calling your attention to the following amendments, which I hope can be placed in the Howard-Wheeler bill (H.R. 7902) in the event it is reported favorably.

I believe that these amendments will tend to clarify the bill so far as the Quapaws are concerned, and I trust they will have your consideration. The amendments are as follows:

TITLE V. MISCELLANEOUS

SECTION 1. The provisions of this Act shall not apply to any reservation wherein a majority of the adult resident Indians votes against the application of these

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provisions in an election duly called by the Secretary of the Interior. It shall be the duty of the Secretary to call such an election to be held within thirty days after the receipt of a petition for such an election signed by one-fourth of the adult resident Indians: *Provided,* That such petition is presented to the Secretary within three months after the passage of this Act: *And provided further,* That none of the provisions of this Act shall in any event change the present status of any allotted Indian as to his person or estate, nor change existing laws in relation thereto including the law as to inheritance, the power to devise his estate by will, or the forum for the trial of actions relating to his person or his estate, unless he shall, if an adult, or by his next of kin, if a minor, have first consented thereto in writing.

SEC. 2. None of the provisions of this Act, except the provisions of Title II relating to Indian education, shall apply to the Indians of New York State or to the Quapaw Indians in the State of Oklahoma.

Sincerely yours,

WESLEY E. DISNEY.

WALTHILL, NEBR., *May 7, 1934.*

HON. EDGAR HOWARD,
Washington, D.C.

DEAR CONGRESSMAN: We, as members of the Omaha Tribe of Indians are writing you at this time objecting to the passage of the Howard-Wheeler bill relative to Indians now pending before Congress.

As we view the same, to those Indians who have property in their own right, and intelligent enough to use the same, the bill means nothing. To those who have no lands, and no other property, in order for the bill to benefit, the Government would either have to provide them with property, or money with which to purchase the same, or they would have to share in the property rights of those Indians who still have property of their own. If this latter, we are absolutely opposed to dividing with the rest. It seems to us that it is a step backward instead of a step forward in the progress of the Indians.

Our understanding is that it has been made to appear to you that the tribal council of the Omaha Indians is in favor of the passage of this bill. Permit us to state that a majority of said council as now constituted are without lands and consequently they, as individuals, would have everything to gain, and nothing to loose by the passage of this bill. Would their viewpoint be the same, if they have plenty of property in their own individual right and would be faced with the proposition that they would have to divide this with the others who have no property?

Respectfully,

EDWARD CLINE.
THOMAS REISE.

COMMITTEE ON INDIAN AFFAIRS,
House of Representatives, Washington, D.C.:

Be it known, on this 26th day of April, A.D. 1934, at a council meeting held in Great Falls, Mont., at 9:30 p.m., after consultations and due consideration of the Wheeler-Howard Indian rights bill, or bill H.R. 7902, that we, the undersigned representatives, secretaries, and members of the Chippewa and Cree Indians of Montana do hereby approve of said bill, and the same be executed to it final action at this term of Congress.

J. H. DUSSOME, *State Representative.*
FRED NAULT, *Western Representative.*
JOE ST. MARKS, *Western Secretary.*
(And ninety other members.)

HONORABLE INDIAN AFFAIRS COMMITTEE,
House of Representatives, Washington, D.C.

GENTLEMEN: The Quapaw Indians of the State of Oklahoma, through their duly constituted tribal council, respectfully request your committee to amend section 21 of the Howard-Wheeler bill (H.R. 7902, 73d Cong., 2d sess.) to read as follows:

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"SEC. 21. None of the provisions of this Act, except the provisions of title II relating to Indian education, shall apply to the Indians of New York State or to the Quapaw Indians in the State of Oklahoma".

Respectfully submitted.

QUAPAW TRIBAL COUNCIL,
By VERN E. THOMPSON,
Its Attorney.

APRIL 9, 1934.

HONORABLE INDIAN AFFAIRS COMMITTEE,
House of Representatives,
Washington, D.C.

GENTLEMEN: The Quapaw Indians of the State of Oklahoma, through their duly constituted tribal council, as an alternative request, and in the event their request of this date to amend section 21 of the Howard-Wheeler bill (H.R. 7902, 73d Cong., 2d sess.) to exclude the Quapaw Indians from the provisions of the act except those provisions relating to Indian education, is not allowed, do most respectfully requested that your honorable committee amend title V of the act as suggested by Chairman Howard of the committee, to read as follows

"TITLE V. MISCELLANEOUS

"SECTION 1. The provisions of this Act shall not apply to any reservation wherein a majority of the adult resident Indians votes against the application of these provisions in an election duly called by the Secretary of the Interior. It shall be the duty of the Secretary to call such an election to be held within 30 days after the receipt of a petition for such an election signed by one-fourth of the adult resident Indians, provided such petition is presented to the Secretary within 3 months after the passage of this Act: *And provided further*, That none of the provisions of this Act shall in any event change the present status of any allotted Indian as to his person or estate, nor change existing laws in relation thereto including the law as to inheritance, the power to devise his estate by will, or the form for the trial of actions relating to his person or his estate, unless he shall, if an adult, or by his next of kin if a minor, have first consented thereto in writing."

Respectfully submitted.

QUAPAW TRIBAL COUNCIL,
By VERN E. THOMPSON,
Its Attorney.

APRIL 9, 1934.

NATIONAL ASSOCIATION ON INDIAN AFFAIRS, INC.,
New York, April 5, 1934.

Hon. EDGAR G. HOWARD,
Chairman Committee on Indian Affairs,
House of Representatives, Washington, D.C.

MY DEAR CONGRESSMAN: I am instructed by the National Association on Indian Affairs to write to you expressing our hearty support of the Wheeler-Howard bill, and our appreciaton of your efforts for its passage. We have read with interest the transcript of the hearings held by your committee on this bill to date, and are much gratified by your personal interest in the matter.

I have just returned from attending a number of Indian councils on this subject in the southwestern part of the United States and we have embodied the desires of these Indians, as communicated to us, together with our own observations in the light of our experience in dealing with Indian tribes in the enclosed suggestions for amendments or improvements in the bill, which we respectfully submit for your consideration.

Of course much of the effect of this bill will depend upon the type of rules and regulations put forth by the Commissioner of Indian Affairs and the Secretary of the Interior. We hope that in the course of your hearings you will cause the Commissioner to put in the record fairly definite statements as to the type of these rules and regulations, and in particular a specific statement as to the regulations he would set up in regard to the provision for the recall of employees by the vote of the Indian communities.

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I hope to come to Washington in the near future and if you are not too busy should appreciate the privilege of calling upon you.

Would you be so good as to place the attached memorandum in the record of your hearings?

With respectful regards, I remain,

Yours sincerely,

OLIVER LA FARGE,
President National Association on Indian Affairs, Inc.

MEMORANDUM BY NATIONAL ASSOCIATION ON INDIAN AFFAIRS, INC.

The National Association on Indian Affairs is in favor of the principles embodied in the Wheeler-Howard bill, but it is the considered opinion of this association that unless certain amendments are made, one of the primary purposes of the bill, namely to safeguard the rights of the Indians and to train them in equitable self-government, will be frustrated. These amendments do not change the major purposes of the bill, but they are necessary to close loopholes which in many cases we believe were left open through oversight or a misapprehension of actual conditions among the Indians.

The amendments suggested are as follows: (References by page and line refer to H.R. 7902).

1. TITLE I, SECTION 3, LINES 17 TO 21 IN PAGE 4

The proposed charters shall guarantee "the right of any member to abandon the community" and provide for his compensation for the rights which he relinquishes thereby. From this section and further provisions in the bill we gather that there is no restriction upon an Indian's freedom to withdraw from his community, and that in many cases he would in that case receive a cash compensation. There is no provision in the bill for the further care of such Indians. If restricted Indians are to be allowed so to withdraw from the community, and by so doing are to remove themselves from the system of guardianship set up in this bill, we have here a back-door method of achieving an end similar to that which is now achieved by the allotment system, and the purpose of the revocation of the Secretary of the Interior's power to issue certificates of competency (title III, sec. 4) is partially frustrated. Many restricted Indians in their present stage of development would be greatly tempted by the opportunity to receive a lump sum in cash in exchange for surrendering their tribal rights, just as today it has been so mournfully demonstrated that the majority of Indians cannot resist pressure to sell their allotments for a cash consideration. It is well known that there are frequently dissentions and political quarrels within tribes; the losers in such quarrels would be strongly tempted in a moment of irritation to sell out in this manner.

When restricted Indians, some of them perhaps not even equipped with an adequate knowledge of the English language, take such action, what is to happen to them under the provisions of this bill? Do they become unrestricted Indians at the mercy of white communities? Or if the continue Federal ward, and the Federal Government remains responsible for them, will this mean the creation in the future of innumerable individual trusts—one might almost say 1-man tribes, the affairs of each one to be administered individually by the Department of the Interior? This promises to set up as complicated and as expensive an administration as the present machinery for handling Indian real estate and individual trusts which this bill hopes to abolish and which we are all anxious to see terminated. We suggest that the power of a restricted Indian to eliminate himself from his tribe or community should be subject to the approval of the Secretary of the Interior in his normal capacity as guardian of such Indians.

2. TITLE I, SECTION 4, PARAGRAPH (D)

No provision is made in this paragraph for an appeal by the Indians from decisions of the tribal or community courts. A fine of $500, with or without imprisonment, would break the average Indian family. In most Indian communities such a fine would be equivalent to a fine of $10,000 in an ordinary white community. We might safely say that a fine of $50 would be ruinous to a considerable portion of our Indian population. Actual experience among self-governing groups, such as the Pueblos of New Mexico, shows that in practice the majority group which controls the government tends to inflict punishments upon dissenting minorities as a method of political discipline. Such tendencies would probably continue—they exist even in white communities. It is unjust

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and un-American to deny to the individual Indian the same right of appeal as is now possessed by white men from their magistrates' courts.

It may be objected that the placing of an appeal from the decision of the community courts to the proposed Court of Indian Affairs would result in crowding the higher court with frivolous appeals; we believe that if it were placed in the power of the Court of Indian Affairs to assess the expenses of the appeal upon the appellant if the court should determine that the appeal was unjustified, or that if the court were given the power to refuse to receive what appear to be groundless appeals, that this could be avoided. In any case we consider it vital that the Indians should have this right.

There has already been some discussion of this matter before the House Committee on Indian Affairs (hearings, p. III, pp. 79–82). We are in accord with the position taken up by Mr. O'Malley (p. 80) and Mr. Werner (p. 81) in this matter, favoring extending to the Indians the full right of appeal.

We believe also that various of the Indian tribes themselves will submit or have submitted protests against the absence of such a provision.

3. TITLE I. SECTION 9

This section deals with the important matter of the protection of the rights of minorities by the Secretary of the Interior and the Commissioner of Indian Affairs. It gives these officials power to enforce provisions for the protection of minority rights only if such power is provided within the charter; otherwise they must act through the cumbersome method of legal process in a court of competent jurisdiction. We believe that far more adequate protection could be given to the minorities if the power to enforce provisions for their protection, including the provisions of the United States Constitution, were vested in these officials in all cases, the communities retaining the right to oppose such administrative action by a legal process in the event that such action should seem improper. Experience with many tribes has shown that Indians are no better than whites in their treatment of minority groups, and where for a generation or more the Indians have had no experience in self-government but have become accustomed to the harsh, arbitrary, and paternalistic methods of the Indian Service, it is not to be expected that the dominant groups will have any well-developed sense of responsibility toward minorities.

4. TITLE I, SECTION 7, PAGES 13 AND 14

This portion of section 7 sets up what amounts to a special Indian civil service within the Bureau of Indian Affairs. Some such provision is badly needed, and we are heartily in sympathy with the purpose of this section. However, we feel that there is the same need here as in white civil service to protect both the people and officials from the future development of political pressure for purely political appointments or the application of the spoils system. At the present time the control of this proposed Indian civil service, including all the regulations govering qualification, is vested in the Indian Bureau. This Bureau at the present moment seems to be going through a remarkable period of regeneration, but its past history is not such as to lead anyone to regard it with confidence as the administrator of such regulations. We believe that the purpose of this section would be yet more efficiently fulfilled if the actual administration of this matter were handed over to the Civil Service Commission, drawing up its qualifications to meet the provisions of this bill in consultation with the Bureau of Indian Affairs. We believe that this would not only be a protection to the Indians but also a valuable protection to the Commissioner of Indian Affairs himself against the pressure of office seekers.

5. TITLE I, SECTION 13, PARAGRAPH (E)

This section provides that the three-fifths vote for ratification of a charter, and three-fourths vote for ratification of an amendment thereto "shall be measured with reference to the total number of votes cast." As it stands, this provision vitiates this entire title of the bill, since it provides a means whereby an original charter could be ratified by an actual minority of the tribe concerned or equally dangerously whereby a vital amendment in the future could be put over upon a tribe by minority vote. Actual experience has shown that where tribes are unaccustomed to our voting methods or mistrustful of the purposes of the Government, large numbers may fail to vote, believing that by so abstaining they may refuse to participate in the outcome of the election. We may cite the case of the San Carlos Apaches who were called to vote upon the adoption of a constitution in December 1933. Of the 1,400 eligible voters only 470 cast a ballot, due to

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failure of the Indians to understand the nature of the occasion and to the fact that many of them were employed in relief and other work at a great distance from the voting place. A constitution which would have virtually disfranchised more than a third of the tribe and vested control of all tribal affairs in the hands of a small minority clique was adopted by a vote of 270 to 200. There can be no question that this constitution, which the Commissioner of Indian Affairs quite properly refused to accept, was opposed by the great majority of the tribe, but in fact the favorable vote was only 12 short of the binding three-fifths vote, as provided by the paragraph under discussion.

The argument that we seldom get a full majority of voters in white communities does not apply to these small Indian groups and particularly should not apply in matters of such vital importance to them as the acceptance and amendment of charters. If only from the point of view of educating them in citizenship, they should be faced by the necessity of getting out an adequate vote in order to receive charters or additional powers. This association considers it vital for the protection of the rights of the Indians that this paragraph should be amended to provide that the three-fifths vote or three-fourths vote, as defined, shall not be valid unless the total number of votes cast shall be equal to 80 percent of the total number of qualified voters in the community or tribe concerned.

We understand that protests against this provision as it stands and requests for amendments similar to the one proposed here have been sent in or will be sent in from a number of Indian tribes.

6. TITLE III, SECTION I

The National Association on Indian Affairs urges adoption of the amendment to section 4 outlined by the Commissioner of Indian Affairs in the hearings before the House committee, part IV, page 114. As this section now reads it would give to the Indian communities the power to make a series of 1-year leases, indefinitely renewable, which would frustrate the supervision of the Secretary of the Interior. The provision suggested by the Commissioner that such leases should not be renewed without the Secretary's approval appears to be absolutely necessary. The history of long-term leases made by individual Indians among the Five Civilized Tribes, as well as in other places, shows clearly the necessity for this.

Granted these proposed changes, which we believe to be necessary for the fulfillment of the purposes of the bill, the National Association on Indian Affairs wishes to place itself on record as being heartily in favor of the passage of the Wheeler-Howard bill as a desperately needed and truly effective reform in our administration of Indian affairs.

SANTA CLARA PUEBLO,
ESPANOLA POST OFFICE,
March 26, 1934.

Hon. EDGAR G. HOWARD,
Committee on Indian Affairs,
House of Representatives, Washington, D.C.

DEAR MR. HOWARD: We, Santa Clara Pueblo Indians, belonging to the progressive party, are writing to ask you respectfully to use your influence to make certain changes in the Wheeler-Howard bill, which are necessary to protect our rights and for the future welfare of the whole pueblo. Although we are in favor of the bill as a whole and agree with our pueblo council that it should be passed, we believe that unless these changes are made the bill will work great injustice to many Indians.

The first of these changes is that title I, section 4, paragraph (d) shall be amended to provide to all Indians the same right of appeal from unjust or improper decisions of the local courts described in that paragraph as is now enjoyed by white men in their communities. There is strong political feeling in many tribes and pueblos, and as the bill reads at present it would be possible for judges selected by the majority groups to ruin their opponents by fines and imprisonment. We Indians are mostly poor people, and a fine of $50 would break the average Indian family. We also believe that the right of appeal is one which all Americans should have, and that it is un-American to set up local courts from which there is no appeal.

The second change is that title I, section 13, paragraph (e) shall be amended to provide that no vote for ratification or amendment of a charter shall be valid

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unless the total number of votes cast is equal to 80 percent of the total number of qualified voters in the community or pueblo concerned. If this change is not made, it would be possible for a small group in the future to put over a charter or important amendment, by holding an election at a time when not everybody of the community could be present. In small communities, such as our pueblos, and in many tribes, this would be easy to do; and as these charters are the same a constitution to us, this danger should be prevented.

We believe thise changes to be vital to our protection in the future, and we hereby call your attention to them. They are not merely necessary for ourselves but for all Indians. Unless they are made, we protest against the Wheeler-Howard bill as injurious to our rights and ancient form of government; if they are made, we herewith join in approving the bill and urge that it be passed.

We are writing about this also to the Commissioner and to Mr. Wheeler.

Yours truly,

DESIDERIO NARANJO
(And 33 others).

RESOLUTION OF THE CHICKASAW INDIANS

Be it resolved, The Chickasaw Indians in convention assembled this 2d day of April, at Sealy's Chapel Indian Church, Johnston County, Okla., representing approximately 2,500 Indians, express their confidence in the present administration and Congress at Washington, D.C., for an immediate consideration of the Wheeler-Howard bill, H.R. 7902 and bill H.R. 8174.

Particularly do we wish to express our belief in the sincerity and intention of our Indian Commissioner, Hon. John Collier, of Washington, D.C., as evidenced by his willingness to speak with the Indian people of these United States upon pending legislation so vitally affecting the everyday life and the future well-being of the Indian people as a whole.

With careful thought and mature deliberation this meeting accepts the principles found in the Wheeler-Howard bill (H.R. 7902) and especially do we subscribe to the purposes of the bill. Similarly do we accept in toto bill H.R. 8174.

The Chickasaw Indian race does not seek to speak for other tribes or races of Indians, neither do the Chickasaw Indians authorize any group, clique, or collection of individuals to speak for it in any manner pertaining to the pending legislation; namely, bills H.R. 7902 and 8174, so vitally concerning their present and future welfare.

We especially want to emphasize the following memorial: We believe the provisions in these bills provide the remedy in its broadest meaning, it corrects evils that we ourselves have been unable to correct, but the existence of which evil we have been conscious all these years. And we feel the Indian people or race alone can rightfully express and interpret the feeling others are attempting to express for them, irrespective of how well their intentions may be.

The Commissioner of Indian Affairs, Hon. John Collier, is authorized to use these expressions in whatever capacity, time, or place conducive to an immediate consideration of the pending legislation in Congress for an immediate relief for the Chickasaw Indians and the Indian race as a whole and removing certain operations of law tending to dispossess the Indian people of their lands and home; and for rehabilitation, we cannot find words better expressive of the method to be used than those of our Commissioner of Indian Affairs when in his report he said to first lift the Indian race out of "material and spiritual dependency and hopelessness."

J. C. MCCURTAIN,
THOMPSON JOHNSON,
E. H. BYARS,
JOSEPH W. HAYES,
Committee on Resolutions.

The following resolution suggesting changes was also submitted by the Chickasaw convention:

Be it resolved, That the duly assembled Chickasaw Indians this 2d day of April, at Sealy's Chapel Indian Church, Johnston County, Okla., recommend the following change, insertion, and clarification of the Wheeler-Howard bill (H.R. 7902):

1. Insertion of language that would entitle the member of a chartered community a voice in the leasing or letting of property for oil, gas, or mining purposes—similar to the language as found in the bill in respect with the leasing of land to remove timber, etc.

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2. Whenever and after the passage of this act, the Secretary of the Interior shall, after ascertaining as near as possible the wishes of the Indian tribe, survey, purchase, and consolidate the community, but shall be prohibited from removing said tribes or tribe from their original nation or domain or State wherein they now presently reside, unless there is a clear intention of willingness or permission from the tribe so concerned or an individual or member of the tribe.

3. That no member of a tribe shall lose, or his or her interest shall be diminished, because of H.R. 7902, in any suit now pending in the Court of Claims being prosecuted in the name of the tribe or jointly with another tribe or tribes.

SAN ILDEFONSO PUEBLO,
New Mexico, April 3, 1934.

Hon. EDGAR G. HOWARD,
Committee on Indian Affairs, House of Representatives,
Washington, D.C.

DEAR SIR: Our council meet to discuss the bill H.R. 7902. We understand it a little because Mr. Collier has explain to us at San Domingo meeting. But we wanted to call your attention in title I, section 12, paragraph (e), and title I, section 3 and section 4, paragraph (e).

Title I, section 12, paragraph (e), shall be amended to provide that the "three-fifths vote" for ratification of a charter and the "three-fourths vote" for ratification of any amendment thereto shall not be valid unless the total number of votes cast is equal to the total number of qualified votes in the pueblo or community. The State constitution of New Mexico or law permits females to vote and so with other States. In our laws that is not written. Only by voice do we know that females are not permitted to vote.

We also do not approve of the provision in title I, section 3, and section 4, paragraph (e), whereby the pueblo or community is required to allow any member to abandon his community and to receive compensation for so doing. These provisions encourage, or will encourage, the member to leave his pueblo or community by offering a cash reward. It is against our pueblo law of San Ildefonso that if an Indian has land and house and abandons the pueblo his right is not taken away. By our Law he can stay as long as he wanted to or die some place else. If he dies what belongs to him goes to his close relations. Our pueblo council cannot take away his land or anybody's land they own only because they stay away so long. The laws of our pueblo do not extend that far.

We Pueblos of New Mexico have a body of council who attend to its own pueblo. Spain found us Pueblos in community. She created a cane as emblem of authority. She let the pueblos create the rest of it—canes that different officers hold, also laws to regulate its people and pueblo. United States under our great statesman, Mr. Abraham Lincoln, gave us the United States cane with his name on it. Different kinds of parties has been created in United States by white people in the generations past up to date. But we Pueblos still have the same law and same government that was created long ago, and we know it is a good government. So that is why we are still trying to hold to it. A house can fall and a poor man can build it again even if he has no money. But if our Pueblo government is gone or changed it will be a hard thing to recreate it again.

We ask you will consider our letter, and hope amendment be made of your bill. We will be in favor when amended in title I, section 12, paragraph (e) and title I, section 3 and section 4, paragraph (e).

We will close here with regards from all members of our council of San Ildefonso Pueblo.

Yours truly,

PUEBLO COUNCIL OF SAN ILDEFONSO PUEBLO.
DIOMICIO SANCHEZ,
Governor.
SOTERO MONTOYA,
First Lieutenant.
AGAPITO PINO,
Second Lieutenant.
ABEL SANCHEZ,
Secretary.

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CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., April 14, 1934.

Hon. EDGAR HOWARD,
Chairman Committee on Indian Affairs,
House Office Building, Washington, D.C.

MY DEAR MR. HOWARD: The Blackfeet Indians of my district have proposed several amendments to the Department's Indian bill.

The council of this tribe is quite a businesslike council and have unanimously agreed upon these amendments.

I believe they are worthy of passing on for your consideration; therefore, I have had copies made and I am herewith enclosing one for your consideration.

Sincerely yours,

ROY E. AYERS.

COMMENT UPON AND SUGGESTED AMENDMENTS TO SENATE BILL 2755 WITH REFERENCE TO INDIAN SELF-GOVERNMENT

1. It appears that under sections 2 and 3 of the Senate bill it will be possible to organize a large number of communities each of which will be self-governing and each of which will have all of the corporate powers set forth in the bill under the same reservation. Some question arises in our minds as to the admissibility of so dividing up the lands and people of a single tribe. It is well known that a portion of the tribal lands will have a much greater value than others. It may be possible under the bill, as at present drawn, for one or more communities small in number of members, to obtain control of a large portion of more valuable land theretofore belonging to the entire tribe. It is suggested that this matter be given thought with the idea, if possible, to restrict the organization of separate communities upon a single reservation.

2. Amend section 4 by inserting after the word "vote", line 19 of page 5, the following: "of the adult members of the community".

3. Amend subsection B, section 4 by striking the word "adoption", line 15, page 6, and inserting in lieu thereof the word "admission".

4. Amend subparagraph F of section 4 by inserting after the word "properties" on line 23, page 7, the following: "except lands held in trust for members of such community" and by inserting after the word "assessments", in line 3, page 8, the following: "*Provided, however*, That said Indian community shall have the right and is hereby empowered to exercise the right of condemnation upon all lands included in such community including trust lands for public uses as defined by the laws of the United States".

5. Amend section 5, page 10, by striking all of said section after the word "community", in line 21, and inserting in lieu thereof the following: "and an Indian member of such community shall be appointed to fill the vacancy arising from such removal: *Provided, however*, That the qualifications of any Indian applicant for such position so vacated shall first have been approved by the Commissioner of Indian Affairs".

6. Amend subsection D of section 8, page 16, by striking from line 1, page 16, the words "Secretary of Interior" and inserting in lieu thereof the word "community"; striking from line 2 the words "the community has failed" and inserting the words "it is unable"; striking the first word "the" in line 4 and inserting in lieu thereof the word "any".

7. Amend subsection B, section 13, page 19, by striking from lines 3 and 4 and 5 the following words: "and were on or about February 1, 1934, actually residing within the present boundaries of any Indian reservation".

8. Amend section 3, page 26, by striking from line 12, the words "Secretary of the Interior" and inserting in lieu thereof the words "tribe by a three-fourths vote of its adult enrolled members".

9. Amend section 5, page 27, striking the words "devise", "gift" in line 11, and word "devised" line 16, and inserting before the word "no" in line 11 the following: "the right of inheritance by will or otherwise of lands held under restricted patents is expressly recognized in accordance with existing laws, but".

10. Amend section 7, page 29, by inserting after the word "and" and before the word "to" in line 18 the following: "and upon such voluntary relinquishment", and by inserting the same words before the word "to" in line 14, page 30.

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11. Amend section 8, page 31, by striking from line 1, the words "tribal or community" and from lines 2 and 3 the words "whether or not held in the Treasury of the United States", and inserting after the word "expend" in line 1, the word "funds", in line 2 the words "appropriated by the Congress of the United States".

12. Amend section 8, page 32, by striking all of the paragraph after the word "paid" in line 11, and inserting in lieu thereof the words "for in cash in one amount at time for sale".

13. Amend section 11, pages 33 and 34, by striking all of said paragraph and inserting in lieu thereof the following: "nothing in this act contained shall prevent an allottee under a trust or restricted patent from, during his lifetime, opening mines and oil and gas wells upon the lands held by him under such allotment or from leasing subject to the approval of the Secretary of the Interior such allotment for the purpose of mining or drilling and operating thereon for oil, gas, and other minerals, and such allottee, his heirs and assigns shall be entitled to receive all rentals and royalties due or to become due under the terms of any such lease for the full term thereof".

LATER AMENDMENTS SENT IN

14. Amend section 8, subdivision (d), on page 16, as follows: After the word "shall" in line 5 insert the following: "with the consent of the Senate of the United States". Strike all appearing after the word "service" commencing on line 6.

15. Amend section 13, subdivision (b), on page 19, as follows: Strike out from lines 7 and 8 the following: "The Secretary of the Interior or the constituted authorities of", and insert after the word "community" in line 14 the following: "but nothing in this title contained shall be construed as authorizing the Secretary of the Interior, the Commissioner of Indian Affairs, or any other person or body to establish any reservation within the boundaries of those now established or to settle within the boundaries of any reservation now established or any chartered community hereafter to be established any Indian not a member of the tribe or nation settled upon such reservation on February 1, 1934".

[Telegram]

WINGATE, N.MEX., *April 12, 1934.*

Hon. EDGAR HOWARD,
Chairman House Committee on Indian Affairs:

I beg to inform you that the tribal council of the Navajo Nation, the largest Indian tribe in the United States, in council assembled April 10, at Crown Point N.Mex., after a thorough discussion of the provisions of the Wheeler-Howard Indian self-government bills, S. 2755 and H.R. 7902, have given it their approval and urge early passage of the bills with the proposed amendments. This affirmative action by the Navajo Council was taken after a previous council meeting at Fort Defiance, Ariz., March 12 and 13 with Commissioner Collier and his staff, at which time the council requested an opportunity to discuss the provisions of the bills with their people, which was done. Again, in behalf of the Navajo Council and the Navajo Nation, I urge early favorable action by the Congress on the bills and also your support.

Respectfully,

THOMAS P. DODGE,
Chairman Navajo Tribal Council.

Hon. EDGAR HOWARD,
United States Congressman:

We, the undersigned, chiefs and authorized councilmen of the Confederated Tribes of Yakima Indians, respectfully petition your aid in preventing the passage of Senate bill no. 2755. We feel that the best interests of the Indians can be preserved by the continuance of treaty laws and carried out in conformity with the treaty of 1855, entered into between the fathers of some of the undersigned chiefs and Governor Stevens of the Territory of Washington.

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We object to the proposed Senate bill no. 2755 specifically for the reason that we feel that it might result in placing in the hands of irresponsible Indians too much authority and power.

Wherefore we respectfully urge that you use your influence in preventing the passage of this bill and the making of the same into a law.

Chief Noah (his mark) Saluskin, Chief Jim (his mark) Mennick, Chief Frank (his mark) Totus, Chief George (his mark) Lee, Chief Job (his mark) Charley, Columbia Wildman Councilman; Ira Taslwiat, Thomas Sam, William (his mark) Adams, Councilmen; Chief Jim Wallahee, Ohi Chief; Moses Whiteford, Louis Andy, Councilmen; Frank (his mark) Seelatsee.

I certify this to be a true copy of original petition.

GEORGE LEE,
Chairman Tribal Council.

MARCH 12, 1934.

RESOLUTION

To whom these presents shall come, greetings:

Whereas the Commissioner of Indian Affairs has proposed the so-called "new deal" for the Indians; designed to set up some form of self-government;

Whereas the Chippewa Indians of the State of Minnesota are now living under a treaty with the United States of America known as the "act of January 14, 1889";

Whereas the so-called "new deal" for the Indians would set aside the treaty of January 14, 1889, abrogate rights accrued thereunder, and prolong the period of such living under treaty rights; and

Whereas the best system of self-government is that now in effect and enjoyed by the American citizen known as the white man, therefore

Be it resolved, That the Twin Cities Council of the Chippewa Indians of the State of Minnesota go on record as being opposed to the so-called "new deal" for the Indians;

Be it further resolved, That a copy of this resolution be sent to each of the Members of Congress from the State of Minnesota, the Indian Committees of Congress, and the Governor of the State of Minnesota, urging that they oppose the so-called "new deal" for the Indians.

Passed by the Twin Cities Council of the Chippewa Indians of the State of Minnesota, this 4th day of April 1934.

By the officers:

MARTIN V. B. DREW,
Chairman,
SIMON MCKEIG,
Vice chairman,
ARCHIE LIBBY,
Secretary.

RESOLUTION OF THE UNRESTRICTED INDIAN ORGANIZATION

To all to whom these present shall come greeting:

Whereas, the Unrestricted Indian Organization of the Muskogee Creek Nation has assembled in the city of Beggs, county of Okmulgee, State of Oklahoma, this the 19th day of March 1934, for the purpose of the discussion of the Wheeler-Howard Indian rights bill (S. 2755; H.R. 7992) now pending in Congress, and whereas, the National Commissioner of Indians Affairs, Mr. John C. Collier, will be in the State of Oklahoma, between the dates of March 19 and 22, 1934, to elect delegates to confer with him on said bill.

Whereas the said Commission to the Five Civilized Tribes, or its lawful successor, has presented to Congress, by Mr. Howard, on February 12, 1934, and referred to the Committee on Indian Affairs, the above-mentioned bill.

Now therefore, we the undersigned, officers of the Unrestricted Indian Organization, of the Muskogee Creek Nation, with its duly elected delegates, to confer with the honorable National Commissioner of Indian Affairs, Mr. John C. Collier, by resolution. Be it enacted that this resolution, be adopted and approved, and

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become a part of the records local convention of the Creek Tribe of Indians now assembled, of the Muskogee Creek Nation, on the 22d day of March 1934 and the said resolution, be given to the honorable John C. Collier the National Commissioner of Indian Affairs.

Be it further resolved, That the representatives of the Unrestricted Indian Organization, of the Muskogee Creek Nation, do not regret, of the inability of the Muskogee Creek Tribe of Indians, now assembled in a convention, of being able to approve or disapprove of the Wheeler-Howard bill, and that said bill can only be discussed for further information.

First. For the reason that on March 4, 1906, the Creek national council, of the Muskogee Creek Nation, was abolished. And the Creek Tribe of Indians is now divided into several local organizations; further reasons, that the Creek Tribe of Indians do not have a national organization, and therefore this convention now assembled on this the 22d day of March 1934 for the purpose of hearing the discussion of said bill, shall not be as of record as a national convention, as far as the Creek Indians of Muskogee Creek Nation are concerned.

Be it further resolved, That before the said bill now pending in Congress a national issue can be legally approved, or disapproved, the Creek Indians of the Muskogee Creek Nation shall have to comply with the act of Congress March 1, 1901, and were ratified by the Creek national council in 1902, and the act of April 26, 1906, as shown in Indian Land Laws (p. 487, sec. 598), and that the said act reads as follows.

"Provides that no act, ordinance, or resolution (except resolution of adjournment) of the tribal counicl or legislative of any of said tribes or nation shall be of any validity until approved by the President of the United States). Further provides that no contract involving the payment or expenditure of any or affecting any property belonging to any of said tribes or nations made by them or any of them or by any officer thereof, shall be of any validity until approved by the President of the United States. And for such reason any resolution that may be passed on or vote taken in this convention, that is not in accord with the act of Congress March 1, 1901, could not expect the endorsement or approval of the President of the United States: Therefore be it

Resolved, That this convention now assembled urge that inasmuch that the restricted Indians have an organization and the unrestricted Indians of the Muskogee Creek Nation have an organization. That the said organizations should come together and perfect a national organization, and that the said national organization shall call a national convention, that we may be able to intelligently pass on the Wheeler-Howard bill or any other matters pertaining to the Muskogee Creek Nation, with a national committee from a national convention, as by the act of Congress March 1, 1901, ratified by the Creeks May 25, 1901, as of section 451, article 33, page 430, of Indian Land Laws.

Be it enacted, That the Wheeler-Howard bill be tabled until such time that a national organization council, can be perfected, as follows:

First. President, vice president, secretary, assistant secretary, treasurer, auditors, interpreter, national translator, and six national delegates, whose duties shall be to oppose all measures looking toward the territorialization or sectionization of our public domain. Or any change in our present relations with the United States Government.. They shall represent in all other matters the interest of the Muskogee Creek people members and citizens of tribe, in such a way as will be most for the welfare of the Indian race.

Be it further resolved, That the members of the national organization council, of the Muskogee Creek Nation, be elected from the Restricted Indian Organization and the Unrestricted Indian Organization, as near equal as possible, and the same be submitted to His Excellency, Franklin D. Roosevelt, President of the United States, for his approval.

Which is in accord with the supplemental agreement of March 1, 1901, and that no agreement pertaining to the Creek tribal affairs and the United States Government shall not be valid without the signature of two-third majority of the said representatives of the Muskogee national organization Creek council, as the vote of the members and citizens of Creek Nation, national organization council, when such organization have been perfected.

Be it further resolved, That this organization, the Unrestricted Indian Organization, of the Muskogee Creek Nation, in compliance with the act of Congress of April 26, 1906, section 598, send a copy of this resolution, to His Excellency, Franklin D. Roosevelt, President of the United States, as of our actions in this convention now assembled.

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In witness whereof we the members of the Unrestricted Indian Organization, of the Muskogee Creek Nation, and members and citizens of the Creek Nation, and as members of the resolution committee, have hereunto set our hands, the day and year above mentioned.

And present to you for your approval,

Respectfully submitted.

LEWIS ADAMS,
Chairman of the Committee,
Thru J. ADAMS,
SARAH GRAYSON NAW BROWN.

Attested and approved March 19, 1934.

C. W. WARD,
Chairman of the Unrestricted Indian Organization.
WASHINGTON ADAMS,
Secretary of the Unrestricted Indian Organization.
C. W. WARD,
J. T. WARD,
WASHINGTON ADAMS,
Delagates as representatives of the Unrestricted Indian Organization of the Muskogee Creek Nation. To confer with Mr. John C. Collier, National Commissioner of Indian Affairs.

OMAK, WASH., *April 9, 1934.*

Hon. EDGAR HOWARD,
Washington, D.C.

DEAR SIR: The Colville Indian Association of the Omak district held a meeting on March 31.

The purpose of the meeting was to discuss and familiarize ourselves with the new Collier program, particularly the bills S. 2755, and H.R. 7902, respectively. We understand these bills are coming before the Senate and the House of Representatives in the near future.

Toward the close of the session we Indians passed a resolution to inform you that we are very much in favor of the Collier program, particularly the bills S. 2755, and H.R. 7902.

We are desirous of your support in the passing of the above-mentioned bills, and other legislation beneficial to the Indians.

Sincerely yours,

ALBERT W. ORR, *Secretary.*

APACHE, OKLA., *March 14, 1934.*

PROTESTATION

Honorable Members of the Senate and House Committees on Indian Affairs:

We, the Fort Sill Apaches, oppose the Wheeler-Howard bill S. 2755, H.R. 7902, as enumerated in the following paragraphs.

The passage of the Wheeler-Howard bill will not benefit the Fort Sill Apaches and their descendants.

It will check our economic and social advancement. Reservation life will retard and eventually prevent us from adjusting ourselves to fit in the white civilization in which we live.

We were released from prisoners of war in 1912 by an act of Congress. Since that date we have made considerable progress.

We exercise the rights of suffrage as the white citizens here in Oklahoma.

We want to abide by the present law of inheritance and the right to make and execute wills. We do not want this law changed or abolished.

We oppose any legislation that will deprive us of our allotted lands or require of us the relinquishment of our interest in any acquired properties.

We do not want to exchange or pool our properties for an undivided interest in an Indian community. This does not provide an incentive to improve the land. We want to improve our own individual allotted lands; in this is the real incentive to improve.

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We do not want to be a part of this experiment. It is a gross violation right. Therefore, we do not want this bill to pass.

JAMES KAWAYKLA, Sr.,
JOHN LOCO,
Chairmen.
BENEDICT JOYLE, Jr.,
Secretary.
TALBOT GOODAY.

RESOLUTIONS

We, the younger members of the Comanche Indian Tribe, gathered together at the Reformed Church Mission on Monday, March 5, 1934, adopt the following resolutions:

We desire to express our appreciation to the Commissioner of Indian Affairs, John Collier, and to the Secretary of the Interior for the interest that they are taking in behalf of all of the Indians of the United States and particularly for the interest they are taking in the members of our tribe.

We appreciate and greatly sympathize with all landless Indians and respectfully petition and ask the Government to do something for the landless Indians to the end that they may be well and better taken care of and provided for.

We, however, would much prefer to have our affairs looked after in the future as they have been in the past, rather than to have enacted the proposed legislation, Senate bill 2755, as we cannot see that it would be to our advantage or welfare to have said bill become a law.

Respectfully submitted.

ROBERT COFFEY, *Chairman.*
ROBERT P. CHOAT, *Secretary.*

PROTEST OF COMANCHE INDIANS AGAINST THE PASSAGE OF THE WHEELER-HOWARD BILL (S. 2755; H.R. 7902)

To the Honorable Members of the House Committee on Indian Affairs:

We, the Comanches, gathered in council at the Fort Sill Indian School March 12, 1934, adopt the following resolution protesting against the passage of the Wheeler-Howard bill, S. 2755, H.R. 7902, and bringing the Comanches under its provisions.

We feel that the Comanches have made such progress in civilization that to bring them under the provisions of this bill, if passed, would be detrimental to their continued advancement, both economical and social. We are satisfied with the protection afforded by present law and feel that the passage of this bill would eventually return the Comanches and their descendants to reservation life instead of fitting them to take their places in the present advanced civilization. We are opposed to any legislation which would require us to give up our allotments or relinquish any interests that we have in any property that we have acquired. We do not feel that it would be equitable for us to enter into a community organization or to pool our lands and have undivided interests in tribal or reservation lands.

There is no need of any Indian towns or villages in our section of the United States as the Indians in Oklahoma exercise the right of suffrage and vote in State and county elections and if living in cities or towns, vote in such municipal affairs. We protest against the change of the laws of inheritance and the right to make and execute wills and the taking away of individual and property rights guaranteed by treaties and acts of Congress.

We do not see how this bill, if it becomes law, would help the Comanches to more quickly merge into the white civilization which we must do if we are to take our places in the affairs of our land. We feel that segregation which seems the intent of the bill would be a backward step for us.

We feel that it would take away initiative and endeavor on our part and the part of our children who have made great progress in their contacts and developments.

ROBERT COFFEY, *Chairman.*

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WASHINGTON, D.C., *April 10, 1934.*

Hon. EDGAR HOWARD,
Chairman Indian Affairs Committee,
House of Representatives, Washington, D.C.

DEAR MR. HOWARD: I am a Tuscarora Indian of New York State. I own land and farm it on the Tuscarora Reservation, near Sanburn, N.Y. Previously I was made chairman of the Tuscarora Agricultural Association, and I am now representing that association.

I do not think that the New York Indians ought to be shut out from the Wheeler-Howard bill, and I do not understand why that has been proposed.

We Tuscaroras are in very great need of Government help. We have land but we do not have money for the development of our land. We need a credit fund and we need educational help and help in organizing our industrial life.

I have formed, through the Tuscarora council, an agricultural association among that tribe, and each of the Six Nations will form its own agricultural association and we are working out the program fitted to our own situation, but our ability to go ahead will be crippled unless we can be permitted to come under the Wheeler-Howard bill.

I do not think that the New York Indians ought to be singled out as the only Indians denied this new bill.

Respectfully yours,

FRANK D. WILLIAMS.

AMERICAN INDIAN ASSOCIATION,
Brooklyn, N.Y., March 10, 1934.

Hon. EDGAR HOWARD,
Chairman House Committee on Indian Affairs, Washington, D.C.

DEAR CHAIRMEN WHEELER AND HOWARD: This oldest strictly "Indian organization" represents a large and wide circle of progressive Indians both on and off reservations.

These Indians and this organization, from years of experience, have witnessed the absolute failure of our Indian Bureau system, even under the most conscientious and able of Commissioners. In fact, its failure is admitted by all organizations of benevolent citizens interested in the American Indian.

But the difference between we progressive Indians and these benevolent organizations is that they have continuously championed "reform of the Indian Bureau", and have usually hailed each new Commissioner as the one who would make the Bureau a success. This has been particularly noticeable beginning with the "Reform Commissioner" Luepp in the Theodore Roosevelt administration, and these organizations are now unitedly behind the present Commissioner Collier.

While, on the other hand, Indian followers of the great white friend of the Indian, the late General R. H. Pratt, founder and head of the Carlisle Indian School for 25 years, and of our noted brother, the late Dr. Carlos Montezuma, a full-blooded Apache, have stood, and still stand, for the abolishment of our Indian Bureau, believing as General Pratt publicly declared in 1904, when he said:

"The early death of the Freedman's Bureau (1870) was an infinite blessing to the Negro himself and the country as well. If you say the turning loose of this large number of ignorant and unprepared people would threaten the peace of our communities, I say that not a year within the past 30 but we have imported from foreign countries, and turned loose in the United States, a much greater number of no less ignorant and unprepared people.

"Better, far better, for the Indians had there never been a Bureau. Then self-preservation would have led the individual Indian to find his true place, and his real emancipation would have been speedily consummated."

We do not question the enthusiasm, nor the good intentions, of our new Commissioner Collier, but, on his own admissions, he gained his early interest in Indian Affairs only some 10 years ago, and then among primitive tribes of the Southwest. He has, in all his later work, been the outstanding leader for "reform of the Indian Bureau", openly dismisses any plan for its abolishment as "impracticable" and as "leaving the Indian helpless". Fuerher, he is opposed to full citizenship for the American Indian as granted by Congress in 1924, has termed it as "worthless", and has repeatedly held its practicability as "useless" and as "harmful" to the American Indian.

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Hence, we deplore the huge propaganda which the Commissioner is spreading broadcast in support of his bill (H.R. 7902, S. 2755). We especially suggest that no independent judgment on this bill can be obtained from reservation Indians, through his personally conducted campaign throughout the Indian reservations of the United States. In this we refer to continuous references in the printed hearings of the Senate Committee Investigating Indian Affairs, and to the personal knowledge of Senators and Congressmen long familiar with Indian affairs, wherein it is proven that the reservation Indian who opposes any Bureau policy is a marked victim for Bureau oppression. Is it reasonable to believe that the appointment of a new commissioner can assure these Indians against all belief of "reprisals" from their immediate custodians?

As independent Indians we believe in the desire for fairness on the part of the members of both the Senate and the House Committees on Indian Affairs, and, hence, as we have no public nor private funds with which to publicly expose the fallacies of Commissioner Collier's propaganda to the public, nor to the Bureau supervised meetings of the reservation Indians, we most urgently ask both the said Senate and House committees that they insert in the printed hearings on said House bill 7902 (S. 2755) this letter as a protest against the enactment of said bill; and to also insert in such printed hearings the attached, and made a part hereof, exhibit A and exhibit B, and described as follows:

Exhibit A: Written "Comment on House bill 7902 (S. 2755)", by Joseph W. Latimer, Esq. In this connection we state that Mr. Latimer has been active in Indian affairs as an associate of General Pratt and Dr. Carlos Montezuma, and since he was examining attorney for the House committee examining into Indian affairs in 1911. He is author of the booklet "Our Indian Bureau System" (1923), copies available in the Library of Congress and numerous public libraries and of numerous leaflets on Indian affairs from 1926, including December 1932.

Exhibit B: A printed copy of "Suggested Citizenship Plan" for the American Indian, sponsored by Mr. Latimer, widely commended by eminent citizens, and fully endorsed by this organization. We urge a careful reading of this "plan" by Congressional leaders and submit that it cannot be dismissed as "impracticable", "not workable", "would leave the Indian helpless", and that the Indian "is unfit to govern himself", as was stated by Commissioner Collier at a public meeting in Baltimore on February 25, last.

In conclusion, we have confidence that Congress desires to treat the American Indian not only fairly, but most generously, and we submit that this letter, written by an Indian with years of experience with our Indian Bureau system, together with the enclosures written by Mr. Latimer, than whom no one has more diligently studied the fundamentals of this system, nor as fearlessly nor ably attacked its wrongs, are worthy of the careful consideration by Congress, before it commits a fatal injustice against the American Indian in creating a definite perpetuation of this monstrous Indian Bureau system, which is assured, if such an "omnibus bill" as is H.R. 7902 (S. 2755) should be enacted.

Respectfully submitted.

American Indian Association,
By F. Running Bear,
Executive Counselor.

Exhibit A

COMMENT ON H.R. 7902 (S. 2755) BY JOSEPH W. LATIMER, BROOKLYN, N.Y.

It has been my experience that few Indians are interested in anything except to have Uncle Sam support and care for him. This is not the Indians fault, but solely due to generations of paternalism under our Indian Bureau. The sweeping control granted in H.R. 7902 insures Indian Bureau paternalism for generations to come; forces the Indian to be a separated race; deprives him of his rights under the full citizenship Congress granted him in 1924, and revives, by dangerous experiment, the life of a condemned Bureau—an admitted failure after over 50 years of "Indian care."

This Collier bill supports all those who think the Indian is only a helpless derelict in our civilization, and that he must be set off by himself to lead a community life as an Indian—an alien to all other Americans. This is flatly what the Collier bill creates. It is, in effect, another set of Bureau "rules and regulations", as, with all its "flourishes" of independence of Indian control of these separated Indian communities, you will find safe provisions holding the Bureau hand constantly with power to control; and in subdivision (d) of section 8, page 15, of bill

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you find full authority in the Secretary of the Interior at his practical discretion where he can regain all Indian control, and the Bureau "resume" its control.

The Bureau has full power today to let the Indian handle most of his own affairs. It is very simple to frame and pass an act fully protecting the land holdings of the Indian, and if this was done on the established trust plan, all Bureau control would be defined explicitly or altogether wiped out.

But the Collier bill insures perpetuation of the Bureau; segregates both the Indian and his property from the laws, business, and activities of life accepted by all other citizens of this country. Nullifies Indian citizenship, makes him a complete stranger to our national life, cuts him out, labels him "Indian", and can more intensely than in the past establish him as a Bureau "ward and incompetent." Community property, community Government, community education and community life—all Bureau "supervised" and "helped" ("supervising" and "helping the Indian" has been the Bureau's activity for 50 years). Certainly, there is no incentive in all of this to raise one's self from the same paternalized Indian as of the present. Paternalism kills individual initiative, and is the cause of the helplessness of the Indian of today.

Indian "community life" under this Collier bill will soon develop into a zoological curiosity for the entertainment of the American public, and of further experimentation by "experts" on the Indian as a separated species of humanity.

Possibly some good can be gained for the Indian under the Collier bill with the right assistance of the right Commissioner, supported by the right Secretary of the Interior. But you can get all this "good" under the Bureau without the Collier bill, if the right Commissioner and the right Secretary of the Interior would rightly exercise the powers they now possess, or can obtain from Congress. Fifty years of experiment has proved this impossible. H.R. 7902 is only another Bureau experiment.

Another serious objection to this H.R. 7902 is the fact—one often admitted by the Benevolents themselves—that our Indian problem is not a blanket affair, but one involving separate facts and a separate remedy for a vast number of separated tribes or Indian communities scattered over widely separated parts of the United States.

I can readily apprehend that much of H.R. 7902 might be successfully applied to the Pueblos, who have never abandoned their community life—but even they should be freed of the Bureau under a separated charter existence, which may be along the lines of H.R. 7902, but "open enough" to legally link them with our citizenship civilization.

But to apply H.R. 7902 to the more progressive northern tribes is to force them back to be segregated, community-existing Indians, always under Bureau jurisdiction, with the power in the Secretary of the Interior to annul any of the "liberties" (?) granted under H.R. 7902 and to "resume" full Bureau control.

Any "ingenious" Commissioner of Indian Affairs working with only a few "ingenious" Indians could wreck a community formed under H.R. 7902, as easily as have past Commissioners wrecked all the good that ever existed in our Indian Bureau. And, if no "ingenious" Indians could be found, the "ingenious" Commissioner under subdivision (d), section 8, could "cause to be resumed" full Bureau control.

I favor all education in our public schools for the Indian, as a free American citizen, and full care for his health—better, if possible, than white citizens receive—and special legislation by Congress on established principles can insure all of the foregoing, as well as drastic care of all Indian property and full restoration of land to landless Indians. But little, if any, of this is assured and none is safe to be preserved under H.R. 7902.

To be sure, as the Commissioner recently said in Baltimore, "many Indians are ignorant, cannot speak English, and are unfit to govern themselves." Then why rejuvenate a Bureau which has not been able to correct such conditions, and now advocates intense segregation of the Indians? The millions of foreigners more "ignorant" than the Indian, as equally unable to speak English, have landed on our shores and by mingling in all our life activities have become able American citizens. Could segregated racial community life have accomplished this necessary change?

On the other hand, H.R. 7902 insures the perpetuation of our Indian Bureau for generations to come, and with no more permanent safeguards for either the Indian or his property than is now in the power of our Bureau of Indian Affairs.

The "community charter" defined in H.R. 7902 creates a new and a most complicated form of government, and so subject to Bureau control as to open the doors to Bureau manipulation. It does not free the Indian. It still keeps him a "ward and an incompetent." It legalizes the Bureau to continue.

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The rights of the Indian as a person should not be confused with his property rights. The American Indian should have all the rights of an American citizen. He has never had any other country. He should never have been denied his native country, and should no longer be segregated in it, no matter how alluring may appear this Indian-community provision in H.R. 7902. If tribes seek community life, let them have it—free from Bureau control, and subject to established laws. Such formed community life already exists in the United States.

The property of the Indian can be more safely protected under a form of trust, based on established laws, rather than under an experimental community holding, always subject to Bureau interference and open to court interpretation.

There is no necessity, nor justification, to segregate the Indian, or his property, as a separate entity from all other races or property in our country, and whose person and property are governed and protected by our established laws.

Exhibit B

AMERICAN INDIAN ASSOCIATION, INC., SUGGESTED CITIZENSHIP PLAN FOR THE INDIAN

We consider it a settled question that since Congress has declared the American Indian a citizen of this country he is entitled to all the rights, benefits, and duties of any other citizen. Certainly he should now "be recognized as an American citizen; treated as such; educated as such."

Fortunately, if handled according to established fundamental laws, many of these Indian citizens have vast property interests of which they are the beneficiaries. This property consists of both real and chattel, and though this has been held for years and is now held by a Government bureau, there are fundamental laws in this country which could protect these beneficiaries on the same principles as other properties are protected for beneficiaries. The fundamental question this change involves is in no way complicated, though working out details would involve careful and experienced service.

Again, if Congress now votes such vast sums to the Bureau for Indian maintenance, certainly the same policy should be as freely continued when the funds go into already established State departments all conducted with equal impartiality to all its citizens no matter of what race or creed.

Therefore, as a working basis for fundamental relief for the American Indian from the present Bureau control the following plan has been suggested:

1. Free the Indian at once from Bureau wardship of his person.

2. Each State through its already established channels under which and in the same manner they now treat their other citizens, but the Indian—to educate, to guard health, to police, and to open all its established courts to the Indian. Congressional appropriations (from Indian funds where treaties provide, or from taxes) now voted annually to the Bureau (and more if needed) to go to the State to cover all cost of foregoing.

In cases of emergency the Red Cross should be given all power, free from Bureau control, to immediately take charge of the Indian health and life situation

3. Begin at once with competent heads to untangle the Indian property mess existing in the Bureau, with the view of creating legally, active trusteeships subject to court review, of this property, including tribal funds, preferably creating a separate trust for each reservation and tribal fend. These trusts should be created on same fundamental legal basis as other innumerable trusts which now hold property all over the United States.

At no time, of course, during the above program is the Indian to be inequitably disturbed in the rights, occupancy, and use of any Indian property now by him possessed.

THE MASSACHUSETTS INDIAN ASSOCIATION,
Boston, March 31, 1934.

Hon. EDGAR HOWARD,
House of Representatives,
Washington, D.C.

SIR: The Massachusetts Indian Association now in its fifty-first year of service to the Indians, wishes to go on record as protesting the passage of bill 7902 in its present form, and not until the Indians have been given ample time to understand it. It also asks that their wishes be given careful and full consideration.

Yours for the Indian,

KATE LEAH COTHARIN,
Corresponding Secretary.

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LOS COYOTES RESERVATION,
Warner Springs, Calif., March 26, 1934.

To the House Committee,
Washington, D.C.

GENTLEMEN: We, the undersigned Indians of the Los Coyotes Indian Reservation are opposed to the Senate bill no. 2755 and House bill no. 7902, as the above bills are not or will not benefit the Indians.

ROBERT CHUTNICOT
(And 46 others.)

[Telegram]

OKLAHOMA CITY, OKLA., *March 6, 1934.*

Hon. JED JOHNSON,
House of Representatives, Washington, D.C.

Kiowa tribe assembled Carnegie, Okla., March 5, for purpose discussing S. 2755, H.R. 7902. After long discussion tribe voted 280 against, 2 for, and requested you file their protest with Committee on Indian Affairs in Senate. Letter follows.

JASPER SAUNKEAH, *Chairman.*

At a meeting of representative Indians of the Winnebago Tribe of Indians of Nebraska, specially called for the purpose of discussing the Collier Indian bill, H.R. 9702, held at Winnebago, Nebr., March 27, 1934, the following was adopted as the sentiment of the tribe:

That the bill should not become a law.

That the Collier Indian bill, H.R. 7902, to readjust Indian affairs, is but a continuance of past efforts on the part of the Indian Bureau to increase its powers and authority over Indian affairs.

That so long as the Indian Bureau believes the Indian is inferior and its personnel superior to the Indian, just so long will the Indian be kept in subjection and prevented from developing self-confidence and developing determination to overcome obstacles.

That it would be folly to isolate the education of the Indian, as he would thereby be removed from that constant contact with the ways and manner of people who direct human affairs of the Nation.

That civilization progresses from interchange of personalities, and we resent it as an insult to our intelligence and ability to insist that we must be segregated for the reason that we are incapable of adjusting ourselves to the political, social, and business affairs of our white brother.

That under present conditions we take part in public affairs, but that under the bill we would only be allowed to take part in such affairs as the Commissioner of Indian Affairs and the local agent imagines we are capable of carrying out, and because the Indian Bureau looks upon us as inferior, the Bureau would allow us little, if any, discretion.

That the Indian Bureau, under the bill, will naturally have to increase the details and red tape of its work, and this will call for increased employees. That if the Indian Bureau really meant to aid the Indian, it would cut out details and red tape and direct its attention to recognizing in the Indian some sound judgment, and ambition equal to that of the ordinary citizen. Such an attitude towards the Indian would produce more progress and self-confidence among the Indians in 2 years, than could be accomplished in a thousand years under the bill, or the manner it has directed its affairs in the past.

That as to the tax question on Indian lands, there is no need to give the Indian Bureau greater power to settle this question, nor stamp the Indian as inferior for all times in the future. It can be solved by simply repealing the Brown bill.

Mr. Collier promises Indian control over Federal employees under the bill if passed, but this can be granted without passage of the bill. The Winnebago Indian, practically in mass, have complained against the local office force, but the Indian Bureau ignores our demands. If he ignores us now, in face of records in the Bureau and reports of Senate and House investigation committees, what chance will we have after the bill is passed and it designates us as inferior?

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That we demand recognition as men and women, not as inferior to the employees of the Indian Bureau, but as people who mingle with the masses of the people, taking part in the affairs of the Nation, the State, and the county.

That the Indian Bureau is repugnant to the American institution, because it is an absolute monarchy within a republic. Congress passes the laws placing Indian affairs under the Bureau, then the Bureau issues regulations governing those laws (legislative), then enforces its mandates and orders (executive), then it judicially passes upon its own actions (judiciary).

From the very nature of its character it must turn out its subject which would be like the subject of Russia under the Tsars, humble, disheartened, discouraged, hesitating.

That we demand that the Indian Bureau become active instead of grasping after greater powers. That it treat the Indian as a human being, with a heart and soul, an ambition, and worthy of recognition as a man or a woman.

That we demand that the Indian Bureau allow expression of the hopes and desires of the Indians, that it enable the Indian to show and prove his worth and ability.

That we insist that we have tribal members capable of transacting the clerical affairs at the agency at Winnebago as any now employed there and demand recognition in applying ourselves to fill said offices.

That a copy of these sentiments be mailed to the Committee on Indian Affairs of the House of Representatives, at Washington, D.C.

HARRISON TEBO,
Chairman of the Meeting.

Attested:
DUNCAN ROWE,
Secretary of the Meeting.

The Winnebago Indian Welfare Association of Nebraska, having fully considered the Collier Indian bill to readjust Indian affairs, have come to the following conclusions:

First. The bill presupposes and stamps the Indian as a person incapable of adjusting himself to the activities of our national life. This prejudice on the part of its sponsors will subject the Indian to the whims of people who imagine themselves divinely appointed developers of Indian character and ability, and produce in the Indian a variety of dispositions as mixed as that possessed by the Indian Bureau as a whole. It would corrupt a possible Edison, a Bryan, a Roosevelt into a hybrid.

Second. It suggests that the Indian will ever have the Government ready and willing to supply all material supplies and necessities of life forever, and this will encourage the Indian to neglect independence and self-support. We realize that the Government cannot forever support the Indian, that sometime he must shift for himself, and we take this promise in the bill to be a misrepresentation.

Third. It will subject the Indian to an increased continuance of stupid, ignorant, and arrogant domination of subordinate employees. These subordinates will continue to treat the Indian with contempt (except when superiors from Washington are present, or if publicity can be gained in the newspapers), and deepen the humility and backwardness of the Indian.

Fourth. It will curse every newborn Indian baby with a mark of inferiority, While the agency people will be assured a continuance in office as paternal busybodies at every birth.

Fifth. The bill intends to humor the Indian, as if he were an idiot or a moron.

Sixth. Like the guinea pig or rat in the medical laboratory, the bill moves to make the Indian a subject rat in the laboratory of childish sociologists.

Seventh. We declare that the backward Indian, those on closed reservations in the West and Southwest, is the direct product of a superior complex, stupidly blind to the elements of individual development, and that the bill expresses openly what previous commissioners feared to speak only in whispers.

Eighth. If the principles of the bill are right and just, we request of Congress to enlarge its reach so as to take in all children in the Nation, for the reason that it suggests that the public institutions and the field of world experience, from which grew Washington, Lincoln, Wilson, and Roosevelt, and the members of this honorable Indian Affairs Committee, have been found wanting, and submits segregation as a better scheme.

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Ninth. We suggest that the Government would aid the Indian by guiding the Indian among the human activities he is to adjust himself to, rather than isolating him, as if he were a leper.

Tenth. We demand that the Indian be recognized in the same manner as the Government recognizes the ordinary citizen.

Eleventh. A copy of the above resolution to be filed with the House Committee on Indian Affairs, Washington, D.C.

ALBERT HENSLEY, *President.*
WILLIAM DAVIS, *Secretary.*

APRIL 2, 1934.

PABLO, MONT., *April 6, 1934.*

Hon. EDGAR HOWARD,
Washington, D.C.

MY DEAR MR. HOWARD: The Women's Club of the Flathead Tribe do hereby take this way of expressing their views to the bill H.R. 7902. We, in unison, favor the bill to the fullest extent and will do everything in our power to promote its passage.

Hoping for its immediate passage, we remain
Sincerely yours,

WOMEN'S CLUB OF FLATHEAD TRIBE,
ALICE DUPUIS MENZIE, *Secretary.*

IRVING, N.Y., *April 12, 1934.*

Hon. EDGAR HOWARD,
Chairman House Indian Committee,
House Office Building, Washington, D.C.

MY DEAR CHAIRMAN HOWARD: On behalf of the interests of the Seneca Indians and all other New York State Indians, I wish to protest against our being included under section 2, title II of the bill H.R. 7902 which is now before your committee.

Section 2 provides that Indian schools with special curricula will be maintained for the Indians. We do not wish this to apply to our schools.

For many years past our schools have been maintained by the State of New York. It is true that they do not represent equal opportunity with white schools for our children because Indian schools are classed with prison schools, reform schools, and schools for the feeble-minded. In that classification the appropriations are approximately $3 per month, per child, whereas for other rural schools the appropriations are about $10 per month.

But regardless of the quality of the teachers and the limited equipment provided, scholastic standards are the same as for other schools, viz: New York regents standards.

This proposed legislation gives no guarantee that the Federal Government will maintain those standards. Rather, after our pupils were graduated from these "special curricula" schools, it would be necessary for them to attend another school for 1 to 2 years before they would be eligible to enter high school.

We do not wish to be included under section 2, title II of H.R. 7902. We are in favor, however, of the speedy passage of the so-called "Swing-Johnson bill" which has been before Congress for the past 4 years or so and was this year reintroduced as S. 2571. This bill provides for cooperation between the Federal and State Governments and definitely states that the education provided shall be the highest maintained by the State. Under that bill our schools would be improved.

On behalf of the interests of the Indian race, I wish to protest against the passage of any part of this bill for the following reasons:

1. It absolutely revokes the rights of free citizens which were granted to the Indians in 1924 by act of Congress.
2. It is too long and complicated, is full of new rules and regulations, and is subject to Bureau interpretation.
3. It is mass-legislation, which is not applicable to all tribes.
4. It provides for a larger and more powerful Bureau by way of new appointments at increased cost to the taxpayers and not only leaves all power where it has been for the past 100 years but also provides for increased and more detrimental power for the Bureau of Indian Affairs.

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5. It provides only for continued segregation for the Indians and provides no adequate protection for Indian property in accordance with established laws.

6. The idea of establishing a separate court for Indians only in this land of supposed equality is ridiculous and it and the further provision for the appointment of Bureau attorneys to represent the Indians is an insult to all accepted standards of justice.

7. The whole bill provides nothing but increased and continued Bureau control and the opportunity for experimenting on the Indians with radical, communistic ideas.

I respectfully ask that this protest, together with all protests, both Indian and white, be filed in the record of the hearings before your committee.

The New York Indians, in company with all other Indians, would appreciate an opportunity to appear before your committee to express their opinions on this legislation. May I suggest that an open hearing date be set and announced well in advance so that we may so appear.

Thanking you for your consideration, I am,

Very truly yours,

RAY W. JIMERSON,
President Seneca Nation of Indians.

Copies to western New York Congressmen and New York Congressmen-at-Large.

Mr. CHAVEZ. We shall have to adjourn for the day at this time; to meet at the call of the chairman.

(Thereupon at 12:10 p.m., Friday, May 4, 1934, the subcommittee adjourned, to meet at the call of the chairman.)

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READJUSTMENT OF INDIAN AFFAIRS

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS HOUSE OF REPRESENTATIVES

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 7902

A BILL TO GRANT TO INDIANS LIVING UNDER FEDERAL TUTELAGE THE FREEDOM TO ORGANIZE FOR PURPOSES OF LOCAL SELF-GOVERNMENT AND ECONOMIC ENTERPRISE; TO PROVIDE FOR THE NECESSARY TRAINING OF INDIANS IN ADMINISTRATIVE AND ECONOMIC AFFAIRS; TO CONSERVE AND DEVELOP INDIAN LANDS; AND TO PROMOTE THE MORE EFFECTIVE ADMINISTRATION OF JUSTICE IN MATTERS AFFECTING INDIAN TRIBES AND COMMUNITIES BY ESTABLISHING A FEDERAL COURT OF INDIAN AFFAIRS

PART 9

Printed for the use of the Committee on Indian Affairs

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READJUSTMENT OF INDIAN AFFAIRS

TUESDAY, MAY 8, 1934

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met in its committee room, Capitol, at 10 a.m., Hon. Edgar Howard (chairman) presiding.

Present: Representatives Howard, Chavez, Ayers, Stubbs, Hill, Murdock, Werner, Lee, Peavey, De Priest, Gilcrist, Collins, Christianson, Dimond, and Greenway.

The CHAIRMAN. The committee will come to order.

The committee meets this morning pursuant to its own order at the last meeting for a further hearing on H.R. 7902, which is a bill to be heard before this committee. We are meeting to give opportunity to such persons as desire to be heard.

I see the Commissioner is here. Have you anything further to offer, Mr. Commissioner?

Mr. COLLIER. Mr. Chairman, I do not want to offer any more testimony or any further witnesses, because it is our hope that the committee may go to work on the bill in order to shape it up.

I would like to complete the offering for the record of the action by the Indians insofar as they have registered with us on the various referendums or official actions which we have received from the tribes or tribal councils for and against the bill.

Mr. PEAVEY. Would you give us a summary without going into complete detail?

Mr. COLLIER. The official vote, as it is called here, is as follows, to May 7:

Favorable, 55 tribes, 141,881 Indians; unfavorable, 12 tribes, 15,106 Indians.

Now, the details are cited in this exhibit I have here. The only way we could see to arrive at it was this: Where a tribal council has acted, we have assumed they have spoken for the whole tribe.

Where a referendum was held, we assumed that that put the whole tribe on record. In other words, where a tribe was for the bill, it was counted as entirely for it, and where it was against the bill it was counted entirely against it.

Had we attempted to say a portion of the tribe was for and a portion against, we could not have done so. Where actual elections were held, we believe the report is a pretty accurate cross section of the Indian opinion at this stage.

Mr. GILCHRIST. What was the actual vote when you had it, Mr. Commissioner?

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Mr. COLLIER. There were various places where referendums were held. For instance, there was a referendum at Yankton, which is in eastern South Dakota, that went about 4 to 1 against the bill.

There was a referendum at Rosebud, where there was a large vote, about 3 to 1, for the bill.

Mr. WERNER. Mr. Commissioner, what was the vote at Rosebud?

Mr. COLLIER. At Piney Ridge there was about 1,500 for and 900 against.

Mr. WERNER. How many eligible voters are there at Piney Ridge?

Mr. COLLIER. I think there was about 8,200 resident Indians, and it would represent a vote of about 2,500 in a pouplation of 8,200, which would be a fairly high vote, higher than we have in general elections.

At Rosebud the number of the vote is not stated, but it is simply stated that it was two-thirds favorable. It ran about as high as Piney Ridge.

I think the Yankton vote was a representative vote, and it was adverse to the bill.

In most instances the vote has been taken by tribal councils and not by referendum.

The Navajo Tribe met but did not act. As to that vote, the system is this: The tribal council almost invariably refer the question back to the local chapters, which is the community organization of the people. They have had 2 days' discussion and endorsed the bill with 1 adverse vote in the council of 12, and 3 votes not cast, so that it was a majority vote.

The meetings in Oklahoma have all consisted of conventions of the various tribes. I have here quite a long list of resolutions and documents sent in by the Chickasaws and the Choctaws, which explain exactly what their votes were. There is no one way to determine the Indian opinion except the method of referendum.

I may say that where the tribal council acts, the tendency is to be less favorable than where the masses act, for the simple reason that the Indians still owning allotments are even yet somewhat troubled with the idea that this bill might put their allotments over into the control of the landless Indians and the land-owning Indians usually predominate on the tribal councils, so that action by tribal councils tends to be less favorable to a plan of this sort than actions by referendums.

I am merely presenting this for what it is worth, for the committee's information.

Mr. PEAVEY. What proportion of those that acted favorably are actions taken by tribal councils.

Mr. COLLIER. For the Apaches, it was a general council, which means a general meeting that anybody who wants to can attend.

The Havasupai was a general council, and their action contains the statement they do not want their present method of local self-government interfered with. They have their own little scheme there.

The Hopi was an official meeting of representatives of the villages, two-thirds in favor of the bill.

The Choctaws of Mississippi was a general council.

The Bannock of Idaho sent a petition to the President signed by 170 male members of the tribe.

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The Pueblo were unfavorable, acting through the governor and council, who are the tribal council of the tribe.

The Montana Crows are unanimously opposed, by tribal council. They feel unprepared for self-rule and want to keep allotments.

The South Dakota Sioux, favorable; and the Oregon Klamath general council voted 220 against, 34 for.

If I may be permitted to do so, I will put in as an exhibit this analysis of the official vote of the Indian tribes.

The CHAIRMAN. Without objection, it will be received.

(The official analysis referred to is here printed in full as follows:)

RESULT OF INDIAN VOTE ON WHEELER-HOWARD BILL RECEIVED BY INDIAN OFFICE UP TO MAY 9

Favorable: 58 tribes, population 146,194.
Unfavorable: 13 tribes, population 15,213.

(Choctaw, Okla., 10,633. Seven counties: Atoka, Bryan, Choctaw, Haskell, McCurtain, Pittsburg, Pushmataha)

I. BRYAN COUNTY INDIAN MEETING, DURANT, OKLA., APRIL 7, 1934

The following resolution, introduced by Ben McCurtain, and duly seconded, was passed with 1 recorded dissenting vote:

"That this convention of Bryan County Indians go on record as heartily commending President Roosevelt, Secretary Harold Ickes, and Commissioner John Collier for their sincere interest and efforts on behalf of the Indians; that this convention also go on record as endorsing the principles advocated in the Wheeler-Howard bill (H.R. 7902) now pending before the Congress of the United States; that a copy of this resolution be forwarded to the Commissioner of Indian Affairs and the Members of the Oklahoma delegation in Congress with the request that said Members favor the passage of said bill by the Congress."

We certify that the above was duly passed at the meeting held at the time and place first above mentioned.

TOM MOORE, *Chairman.*
HOLLIS HAMPTON, *Secretary.*

II. PUSHMATAHA COUNTY INDIAN MEETING AT ANTLERS, OKLA., APRIL 10, 1934

Resolution of approval of the Wheeler-Howard bill now pending in Congress

We, your committee of the Choctaws in Pushmataha County, Okla., concur in the bill now before Congress waiting action in behalf of the Indian people. We feel that it will be conducive to their best interest; we would love to see our people come back and enjoy life as we enjoyed it years ago. We have always thought and felt that the Government of the United States was interested in our best comfort, and we feel that the above-styled bill would be of interest to ourselves and our people.

V. M. LOCKE, JR., *Chairman.*
W. A. JAMES, *Member.*
S. E. COLE, *Member.*

I certify that the above resolution was duly passed by a convention of Pushmataha Indian meeting at Antlers on April 10, 1934.

P. W. HUDSON, *Chairman.*

III. CHOCTAW COUNTY INDIAN MEETING AT HUGO, OKLA., APRIL 11, 1934

Pursuant to a call issued by Ben Dwight, principal chief of the Choctaw Nation, to the Indians of Choctaw County, Okla., for the purpose of considering the Wheeler-Howard bill, a meeting was held in Hugo, Okla., on April 11, 1934, at which the following resolution was duly passed with 2 dissenting votes:

"*Be it resolved,* That this convention of Choctaw County Indians go on record as hearily commending Hon. John Collier, Commissioner of Indian Affairs, for his sincere interest and efforts on behalf of our Indian people; that this conven-

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tion also go on record as endorsing the principles embodied in the Wheeler-Howard bill (H.R. 7902) pending before the Indian Committee of Congress at Washington; that a copy of this resolution be forwarded to the Commissioner of Indian Affairs and the Members of the Oklahoma delegation in Congress, with the request that said Members use their influence in favor of the passage of said bill by Congress.

We, the undersigned, hereby certify that the above is a true record of the meeting held at the time and place mentioned above.

T. W. EVERIDGE, *Chairman.*
JOHN S. PATTERSON, *Secretary.*

IV. M'CURTAIN COUNTY INDIAN MEETING AT IDABEL, OKLA., APRIL 14, 1934

Motion by Robert E. Lee:

That the sense of this Convention of McCurtain Indians be that the Wheeler-Howard bill be passed and a copy of the resolution be sent to the Oklahoma delegation.

I certify the above resolution was duly passed.

JAMES DYER, *Chairman.*

ATOKA COUNTY INDIAN MEETING, ATOKA, OKLA., APRIL 17, 1934

Pursuant to a call to the Indians of Atoka County Indians, a meeting was held on April 17, 1934, at Atoka, Okla.

And said convention was recorded as being unanimously in favor of the Wheeler-Howard Indian rights bill and recommended that it be passed.

HENRY BOND, *Chairman.*

HASKELL COUNTY INDIAN MEETING, STIGLER, OKLA., APRIL 19, 1934

Motion by Davis Folsom:

That this convention of Haskell County Indians endorse the Wheeler-Howard Indian rights bill and urge the Oklahoma delegation to support said bill.

We certify that the above resolution was duly passed by said convention.

W. G. STIGLER, *Chairman.*
GEO. W. SCOTT, *Secretary.*

MEETING OF INDIANS AT M'CURTAIN, HASKELL COUNTY, OKLA., APRIL 19, 1934

I certify that said meeting voted unanimously in favor of the Wheeler-Howard bill.

BEN DWIGHT.

SMITHVILLE, M'CURTAIN COUNTY, OKLA., APRIL 20, 1934

The Indians in northern McCurtain County met at Smithville, April 20, 1934.

And all present voted affirmatively on the question of approving the Wheeler-Howard Indian rights bill. The meeting also commended Commissioner Collier for his earnest efforts on behalf of the Indians.

ISOM THOMAS, *Secretary.*

PITTSBURG COUNTY INDIAN MEETING, M'ALESTER, OKLA., APRIL 21, 1934

Resolved by the Choctaw citizens of Pittsburg County, Okla., in mass convention assembled at McAlester, Okla., on April 21, 1934, that the Wheeler-Howard Indian rights bill has our unqualified approval; that we urge Congress to pass it; and that each member of the Oklahoma delegation in Congress be requested to vote for the passage of the bill.

We hereby certify that the above resolution was passed unanimously at the above meeting.

C. B. BASCOM, *Chairman.*
H. W. ANDERSON, *Secretary.*

STATE OF OKLAHOMA, *County of Bryan:*

I, Ben Dwight, do certify:

That advance notices of the above meetings were carried in the daily and weekly papers of the respective counties and that in addition thereto written and oral notices of said meetings were communicated to Indians living in the various communities in said counties.

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That the Wheeler-Howard bill was explained in both the Choctaw and English languages (excepting the meeting at McCurtain) and that full discussion (pro and con) of said bill was permitted and stimulated.

That correct statements regarding the actions taken by the respective meetings are hereinbefore transcribed.

BEN DWIGHT,
Principal Chief of the Choctaw Nation.

(Tribe, Chickasaw. Population, 4,685. Jurisdiction, Ada, Okla.)

RESOLUTION TO THE PRESIDENT OF THE UNITED STATES, FRANKLIN D. ROOSEVELT

The Chickasaw Indians, in convention assembled, this 2d day of April, at Seely's Chapel, Johnston County, Okla., in their consideration of the sad plight of the Indian race as a whole; and not only subscribing to the purposes of the provisions in the various legislation in the forms of bills H.R. 7902 and 8174 and humbly expressing their love and feelingness beyond expression of words do petition the President of the United States, Franklin D. Roosevelt, for his assistance and guidance for an immediate consideration of the pending Indian rights bill.

The Chickasaw Indians are of the belief a delay would defeat its purpose and benefits of a friendly administration to the Indian people would be lost.

Be it resolved, That copies of this message be sent to the Honorable Secretary of the Interior, Harold Ickes, to the Commissioner of Indian Affairs, Hon. John Collier; and the original to the President of the United States, Franklin D. Roosevelt.

ROBERT IMOTICHEY,
Chairman of Meeting.
JESS J. HUMES,
Secretary.

Be it resolved: The Chickasaw Indians in convention assembled this 2d day of April, at Sealy's Chapel Indian Church, Johnston County, Okla., representing approximately 2,500 Indians, express their confidence in the present administration and Congress at Washington, D.C. for an immediate consideration of the Wheeler-Howard bill, H.R. 7902, and bill H.R. 8174.

Particularly do we wish to express our belief in the sincerity and intention of our Indian Commissioner, Hon. John Collier, of Washington, D.C., as evidenced by his willingness to speak with the Indian people of these United States upon pending legislation so vitally affecting the every-day life and the future well-being of the Indian people as a whole.

With careful thought and mature deliberation this meeting accepts the principles found in the Wheeler-Howard bill, H.R. 7902, and especially do we subscribe to the purposes of the bill. Similarly do we accept in toto bill H.R. 8174.

The Chickasaw Indian race does not seek to speak for other tribes or race of Indians, neither does the Chickasaw Indians authorize any group, clique, or collection of individuals to speak for it, in any manner, pertaining to the pending legislation, namely: Bills H.R. 7902 and 8174, so vitally concerning their present and future welfare.

We especially want to emphasize the following memorial: We believe the provisions in these bills provide the remedy in its broadest meaning: it corrects evils that we ourselves have been unable to correct, but, the existence of which evil, we have been conscious all these years. And we feel, the Indian people or race alone can rightfully express and interpret the feelings others are attempting to express for them, irrespective of how well their intentions may be.

The Commissioner of Indian Affairs, Hon. John Collier, is authorized to use these expressions in whatever capacity, time, or place conducive to an immediate consideration of the pending legislation in Congress for an immediate relief for the Chickasaw Indians and the Indian race as a whole and removing certain operations of law tending to dispossess the Indian people of their lands and home; and for rehabilitation, however, for the purposes for rehabilitation, we cannot find words better expressive of the method to be used than in the words of our Commissioner of Indian Affairs when in his report he said, first to lift the Indian race out of "material and spiritual dependency and hopelessness": Therefore be it further

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Resolved, That copies of this resolution be sent to our Governor of the Chickasaw Indians, Hon. Senators Thomas and Gore of Oklahoma, Congressman Tom D. McKeown, chairman of the House Committee on Indian Affairs, Hon. Edgar Howard of Nebraska, to the Commissioner of Indian Affairs, Hon. John Collier.

JOSEPH W. HAYES, Ada, Okla.,
J. C. MCCURTAIN, Enville, Okla.,
THOMPSON JOHNSON, McMillan, Okla.,
E. H. BYARS, Stonewall, Okla.,
Committeemen on Resolution.

Tribe, Absentee Shawnee. Population, 611. Jurisdiction, Shawnee Agency Okla.

The Absentee Shawnee Indians under the jurisdiction of the Shawnee Indian Agency, Okla., met in general council at the agency at 2 p.m., April 21, 1934, pursuant to general notice thereof and adopted the following resolution concerning the pending Wheeler-Howard Indian rights bill:

Resolved, That we, the said Absentee Shawnee Indians of Oklahoma, hereby declare that we are in favor of said Wheeler-Howard Indian rights bill, and recommend that it be passed by the Congress of the United States: Be it further

Resolved, That our business committee be instructed to sign this resolution for the tribe, and to transmit same to the Commissioner of Indian Affairs through the superintend of the Shawnee Indian Agency.

THOS. W. ALFORD, *Chairman.*
JOHN E. SNAKE, *Secretary.*
CASPER ALFORD, *Member.*
THOS. B. HOOD, *Member.*
WILLIAM SLOAT, *Member.*

(Tribe, Apache. Population, 2,737. Jurisdiction, Fort Apache Agency, White River, Ariz.)

Whereas the White Mountain Apache Indians have had under consideration and taken under advisement the merits and demerits of a bill known as the Wheeler-Howard bill introduced in Congress and now pending therein for future action; the White Mountain Apache Indians insofar as we are able to understand this legislation hereby submit to the Commissioner of Indian Affairs the following resolution:

TITLE I. INDIAN SELF-GOVERNMENT

Whereas sections 1 to 12, inclusive, disclose a policy and formulates an outline of proposed Indian self-government, we, the authorized council, speaking in behalf of the White Mountain Apache Indians, favor this, or a similar outline, of Indian self-government, as the Indians become qualified, and can through legislation adopt self-government.

It is our understanding that if this legislation passes, the Indians of the White Mountain Apache Indian Reservation may adopt a form of self-government at any time in the future that we feel we are qualified to adopt self-government, and there is nothing in this act that will urge, induce, or compel us to adopt this or a similar plan that might be outlined by amendments until we ourselves feel fully capable and ready to adopt a form of self-government.

Insofar as we are able to understand this legislation, we frankly state that we are in favor of self-government, but frankly state that at the present time, and for some years to come, feel that we are not capable of self-government, and for the present, on our reservation, do not want self-government.

That this Fort Apache Tribe of Indians wants to go on record as including all of the mixed bloods now on the rolls of the Fort Apache Indian Reservation to have full rights of membership with the tribe as any other Indians, and other children that may be born of these parents.

We feel that this section of this bill is a good thing in that it provides a more liberal policy of administration of our own affairs, and that if passed, we can look forward to a greater voice in the administration of our own affairs, and can, as soon as we feel we are capable of gradual administration of our own affairs adopt in part, or in whole a plan of local self-government, which will place more of the responsibility of our local affairs on our own shoulders.

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TITLE II. SPECIAL EDUCATION FOR INDIANS

Whereas sections 1 to 2, inclusive, provide for special education for Indians and provide a special appropriation for higher education and for scholarships to specially qualified Indians, we are heartily in favor of not only this, but a more practical educational policy for Indians generally.

We feel that special efforts should be made to develop qualified men and women not only for jobs within their reservation, but to qualify men for jobs anywhere within these United States, so that Indians may be able to fill positions demanding qualifications regardless of race or color. We feel that the special fund and special scholarships provided should be made available to all sections of the country. We feel that unless these funds and scholarships are prorated (Indians in the Southwest, for instance, whose educational advantages do not compare with those in the North and Central States), Indians in this section would not be able to share in the legislation provided.

We recommend that the Fort Apache Indian Reservation and the San Carlos Reservation be made one district and a certain number of scholarships be awarded to this one district.

TITLE III. INDIAN LANDS

Whereas sections 1 to 21, under this title, prohibit any future allotments and provide regulations for the joint ownership and management of lands already allotted, we the White Mountain Apache Indians, are interested primarily in sections 1 and 2 only.

We are unanimously in accord with section 2 which will prohibit the allotment of our reservation in severalty. We do not want allotments. We want our reservation to remain just as it is and are opposed to any legislation or order which might allot in severalty or withdraw from our present boundaries any part of the White Mountain Apache Indian Reservation without the unanimous consent of the White Mountain Apache Indians. Since we are not now allotted and do not expect to be allotted, we are not interested and do not care to have any voice in sections 3 to 21, inclusive, of the proposed legislation.

TITLE IV. COURT OF INDIAN AFFAIRS

Whereas there is provided in sections 1 to 25, inclusive, a Court of Indian Affairs, we are in favor of a Court of Indian Affairs to that outlined, if in this Court of Indian Affairs, Indian judges, attorneys, marshals, deputy marshals, court reporters, etc., are given equal qualifications to fill the positions created by the establishment of this court, and wherein the minor positions such as clerks, stenographers, etc., Indians equally qualified will be given preference in filling these positions.

We feel that Indian wards, whether having the right of franchise or not, if otherwise qualified, be permitted to serve on juries, in these courts the same as other qualified nationalities.

In approving the Court of Indian Affairs, we do not wish to have the same construed as meaning that we are dissatisfied with the treatment in Federal court. In fact, we feel that the Federal court, as a whole, has been very fair with our people. We realize, however, that the work of the Federal court is so voluminous and so extensive, a court handling Indian cases only would have more time to devote to the various complications and intricate Indian problems, and that through this Indian court, Indian claims and Indian affairs generally may be given more thorough and detailed consideration, which we feel will be beneficial to Indians.

In conclusion, we wish to state that in voicing our approval of the sections of the bill heretofore outlined, as concerns our reservation, we are incapable of understanding in detail the many complicated points of law and many unforeseen amendments that may be made before this bill becomes a law. We have faith in the Commissioner of Indian Affairs, John Collier, and we are placing the responsibility for our best interests directly in your hands. We ask that in fostering this legislation and in considering any amendments that may be offered and included, you bear in mind that insofar as the White Mountain Apache Indian is concerned, he is depending on you to foster such legislation that will most thoroughly protect our people and our reservation for our future generations. We depend on you, through this bill or otherwise, to foster and encourage legislation which will gradually, as we become more capable, give us greater responsibility in the management of our own affairs. We feel that you are our guardian and as such in any

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legislation pending or which may come up in the future you will freely confer with us and act in our behalf to the best of your ability.

Remarks of Chief Baha: "We want what is written on this paper and nothing else is to be added. What has been said on this paper is fully satisfactory to the chiefs. As a son of my father I beg of you to defend me in every way forever. We are thankful that you sent us this bill, which is the best thing you have done for the Indians. The greatest thing you have done for our children is appropriate money for our schools and for scholarships, as is in the bill. We hope that some of our younger students will make use of that money."

Signed by the following council representing the White Mountain Apaches:

BAHA, *Head Chief.*
R-14, *Cedar Creek Chief.*
CHARLEY SHIPP, *Canyon Day Chief.*
FLOYD TOGGIE, *Eastfork Chief.*
JACK KEYES, *Eastfork Chief.*
JOHN TAYLAY, *Cibicue Chief.*
WILL LUPE, *Oak Creek Chief.*
CUSTER WHITE, *Eastfork Chief.*
CHEGAY, Z-5, *Cibicue Chief.*
ELMER DECLAY, *Canyon Day Chief.*
JOHN ETHELBAH, *Carrizo Chief.*

(Tribe, Hopi. Population, 2,925. Jurisdiction, Oraibi, Ariz.)

The Hopi people at their council at Toreva, April 13 and 14, 1934, approved the Wheeler-Howard bill by a two-thirds vote, without amendments. All the Hopi villages were represented, including Moencopi.

Through the urgings of our elders, the conferees agreed to organize under one head which body should be considered official. The method or form of this organization is to be decided upon later.

OTTO LEMITOVI.

(Tribe, Navajo. Population, 1,865. Jurisdiction, Leupp School and Agency)

RESOLUTION

Whereas there has been introduced into Congress a bill known as the "Wheeler-Howard Indian rights bill", which bill is designed to give the Indians the right to organize for self-government; makes provision for additional educational opportunities for Indians; and provides for the preservation of Indian lands through repeal of the existing allotment laws; and

Whereas the provisions of title 1 of said bill relating to self-government are entirely permissive and dependent on the capacities and desires of the Indians for additional self-government; and

Whereas we believe that the passage of this bill would open doors of opportunity now closed, although we realize that it will be several years before we will have a sufficient number of trained Indian leaders on the Leupp jurisdiction to permit us to organize and charter a community capable of assuming some of the powers of self-government, yet we believe that the door of opportunity should be opened: Now, therefore, be it

Resolved by the chapter officers of the Leupp jurisdiction, That we hereby endorse in principle the Wheeler-Howard Indian rights bill and respectfully request the Commissioner of Indian Affairs and members of his staff to devote their best efforts to secure its enactment into law.

Unanimously adopted at Leupp, Ariz., this 7th day of April 1934.

NAL NASHIA (his mark),
HASTEEN BA GOSHI BEGA (his mark),
HASKA YIL NA HA YA (his mark),
BE AH KIDDY NI BEGA (his mark),
MARCUS KANUHO,
SELTH SA PAI BADONI (his mark),
HADILTH CHALILEY YAZZIE (his mark),
EDKAI YAZZIE NI BADONI (his mark),
CAPTAIN JOE (his mark),
JERRY MONROE,
ROBERT CURLEY (his mark),
JUDGE SLOWTALKER (his mark),
CHA HE (his mark).

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Tribe, Navajo Nation. Population, 42,374. Jurisdiction, North Navajo, Shiprock, N.Mex.; East Navajo, Crown Point, N.Mex.; South Navajo, Fort Defiance, Ariz., and West Navajo, Tuba City, Ariz. Date, April 12, 1934

I beg to inform you that the Tribal Council of the Navajo Nation, the largest Indian tribe in the United States, in council assembled April 10 at Crownpoint, N.Mex., after a thorough discussion of the provisions of the Wheeler-Howard Indian self-government bills, S. 2755 and H.R. 7902, have given it their approval and urge early passage of the bills with the proposed amendments.

This affirmative action by the Najajo Council was taken after a previous council meeting at Fort Defiance, Ariz., March 12 and 13, with you and your staff, at which time the council requested an opportunity to discuss the provisions of the bills with their people, which was done. Again, in behalf of the Navajo Council and the Navajo Nation, I urge favorable action by the Congress on the bills.

Respectfully,

THOMAS H. DODGE,
Chairman, Navajo Tribal Council.

Tribe, Sandia Pueblo. Population, 123. Jurisdiction, Albuquerque, N.Mex.

We, the undersigned officers of the Pueblo de Sandia in New Mexico, after giving careful consideration to the Wheeler-Howard bill now pending before Congress, desire to advise you that the pueblo has approved the bill and desires to express the hope that it may pass Congress at the present session.

PUEBLO DE SANDIA,
By JUAN A. (his mark) TRUJILLO, *Governor.*
LEYSITO (his mark) ORTIZ, *Lieutenant Governor.*

Attest:

DOMINGO MONTOYA, *Secretary.*

Tribe, Picuris Pueblo, population, 113. Jurisdiction, Santa Fe school, Santa Fe, N.Mex. Date, Mar. 18, 1934

This is to notify you that Picuris Pueblo is endorsing the Wheeler-Howard Indian bill.

Our delegates, who represented at the All Pueblo Council at Santo Domingo Pueblo, have returned with more explanation in reference to the Indian bill.

The council of this pueblo feels satisfied and hoping its passage at this session of Congress.

ROMAN MARTINEZ,
Picuris Pueblo Governor.

Tribe, Iowa Indian Tribe. Population, 479. Jurisdiction, Haskell Institute jurisdiction, White Cloud, Kans.

At a meeting of the members of the Iowa Tribe of American Indians, held Saturday, April 21, 1934, at the Grandview Schoolhouse on the Iowa Indian Reservation the following resolution was unanimously adopted:

"*Resolved*, That it is the opinion of the members of the Iowa Tribe of American Indians that Senate bill no. 2755 will, if it becomes a law, make possible the economic, social, and political organization of the American Indian on a basis to obtain to the fullest measure the blessings secured under the Constitution of the United States to its citizens, and give him the unrestrained privilege of participating in the affairs of life on the land of his nativity, and be it further

"*Resolved*, That we urge the early enactment of the said Senate bill no. 2755, and when duly enacted we hereby pledge our earnest efforts to fully cooperate with the Government of the United States that the benefits therein granted the American Indians may be realized and that the widsom and justice of this proposed legislation be demonstrated."

DAVID H. ROUBIDOUX,
Chairman of meeting.
PAULINE MURPHY,
Secretary of meeting.

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(Tribe, Bannock. Population, 344. Jurisdiction, Fort Hall Agency, Fort Hall, Idaho. Date, March 6, 1934)

The undersigned, members of the Bannock Tribe of Indians on the Fort Hall Indian Reservation in Idaho are writing the President of the United States, direct and in our own manner, for support in securing your help in securing passage of Senate bill 2755.

OLIVER TETON,
For Chief Pharney Beech, care of Oliver Teton,
Blackfoot, Idaho, post office box 372.

And 170 male signers.

(Tribe, Blackfeet. Population, 3,890. Jurisdiction, Blackfeet Agency, Browning, Mont.)

At a Blackfeet Tribal Business Council meeting held March 31, 1934, the Wheeler-Howard bill was accepted. Below are suggested amendments from the minutes.

COMMENT UPON AND SUGGESTED AMENDMENTS TO SENATE BILL 2755 WITH REFERENCE TO INDIAN SELF-GOVERNMENT

1. It appears that under sections 2 and 3 of the Senate bill it will be possible to organize a large number of communities each of which will be self-governing and each of which will have all of the corporate powers set forth in the bill upon the same reservation. Some question arises in our minds as to the advisability of so dividing up the lands and people of a single tribe. It is well known that a portion of the tribal lands will have a much greater value than others. It may be possible under the bill as at present drawn for one or more communities, small in number of members, to obtain control of a large portion of more valuable land theretofore belonging to the entire tribe. It is suggested that this matter be given thought with the idea, if possible, to restrict the organization of separate communities upon a single reservation.

2. Amend section 4 by inserting after the word "vote" line 19 of page 5, the following: "of the adult members of the community."

3. Amend subsection B, section 4 by striking the word "adoption" line 15, page 6, and inserting in lieu thereof the word "admission."

4. Amend subparagraph F of section 4 by inserting after the word "properties" on line 23, page 7, the following: "except lands held in trust for members of such community" and by inserting after the word "assessments" in line 3, page 8, the following: "*Provided however*, That said Indian community shall have the right and is hereby empowered to exercise the right of condemnation upon all lands included in such community, including trust lands for public uses as defined by the laws of the United States."

5. Amend section 5, page 10, by striking all of said section after the word "community" on line 21 and inserting in lieu thereof the following: "And an Indian member of such community shall be appointed to fill the vacancy arising from such removal: *Provided however*, That the qualifications of any Indian applicant for such position so vacated shall first have been approved by the Commissioner of Indian Affairs."

6. Amend subsection D of section 8, page 16, by striking from line 1, page 16, the words "Secretary of Interior" and inserting in lieu thereof the word "community"; striking from line 2 the words "the community has failed" and inserting the words "it is unable"; striking the first word "the" in line 4 and inserting in lieu thereof the word "any."

7. Amend subsection B, section 13, page 19 by striking from lines 3 and 4 and 5 the following words: "and were on or about February 1, 1934, actually residing within the present boundaries of any Indian reservation."

8. Amend section 3, page 26, by striking from line 12 the words "Secretary of the Interior" and inserting in lieu thereof the words "tribe by a three-fourths vote of its adult enrolled members."

9. Amend section 5, page 27 by striking the words "devise, gift" in line 11, and the word "devised" line 16 and inserting before the word "no" in line 11 the following: "the right of inheritance by will or otherwise of lands held under restricted patents is expressly recognized in accordance with existing laws, but."

10. Amend section 7, page 29 by inserting after the word "and" and before the word "to" in line 18 the following: "and upon such voluntary relinquishment" and by inserting the same words before the word "to" in line 14, page 30.

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11. Amend section 8, page 31 by striking from line 1 the words "tribal or community" and from lines 2 and 3 the words "whether or not held in the Treasury of the United States" and inserting after the word "expend" in line 1 the words "with the approval of the Secretary of the Interior" and after the word "funds" in line 2 the words "appropriated by the Congress of the United States."

12. Amend section 8, page 32 by striking all of the paragraph after the word "paid" on line 11, and inserting in lieu thereof the words "for in cash in one amount at time of sale."

13. Amend section 11, pages 33 and 34 by striking all of said paragraph and inserting in lieu thereof the following: "nothing in this act contained shall prevent an allottee under a trust or restricted patent from, during his lifetime, opening mines and oil and gas wells upon the lands held by him under such allotment or from leasing subject to the approval of the Secretary of the Interior such allotment for the purpose of mining or drilling and operating thereon for oil, gas, and other minerals, and such allottee, his heirs and assigns shall be entitled to receive all rentals and royalties due or to become due under the terms of any such lease for the full term thereof."

(Tribe, Pyramid Lake. Population, 566. Jurisdiction, Pyramid Lake Jurisdiction, Nixon, Nev.)

We, the Pyramid Lake Indians, are glad to see the "new deal" plan being applied even unto us through the Wheeler-Howard Indian (S. 2775) bill. We believe that this is a very constructive program.

As chairman of the proposed unit for self-government of this reservation, I am glad of this opportunity to express our appreciation and approval of this bill so far as we understand its purpose."

DUVEY E. SAMPSON.

CHEROKEE, N.C., *February 14, 1934.*

Whereas the Commissioner of Indian Affairs has asked us, along with other Indians of the country, for an expression of opinion regarding certain suggestions of his tending toward a larger measure of self-government and better control of the lands and other property of the Indians; and

Whereas we, the regularly elected officials of the Eastern Band of Cherokee Indians, have studied and discussed this question for several says and have reached certain conclusions: Therefore, be it

Resolved by the Eastern Band of Cherokee Indians in council assembled, That the Commissioner of Indian Affairs be advised of our thoughts and decisions on these matters, for which purpose they are set forth in the following sections of this resolution:

I. We agree in principle with the objects which the honorable Commissioner of Indian Affairs is seeking, to wit; a larger degree of self-government for Indians and better management and control of their land and property. We wish to call attention, however, to the fact that this band of Indians has such an organization and does manage and control its property along the lines suggested by the honorable Commissioner, and has done so for many years. In support of this assertion, we remind you of certain high spots in the history of this band of Indians.

II. When the Cherokee Indians were dispossessed of their lands in this part of the country by the Federal Government, over their protest and without their free consent or agreement, a small band of Indians refused to move into a strange and unknown country but elected to remain here in the homeland which had always been theirs and to which they had the strongest attachment. This little band of Indians in various and diverse ways managed to elude the soldiers who were removing them and hid out in the mountains of western North Carolina and eastern Tennessee. They were without recognized legal rights and were treated little better than wild animals. They had no tribal organization and no way of organized cooperative activity. The Government refused to pay them the money which was due them as a result of this removal or to buy them land unless the State of North Carolina would give them permission to remain within its territory. The State of North Carolina came to their aid in this emergency and in 1866 passed the necessary legislation permitting them to remain in this State. Two years later the Federal Government, through an act of Congress, assumed the same supervision of their affairs that it exercised over other Indians.

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In the meantime, the Indians had found a friend in one Col. William H. Thomas, through whose aid and assistance lands were bought by and for them. As Indians could not hold land in their own name at that time, Colonel Thomas took title to these lands in his own name. When those affairs became involved it was necessary to resort to the courts to protect the rights of these Indians; and again, within another 2 years, Congress authorized this band of Indians to bring suit to quiet title to their lands. It is not necessary to relate the history in this litigation in this resolution. It is too well known. Suffice to say that the Indians won, in part at least, what was due them.

In order to prosecute this case, these Indians attempted to provide themselves with some sort of an organization. At a general council assembled at Cheoah, on December 9, 1868, the Eastern Cherokees placed upon record a declaration of purpose. This was followed by other declarations made at Qualla Town on November 26, 1870, which eventually resulted in the adoption of the so-called "Welch Constitution", which was adopted October 13, 1875. A résumé of this activity is attached to this resolution as exhibit A.

In a decision in the trust-funds case, the Supreme Court of the United States held that these Indians had no tribal organization; that they were citizens of North Carolina; and had no legal organization by which they could protect their rights. Again the State of North Carolina came to the rescue of this band of Indians and passed the act of March 11, 1889, incorporating this band of Indians under the title of "The Eastern Band of Cherokee Indians." This act of incorporation is attached to this resolution as exhibit B. At various times since then the State of North Carolina has amended and revised these articles of incorporation until they now stand as a charter for this band of Indians. Attached hereto, as exhibit C, you will find this law as it is in effect at the present time. This act of the legislature gave this band of Indians legal standing, and they wish to take this opportunity to express their gratitude to the State of North Carolina for coming to their rescue time and again and for all the other benefits which the said State has conferred upon them. At the present time this group of Indians is an incorporated entity under and by the laws of the State of North Carolina, under the legal title of "The Eastern Band of Cherokee Indians."

III. This charter has been in force now for about 45 years. From time to time, as the necessity arose, the State legislature has made necessary revisions as requested by this band of Indians. Under this charter we have been able to live, manage our individual affairs, and to operate and conduct all the business of the tribe in a satisfactory manner. We see little or no need to change our organization, inasmuch as the present charter is sufficiently flexible to meet any and all questions.

IV. Without any purpose or intent of reflecting upon the State of North Carolina, we believe that it would probably be advantageous for us to operate in the future under a charter to be issued by the Federal Government instead of the one which is issued by the State of North Carolina. We take this stand because it seems to us that there would be less chance for conflict of authority with most of our business concentrated in the Federal Government. There follows a brief statement of the things which we consider essential in any such new charter:

(*a*) We recommend that the officials of the tribe remain the same as under our present articles of incorporation, with the same duties and salaries.

(*b*) We recommend that elections be held as stated in our present articles of incorporation and that nominations for office be made in the following manner: Sixty days before any annual election, the qualified voters of each township shall meet in convention in their respective township and place in nomination one candidate for each position. At those times when a chief is to be elected, these conventions shall also select delegates to attend the convention for nominating chief and assistant chief. Independent candidates desiring to enter any election contest must file a petition 30 days before the election, which petition must be signed by 10 voters in the case of councilmen and 50 voters in the case of chief or assistant chief. Votes for any candidate who has not complied with these requirements will not be counted but will be thrown out.

(*c*) Membership of the community will be constituted as stated in the present articles of incorporation and shall consist of any enrolled member of the Eastern Band of Cherokees, either male or female, who have passed their 18th birthday, and have more than one-sixteenth degree of Indian blood.

(*d*) Legislative power shall be in the hands of the council, subject to a referendum.

(*e*) Provision in the present articles of incorporation regarding the recall or impeachment of officers is satisfactory.

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V. It is our belief that the United States Government should continue its present program relating to health, education, etc. We do not feel that we are ready at this time to take over any large amount of these activities.

(a) For many years, the State of North Carolina has exercised police power in the maintenance of law and order. This has worked satisfactorily for the most part, and we recommend that it be continued, instead of trying to undertake this activity ourselves. Consideration should be given to the proposition that some way be developed by which the local Governments can be remunerated by the Federal Government for the costs involved in view of the fact that our lands are no longer subject to taxation. Supplementing the activity of the State in maintaining law and order, we recommend that the Federal Government continue to make use of the Federal courts in protecting our personal and property interests and that some action be taken by the Federal Government to faiclitate and expedite actions of this nature. To do this, we recommend that the United States Commissioners be granted authority to try minor cases corresponding to the jurisdiction of the justice of the peace courts in the State.

(b) We do not believe that the tribal organization should undertake cooperative purchasing or selling of the products in the community. This can better be left to voluntary organizations, such as the handcraft guild which is organized here already. The tribal organization should only interest itself in cases where tribal funds or tribal property is involved.

(c) We believe the tribal organization is ready to assume more active control of road work and protection of our forests against fire. We believe that the council members selected in each township should constitute a school committee for the said township to assist in the question of school attendance, and we suggest that the Government provide somehow and somewhere a truant school for children who cannot be kept in school regularly. We also recommend the organization of parent-teachers' associations and the appointment of an attendant officer to assist school employees in maintaining higher standards of attendance.

(d) This band of Indians has always looked after its own needy and expect to continue to do so, using tribal funds for that purpose.

VI. Under the tenure of land, we invite your attention to the following act of the council, showing how this has been handled in the past (the act of Oct. 18, 1932, which is attached hereto as exhibit D). To make this act effective, a form has been adopted for use in granting holdings (attached as exhibit E). We have made it a practice to limit new holdings to 20 acres per family and recommend that this be continued. In a disposition of the estates of deceased Indians, we recommend that any Indian having a holding be permitted to dispose of the same by will. In case an Indian dies without having made a will, the council, by virtue of the fact that all land is tribal property, shall assume control of the estate for the purpose of settling the estate and shall distribute it to the heirs, if possible; otherwise shall close the estate by selling it, giving first chance to buy to the heirs. In case the heirs wish an immediate settlement when the council is not in session, the business committee should be authorized to proceed for the council.

VII. We see no reason for changing our present method of controlling expenditure of funds. If we understand this correctly, no tribal money can be expended for any purpose without a previous authorization by an act of Congress, after which the money can be expended for purposes as approved by the tribal council. The council will be glad to confer with the Government officials in the preparation of budgets for the expenditure of Federal funds and believe that this should become a part of the routine procedure.

VIII. Such measure of control over Government employees as may be decided upon by the Government should reside solely in the tribal council and not subject to the whims of individuals.

Passed and ratified in open council on this 15th day of February 1934, by 9 members voting for the act and 2 members voting against it as follows:

Voting for the act: Wm. Owl, Lloyd Lambert, Johnson Arch, Maroney French, John Sherrell, Arscen Thompson, Jack Jackson, Caffiney Long, Carneta Welch.

Voting against the act: Jarrette Warchar-choe, Henry Bradley.

Signed, on behalf of the council, by

JOHN WOLFE,
Chairman.
W. L. FRENCH,
Clerk.

Approved:
JARRETT BLYTHE, *Principal Chief.*

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I, W. L. French, interpreter for the council, hereby certify that the foregoing act of the council was duly passed and ratified in open council after the same had been interpreted by me and had been fully and freely discussed.

W. L. French, *Interpreter.*

I hereby certify that the foregoing act of the council was duly passed and ratified in open council after the same had been interpreted by the official interpreter and had been fully and freely discussed.

In testimony whereof I have hereunto set my hand and affixed the seal of the said band of Indians.

[SEAL] R. L. Spalsbury,
Superintendent and ex-officio Secretary.

Exhibit A

At a general council assembled at Cheoh, December 9, 1868, the Eastern Cherokees placed upon record the following declaration:

We, the Eastern Cherokees, being desirous of holding our general council in some organized form and established manner and under a like form as other tribes of Indians who are desirous of adopting a republican form of government, and restricting, controlling, and compensating our rulers, do hereby enact as follows:

That hereafter each Cherokee settlement or town shall be entitled to one delegate for each member of such settlement, who shall represent them in said general council, and that said general council shall meet once in each year on ——— ——— of ———; that said general council shall, from their number when convened, elect one of their number who shall be chairman or president of said council, and who shall be president or chief of said Eastern Cherokees for the term of time so directed by said council, not exceeding 4 years, and in case of choice each settlement may petition said council in writing upon any subject. Said council shall have power to elect a secretary and interpreter of the council and marshal of the nation, and fix the duties and compensation of the same. Said council shall have the power to prepare and adopt bylaws and rules for the general government of the people and the duties of each national officer, and also the compensation of said council, and assess the national funds and property to pay the same. Said council may prepare bylaws and police regulations and other rules, and submit the same to the nation in general council assembled, and a majority vote shall adopt or reject the same. They shall also prepare a system of schools in each settlement and provide for the election of a superintendent or board of trustees, who shall organize the same in accordance with said regulations. Said council may, in their discretion, fix a place and day or days for holding a national fair, where each person may present samples of grain, stock, weaving, knitting, spinning, needlework, butter, and any article of agricultural products or fruit, and domestic or mechanical product; and also a measure proving amount of crop per acre, and the number of acres cultivated in any crop, and fix committees to grant premiums thereon and name the same, and one premium for the best general system of farming to be shown by the general statement.

Signed in Cherokee: John Wayne-na, chairman; Long Bear, Allen Ratler, Tramper, William McElmore, John Ax, Sowanooka, Ken-ska-leskee, Tah-quah-tee, James Blythe, Skeegee, John Large, Wilson Ax, Mink.

Attest:

N. J. Smith,
Clerk of the Committee and Council.

Qualla Town, Jackson County, N.C.,
November 26, 1870.

In conformity to previous appointment, and notice having been given previously to the different towns composing the Eastern Band of Cherokees, a grand council is this day organized by appointing Suate Owl and Corntassel, chairmen, and John Lige and Samuel W. Davidson, clerks.

The credentials of the delegates were presented and referred to a committee consisting of the following: Jackson Blythe, Will McElmore, Swimmer, Young Squirrel, Ah-mah-chu-ah, Wilson Wolf, Tom Skitty, Sam Wolf, Lewis Smith, Leander Hornbuckle, John Dobson, and Willigeh, who, after examining the credentials, reported favorably, and the following delegates then presented themselves, to wit: From Long Ridge, Cherokee County, R. B. Smith, John Going,

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Will West; Hanging Dog, John Owl and Teceteska; from Cheoh, Jacob Cheer and L. R. Welch; Buffalo, Standing Deer; John Jackson as proxy for Sand Town; and Henry Smith for Notla.

The delegation then came forward and signed their names as follows:

Jackson County, N.C.: Black Fox, Wolfe Town; Benj. Brown, Birdtown; Axe, Raven Fork; Oolenasseh, Raven Fork.

Cherokee County: R. B. Smith, Long Ridge; Will West, Long Ridge; John Going, Long Ridge; John Owl, Hanging Dog; Teceteska, Hanging Dog; Jacob Cheer, Cheoh; Loyd R. Welch, Cheoh; Henry Smith, Notla; Standing Deer, Buffalo; John Jackson, Sand Town.

Will McElmore, Lower Hanging Dog, signed in presence of Samuel W. Davison, clerk.

Ordered by the council that an election be held on Thursday, December 1, 1870, for principal chief to serve until our next annual election in 1871.

DECEMBER 1, 1870.

The council met pursuant to adjournment and proceeded to business. The election of principal and second chief was then opened and held and resulted in the election of Flying Squirrel, or Call-lee-high, as principal chief, and John Jackson, Oo-wah-lun-tee, as second chief.

The form of government referred to the committee was reported favorably.

It was then moved and second that the constitution be adopted by the council, which motion was carried unanimously, and the constitution was adopted is as follows:

First. Whereas the legal representatives or councilmen of towns or settlements of the Eastern Band of Cherokee Indians have this day and date, at the place aforementioned, met according to general agreement and undertaking.

Second. Said council be, and is hereby, duly authorized and empowered by representation, as the undersigned showeth, to provide for the common interest and enact measures by which the aforesaid band of Indians may be represented in prosecuting or defending all mattters pertaining to or touching the interest of said band of Indians with the United States, or State or States, or individuals of the United States, in whatever relation said interest may be, provided that nothing herein be so construed as an abrogation of any rights, claim, or claims of any individual or individuals of said band to the legislation of said council in common property.

Third. All members constituting the aforesaid council shall be, and they are hereby, governed and bound by all acts passed in council of delegates and approved by the chief.

Fourth. All acts done, made, and confirmed in grand council, as aforesaid, shall be effectual and binding upon all members belonging to or constituting the aforesaid band, as a band, in all matters held in common or pertaining to the common interest of said band and not otherwise.

Fifth. Provided, further, that there be and the council is hereby authorized to appoint an annual session for holding grand councils at such place and time as they may designate and determine on, and no called or appointed council otherwise held shall be held valid or binding upon the aforesaid band or the subjects thereof unless the chief, in his judgment and reason, thinks the interest of said band demands or justifies such called or appointed council; also, that there be ordered a stated election to be held in each town and settlement for the purpose of electing first and second chiefs, whose power and right of governing shall extend over the whole bank of Eastern Cherokees for and not exceeding the term of 2 years; also for the electing all subaltern officers to constitute the aforesaid annual council. The said subordinate term of office shall not exceed 1 year only by the annual election of the band. The right of vote by which said band shall be governed shall be exclusive and consist only of its male members of 16 years of age and upward. And the aforesaid officers so elected shall have the exclusive right to govern and rule, and all the acts done, made, or had by said officers for the term elected shall be binding, held binding, and in full force upon said band. The aforesaid chiefs so elected shall have no power nor hold any right of jurisdiction to enact or enforce laws within themselves over the band of which he presides as chief, but in all cases or interests conflicting or touching the common rights of said band the legal representatives shall be duly notified by the chief and the legislative body assembled.

Signed in Cherokee: Flying Squirrel, Principal Chief; John Jackson, Assistant Chief, Black Fox, Wilson Welsh, George Wilnota, Joe Welch, Le-ya-nah, Lewey Owl, Benj. Brown, Ax, Oolenasseh, Ross B. Smith, Will West, John Going, John Owl, Teceteska.

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Amendments to the Constitution of the Eastern Band of Cherokee Indians

The Eastern Band of the Cherokees having again reunited and become one body politic under the sulte and title of the "Eastern Band of the Cherokee Indians"; therefore:

We, the people of the Eastern Band of the Cherokee Indians in annual council assembled, in order to establish justice, promote the common welfare, and to assure to ourselves and our posterity the blessings of freedom, acknowledging with humility and gratitude the goodness of the Sovereign Rule of the Universe in permitting us so to do, and imploring His aid and guidance in its accomplishment, do ordain and establish these amendments to the constitution for the government of the Eastern Band of Cherokee Indians.

ARTICLE I

Section 1. The power of the Eastern Band of the Cherokee Indians shall be divided into two distinct departments, the executive and the legislative, the executive to consist of the principal and assistant chief, and the legislative of the council.

ARTICLE II

Section 1. The legislative power shall be vested in a council, and all enactments of the council shall be signed by the chairman of the council and approved by the principal chief, and in all their deliberations the vote shall be taken by yeas and nays, unless otherwise directed by the council.

Sec. 2. Each member of the annual council, before he takes his seat to transact any business of the council, shall take the following oath (or affirmation):

"I, A. B., do solemnly swear (or affirm) that I have not obtained my election or appointment as a member of this council by bribery or any undue or unlawful means or duress or fraud, used by myself or others, by my desire or approbation for that purpose; that I consider myself constitutionally qualified as a member of this council, and that on all questions and measures which may come before me I will give my vote and so conduct myself as in my judgment shall appear most conducive to the interest and prosperity of the Eastern Band of the Cherokee Indians, and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power observe, conform to, support, and defend the constitution thereof."

ARTICLE III

Section 1. No person shall ever be eligible to any office or appointment of honor, profit, or trust who shall have aided or abetted, counseled or encouraged any person or persons guilty of defrauding the Eastern Band of the Cherokees, or who may hereafter aid or abet, counsel or encourage any pretended agents or attorneys in defrauding the Eastern Band of Cherokees.

ARTICLE IV

Section 1. It shall be the duty of the annual council to pass such rules and regulations as may be necessary and proper, and to decide differences by arbitrators to be appointed by the parties who may choose that summary mode of settlement.

ABSTRACT

Supreme executive, the principal chief, term 4 years; vice or assistant chief. By males of 18 years. Eligibility of either, age 35, and at least one-fourth Cherokee, of band. In case of death, resignation, or disability of both, council appoint until removal of disability or successor be elected. Councilmen must be 21. Compensation of chief and vice not changeable during term.

Oath of principal chief:

"I do solemnly swear (or affirm) that I will faithfully execute the duties of principal chief of the Eastern Band of Cherokees, and will, to the best of my ability, preserve, protect, and defend the constitution of the Eastern Band of the Cherokee Indians."

Principal chief may on extraordinary occasions convene the council at such place as the council shall designate as the seat of government.

Principal chief from time to time give information as to the state of affairs and recommend measures as he may think expedient. He shall take care that the rules and regulations be faithfully executed; shall visit the different towns and settlements at least once in 2 years.

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All officers and members of council take oath, and so forth. Council for 2 years. Treasurer chosen by council for 2 years and give bond. No money drawn except by warrant from the president in consequence of appropriations by council. Treasurer receive and account for moneys at each session of the annual council.

ARTICLE V (ABSTRACT)

No person eligible to any office who denies the existence of a God or a future state of rewards and punishments. Free exercise of religious worship and serving God forever enjoyed, but not construed as to excuse acts of licentiousness inconsistent with the peace and safety, etc. Council may decide the expediency and principal chief nominate to council when necessary to send a delegate to transact business with the United States, and he shall keep up a friendly correspondence through the medium of its proper officers. All commissions to be in the name and by the authority of the Eastern Band of Cherokee Indians, sealed with the seal of the probate court of the county where the council is held, attested by clerk of council, and approved by the principal chief. Religion, morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education shall forever be encouraged and cherished by the Eastern Band of Cherokee Indians. Annual council may propose amendments as two-thirds deem expedient, the same not to be passed until the meeting of the next council.

ARTICLE VI

Council shall consist of 2 from each town or settlement of 100 souls, of 1 extra on an excess of 200, and for less than 100 still 1. Council, at the annual session, shall appoint 2 judges of elections. In fault of election, a majority may send a delegate with certificate, with the names of those selecting the delegate. Election to be held on the first Thursday in September. Executive council to consist of principal chief, assistant chief, and 3 associates, nominated by the principal chief and confirmed by the council. The annual council shall be held on the first Monday of October at place designated by council, or, an emergency, by the principal chief. The annual council shall be called to order by the assistant chief, and a chairman and clerk be elected. In the absence or neglect of the assistant chief any member of the executive council may organize the council. The officers of the council shall be 1 first and 1 second clerk, an interpreter, marshal, messenger, and doorkeeper. The oath may be administered by any officer of the State or the United States authorized to administer an oath. Conviction of felony shall exclude from office. The annual council may, by a commission, provide for the purchase of land for the Eastern Band of Cherokee Indians: *Provided*, that any commission provided for under this ordinance may be nominated by the principal chief and confirmed by the annual council: *Provided further*, That no act of such commission shall be construed to interfere with or in any manner impair the rights of individual members of said band. The annual council shall, by appropriate legislation, provide a public school system for the Eastern Band of the Cherokee Indians. The veto power exists except against a two-thirds vote. Style of enactment: "*Be it enacted by the annual council of the Eastern Band of the Cherokee Indians*", etc.

W. J. HILDER.
T. Z. P. ENOLA, *Chairman.*

Attest:

JOHN G. TATHAM, *secretary of council.*
HENRY SMITH, *interpreter.*

Approved:

LOYD R. WELCH, *Principal Chief,*
Cheoh Council Ground, October 13, 1875.

EXHIBIT E

CHAPTER 211. AN ACT INCORPORATING THE EASTERN BAND OF CHEROKEE INDIANS, AND FOR OTHER PURPOSES

The General Assembly of North Carolina do enact:

SECTION 1. That the North Carolina or Eastern Cherokee Indians, resident and domiciled in the counties of Jackson, Swain, Graham, and Cherokee, be and the same are hereby created and constituted a body politic and corporate under

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the name, style, and title of "The Eastern Band of Cherokee Indians", with all the rights, franchises, privileges, and powers incident and belonging to corporations under the laws of the State of North Carolina.

SEC. 2. That "The Eastern Band of Cherokee Indians" by that name and style, be and they are hereby authorized and empowered to sue and implead in law or in equity in all the courts of the land touching and concerning all the property of whatever nature held in common by the said North Carolina or Eastern Cherokee Indians in the said counties; and that the said "Eastern Band of Cherokee Indians," by that name and style, can and may be sued and impleaded in all the courts in the land touching and concerning the said property held as aforesaid in the said counties.

SEC. 3. That in all cases where the State of North Carolina has heretofore issued any grant to any person or persons for any of the land held as aforesaid by the said Eastern Cherokee Indians and under whom the said Indians claim title, as also all deeds made by commissioners of the State for what is known as "Cherokee lands", to any person or persons for any of the land held as aforesaid in said counties by said Eastern Cherokee Indians, and under whom the said Eastern Cherokee Indians claim title, such grants and deeds are hereby declared valid as against the State.

SEC. 4. That in all cases where titles or deeds have been executed to the said "Eastern Band of Cherokee Indians", or to any person or persons in whatever capacity in trust for them under that name and style, by any person or persons, either collectively, individually, officially, or in any capacity whatever, such deeds or titles are hereby declared valid against the State and all persons or person claiming by, through, or under the State by virtue of any grant dated or issued subsequent to the aforesaid deeds or titles to the said "Eastern Band of Cherokee Indians."

SEC. 5. That in case any person or persons now claiming any part of the lands described in the preceding sections adversely to the said Indians, under colorable (166) title or titles, shall be sued by reason of such adverse claim or any possession under such colorable title or titles, this act shall not be used in evidence on either side, nor shall it in any way prejudice the rights of either party, but such suit or suits shall be determined as if this act had not been passed.

SEC. 6. That this act shall take effect from and after its ratification.

Ratified the 11th day of March, A.D. 1889.

EXHIBIT C

CHAPTER 207. AN ACT TO CORRECT AND AMEND CHAPTER 166, PRIVATE LAWS OF 1895 ENTITLED "AN ACT TO AMEND CHAPTER 211, LAWS 1889, RELATING TO THE CHARTER OF EASTERN BAND OF CHEROKEE INDIANS"

The General Assembly of North Carolina do enact:

That chapter 166, private laws of 1895, entitled "An act to amend chapter 211, laws of 1889, relating to charter of Eastern Band of Cherokee Indians", be amended and corrected so as to read as follows:

SECTION 1. That the officers of said corporation shall consist of a principal chief, assistant (or vice) chief, and for the present twelve (12) members of council, as follows:

From Yellow Hill Settlement, in Swain County, 2 members; from Big Cove Settlement, in Swain County, 2 members; from Birdtown settlement, in Swain and Jackson, 2 members; from Wolftown Settlement, Jackson County, 2 members; from Paintown Settlement Jackson County, 2 members; from Cheoah Settlement, Graham County, 2 members; also a secretary, interpreter, marshal of the band, and other officers as hereinafter provided.

SEC. 2. That the principal chief, assistant (or vice) chief and members of council shall be elected to their respective offices by the male and female members of the Eastern Band of Cherokee Indians, who have attained the age of eighteen (18) years; and who has been a resident for ninety days next preceding the date of an election in the district in which he or she votes; and all other officers are to be appointed by the council as hereinafter provided; that the term of office of the principal and assistant chief shall be four (4) years and that of members of council two (2) years, and all other officers elected by the council shall hold until the first annual or grand council held after the election for members of council, and all officers of said corporation shall hold until their successors are duly qualified.

SEC. 3. That the election for principal chief and assistant (or vice) chief, shall be held on the first Thursday in September next, and every four years thereafter, under such rules and regulations as may be prescribed by the council.

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SEC. 4. That the election for members of council shall be held on the first Thursday in September, eighteen hundred and ninety-five (1895), and each two years thereafter, under the same rules and regulations as are prescribed by the council for the election of principal and assistant chief.

SEC. 5. That the council shall, sixty (60) days preceding the election held for members of council, appoint two judges for every Indian town and settlement that is entitled to a member of council, who shall hold the elections for such town and settlement, and shall certify the result of the same under such rules and regulations as may be prescribed by the council, to the next succeeding annual or grand council: *Provided, however,* That the candidates for principal and assistant chief, who shall have received a majority or plurality of the votes cast by the band, shall be declared by the said annual council to be the duly elected principal chief and assistant chief for the term of four (4) years, and the members of council who shall be certified by the said judges of election to be elected for that town or settlement shall be the duly elected members for the same, and shall hold their office for the term of 2 years.

SEC. 6. There shall also be an executive council, which shall consist of the principal chief, assistant (or vice) chief, and one associate, who shall be appointed by the principal chief and confirmed by the council, who shall receive the same compensation as is hereinafter provided for members of council.

SEC. 7. That the principal chief shall receive as a compensation for his services such sum as may be fixed by the council, not to exceed the sum of two hundred and fifty ($250) dollars per annum, and the assistant chief such sum as may be fixed by the council; not to exceed the sum of one hundred and twenty-five ($125) dollars per annum, and they shall receive such traveling expenses as may be authorized or approved by the council, and the members of the council shall receive as compensation for their services the sum of two ($2) dollars per day for such time as they may be necessarily in session, and all other officers shall receive as compensation for their services such sums as may be provided by the council.

SEC. 8. That hereafter there shall be elected from each town or settlement of one hundred souls two (2) members of council and one (1) extra member in excess of two hundred (200) souls, and for less than one hundred (100) still one (1) member. In default of an election being held in any town or settlement entitled to a member of council, the people may send a delegate to the councils, and petition through him and make known their wants; but such delegates shall have no vote in the council.

SEC. 9. That the seat of government of the eastern band of Cherokee Indians shall be at Cherokee Council Grounds, Swain County, North Carolina, until changed by the council.

SEC. 10. That there shall be an annual or grand council held on the first Monday in October of each and every year, and in cases of emergency the principal chief can call a special council, but no business can be transacted in either annual or special council unless a quorum of the members shall be present which shall consist of a majority of the members of council elected at the last preceding election.

SEC. 11. The annual council shall be called to order by the assistant chief, and a chairman, vice chairman, and clerk be elected, who shall receive as a salary for their services such sums as may be fixed by the council, and shall hold their offices until the next annual council: *Provided,* That all officers elected or appointed by the council shall hold during the pleasure of the council, and for failure to perform their duties may be removed by said council, and others elected in their stead. In the absence or through the neglect of the assistant chief to organize the grand council any member of the executive committee may organize the same, and after an organization is effected the chairman shall call special councils to order and preside over the same, or in his absence the vice chairman, but the chairman shall have no vote except in the case of a tie vote, when he shall vote yea or nay on all matters.

SEC. 12. That all acts of council, resolutions, etc. shall be signed by the chairman and the clerk, and countersigned by the chief, and certified to by the secretary, and that the agent appointed by the general government to supervise the schools or affairs of the Eastern Band of Cherokee Indians, shall be, and is hereby made, ex officio, by virtue of his office, secretary of this corporation, with the custody of the books and papers appertaining to the same in all respects: *Provided, however,* That if such agent fails to act the council may elect a secretary.

SEC. 13. That the chief shall have the power to veto all acts and resolutions, etc. of council, but his veto shall not prevail against a two-thirds (⅔) vote of the council.

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SEC. 14. That the principal chief shall from time to time give information as to the state of affairs of the band, and recommend such measures as he may think expedient, and he shall also make an effort to see that the rules and regulations of the council are faithfully executed, and shall visit the different towns and settlement at least once in every 2 years.

SEC. 15. That in case of death, resignation or disability of the principal chief, the assistant or vice chief shall become the principal chief until removal, or disability, or his successor be elected; or in case of death, resignation or disability of assistant or vice chief, the council may elect until removal, or disability, or his successor be elected.

SEC. 16. That in case of death, resignation or disability of any member of council a new member shall be elected by such town or settlement, under such rules and regulations as may be prescribed by the council.

SEC. 17. No person shall be eligible to the office of principal or assistant chief under the age of 35 years, and who is not at least one-half Eastern Cherokee blood, nor shall any person be eligible to hold the office of member of the council under 21 years of age, and who is not at least one-sixteenth Eastern Cherokee blood.

SEC. 18. No person shall even be eligible to any office or appointment of honor, profit, or trust who shall have aided, abetted, counseled, or encouraged any person or persons guilty of defrauding the Eastern Band of Cherokee Indians, or who may hereafter aid or abet, counsel or encourage any pretended agent or attorneys in defrauding the Eastern Band of Cherokee Indians. Neither shall any person be eligible to such office, etc., that has been convicted of a felony or who denies the existence of a God or a future state of rewards and punishments. Free exercise of religion, worship and manner of serving God shall be forever enjoyed, but not construed as to excuse acts of licentiousness.

SEC. 19. That the principal chief, before entering on the duties of his office shall take the following oath before some officer authorized to administer oaths: I do solemnly swear (or affirm) that I will faithfully execute the duties of principal chief of the Eastern Band of Cherokees, and will, to the best of my ability, preserve, protect, and defend the constitution and laws made for their government. And the council, before entering upon their duties, shall take the following oath before some officer authorized to administer oaths, to wit: I, A. B. do solemnly swear (or affirm) that I have not obtained my election or appointment as a member of this council by bribery or any undue or unlawful means or frauds; that I will support the constitution and laws of the State of North Carolina, and that in all measures which may come before me I will so conduct myself as in my judgment shall appear most conducive to the interests and prosperity of the Eastern Band of Cherokees, and all other officers shall take such oaths as prescribed by the council.

SEC. 20. No money shall be paid out except upon the warrant of the principal chief, authorized by an act of council, and the treasurer of said corporation shall give a bond for the faithful performance of his duties as such treasurer in double the sum of money that passes through his hands, and shall render a statement of all moneys received and disbursed by him at each annual council, and oftener if required to do so by the principal chief.

SEC. 21. That any officer of the Eastern Band of Cherokee Indians who has violated his oath of office, or has been guilty of any offense making him ineligible to hold said office, may be impeached by a two-thirds vote of the council.

SEC. 22. That the council of the Eastern Band of Cherokee Indians shall direct the management and control of all property, either real or personal, belonging to the band as a corporation; but no person shall be entitled to the enjoyment of any lands belonging to the Eastern Band of Cherokee Indians as a corporation or as a tribe, or any profits accruing therefrom, or any money which may belong to said band as a corporation or as a tribe, unless such person be of at least one-sixteenth of Eastern Cherokee blood, and in case that any money derived from any source whatever, belonging to the Eastern Band of Cherokee Indians, shall be distributed among the members thereof, the same shall be divided per capita among the members entitled thereto.

SEC. 23. That the said Eastern Band of Cherokee Indians is hereby fully authorized and empowered to adopt bylaws and rules for the general government of said corporation, governing the management of all real and personal property held by the Eastern Band of Cherokee Indians as a corporation or as a tribe, and direct and assign among the members thereof homes in the Qualla boundary and other land held by them as a corporation or as a tribe, and is hereby vested with full power to enforce obedience to such bylaws and regulations as may be enacted by the council, through the marshal of the band.

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SEC. 24. That as the county authorities of Jackson, Swain, Graham, and Cherokee Counties make no provision for the support of the poor, nor provide free schools for the children of the Eastern Band of Cherokee Indians, the male members of said band in said counties shall be exempt from the payment of any poll tax, or if said poll tax shall be collected, the same shall be paid over by the proper officers of said counties to the council of the said Eastern Band of Cherokee Indians, to be used by said band for educational purposes.

SEC. 25. That a decree which the Attorney General of the United States caused to be entered on October 15, 1894, in the circuit court of the United States for the Western District of North Carolina, in the two suits, respectively, *The Eastern Band of Cherokee Indians* v. *William H. Thomas et al.* and the *United States* v. *William H. Thomas et al.*, by which the title to the Qualla boundary of land was vested in the Eastern Band of Cherokee Indians in fee as a corporation, as created by the act of assembly as aforesaid be, and is hereby, ratified and confirmed, and that said Indians, as such corporation are also authorized to hold title in fee to the several tracts of land conveyed in what is known as the "Sibbald deed", executed August 14, 1880, by William Johnston et al. to the Commissioner of Indian Affairs, as trustee for the Eastern Band of Cherokee Indians, and that section 701 of chapter 16 of the code, entitled "Corporations", so far as the same applies to this act, be, and the same is hereby, repealed.

SEC. 26. That the organization had and the bylaws passed by the Eastern Band of Cherokee Indians on December 13, 1889 in pursuance to the act of incorporation aforesaid, be and is hereby ratified and confirmed, and all acts and resolutions of council, and contracts made by the said council, in pursuance to said organization, not inconsistent with the constitutions and laws of North Carolina, is hereby validated; and that all acts and resolutions of council passed by the band in pursuance of chaper 166, private laws of 1895, whether said acts and resolutions be countersigned by the assistant or vice chief of said band or not, be and are hereby validated.

SEC. 27. All deeds executed by the Eastern Band of Cherokees shall be under the corporate seal, and acknowledged as deeds of corporate bodies are acknowledged under the laws of this State.

SEC. 28. That whenever it may become necessary, in the opinion of the council, to appropriate to school, church, or other public purposes, for the benefit of the band, any of the lands owned by the Eastern Band of Cherokee Indians, as a corporation or tribe, and occupied by any individual Indian or Indians of the band, the council may condemn such land for the aforesaid purposes only by paying to the occupant of such land the value of such imporvements and betterments as he may have placed or caused to be placed thereon, and the value of such improvements or betterments shall be assessed by a jury of not less than six competent persons, who are members of the band, to be summoned by the marshal of the band, under such rules and regulations as may be prescribed by the council: *Provided,* That either party to such condemnation proceedings may appeal from the judgment rendered therein without bond to the superior court of the county in which such lands lie, but such appeal shall not stay execution, and the judge of the superior court to which such appeal is taken may, in his descretion, require either party to give such bond, either before or pending such trial, as he may deem fair and reasonable.

SEC. 29. That the marshal of the band shall execute, serve, and carry into effect all orders, process and acts of the council affecting the rights, interests and affairs of the band as a corporation, under such rules and regulations, and for such fees and salary, as may be prescribed by the council, but the sheriff shall execute all papers and serve orders and process of the superior court in which any trial may be had.

SEC. 30. That all laws and clauses of laws in conflict with this act be and the same are hereby repealed.

SEC. 31. That this act shall be in force from and after its ratification.

Ratified the 8th day of March, A.D. 1897.

Amendments—April 1, 1931, and March 6, 1933.

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EXHIBIT D

COUNCIL GROUNDS,
Cherokee, N.C., October 18, 1932.

Whereas the land belonging to the Eastern Band of Cherokee Indians is limited in extent, and whereas it is necessary that it be utilized to the fullest extent possible for the benefits of the Indians who are members of the tribe: be it

Resolved by the Eastern Band of Cherokee Indians in council assembled,

(1) That in assigning holdings from the tribal lands to individual Indians it shall be understood and agreed by all concerned that the one to whom the holding is assigned must make bona fide entry on said lands within a period of 12 months from the date of said assignment; that during each year for the first 5 years after the holding is assigned the individual must clear and put into cultivation 1 acre of land (1 acre per year making a total of 5 acres in 5 years); that the Indian assigned the holding must within 2 years construct a suitable home on said holding; and that all laws and regulations regardng the cutting or disposition of timber on said holding must be complied with in spirit and in letter;

(2) That any Indian to whom a holding of land has been assigned who abandons same and fails to utilize it during a period of 5 years shall forfeit all right, interest, and title to same which shall revert to the band;

(3) That the provisions of sections 1 and 2 above shall apply equally to all members of the band, including those who have hitherto received holdings, provided the date from which the conditions run shall be that on which this resolution is ratified;

(4) That this resolution shall not be interpreted to mean that one who holds land cannot lease his holding or sell his possesory right to another Indian according to custom and subject to the approval of the business committee;

(5) The acceptance of a holding of land by any Indian shall be prima facie evidence of acceptance of these conditions, and failure to comply with any of these conditions shall subject the holder to forfeiture of his claim;

(6) That all acts and resolutions previously passed, which may be in conflict with this resolution, are hereby repealed.

Passed and ratified in open council by four members voting for the act and none voting against it.

SAUNOOKE LITTLEJOHN, *Chairman.*
W. L. FRENCH, *Clerk.*

Certified.
R. L. SPALSBURY, *Superintendent and Secretary.*

Approved.
JARRETT BLYTHE, *Principal Chief.*

EXHIBIT E

COUNCIL GROUNDS,
Cherokee, N.C., ———, 19—.

Whereas ____________________, who is an enrolled member of the Eastern Band of Cherokee Indians, has applied for a holding of land subject to the provisions of the law under which this band of Indians is incorporated and the rules and regulations prescribed by the Indian council thereunder;

And whereas the said ____________________ has not exhausted ___________ right to such a holding: Be it

Resolved by the Eastern Band of Cherokee Indians in council assembled that the said ——— be and ——— hereby is assigned a holding of land located as follows:

____

____

to be more specifically and definitely located and marked under the direction of the business committee of this band.

It is understood and agreed that this assignment of a holding conveys only a possessory interest in the said holding, and that the title to the said land remains in the Eastern Band of Cherokee Indians.

It is further understood and agreed that the said ____________________ must make bona fide entry on said holding within a period of 12 months from the date of this assignment; that during each year for the first 5 years from the date of this resolution this assignee must clear and put into cultivation 1 acre of land (1 acre each year making a total of at least 5 acres in 5 years); that the person assigned this holding must within 2 years construct a suitable home on said holding; and that all the laws and regulations regarding the cutting of timber on said holding must be complied with in spirit and in letter.

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It is further understood and agreed that should the assignee fail to utilize said holding during the period of 5 years -------- shall forfeit all right, interest, and title to said holding which shall revert to the Eastern Band of Cherokee Indians.

It is further understood and agreed that the assignee can lease said holding or sell -------- possessory right to another Indian according to established custom and subject to the approval of the business committee.

The acceptance of this holding shall be prima facie evidence of the acceptance of these conditions and failure to comply with any of these conditions shall subject the holder to forfeiture of -------- claim.

The complete description of this holding as finally selected and marked under the direction of the business committee is recorded on the back of this page.

(Tribe, Mexican-Kickapoo. Population, 212. Jurisdiction, Shawnee Indian Agency, Shawnee, Okla. Date, Apr. 16, 1934)

Resolved, That we, the Mexican-Kickapoo Indians of Oklahoma, in general council assembled, hereby express our disapproval of the said Wheeler-Howard Indian Rights bill and urge that it be not enacted into law for the following reasons:

We feel we are not qualified to accept self-government and look after our own business; none of our members are college graduates and we do not feel competent to take care of our own affairs, and furthermore our tribe is too small to set up a self-government community.

In connection with this matter, we further feel that the present agency and superintendency should be maintained to look after the affairs of our tribe.

Be it further resolved, That our business committee transmit this resolution to the Commissioner of Indian Affairs through the Superintendent of the Shawnee Agency.

FRANK REED, *Chairman*.
GEORGE KISHKETON, *Secretary*.
WAH-PE-PAH, *Member*.
SWEENY STEVENS, *Member*.
JIM WAHMEAH, *Member*.

(Tribe, Cheyenne-Arapaho. Population, 2,742. Jurisdiction, Cheyenne-Arapahoe Agency)

RESOLUTION

Be it resolved by the Arapahoe Tribe of the Cheyenne and Arapahoe Reservation, residing in the Greenfield district, gathered together on this 9th day of April, 1934, in a general conference to discuss the Honorable John Collier's plan of reorganization of the United States Indian Service, That in our general discussion, our conclusion to the new policy and to our judgment for the best interest and welfare of the tribe involved, we have voted as follows:

(1) The Arapahoe Council on this day rejects the plan of abolishing the allotment act.

Giving land to Indians in severalty was strongly opposed.

(2) The Arapahoe Council on this day rejects the plan of self-government.

Privileges of protection taken away from the State and Federal courts of the land was strongly opposed.

Be it resolved, Also at this time we are appealing to the honorable Commissioner of the Indian Affairs, Mr. John Collier, to retain the present status of rights and privileges given to the Indians comprising the Cheyenne and Arapahoe Reservation.

And may our wishes be embedded with the officials of the Indian Affairs and the officials yet to come, that our Indians enjoy absolute competency with the civilized world before any such change or governmental aid be abolished.

WILBUR FABOR,
IRA SANKEY,
SAGE (his thumb mark),
FRANK SWEEZY.

Similar resolution from Geary District, Okla., dated April 5, 1934.

TOM LIVI,
ARNOLD (surname illegible),
CHIEF UTE (his thumb mark),
LITTLE BIRD (his thumb mark).

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(Tribe, Spokane. Population, 794. Jurisdiction, Spokane Indian Reservation, Wellpinit, Wash.)

There were 107 adult members of the Spokane Tribe present at the tribal meeting, and after several talks by some of the most prominent Indians a vote was taken as to whether the bill should be accepted or rejected. The results of the vote were that 106 voted against and 1 voted for the bill.

Following we are listing some of the reasons why the Spokane Indians do not want to accept the bill as it now stands.

1. There is no place on the Spokane Reservation where there is suitable land for intensive farming. The farm land is widely scattered and in such small pieces it would be impossible to form an agricultural community group. The Indians would not want to form a community group elsewhere than on the reservation.

2. The educational system on this reservation was another thing that is neither mentioned in the bill, nor could the attorneys, interviewed furnish any information on same. We could not find anything in the bill that guarantees the Government will maintain a school on our reservation like the one we now have.

3. At the meeting before the House committee, held in Washington, Commissioner Collier stated that the appropriations would be enough for the first year but did not know about the years after. The tribe feels that if sufficient appropriations are not sure for the coming years, how could they be sure that there would be any money appropriated for the years after the first (trial) year. They are secure now and did not see why they should jeopardize their present security.

The tribe wanted you to know that they turned the bill down until they received some guaranty that the things to which they take exceptions are changed and can see that the bill will make things better for them than they are now.

MOSES B. PHILLIPS, *Chairman.*
CLAIR WYNECOOP, *Secretary.*

(Tribe, Colville. Population, 3,067. Jurisdiction, Colville Indian Agency, Nespelem, Wash. Date, Apr. 16, 1934)

We, the chiefs, leaders, head men, and duly appointed representatives of groups, bands, units of the Colville Indian Tribe of the Colville Indian Reservation, assembled in council to voice our desires concerning H.R. 7902 and S. 2755, relating to Indian affairs. That our voice for or against this is truly the voice of the Colville Indian Tribe.

Therefore we, the undersigned chiefs, leaders, head men, and duly appointed representatives of groups, bands, and units of the Colville Indian Tribe, do hereby remonstrate against H.R. 7902 and S. 2755—meaning the Wheeler-Howard bill.

JIM JAMES,
Leader of the San Poil District Group, Koller, Wash.
VICTOR NICHOLAS,
Leader of the ——— District Group, ———, Wash.
C. B. SUSZEN TIMENTWA,
Leader of Okanogan District, Mallott, Wash.
LOUIE (his thumb mark) TIMENTWA,
Leader of the Okanogan Group, Mallott, Wash.
CHILIWHIST (his thumb mark) JIM,
Leader of the Okanogans, Monse, Wash.
GEORGE TIMENTWA.

(Tribe, Crow. Population, 2,028. Jurisdiction, Crow Indian Agency, Hardin, Mont. Date received, Apr. 9, 1934)

Be it resolved by the Crow Tribal Council of the Crow Indian Reservation, Mont., this day duly assembled, held at Crow Agency, Mont., on the 4th day of April 1934:

Whereas there has been presented to the Crow Tribe for adoption or rejection Senate bill 2755 and House bill 7902, better known as the Wheeler-Howard bill, by the Commissioner of Indian Affairs. The purposes of these bills are to create chartered Indian communities and self-rule. Said bills have been given intensive

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study and due consideration by the members of the Crow Tribe and its Tribal Council; and therefore, be it

Resolved, That it is the sense of the Crow Tribal Council that the Crow Indians are not ready for self-rule; nor are they willing to give up their vested rights in their allotments of lands. That the present laws under which we live were fairly enforced gives ample protection over person and property and allows individual initiative. No modified bill or bills of similar nature as the Wheeler-Howard bills will be accepted, and

Therefore, the Crow Council rejects the Wheeler-Howard bill without recommendation.

HAREFORD BEAR CLAW,
Chairman Crow Council.

(Tribe, Shoshone. Population, 1,079. Jurisdiction, Shoshone Indian Reservation, Fort Washakie, Wyo.)

Now, therefore, be it resolved, That we, members of the Shoshone Tribe of Indians, residing on the Shoshone Indian Reservation in Fremont County of the State of Wyoming, request that the Wheeler-Howard bill, H.R. 7902 and S. 2755, be amended so as to entirely exclude the said tribe of Shoshone Indians from the provision of said bill.

This resolution was accepted by 153 members and 5 against.

CHARLES A. DUSKELL,
Chairman.
BEN PERRY,
JESSE DAY,
LARY MCADAMS,
SAMUEL M. WATER,
WILLIAM ARGON, SR.,
Council Members.

(Tribe, Arapahoe. Population, 1,036. Jurisdiction, Shoshone Indian Reservation, Fort Washakie, Wyo.)

Whereas on April 7, 1934, at a tribal meeting of the members of the Arapahoe Tribe of Indians, by a voice of 115 to 1, strongly disapproved of the Wheeler-Howard bill in its entirety and instructed the tribal council to submit another resolution for the following reasons:

1. That the Arapahoe Tribe of Indians are not qualified, both in education and experience, to carry on the proposed form of self-government and desire that the present form of government as to the handling of Indian affairs be continued; that they believe better care of the old and indigent members of the tribe can be furnished by the Government than by the community.

2. That the Arapahoe Tribe of Indians do not approve the provisions of the Wheeler-Howard bill as to land tenure, as it provides the transfer of lands from individual ownership with its right of distribution to that of tribal or community ownership; tnat the Indians feel that the proposed legislation does not create or promote the individual initiative that is essential to make them self-reliant and self-supporting; now, therefore, be it

Resolved, That we, the duly elected members of the Arapahoe Tribal Council, and acting under the instructions of the said Arapahoe Tribe of Indians of Wyoming, request the Wheeler-Howard bill be so amended as to entirely eliminate them from the provisions of said bill by Congress.

HENRY LEE TYLER,
Chairman Arapahoe Tribal Council.
ROBERT FRIDAY,
BRUCE GROESBECK,
SCOTT DEWEY,
PAUL B. HANWAY,
MICHAEL GOGGLES.

Dated this 10th day of April 1934, at Fort Washakie, Wyo.

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(Tribe, Rincon. Population, 183. Jurisdiction, Rincon Indian Reservation, Valley Center, Calif.)

The members of the Rincon Indian Reservation, desiring to express their attitude and sentiment in reference to the pending Wheeler-Howard bill, after conscientiously and unselfishly giving it their consideration, they petition your honorable body for rejection of the proposed legislation.

They feel that it involves their immediate interests, such as lands, heirship, educational projects, and community welfare, wnich they earnestly believe are well taken care of under the present law.

Therefore we desire to report that at the meeting held March 25, 1934, a majority of the Indians were opposed to the proposed legislation.

THOMAS ARVIS,
Spokesman.
MRS. SOLIDA GILBERT,
MRS. GEORGIA MAZZETTI,
REMON CALAC,
Committee.

ANALYSIS OF OFFICIAL VOTE OF INDIAN TRIBES ON WHEELER-HOWARD BILL

Since the introduction of the Wheeler-Howard bill into Congress numerous regional Indian conferences have been held by the Bureau of Indian Affairs to clarify and amend the proposed legislation. There follows a statistical analysis of the official vote taken by various tribes on the bill during and subsequent to the conferences.

To date (Apr. 30, 1934) of 62 tribes that have voted, with a total population of 152,188 Indians, 51 tribes, representing an Indian population of 139,824, voted in favor of the Wheeler-Howard bill, and 11 tribes, representing an Indian population of 12,364, voted against the bill.

Of those tribes favoring the bill, 51 in number and representing an Indian population of 139,824, 6 tribes (the Havasupai, Red Lake, Chippewa, Blackfeet, Suquamish, and Lac Courte Oreille and Pine Ridge Sioux), representing a population of 16,009, ask for certain amendments or assurances, particularly with respect to treaty rights, free choice to retain present government if desired, continuance of present Federal responsibility, and relaxation of original provisions in the bill concerning heirship. It is believed that these requests are met in the revised Wheeler-Howard bill.

Of those tribes against the bill, 11 in number, representing a population of 12,364, no tribes except the Snoqualmie and the Klamath voted against the bill as such, but only against its application to them. Section 1, of title V of the amended bill, would permit such tribes to secure exemption from all provisions within 4 months of the passage of the bill. It appears, however, from resolutions received from these nine tribes representing a population of 10,965, that objections to the bill are based either on provisions which have been altered in the amended bill, or upon misinterpretations, particularly of the self-government title which is entirely voluntary.

The Snoqualmie, representing a population of 50, will consider the merits of the bill only after their claims now pending in the Court of Claims in Washington, D.C., are settled.

The Klamath, representing a population of 1,349, desire the continued right to sell inherited land to whites. In this connection it may be observed that their eagerness to sell inherited lands comes from an economic condition which is unique. On the basis of figures in the Merriam report on Indian Administration (1928, p. 444) the average per capita wealth of the Klamaths is approximately $28,000, more than twice the average wealth of the next wealthiest tribe, the Osage. The average per capita wealth of almost 50 percent of the Indians is less than $500.

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FAVORABLE VOTE

Tribe	Population	Date	Remarks
Arizona:			
Fort Apache	2,737	Apr. 7, 1934	Official meeting.
Havasupai	201	Apr. 12, 1934	Official meeting. Qualified approval Want no change in present government.
Hopi	2,925	Apr. 14, 1934	Official meeting of all representatives of Hopi Villages. Two-thirds vote in favor of bill.
Fort McDowell (Apache)	190	Mar. 28, 1934	Official notice to Department from chief of council.
Navajo	42,374	Apr. 10, 1934	Tribal council of Navajo Nation.
Pima (Salt River)	1,039	Mar. 16, 1934	Phoenix conference.
Gila River Reservation	4,659	Apr. 25, 1934	Phoenix conference. Also notice from superintendent.
San Carlos Apache	2,796	Mar. 16, 1934	Phoenix conference. Signed statement by authorized committee.
Idaho: Bannock	344	Mar. 6, 1934	Petition to President signed by 170 male members of tribe.
Michigan: Mount Pleasant (Chippewa).	186	Apr. 23, 1934	Hayward conference.
Minnesota:			
Grand Portage (Chippewa)	376	do	Do.
White Earth (Chippewa)	4,000	Mar. 23, 1934	Do.
Pipestone (Sioux)	562	Apr. 23, 1934	Do.
Red Lake (Chippewa)	1,938	Apr. 5, 1934	Interview by superintendent with officers of council. Latter approve bill, but do not want the self-government title to apply to them.
Mississippi: Choctaw	1,729	Mar. 10, 1934	Official meeting.
Montana:			
Blackfeet	3,890	Mar. 31, 1934	Tribal business council meeting. Bill accepted with amendments.
Flathead	2,945	Apr. 14, 1934	Tribal council of confederated tribes. Vote 110 to 11.
Nevada: Pyramid Lake (Paiute).	566	Mar. 28, 1934	Members approve bill. Have already appointed chairman for proposed self-government unit.
New Mexico:			
Nambe Pueblo	127	Mar. 16, 1934	Tribal meeting. Council unanimous.
Picuris Pueblo	113	Mar. 18, 1934	Governor and council unanimous.
San Ildefonso	123	Apr. 21, 1934	Governor and council approve bill.
San Juan	546	Mar. 15, 1934	All-pueblo council meeting.
Santa Clara	390	Mar. 26, 1934	Council unanimous. Minority petition to make certain changes (appeal from court; four-fifths vote for ratification of charter) signed by 33 members of tribe.
Taos	733	Mar. 14, 1934	All-pueblo council meeting.
Tesuque	120	do	Do.
Acoma	1,109	Mar. 31, 1934	
Cochiti	298	Mar. 27, 1934	Tribal council meeting.
Jemez	658	Mar. 14, 1934	All Pueblo council meeting.
Laguna	2,226	do	Do.
Sandia	123		Official word from tribal officers.
San Felipe	567	Apr. 6, 1934	Governor and councilmen approve bill.
Santa Ana	245	Mar. 19, 1934	Tribal council meeting.
Santo Domingo	861	Mar. 26, 1934	Official word from council secretary.
Sia Pueblo	187	Mar. 14, 1934	All Pueblo Council meeting.
Zuni	2,021	do	Do.
Pajoaque	8	do	Do.
New York: Cayugas	196	Apr. 19, 1934	Favor bill if made to apply to them.
North Carolina: Eastern Cherokee.	3,247	Feb. 15, 1934	Open council meeting. Vote 9 to 2.
Oklahoma:			
Keetowah Society Cherokees	6,000	Mar. 22, 1934	Resolution at Muskogee conference.
Chickasaw	4,685	Apr. 2, 1934	Official convention. Resolution sent to President.
Creek	8,607	Apr. 12, 1934	Official meeting. Vote 64 to 4.
Choctaw (7 counties)	10,633	Apr. 16, 1934 Apr. 21, 1934	Official county meetings. Remaining county meetings scheduled. Overwhelming approval thus far.
South Dakota:			
Pine Ridge (Sioux)	8,294	Apr. 26, 1934	Tribal vote. Bill accepted with amendments.
Rosebud (Sioux)	6,280	do	Tribal vote, two-thirds favorable.
Washington: Suquamish	148	Mar. 18, 1934	General council. Majority approve major portions—claims and compensation to be untouched.
Wisconsin:			
Oneida	3,078	Apr. 23, 1934	Hayward conference.
Lac du Flambeau (Chippewa).	849	do	Do.
Mole Lake (Chippewa)	122	do	Do.
St. Croix (Chippewa)	212	do	Do.

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FAVORABLE VOTE—Continued

Tribe	Population	Date	Remarks
Wisconsin—Continued			
Lac Courte Oreille	1,538		Committee held weekly meetings on bill. 310 of 500 voters signed approval. Others older men, not opposed, but fear loss of treaty rights. Want assurance.
Menominee	2,023	Apr. 11, 1934	Tribal endorsement presented to House committee. Official meeting, vote 104 to 1.
Total (51 tribes)	139,824		

UNFAVORABLE VOTE

Tribe	Population	Date	Remarks
California: Rincon	183	Mar. 25, 1934	Majority opposed. Consider present law adequate for them.
Montana: Crow	2,028	Apr. 4, 1934	Unanimously opposed by tribal council. Feel unprepared for self-rule. Want to keep allotments. (Land provision of bill misinterpreted.) Believe bill may be of value to other tribes.
South Dakota: Yankton (Sioux)	2,038	Apr. 26, 1934	Tribal vote, 80 percent opposed.
Oklahoma:			
Kickapoo, Mexican	212	Apr. 14, 1934	General council meeting. Feel unprepared for self-rule. Also consider themselves too small a group.
Quapaw	528	Mar. 27, 1934	Tribal council. Feel bill not applicable to tribe but do not oppose its passage for other tribes.
Oregon: Klamath	1,349	Apr. 3, 1934	Official council. Vote 220 to 34. Satisfied with present regime. Wish continued right to sell inherited land to whites.
Washington:			
Colville	3,067	Apr. 16, 1934	Council of chiefs, head men, and representatives of bands remonstrate against bill. No popular expression of opinion.
Spokane	794	Apr. 9, 1934	Vote 106 to 1. May approve bill if given guarantee of school, continued life on reservation, and financial security by Congress.
Snoqualmie	50	Apr. 17, 1934	Tribal council meeting. Will not consider self-government or accept any part of bill until pending claims settled.
Wyoming:			
Arapaho	1,036	Apr. 7, 1934	General council meeting, vote 153 to 5 Wish to be excluded from bill.
Shoshone	1,079	do	General council meeting, 115 to 1. Wish to be excluded from bill.
Total (11 tribes)	12,364		

Total Indian vote on Wheeler-Howard bill, as of Apr. 30, 1934

Favorable (51 tribes)	139,824
Unfavorable (11 tribes)	12,364
Grand total (62 tribes)	152,188

• *Additional official votes of Indian tribes on Wheeler-Howard bill, received between Apr. 30 and May 7, 1934*

Tribe	Population		Date	Remarks
	For	Against		
Kansas:				
Iowa	479		Apr. 21, 1934	Unanimously approved at tribal meeting.
Kickapoo	297		Apr. 24, 1934	Tribal business committee.
Montana: Rocky Boy	670		Mar. 4, 1934	Plains congress, Rapid City. Affirmed by superintendent.
Oklahoma:				
Cheyenne-Arapahoe		2,742	Apr. 9, 1934	General conference by districts. Reject self-government. Oppose abolishing of allotment act and giving land to Indians in severalty. (Bill misinterpreted.)
Shawnee (Absentee)	611		Apr. 21, 1934	General council of tribe. Resolution signed by Tribal Business Committee.
Total	2,057	2,742		

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Total Indian vote on Wheeler-Howard bill, as of May 7, 1934

Favorable:	
To Apr. 30 (51 tribes)	139, 824
Apr. 30–May 1 (4 tribes)	2, 057
Total (55 tribes)	141, 881
Unfavorable:	
To Apr. 30 (11 tribes)	12, 364
To Apr. 30–May 1 (1 tribe)	2, 742
Total (12 tribes)	15, 106

Mr. Collier. Unfortunately, the foregoing analysis has not the exact number who voted in the various referendums, and I would like to be allowed to submit that, because we have it.

I do not think that any study of the subject, with all of the supporting petitions, reports, and referendums, could leave any doubt that the Indian opinion is strongly for the bill.

In Oklahoma, I would say quite overwhelmingly they favor the bill.

I might offer these various resolutions and reports of the Choctaws and other tribes as an exhibit.

I do not mean to file it as a part of the record, but just leave it here to be looked at by the members of the committee.

Mr. Ayres. Mr. Commissioner, is it not a fact, from your records, as I gather it, that in the majority of the places where there was a vote of the rank and file, the majority of those reservations voted "no."

Mr. Collier. No. For instance, at Yankton it was adverse and at Rosebud, favorable; Piney Ridge, favorable. The Blackfeet, the rank and file meeting and tribal council were unanimously in favor of it. It was not a general meeting.

Mr. Werner. For the record, since you assured me at the last meeting Mr. Fisher was for this bill, and the tribal council was for it, I have been informed by Mr. Fisher that he is opposed to it, and I would like to make that statement. I also have information that he, and the other gentlemen here, represent the tribal council, while you and another gentleman are representatives appointed by the superintendent.

I thought if Mr. Fisher could be here he might be allowed to put a statement on the record, at least to clarify his position.

Mr. Ayres. The Blackfeet are in my district, and it is true they are unanimous, so far as the council is concerned, for this bill, provided that there are 15 amendments attached to it.

Mr. Collier. That is a fact.

Mr. Ayres. They are not for the bill as it stands. Will you add to that, sir?

Mr. Hagerdy. I was from the tribal council. I was not appointed by anybody. I was elected to come here by the tribal council.

Mr. Ayres. The Blackfeet are not for the bill as it stands; they are for it, so far as the council is concerned, if there are 15 amendments tacked to it.

Mr. Hagerdy. That is right, and there is no conflict between them and ourselves.

Mr. Stubbs. They want something done in their behalf along this line, as I understand it.

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Mr. COLLIER. I do not find here in their record or referendum that their actions were by delegation or tribal council, excepting in Oklahoma the large tribes could act only by the referendum method, because they did not trust the tribal council.

But in order that you may construe exactly what the Oklahoma vote means, I think it is advisable to present their own statement from their own chairman, officers, and so on.

The CHAIRMAN. Do I understand now that you desire to offer for the record these statements?

Mr. COLLIER. I have already offered and put in the record the summary of results, but I would hesitate to encumber the record with such a great mass of documents as are contained in these resolutions and detailed statements.

The CHAIRMAN. I suggest, Mr. Commissioner, that you just leave those statements here for the information of the committee, if they may desire to use them.

Mr. COLLIER. Our sole object here is to direct your attention, so far as we have the information, to what has been done.

We are not trying to show that the Indians want the bill or do not want it.

There is a document which I would like to mention, which the committee may want to have in the hearings. So much of this bill arises out of the allotment situation, and there does not exist in print anywhere an adequate record of the workings of the allotment development down the years, how it arose, how it was developed, and what it has resulted in. But. within recent months, the Indian Office has employed a competent historian, a Mr. Otis, who has made an extremely interesting résumé of the law, the history of the allotment from the beginning down to the present. It is a document of about 30,000 words, and I do not know whether the committee wants to put it in the record or not, but it would be of great value to presòns interested in Indian affairs.

It has nothing to do with the bill, but it is a basic study of the history of the allotment from all of the data obtainable.

If the committee desires it, I will be glad to offer it for the record.

Mr. GILCHRIST. Why, Mr. Commissioner? You say it has nothing to do with the bill.

Mr. COLLIER. I mean, it was not prepared in connection with the bill.

Mr. GILCHRIST. My idea was that allotments had a very great deal to do with the bill.

Mr. COLLIER. They have, everything; but this document by Mr. Otis was not prepared as a part of any piece of legislation or in connection with legislation, but it was purely an attempt to get the data out of which remedies called for might be derived.

Mr. WERNER. You say that that has nothing whatever to do with the bill.

Mr. COLLIER. Anything about allotments has to do with the bill, of course.

Mr. WERNER. It would encumber the record to put that in, would it?

Mr. COLLIER. It has not been printed, and we have no immediate way of printing it, and it would be of very general interest and value to the committee, Members of Congress, and all who are interested

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in Indian affairs. Whether you pass this bill or not, you still have the problem of allotments on your hands.

Mr. WERNER. It is not in any sense propaganda, but is a factual compilation?

Mr. COLLIER. Yes; that is correct. I am not urging it at all, but I am sure the committee and the Members of Congress would find it useful.

Mr. GILCHRIST. I would say, aside from the consideration of this bill, as you say, a historical study of allotments would be of value to Congress, either on this bill or all of the allotment bills that are before us. It is a very important matter, I think.

The CHAIRMAN. If there be no objection, Mr. Gilchrist, the statement will be received by the committee from the Commissioner as documents of historical value and information to the committee.

Mr. PEAVEY. I would like to know if this document you refer to sets up clearly the operation of the allotment law on each reservation and in each State, so that it would not only be of value to Congress, but also the people of the States.

Mr. COLLIER. It is an attempt to show how the allotment policy arose out of the consideration that conditions then existing, and then how it evolved down to the present time, but it does not go as far as you suggest, Mr. Peavey.

Mr. AYRES. It brings up the present condition also, does it not?

Mr. COLLIER. Not in the way I have endeavored to do, because it emphatically intends not to be a political propaganda document, but contains data you gentlemen would want.

Mr. DE PRIEST. Mr. Chairman, I suggest a subcommittee of these lawyers be appointed to pass on this, to see whether it should be printed, and I so move.

Mr. PEAVEY. If the gentleman would permit, I would like to call the attention of the committee to the fact that at previous meetings we authorized the Chair to decide what should and should not go into its record, as being of value to the committee.

Mr. DE PRIEST. That pertains to testimony before the committee.

Mr. PEAVEY. All of the testimony before the committee.

The CHAIRMAN. The Chair understood that, but the Chair does not want to put anything in the record the committee would not like to have.

Mr. DE PRIEST. It may be good, but I would like to have the lawyers on the committee tell us about it.

The CHAIRMAN. Suppose we hold that matter up until we have finished the hearings, then we will pass upon it.

(Subsequently the chairman directed that the document submitted by the Commissioner of Indian Affairs containing the History of the Allotment Policy by Professor D. S. Otis, of Columbia University be inserted in the record and accordingly the same is here printed in full as follows:)

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HISTORY OF THE ALLOTMENT POLICY

(By D. S. Otis)

PART I. THE GENERAL ALLOTMENT LAW

BEGINNINGS OF THE POLICY

In the 1870's the Government's policy of general allotment of Indian lands in severalty gradually took form. The idea of allotment had, in theory and practice, previously been known. Perhaps the first proposal of this sort is to be found in a report of Secretary of War Crawford to President Madison in 1816.[1] In the Choctaw Treaty of 1805 (7 Stat. L. 98) the Government had begun the practice of reserving for individuals certain tracts of land for which patents in many cases were issued later.[2] At any rate, in an act providing for the distribution of the Brotherton Indians' lands (5 Stat.L. 349) Congress in 1839 expressly used the term "allotment."[3] By 1885 the Government had, under various treaties and laws issued over 11,000 patents to individual Indians and 1290 certificates of allotment.[4] The fact that 8,595 of these patents and 1,195 of these certificates were issued under laws passed and treaties ratified during the period 1850–69 suggests that the forces which produced the General Allotment Act of 1887 were coming to life in the midcentury. In 1862 Congress saw fit to pass a law for the special protection of the Indian allottee in the enjoyment and use of his land.[5] And in 1875 Congress gave further momentum to the whole lands-in-severalty movement by extending to the Indian homesteading privileges. (18 Stat.L. 420).

In the meantime, the Indian Administration was gravitating steadily to the position of supporting allotment as a general principle. In 1870 the Commissioner of Indian Affairs noted that Indians were increasingly demanding allotments, and he thought that the policy of "giving to every Indian a home that he can call his own" was a wise one. He recommended "the adoption, generally, of this plan." [6] The following year he again expressed his interest in an extension of the allotment scheme.[7] In 1872 the new Commissioner, Francis A. Walker, avoided all reference to the question, but he attacked the idea of citizenship for the Indian as pernicious and it is probable that he was opposed to allotment as well.[8] The next Commissioner in his report for 1873 spoke out emphatically in favor of a general allotment law.[9] Thereafter, with few exceptions, the annual reports advocated general legislation, the Commissioner in 1876 going so far as to ask for a law "not only permitting, but requiring, the head of each Indian family, to accept the allotment of a reasonable amount of land." [10] He wrote, "It is doubtful whether any degree of civilization is possible without individual ownership of land." [11] The Secretaries of the Interior responded more slowly to the idea—at least so far as official recommendations were concerned. Secretary Delano in 1874 had urged the adoption of homestead legislation [12], and the next year Secretary Chandler noted that "the desire of the Indians to prepare for themselves more comfortable and fixed abodes" was "becoming more general." [13]

In his next annual report he pointed out that the Commissioner of Indian Affairs had asked for a comprehensive allotment law.[14] In 1877 Secretary Schurz recommended allotment to heads of families on all reservations, "the enjoyment and pride of the individual ownership of property being one of the most effective civilizing agencies." [15] From that date onward the Service as a whole worked for the speeding up of allotment under previous acts and treaties and the passage of a general law. In 1876 the Commissioner wrote, "I am not unaware that this proposition will meet with strenuous opposition from the Indians themselves. Like the whites, they have ambitious men, who will resist to the utmost of their power any change tending to reduce the authority which

[1] Creek Memorial to the 47th Cong., 2d sess., Jan. 29, 1883, in Miscellaneous Document, VII, 5574.
[2] Commissioner of Indian Affairs (1885), 320, 321. See also Commissioner of Indian Affairs (1891), 40.
[3] Idem.
[4] Commissioner of Indian Affairs (1885), 320, 321.
[5] H.Rep. No. 1576, May 28, 1880, 46th Cong. 2d sess., 7.
[6] Commissioner of Indian Affairs (1870), 473.
[7] Commissioner of Indian Affairs (1871), 5.
[8] See Creek Memorial in Miscellaneous Document, VII, 5564; Commissioner of Indian Affairs (1872), 82–105.
[9] Commissioner of Indian Affairs (1873), 4.
[10] Commissioner of Indian Affairs (1876), ix.
[11] Idem.
[12] Report of the Secretary of the Interior, 1874, v–vii.
[13] Report of the Secretary of the Interior, 1875, v.
[14] Report of the Secretary of the Interior, 1876, v.
[15] Report of the Secretary of the Interior, 1877, xi.

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they have acquired by personal effort or by inheritance." [16] But in 1879 Secretary Schurz reported, "The desire for allotment of lands in severalty is now expressed by Indians on a considerable number of reservations with great urgency." [17] Apparently the Indian agents were doing their best. In 1883 the Fond du Lac agent wrote that his Indians had been hostile to the idea of allotment but that since his visits to them they had "become desirous to select allotments" and seemed "deeply interested in the school." [18] In 1886 the Commissioner announced a policy of instructing agents to urge allotment upon the Indians in every possible case.[19]

LEGISLATION

In the late seventies there was a growing public opinion in support of the allotment movement. The Commissioner in 1878 declared, "It [allotment] is a measure correspondent with the progressive age in which we live, and is endorsed by all true friends of the Indian, as is evidenced by the numerous petitions to this effect presented to Congress from citizens of the various States." [20]

Early the following year a joint committee of Congress, appointed to consider the matter of transfering the Indian Bureau to the War Department, reported a decision adverse to the change and proceeded to make recommendations of measures to civilize the Indians. One of their proposals was a general allotment law providing for a title in fee with a 25-year restriction upon alienation.[21] That same day, January 31, 1879, Chairman Scales of the House Committee on Indian Affairs reported a general allotment bill.[22] In the next Congress various bills were introduced to the same effect.[23] The House committee on May 28, 1880, reported favorably an allotment bill and accompanied it with statements of the majority and minority views.[24] In the Senate the measure which was to be known for the next few years as the "Coke bill" was introduced.[25] Senator Dawes in 1885 credited Carl Schurz with having originated the bill.[26] Its provisions were substantially the same as those of the ultimate Dawes Act, except that the Indian was not thereby declared a citizen.[27] The Coke bill passed the Senate in 1884 and in 1885 and in this latter year was favorably reported in the House.[28] In the meantime certain tribes by special laws were given the privilege of allotments in severalty—the Crows on April 11, 1882 (22 Stat.L. 42), the Omahas on August 7, 1882 (22 Stat.L. 341), and the Umatillas on March 3, 1885 (23 Stat.L. 340). These acts applied to specific reservations the principles of the Coke bill.

The allotment movement seemed rapidly to be gaining strength in 1886. President Cleveland in his annual messages in 1885 and 1886 advocated the policy.[29] In 1886 General Sheridan, reporting as lieutenant general of the Army to the Secretary of War, likewise urged an allotment scheme.[30] Finally, Congress acted early in the following year and the President signed the Dawes Act on February 8, 1887 (24 Stat. L. 388).[31] The chief provisions of the act were: (1) a grant of 160 acres to each family head, of 80 acres to each single person over 18 years of age and to each orphan under 18, and of 40 acres to each other single person under eighteen;[32] (2) a patent in fee to be issued to every allottee but to

[16] Commissioner of Indian Affairs (1876), ix.
[17] Report of the Secretary of the Interior, 1879, 12.
[18] Commissioner of Indian Affairs (1883), 160.
[19] Commissioner of Indian Affairs (1886), xx.
[20] Commissioner of Indian Affairs (1880), xvii.
[21] H.Rep. No. 93, Jan. 31, 1879, 45th Cong., 3d sess., 3-20.
[22] Congressional Record, Jan. 31, 1879, 864. (*See also* H.Rep., Mar. 3, 1879, 45th Cong., 3d sess.)
[23] Congressional Record, Jan. 12, 1880, 274; Mar. 8, 1880, 1394; May 19, 1880, 3507.
[24] H.Rep. No. 1576, May 28, 1880, 46th Cong., 2d sess.
[25] Congressional Record, May 19, 1880, 3507.
[26] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian (1885) in Miscellaneous Document, XIII, 10132.
[27] Congressional Record, Jan. 20, 1881, 778, 779. For debate on the question of amending the bill to extend citizenship to the Indian see Congressional Record, Jan. 24, 1881, 875-882.
[28] Reports of the Commissioner of Indian Affairs (1884), xiii; Reports of the Commissioner of Indian Affairs (1885), xv; H.Rept. No. 2247, Jan. 9, 1885, 48th Cong. 2d sess.
[29] George F. Parker (ed.), The Writings and Speeches of Grover Cleveland (New York, 1892), 410-415.
[30] In Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XV, 11660-11663.
[31] The writer regrets that time has not permitted a careful study of the Government documents, especially of the Congressional Record, relating to the Dawes bill. Such a study might by implication throw some light on the forces at work to secure its passage. There is a well-founded suspicion that all the motives of the legislators were not concerned merely with the Indian's welfare. The study would at least show the drift of opinion. In 1887 President Quinton told the Women's National Indian Association that passage of the Dawes bill 8 years previously would have been "an absolute impossibility." She said that the women's petition with 100,000 signatures, which was presented to Congress in 1882, met with "dense ignorance", "prejudice", and the influence of the "Indian Ring." Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XV, 11968, 11969. In its last stages the bill met with no opposition at all. Debate dealt only with details.
[32] Certain tribes were exempted from the provisions of the act, viz, the Five Civilized Tribes, the Osages, Miamies and Peorias, Sacs and Foxes, in Indian Territory, the Senecas in New York State, and the inhabitants of the strip south of the Sioux in Nebraska (sec. 8).

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be held in trust by the Government for 25 years, during which time the land could not be alienated or encumbered; (3) a period of 4 years to be allowed the Indians in which they should make their selections after allotment should be applied to any tribe—failure of the Indians to do so should result in selection for them at the order of the Secretary of the Interior; (4) citizenship to be conferred upon allottees and upon any other Indians who had abandoned their tribes and adopted "the habits of civilized life." So the Indian was to become an independent farmer and a citizen of the Republic.

AIMS AND MOTIVES OF THE ALLOTMENT MOVEMENT

That the leading proponents of allotment were inspired by the highest motives seems conclusively true. A Member of Congress, speaking on the Dawes bill in 1886 said, "It has * * * the endorsement of the Indian rights associations throughout the country, and of the best sentiment of the land."[33] The new policy was regarded as a panacea which would make restitution to the Indian for all that the white man had done to him in the past. Senator Dawes told the Mohonk Conference in 1885:[34]

"I feel just this; that every dollar of money, and every hour of effort that can be applied to each individual Indian, day and night, in season and out of season, with patience and perseverance, with kindness and with charity, is not only due him in atonement for what we have inflicted upon him in the past, but is our own obligation toward him in order that we may not have him a vagabond and a pauper, without home or occupation among us in this land."

The supreme aim of the friends of the Indian was to substitute white civilization for his tribal culture, and they shrewdly sensed that the difference in the concepts of property was fundamental in the contrast between the two ways of life. That the white man's way was good and the Indian's way was bad, all agreed. So, on the one hand, allotment was counted on to break up tribal life. This blessing was dwelt upon at length. The agent for the Yankton Sioux wrote in 1877:[35]

"As long as Indians live in villages they will retain many of their old and injurious habits. Frequent feasts, community in food, heathen ceremonies, and dances, constant visiting—these will continue as long as the people live together in close neighborhoods and villages * * * I trust that before another year is ended they will generally be located upon individual lands of farms. From that date will begin their real and permanent progress."

On the other hand, the allotment system was to enable the Indian to acquire the benefits of civilization. The Indian agents of the period made no effort to conceal their disgust for tribal economy. One of them wrote in 1882:[36]

The allotment of land in severalty will go a long way, in my judgment, toward making these more advanced tribes still nearer the happy goal. I do not think that the results of labor ought to be evenly distributed irrespective of the merits of individuals, for that would discourage effort; but under the present communistic state of affairs, such would appear to be the result of the labor of many.

Supporters of allotment showed themselves children of their age in their deference to the priniple of individualism. In 1873 the Commissioner of Indian Affairs wrote, "A fundamental difference between barbarians and a civilized people is the difference between a herd and an individual."[37] During the discussion of the new policy at the Third Lake Mohonk Conference in 1885 John H. Oberly, superintendent of Indian Schools and subsequently, for a few months, Commissioner of Indian Affairs, went about as far as one could go in resolving the American society into its individual units. He said:[38]

"We, the people" was the reply the Americans made to the king, by which every man who was devoted to the cause of independence said: "I, the individual having an inalienable right to life, liberty, and the pursuit of happiness, unite with other individuals in saying that the answer to the heretofore unanswered

[33] Congressional Record, Dec. 15, 1886, 196.
[34] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, in Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XIII, 10131.
[35] Reports of the Commissioner of Indian Affairs (1877), 75, 76. (See also Reports of the Commissioner of Indian Affairs (1879), 25 (1885), 21 (1886), ix, x.)
[36] Reports of the Commissioner of Indian Affairs (1882), 86. (See also Reports of the Commissioner of Indian Affairs (1878), 48 (1877), 121 (1876), 58, 59 (1880), 2.)
[37] Reports of the Commissioner of Indian Affairs (1873), 4. (See also Reports of the Commissioner of Indian Affairs (1877), 51.)
[38] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, in Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XIII, 10149. J. H. Oberly was Commissioner in 1888 and until March 1889, when General Morgan was appointed.

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riddle of statesmanship is man, for whom all governments should be created, because from the individual all legitimate political power primarily flows." [Applause.]

The Indian, then, was to learn to go his own independent, industrious way and he would become civilized. Probably most citizens in 1881 would have applauded Senator Pendleton when in debating the Coke bill he invoked the American law and prophets. He said, "it must be our part to seek to foster and to encourage within them [the Indians] this trinity upon which all civilization depends—family, and home, and property."[39] One cannot but wonder how many would have subscribed to the astounding utterance of Senator Dawes, himself, in an address to the 1885 Lake Mohonk Conference:[40]

The head chief told us that there was not a family in that whole nation [the Five Civilized Tribes] that had not a home of its own. There was not a pauper in that nation, and the nation did not owe a dollar. It built its own capitol, * * * and it built its own schools and hospitals. Yet the defect of the system was apparent. They have got as far as they can go, because they own their land in common. It is Henry George's system, and under that there is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the botto n of civilization. Till this people will consent to give up their lands and divide them among their citizens so that each can own the land he cultivates, they will no make much more progress.

But voices of doubt were here and there raised about allotment as a wholesale civilizing program. "Barbarism" was not without its defenders. Especially were the Five Civilized Tribes held up as an example of felicity under a communal system in contrast to the deplorable condition of certain Indians upon whom allotment had been tried.[41] A minority report of the House Committee on Indian Affairs in 1880 went so far as to state that Indians had made progress only under communism.[42] At this point it is worth remarking that friends and enemies of allotment alike showed no clear understanding of Indian agricultural economy. Both were prone to use the word "communism" in a loose sense, in describing Indian enterprise. It was in the main an inaccurate term. Gen. O. O. Howard told the Lake Mohonk Conference in 1889 about a band of Spokane Indians who worked their lands in common in the latter part of the 1870's,[43] but certainly in the vast majority of cases Indian economic pursuits were carried on directly with individual rewards in view. This was primarily true even of such essentially group activities as the Omahas' annual buffalo hunt.[44] Agriculture was certainly but rarely a communal undertaking. The Pueblos, who had probably the oldest and most established agricultural economy, were individualistic in farming and pooled their efforts only in the care of the irrigation system.[45] What the allotment debaters meant by communism was that the title to land invariably vested in the tribe and the actual holding of the land was dependent on its use and occupancy. They also meant vaguely the cooperativeness and clannishness—the strong communal sense—of barbaric life, which allotment was calculated to disrupt.

In any event, the doubters were skeptical as to whether this allotment method of civilizing would work. They placed much emphasis upon the fact that Indian life was bound up with the communal holding of land. In 1881 Senator Teller quoted a chief's explanation why the Nez Perces went on the warpath: "They asked us to divide the land, to divide our mother upon whose bosom we had been born, upon whose lap we had been reared."[46] In the same debate Senator Morgan said, "* * * the communal system * * * is almost indistinguishable from the system of the Indians. These people understand from experience what is better for them than we understand with all our knowledge."[47] Senator Teller spoke with high scorn of the exalted dreams of allotment advocates: "I know it will be said, 'Why, in 25 years they will all be civilized; these people will be church-going farmers, having schools and all the appliances of civilized

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[39] Congressional Record, Jan. 25, 1881, 906.

[40] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, in Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XIII, 10137. (See also letter of the Commissioner to Secretary Schurz in H.Rept. No. 165, Mar. 3, 1879, 45th Cong., 3d sess., 2.)

[41] Memorial to Congress from Cherokee Nation in Congressional Record, Jan. 20, 1881, 781.

[42] H.Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 10.

[43] Twenty-first Reports of the Board of Indian Commissioners (1889), 111.

[44] Alice C. Fletcher and Francis La Flesche, the Omaha Tribe, in Twenty-seventh Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1905–6 (Washington, 1911), 273–275.

[45] Reports of the Commissioner of Indian Affairs (1864), 332.

[46] Congressional Record, Jan. 20, 1881, 781, 782. (See also H.Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 7–10.)

[47] Congressional Record, Jan. 20, 1881, 785.

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life in 25 years.'" He proceeded to show that early in the century Jedidiah Morse expected the complete civilization of the Indians in 20 years.[48] The minority of the House Committee on Indian Affairs doubted whether private property would transform the Indian. The minority report said: [49]

"However much we may differ with the humanitarians who are riding this hobby, we are certain that they will agree with us in the proposition that it does not make a farmer out of an Indian to give him a quarter-section of land. There are hundreds of thousands of white men, rich with the experiences of centuries of Anglo-Saxon civilization, who cannot be transformed into cultivators of the land by any such gift."

The believers in allotment had another philanthropic aim, which was to protect the Indian in his present land holding. They were confident that if every Indian had his own strip of land, guaranteed by a patent from the Government, he would enjoy a security which no tribal possession could afford him. If the Indians possession was further safeguarded by a restriction upon his right to sell it they believed that the system would be foolproof. The friends of the Indian were here dealing with the fundamental problem of the relations of the two races. The age-old process of dispossessig the Indian was in this period rapidly accelerating. The railroads were giving powerful impetus to the westward march of land-hungry native Americans and even more voracious European immigrants, whose number was daily increasing. Furthermore, the new industrial needs made mining and lumbering operations far more—and the Indian's title to his land far less—important. In 1881 Carl Schurz wrote, "There is nothing more dangerous to an Indian reservation than a rich mine. But the repeated invasions of the Indian Territory, as well as many other similar occurrences, have shown clearly enough that the attraction of good agricultural lands is apt to have the same effect, especially when great railroad enterprises are pushing in the same direction." [50] And it was allotment he looked to stem these tides.

The Government itself, when political pressure became strong, had not always shown the will to refrain from disturbing Indian rights. In 1884 a speaker at the Lake Mohonk conference said, "* * * by our refusal to protect them in the possession of their land, and by incessant removals we take away the common motives for cultivating it." [51]

When 55 Omaha Indians petitioned Congress for an allotment of their lands in severalty in 1882 they were remembering the fact that their kindred, the Poncas, had in 1877 been uprooted by the Government and transplanted to the "hot country." [52] Statements from most of the 55 Omahas accompanied the memorial to Congress and invariably explained that the petitioners wanted titles to their lands so that they might feel secure in their holdings.[53] But it was clear that the aggressor and the menace to Indian property rights was not directly the Government but the white settler and promoter. At the Lake Mohonk conference in 1887 much was said about the breaking down of reservations, in the interest of civilizing the Indian. Senator Dawes rose to remark: "You talk about the necessity of doing away with the reservation system; a power that you can never resist has broken it up into homesteads, has taken possession of it, has driven the game from out of it. * * * Something stronger than the Mohonk conference has dissolved the reservation system. The greed of these people for the land has made it utterly impossible to preserve it for the Indian." [54] Indeed the power to which the Senator referred was proving itself not only stronger than the Lake Mohonk conference but stronger than the Government, itself. There is ample evidence to indicate that officials at times turned to the allotment program as a means of salvaging for the Indian a fraction of that whole property interest which the Government could no longer protect. Carl Schurz, writing in 1881, told how when feeling against the Utes was running high in Colorado, where the Indians were guilty of owning valuable mining lands, the Government persuaded the Utes to accept allotments and cede the balance of their reservation save for "small tracts of agricultural and grazing lands.[55]" The writer commented as follows: [56]

[48] *Ibid.*, Jan. 20, 1881, 783.
[49] H.Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 8.
[50] Frederic Bancroft (ed.), The Speeches, Correspondence, and Political Papers of Carl Schurz, 6 vols. (New York, 1913), IV, 142.
[51] Sixteenth Report of the Board of Indian Commissioners (1884), 38. (See also letter from the Commissioner to the Secretary of the Interior in H.Rept. No. 165, Mar. 3, 1879, 45th Cong., 3d sess., 2.)
[52] Fletcher and La Flesche, 635, 636; Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), VII, 5239-5252.
[53] Idem.
[54] Nineteenth Report of the Board of Indian Commissioners, 89.
[55] Article in North American Review, July 1881, in Bancroft, op. cit., IV, 142.
[56] Ibid., IV, 141, 142, 146. (See also Twenty-first Report of the Board of Indian Commissioners, 1889, 58.)

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"It must be kept in mind that the settlement of the Indians in severalty is one of those things for which the Indians and the Government are not always permitted to choose their own time. * * * Nobody will pretend that the Utes were fully prepared for such a change in their condition. * * * But nothing short of it would have saved the Ute tribe from destruction, and averted a most bloody and expensive conflict. * * * The question is, whether the Indians are to be exposed to the danger of hostile collisions, and of being robbed of their lands in consequence, or whether they are to be induced by proper and fair means to sell that which, as long as they keep it, is of no advantage to anybody, but which, as soon as they part with it for a just compensation, will be a great advantage to themselves and their white neighbors alike."

Implicit in this statement of Carl Schurz's is a summary of the whole Indian problem so far as Government policies are concerned. Clear is the sense of limitation and of justification. It makes understandable the entire subsequent working out of the allotment program. It was apparent that the Indian system was being smashed by the white economy and culture. Friends of the Indian, therefore, saw his one chance for survival in his adapting himself to the white civilization. He must be taught industry and acquisitiveness to fit him for his "ultimate absorption in the great body of American citizenship."[57] Making him a citizen and a voter would guarantee to him the protection of the rules under which the competitive game of life was played. And it was to be hoped that he would take his place among the more skillful white players.

In passing it seems worth while to suggest the relationship of this philanthropic interest in the Indian to the similar interest in the Negro. In both cases the attitudes are part of the same general ideology. The Negro had been granted freedom, citizenship, and suffrage. The experiment had been by no means a complete success yet as a Boston representative at the Lake Mohonk Conference somewhat ambiguously said in 1886, "If these had not been given, what would have been the status of the Negro today?"[58] There were important differences in the economic situations of the Negroes and of the Indians. Yet the ideas which Booker Washington was evolving with reference to the material progress of the Negro (and which had the enthusiastic support of white philanthropy) had much in common with the theories involved in allotment to the Indians. It was fitting that in this period Hampton Institute should be a training school for the young people of both subordinate races.

It must also be noted that while the advocates of allotment were primarily and sincerely concerned with the advancement of the Indian they at the same time regarded the scheme as promoting the best interests of the whites as well. For one thing, it was fondly but erroneously hoped that setting the Indian on his own feet would relieve the Government of a great expense. In 1879 the Indian Commissioner, in recommending an allotment bill to Secretary Schurz, wrote, "The evidently growing feeling in the country against the continued appropriations for the care and comfort of the Indians indicates the necessity for a radical change of policy in affairs connected with their lands."[59] Speaking in favor of the Dawes bill, a member of Congress said in 1886, "What shall be his future status? Shall he remain a pauper savage, blocking the pathway of civilization, an increasing burden upon the people? Or shall he be converted into a civilized taxpayer, contributing toward the support of the Government and adding to the material prosperity of the country? * * * We desire, I say, that the latter shall be his destiny."[60]

The chief advantages that the new system was to bring to the country as a whole were to be found in the opening up of surplus lands on the reservations and in the attendant march of progress and civilization westward. In his report of 1880, Secretary Schurz wrote:[61]

"[Allotment] will eventually open to settlement by white men the large tracts of land now belonging to the reservations, but not used by the Indians. It will thus put the relations between the Indians and their white neighbors in the western country upon a new basis, by gradually doing away with the system of large reservations, which has so frequently provoked those encroachments

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[57] Ibid., IV, 126.

[58] Address of Walter Allen, of Boston, to the Fourth Lake Mohonk Conference, 1886, in Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XV, 11576. (See also Proceedings of Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, 1885, in Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XIII, 10139, 10146.)

[59] Commissioner to Secretary Schurz in H.Rept. No. 165, Mar. 3, 1879, 45th Cong., 3d sess., 3. (See also Reports of the Commissioner of Indian Affairs (1881), xxiii.)

[60] Congressional Record, Dec. 15, 1886, 190.

[61] Report of the Secretary of the Interior, 1880, 12.

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which in the past have led to so much cruel injustice and so many disastrous collisions."

So the Indian and the white man were to profit together from the pacification of the border but furthermore the Indian was to learn valuable lessons from his white neighbors. This sentiment was frequently repeated. An Indian agent wrote in 1885, that the land when opened "would soon be taken up, and these settlers would at once begin to open farms, and to set an example of thrift and self-support by the side of their Indian neighbors." [62]

There were also frequent allusions to the fact that the Indians were of course making no use of natural resources which should be developed in the interests of civilization. In 1880 the Commissioner recommended the removal of the Chippewas from their lands in Dakota and in Minnesota and a consolidation of them on the White Earth Reservation, where they were to be allotted lands in severalty. He noted that the present Chippewa lands were unfit for farming but were "chiefly valuable for the pine timber growing thereon, for which, if the Indian title should be extinguished, a ready sale could be found." [63]

It must be reported that the using of these lands which the Indians did not "need" for the advancement of civilization was a logical part of a whole and sincerely idealistic philosophy. The civilizing policy was in the long run to benefit Indian and white man alike. But doubters of the allotment system could see nothing in the policy but dire consequences for the Indian. Senator Teller in 1881 called the Coke bill "a bill to despoil the Indians of their lands and to make them vagabonds on the face of the earth." [64] At another time he said,[65]

"If I stand alone in the Senate, I want to put upon the record my prophecy in this matter, that when 30 or 40 years shall have passed and these Indians shall have parted with their title, they will curse the hand that was raised professedly in their defense to secure this kind of legislation and if the people who are clamoring for it understood Indian character, and Indian laws, and Indian morals, and Indian religion, they would not be here clamoring for this at all."

In the debate on the Dawes bill in 1886 Senator Plumb asked why, if the Five Tribes were so advanced in civilization, they should be exempted from the measure and allotment applied only to the more backward Indians. He said, "* * * to pick them out and say to them, 'root, hog, or die,' seems to me to be a refinement of cruelty which I would hardly have expected of my friend from Massachusetts." [66] Senator Teller had charged that allotment was in the interests of the land-grabbing speculators,[67] but the minority report of the House Indian Affairs Committee in 1880 had gone even further in its accusations. It said: [68]

"The real aim of this bill is to get at the Indian lands and open them up to settlement. The provisions for the apparent benefit of the Indian are but the pretext to get at his lands and occupy them * * *. If this were done in the name of greed, it would be bad enough; but to do it in the name of humanity, and under the cloak of an ardent desire to promote the Indian's welfare by making him like ourselves, whether he will or not, is infinitely worse."

This statement is hardly fair to all the supporters of the allotment policy. As has been said, it is true that even the genuine friends of the Indian favored opening up his "surplus" lands in the interest of spreading civilization. But there is no doubt that they believed that the allotment policy would promote the Indian's economic and spiritual welfare. This belief was an integral part of the whole American philosophy of freedom, individualism, opportunity, and progress. However, it must be said that the allotment theory was by no means conceived in a vacuum by detached philosophers who spontaneously conceived a notion for improving the lot of the Indian. The friends of the Indian were faced with a desperate situation and an immediate problem to be solved. The expansion of the white civilization was in the process of breaking down the reservations, laws

[62] Reports of the Commissioner of Indian Affairs (1885), 88. At the same time one often encounters remarks like the following from the report of an agent: "* * * profane language is never heard, unless among those who have learned the white man's way." Reports of the Commissioner of Indian Affairs (1880), xliv.

[63] Reports of the Commissioner of Indian Affairs (1880), xvii.

[64] Congressional Record, Jan. 26, 1881, 934.

[65] Ibid., Jan. 20, 1881, 783.

[66] Ibid., Feb. 17, 1886, 1559. Senator Morgan in 1881 had charged that the Government had not dared to allot lands to the Indians of Indian Territory, because it was a known fact that white settlers were hanging about the lands waiting for them to be opened up by allotment (Ibid., Jan. 20, 1881, 786). On the other hand Judge Draper, of New York, told the Fifth Lake Mohonk Conference that white citizens near the reservations in his State were opposed to allotting lands to the Indians for fear they would quickly dissipate them and become public charges (Report of the Board of Indian Commissioners (1887), 59, 60).

[67] Congressional Record, Jan. 20, 1881, 783.

[68] H.Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 10.

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and treaties to the contrary notwithstanding. The decade of the 1880's saw the "passing of the frontier." Before the end of that decade the last of the more desirable homesteads had been taken up [69] and the pressure of white population and enterprise was cracking the barriers around the Indian lands. So, confronted by this dilemma, the friends of the Indian looked to allotment and patents in fee as means of giving to the Indian sufficient but, above all, secure lands. Senator Dawes had emphasized this point. And before him, Secretary Schurz had said that allotment was a policy for which the Government could not choose its own time.

It is probably true that the most powerful force motivating the allotment policy was the pressure of the land-hungry western settlers. A very able prize thesis written at Harvard by Samuel Taylor puts forth this theory. The author copiously and convincingly cites evidence to show the cupidity of the westerners for the Indian's lands and their unrestrained zeal in acquiring them.[70] The author describes the situation in Colorado where the violent actions of the white population, which Secretary Schurz noted, gave rise to the agreement reducing the Ute Reservation and allotting the Indians lands in severalty. The author also describes the illegal invasion of Indian Territory by the "boomers" and their ensuing struggle with the cattle interests that had leased the Indian lands with the tacit consent of the Government. The account further shows how the general desire of homesteaders for lands, challenged by the cattlemen who already had established through leases a monopolistic control, led to a popular demand in the West for a breaking down of the reservations. This demand was translated, especially among eastern philanthropists, into the allotment proposal as a compromise between East and West.[71]

It is difficult to prove with finality the part played by the western land seekers in the development of the allotment program. Selfish ambitions promoting legislation are never so desirous of expression as are philanthropic interests. It is the latter that provide the themes for oration and debate. But the main facts of this history are that there were powerful social and economic forces breaking down the reservations, and allotment was the legal method by means of which it was finally accomplished. A comprehensive study of western newspapers and local chronicles of this period might throw considerable light upon the problem of the motives behind allotment.

Public administrators initiated the allotment policy but it seems clear that they had in mind the demands of the westerners and the exigencies of the situation, as well as the Indian's needs. The eastern philanthropists also saw allotment as a solution of the immediate problem and they found it consistent with their ideas of progress and Christianity. As Taylor points out, the westerners would have preferred to take all of the Indian lands, but, as it was, they accepted allotment as an attainable compromise.[72] And the West seems generally to have adopted allotment. It is significant that there was no organized opposition of western Members of Congress to the Dawes bill.[73] Indeed, in the bill's later stages there was little opposition at all. And the Territorial Legislature of Dakota and the Pierre board of trade memorialized Congress in favor of the Sioux bill which became law in 1888.[74]

There were, however, clear case sof specific private interests supporting allotment for private ends—as a technique for acquiring Indian lands. In New York State the Ogden Land Co. had a claim to the lands of the Senecas, which claim, however, was subject to the right of the Indians to live on the land as a tribe. In 1886 the company was trying to push an allotment bill through the New York Legislature. In 1887 a speaker said to a conference of friends of the Indian, "* * * the moment that the Seneca Indians part with the possession of those lands * * * or the moment their tribal relation is dissolved, the title of the Ogden Land Co. becomes perfect, and Congress cannot prevent it. You have got to keep them upon that land, you have got to keep them in a tribal condition, or you must turn them over to robbers." [75] A study of the activities of lumber interests in connection with the allotment policy might prove very instructive.

[69] Frederic L. Paxson, The History of the American Frontier, 1763–1893 (Boston, 1924), ch. LVII.
[70] Samuel Taylor, The Origins of the Dawes Act of 1887 (unpublished manuscript, Philip Washburn Prize Thesis, Harvard, 1927), 25–42.
[71] Ibid., 26, 42.
[72] Ibid., 26, 28.
[73] Ibid., 59. The author significantly points out that the only concerted opposition of western senators to the Coke bill was directed against the proposal to extend citizenship, and therefore legal protection, to the Indians. Samuel Taylor. The Origins of the Dawes Act of 1887, 50, 56.
[74] Ibid., 45.
[75] Conference of the Board of Indian Commissioners with Missionary Boards and Indian Rights Associations, Jan. 6, 1887. Eighteenth Report of the Board of Indian Commissioners (1886), 123. See also Taylor, The Origins of the Dawes Act of 1887, 64.

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The technique of a "lumber ring" working with a faction in an Indian tribe to secure a special allotment law was revealed at a Mohonk conference.

Prof. C. C. Painter, national lobbyist for the Indian Rights Association, told how an allotment act for the Stockbridge and Munsee Indians in Wisconsin was rushed through Congress in 1871 and adapted to the uses of the lumber ring. Several different special agents investigated the situation and denounced the whole transaction to no effect, so far as official action was concerned. Professor Painter said: [76]

"There is evidence to show that the same interests (pine on the part of the white men, and power and pelf on the part of the favored Indians) which secured the act of 1871, have been able to suppress, or turn aside, the recommendations of special agents who have examined into and reported the facts and asked that the wrongs inflicted by an allotment under this act should be righted."

A special enterprise which undoubtedly affected the establishing and working out of the allotment program was the railroads. It must again be remembered that the 1880's were a time of feverish railroad building. Construction went forward until in 1890 the number of miles of track per capita reached a figure which has hardly been exceeded since.[77] Fate seems never to have been more ironic than in the tricks it played upon the Government in its policy of settling the Indians in "permanent" abodes. From the time of Monroe's "Indian frontier" in 1825 to the final locating of Indians on what eventually proved to be rich oil lands in Oklahoma the Indians were forever being placed where they would sometime get in the way of important white enterprise.[78] In the 1880's the irrepressible railroads found Indian reservations blocking their paths. Corporations found the Indians not at all interested in furthering railroad progress by stepping aside, and the Government quickly felt the pressure.

Railroad activities on reservations and the Indians' reactions were frequently chronicled in Indian agents' reports in the early part of the decade. In 1883 the agent of the Fort Berthold Reservation, in Dakota, wrote that his charges were anxious for titles to their lands, since they were still smarting from the fact that the Government, in order to fulfill a grant to the Northern Pacific, had taken over half their reservation and offered them in recompense a much smaller tract of land which was "rough and undesirable." He said, "It is difficult to reconcile them, as they fully believe that because they are weak the Government has taken advantage of them and dealt unjustly with them. * * * and would not dare to treat the more powerful and war-like Sioux in such manner. * * * I am constrained to confess that I am unable to answer these complainings, which seem to be well taken, in a satisfactory manner to myself or to the Indians." [79]

The writer of this paper has been unable to discover any explicit expression of a railroad's attitude toward the passage of the general allotment act. He believes that it is a subject well worth exploring, when time permits. It is interesting that the same session of the same Congress that passed the Dawes Act went in for grants of railroad rights-of-way through Indian lands on a new and enlarged scale. Of 9 Indian bills that became law, 6 were railroad grants.[80] Of the remaining 3, 1 was the Dawes Act, 1 was the appropriation act, and the third was an amendment to the land-sales law. In September 1887 the Indian Commissioner remarked in his report, "The past year has been one of unusual activity in the projection and building of numerous additional railroads through Indian lands.

"The wisdom of Congress in granting such charters to railroad companies will, I believe, be demonstrated by the benefits to the Indian which will eventually result therefrom." [81] In 1885 the Commissioner had reported, "As to railroads affecting Indian reservations there is but little of general interest to record." [82] In the first session of the Fiftieth Congress—the session following that in which the Dawes Act was passed—13 laws were passed granting rights-of-way to railroads through Indian territories.[83] Although the second session of the Fiftieth Congress was the short session, it succeeded in putting 10 such laws on the

[76] Twenty-first Report of the Board of Indian Commissioners (1889), 101-103.
[77] Paxson, 548.
[78] Paxson, 323-512, passim.
[79] Reports of the Commissioner of Indian Affairs (1883), 33. The Flathead agent wrote the same year, "As a proof that the Indians of this reservation, while undoubtedly brave, are also law-abiding, I refer with pride to the fact of the completion of the Northern Pacific Railroad through their lands, and against their strongest wishes, without any annoyance or opposition being offered to the railroad company that for a moment could be termed serious." Ibid., 101.
[80] Reports of the Commissioner of Indian Affairs (1887), 272-285.
[81] Ibid. (1887), xxxviii.
[82] Ibid. (1885), xxxiii.
[83] Ibid. (1888), 290-344.

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statute books.[84] It is at least interesting circumstantial evidence that section 10 of the Dawes Act (24 Stat. L., 388) reads:

"That nothing in this act contained shall be so construed as to affect the right and power of Congress to grant the right-of-way through any lands granted to an Indian, or a tribe of Indians, for railroads or other highways, or telegraph lines, for the public use, or to condemn such lands to public uses, upon making just compensation."

On the other hand, it has been suggested that the railroads might have been actually opposed to the allotment scheme as a policy which might render inviolate Indian titles in inconvenient places. It has also been suggested that the wholesale granting of rights-of-way in the Forty-ninth and Fiftieth Congresses may have been the product of the railroads' hustling activity to get under the bars before allotment took effect. It is true that these grants to railroads in 1887–89 could not have come as direct benefits of the Dawes Act, since it took 2 or 3 years to work out and apply allotment on any one reservation. It is quite possible that railroads worked anxiously to get rights-of-way established before Indians were located with inalienable titles on lands which might lie in the path of railroad extension. Yet it is to be noted that subsequently, through the nineties, the railroads seemed to find no difficulty in securing grants from Congress. After a lull in 1891 and 1892 railroad legislation affecting Indian lands took a new lease on life and reached its zenith with 15 rights-of-way grants or extensions of grants in 1898.[85] It is, of course, a doubtful question how much this legislation was actually affected by Indian land policies and how much it was but the result of more fundamental economic forces. However, regarding the interest of railroads in allotment, one salient fact that must be borne in mind is that the allotment system would throw open large areas to white settlement, and in this period especially railroad leaders were lavishly expending money and effort in building up western settlements to furnish railroad traffic.

It is significant that one of the foremost of these empire builders was discovering that under the old reservation system the way of the railroader was hard. The biographer of James J. Hill tells of the difficulties which the builder of the St. Paul, Minneapolis & Manitoba Railroad experienced in securing a right-of-way across the Fort Berthold and Blackfeet Reservations in 1886 and 1887.[86] Eventually the railroad got its grant (24 Stat.L. 402), but the way was paved for acquiring more easily a second grant, extending the right-of-way westward, by the Blackfeet agreement of 1888.[87] This agreement (25 Stat.L. 113) cut the reservation up into several smaller ones (art. I), allowed the sale of the surplus land, provided for allotment in severalty (art. VI), and stipulated that rights-of-way might be granted through any of the separate reservations "whenever in the opinion of the President the public interests require the construction of railroads, or other highways, or telegraph lines * * *" (art. VIII). Again, the writer of this paper has no evidence to show that the railroad was active in promoting this agreement. But a later comment of James J. Hill indicates that he had been well aware of the disadvantages of the old reservations for railroading. He said: [88]

"When we built into northern Montana, and I want to tell you that it took faith to do it, from the eastern boundary of the State to Fort Benton was unceded Indian land; no white man had a right to put two logs one on top of the other. If he undertook to remain too long in passing through the country, he was told to move on. Even when cattle crossed the Missouri River during the first years to come to our trains, the Indians asked $50 a head for walking across the land a distance of 3 miles, and they wanted an additional amount per head, I don't remember what it was, for the water they drank in crossing the Missouri."

At any rate, a number of studies might profitably be made of railroad and allotment activities on particular reservations. The annual reports of the Commissioner of Indian Affairs contain a good deal of factual material concerning negotiations of railroads with Indians in regard to rights-of-way, attitudes of Indians, congressional grants, and the specific application of allotments. Such studies might yield only further circumstantial evidence, but at least they would contribute to the drawing of the general picture. It seems probable that there was more haste than wisdom shown in the extensive railroad legislation of this period. Of the 13 grants of rights-of-way made by the first session of the Fiftieth

[84] Ibid. (1889), 425–462.
[85] Ibid. (1898), 407–457. See Reports of the Commissioner of Indian Affairs for intervening years under "legislation."
[86] Jos. G. Pyle, Life of James J. Hill (2 vols., Garden City, N.Y., 1917), I, 384.
[87] Jos. G. Pyle, Life of James J. Hill (2 vols., Garden City, N.Y., 1917), I, 386.
[88] Jos. G. Pyle, Life of James J. Hill (2 vols., Garden City, N.Y., 1917), I, 385, 386.

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Congress, President Cleveland allowed 5 to become law without his signature, and in his fourth annual message in 1888 he said, "* * * grants of doubtful expediency to railroad corporations, permitting them to pass through Indian reservations, have greatly multiplied."[89] There is at least one recorded instance when a railroad was not above bringing pressure upon the Government in the matter of Indian lands in general. Robert M. La Follette was beginning his political career in 1885 in the House of Representatives. Assigned to the Committee on Indian Affairs at the outset, he gave his attention to pending bills granting rights-of-way through the Sioux country to the Chicago, Milwaukee & St. Paul and the Chicago & Northwestern railroad companies. He at once concluded that the grants were excessively large. When he voiced his opposition in committee a colleague whispered, "Bob, you don't want to interfere with that provision. Those are your home corporations."[90] But the young man persisted and one of the Senators from his State found it expedient to send for the secretary of the Wisconsin State Republical Committee, who was also lobbyist for the Chicago, Milwaukee & St. Paul road.[91] This man, who was Henry C. Payne, told another Wisconsin Congressman, "La Follette is a crank; if he thinks he can buck a railroad company with 5,000 miles of line, he'll find out his mistake. We'll take care of him when the time comes."[92]

As has been indicated, the writer of this paper has discovered no direct evidence of a railroad policy in regard to the allotment movement. What seems to appear is the fact that the railroads were interested in any technique of securing lands for their extension and support. There is at least the testimony of one man that a railroad on one occasion opposed the issuing of patents to the Indians to safeguard their holdings in severalty. In 1886 an agent in Washington Territory reported to the Indian Office that patents had been issued to the Puyallup Indians. He said, "Strong opposition was made by the railroad and land companies interested to the granting of these patents, and great credit is due to the administration for its fearless and efficient protection of their rights."[93] However, the granting of secure titles to Indians already holding lands in severalty and a general allotment policy which would throw open to white acquisition large areas of surplus tribal lands would be two quite different things so far as the railroads' interests were concerned.

The friends of the Indian, at least, saw a connection between allotment and railroad progress. Their attitudes seem anomalous today yet they sprang directly from the contemporary faith in economic enterprise as a force in itself promoting the common good. In 1882 Congress established a commission to negotiate with the Sioux for a division of the Great Reserve into tribal reservations and for a cession of remaining lands to the United States (22 Stat.L., 328).

The report which the commission turned in on February 1, 1883 provided for a separation of the territory into five reservations, on which the Indians were to be settled with allotments larger than the treaty of 1868 stipulated; and for the cession of about eleven and a half million acres to the Government.[94] This agreement was so vigorously assailed by defenders of Indian rights both in and out of Congress that it was ultimately rejected by that body. The opposition was by no means hostile to the general purpose of the plan nor to the size of the cession. They denounced what they regarded as inadequate compensation to the Indians and a failure of the commission to live up to treaty requirements providing for a three-fourths vote of the Sioux adults for any revisions of existing agreements.[95] As regards the general aim of the transactions, the Mohonk Conference in 1883 went on record in favor of a second and just agreement. The conference recommended, "* * * that a cession of territory should be effected, by which a portion of the lands comprised within the limits of the Great Sioux Reserve might be thrown open to white settlement, and railroads be constructed to points west of the reservation. Such action, it was admitted, if wisely and justly carried out, would be beneficial not only to white men but to Indians."[96] Dr. Lyman Abbott told the conference in 1885 that the reservations were obstacles to progress and that they should be reduced. He said, "The post office is a Christianizing institution; the railroad, with all its corruptions, is a Christianizing power, and will do more to teach the people punctuality than schoolmaster or preacher can."[97]

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[89] Parker, Life of James J. Hill, 97. See Reports of the Commissioner of Indian Affairs (1888), 220-344.
[90] Robert M. La Follette, Autobiography (Madison, Wis., 1913), 71, 72.
[91] Ibid., 73, 74.
[92] Ibid., 75.
[93] Reports of the Commissioner of Indian Affairs (1886), 243.
[94] Report of the Secretary of the Interior, 1883, xvii, xviii; Reports of the Board of Indian Commissioners (1883), 39, 40.
[95] Ibid. (1883), 40.
[96] Idem.
[97] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, in Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office Library), XIII, 10145.

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In 1887 the agent at the Fort Peck office in Montana wrote, "The Montana division of the St. Paul, Minneapolis & Manitoba Railway, now being constructed east and west, through this reservation, will, in my opinion, have a greater tendency to civilize these Indians than any other one thing, for the reason that it will bring them in contact with the whites, the most of whom in this country are energetic, pushing people. They are amazed at the activity and endurance of the railroad workmen, and regard them as 'big medicine.'[98]"

The fifth annual report of the executive committee of the Indian Rights Association in 1887 took note of both the triumph of allotment and the new railroad activity. The report is worth quoting at length on this subject:[99]

If any person accustomed to weigh evidence could still think it possible to maintain the old system of the isolation of the Indians, and to perpetuate the common ownership of their lands, a little reflection upon the relations of the railroads of the country to the Indian reservations would be sufficient to expel this delusion from his mind finally and forever. * * *

This process of opening the reservations to railroads is certain to continue. In most cases the Indians themselves are in favor of it, thus showing that they have a truer conception of the meaning of civilization than is exhibited by the opponents of the severalty law. Most of the objections against this measure which have come to our notice show clearly that their authors are mere theorists, who have little knowledge of the actual condition of the Indians under the existing order of things. To maintain and perpetuate existing conditions is clearly impossible. It could not be done if we all united in an effort to that end. That was the reason for the enactment of the severalty law. We have to ckoose between securing something for the Indians—as much as we can get—or having them lose all. The friends of the new law think half a loaf better than no bread, even for Indians. But the law does not, as most of its enemies affirm, take the unallotted lands from the Indians. It leaves such lands in possession of the tribes, exactly as now.

It is apparent from such statements that the friends of the Indian were well aware of the vital economic forces which were tearing down the old Indian system. It is impossible to say whether or not these philanthropists would have supported the allotment scheme if they had not been faced with the necessity of shaping some drastic new policy to protect the Indian against the expanding white settlement. The fact is that the theory of allotment fitted easily into the pattern of their idealism. It was at the same time a practical solution of the immediate problem. The friends of the Indian saw his only chance of surviving the economic conflict in his learning to cope with these forces of civilization on their own terms. And since civilization was good this making of the Indian into a civilized man was also, in itself, good. The philanthropists knew it would be a case of "sink or swim" for the Indians. They accepted the fact, as they accepted the American civilization, that some of the Indians would go down. But these idealists believed that with some tutelage and support most of the Indians would emerge from the competitive struggle, purged and successful, as real Americans were supposed to do. So, from every point of view, the friends of the Indian saw allotment as his great American opportunity.

On the other hand, as has been shown, there is plenty of evidence to indicate that there were definite and powerful interests behind allotment which were not philanthropic at all; that homesteaders, land companies, and perhaps railroads, saw allotment as a legal way of getting at wide areas of Indian lands. To be sure the evidence is for the most part inferential. In matters of public policy, interests of this sort are never so articulate as are those supporting high causes. But there is the basic fact that white settlement and enterprise were irresistibly sweeping westward; and the fact that allotment was used to removed Indians from valuble lands. There is no evidence that any of these private interests originated the allotment idea. Had it been for them to choose they would have probably preferred outright dispossession. But they were certainly not hostile to allotment or there would have been western opposition to it in Congress; and the Dawes bill would not have progressed through its final stages almost without debate, and passed without a roll call.

In conclusion, let it be said that allotment was first of all a method of destroying the reservation and opening up Indian lands; it was secondly a method of bringing security and civilization to the Indian. Philanthropists and land-seekers alike agreed on the first purpose, while the philanthropists were alone in espousing the second. Considering the power of these land-seeking interests and their

[98] Reports of the Commissioner of Indian Affairs (1887), 144.
[99] Fifth Annual Report of the Indian Rights Association (1887), 36, 38.

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support by the friends of the Indian, one finds inescapable the conclusion that the allotment system was established as a humane and progressive method of making way for the "westward movement."

ORGANIZATIONS SUPPORTING ALLOTMENT

The Board of Indian Commissioners was established by act of Congress in 1869 to participate with the Indian Office in the expenditure of Indian funds and to exercise general powers of advice and supervision.[1] It was composed of public-spirited citizens, appointed by the President, who could be trusted to have the best interests of the Indians at heart and who should serve without pay. This organization served to focus public interest in Indian problems, and it generally supported allotment after its first expression of approval in 1876.[2]

The first strictly private and propagandist society of importance to be organized on behalf of the Indian was the Women's National Indian Association which came into existence in 1879.[3] Its twin aims as formulated in 1883 were to stir up public sentiment in favor of Indian rights and by educational and missionary work "to civilize, Christianize, and enfranchise" the Indians themselves.[4] The national society was primarily a federation of local branches, the number of which was listed in 1886 as seventy-odd.[5] Predominantly eastern in its origin the organization gradually extended its hold beyond the Alleghenies.

It depended heavily upon church support, especially the Protestant sects.[7] In 1885 one of the Women's National Indian Association's prominent leaders said, "From the beginning the appeal was to Christians, to pastors of churches, and to editors."[8] Although in 1885 the society presented to Congress a petition with 100,000 signatures urging the strict observance of Indian treaties, and from time to time reported other political activities, the women seem especially to have engaged in educational and missionary work.[9] By 1884 they were spending somewhat over $2,000 a year.[10] They worked in close cooperation with the Indian Rights Association and the Woman's Christian Temperance Union, with whom, in spirit and organization, they seem to have had much in common.[11] The Women's National Indian Association early espoused the cause of allotment. Indeed, in 1887 the president of the society quoted Senator Dawes as saying that the present Indian policy was "born of and nursed by" the Women's National Indian Association.[12] Their report in 1884 mentioned the fact that the Indian Rights Association had "fallen heir to the years of work previously done by the Women's National Indian Association.[13]

The Indian Rights Association was organized in December 1882 at a meeting attended by 30 or 40 men who had assembled to consider ways and means of educating the public and Congress in the business of promoting Indian welfare.[14] This meeting decided on three objectives: More general education of the public, legal protection for the Indian, and a "wise division of land in severalty."[15] The association emphasized its educational work, as the women did.

In 1886 the Indian Rights Association printed 50,000 pamphlets and conducted numerous meetings.[16] They apparently did not engage in missionary work in

[1] Schneckebier, op. cit., 56, 292.
[2] Eighth Report of the Board of Indian Commissioners (1876), 10.
[3] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, 1885 in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XIII, 10141.
[4] Constitution of Women's National Indian Association, art. II, in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XIII, 10262, 10263.
[5] Address of the president of the Women's National Indian Association, 1887, in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XV, 11963; ibid., XV, 11576.
[6] First Report Indian Rights Association, 1883, in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XIII, 10247, 10248; Fourth Annual Report of Women's National Indian Association, 1884, ibid., XII, 8744.
[7] Ibid., XII, 8745.
[8] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, 1885, in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XIII, 10141.
[9] Idem.
[10] Fourth Annual Report of Women's National Indian Association in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XII, 8751.
[11] Ibid., XII, 8759.
[12] President's address in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XV, 11969.
[13] Fourth Annual Report of the Women's National Indian Association in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XII, 8755. General Whittlesey, secretary of the Board of Indian Commissioners in 1890 mentioned the women as being especially responsible for the allotment policy. Twenty-second Report of the Board of Indian Commissioners (1890), 66.
[14] First Annual Report Indian Rights Association, 1883, 5.
[15] Ibid., 6.
[16] Fourth Annual Report Indian Rights Association, 1886, 6-8.

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the field. They were preoccupied with shaping white attitudes and policies and therefore with legal and political action. They kept investigators at work and they maintained a lobbyist at Washington.[17] The Association's report for 1886 states, "The association seeks to arouse public sentiment in behalf of justice for the Indian through the dissemination of reliable information, and when this sentiment is aroused, to concentrate its influence upon Washington."[18] To these ends the Indian Rights Association spent $8,700 in 1887.[19]

To the general student of this period the comparison is interesting between the relations of the Indian Rights Association and the Women's National Indian Association in the movement for Indian reforms, with the relations between the Anti-Saloon League and the Woman's Christian Temperance Union in the prohibition movement at a somewhat later date. In both cases the women's societies were on the ground first and continued to make their greatest contribution in the shaping of public attitudes. The men's groups, on the other hand, were most effective and valuable in practical political action. Very similar to the spirit of the Anti-Saloon League was the temper of the Indian Rights Association, which its secretary described in 1886: "The Indian Rights Association represents practical and business like aims and methods for the solution of the Indian problem. It has no interest in extreme or eccentric theories or plans."[20]

It would be hard exactly to divide the credit between the Women's National Indian Association and the Indian Rights Association for the passage of the general allotment law. It seems clear that both these organizations contributed to the achievement. Although the women thought Senator Dawes had awarded them the first palm, the Indian Rights Association declared in 1887, "In securing the passage of this law the Indian Rights Association achieved the greatest success in its history."[21] There seems to be no doubt but that the women had prepared the way and that the men had been most effective in their dealings with Congress. Prof. C. C. Painter, the Indian Rights Association's Washington representative, had been busily on the job urging legislators to support allotment.[22] Apparently it was a combination of the activities of most of the Indian rights defenders that was responsible for the passage of the Dawes Act. Senator Dawes told the Lake Mohonk Conference in 1887, "It should be called the Mohonk bill; that is the name of the bill; it is the inspiration of the people; you are responsible for it. * * *"[23]

The first Lake Mohonk Conference was summoned by the Honorable Albert K. Smiley, member of the Board of Indian Commissioners, who toward the end of 1883 invited to his lake resort men and women prominent in Indian reform movements. He explained his action to the conference in 1885. He said "My aim has been to unite the best minds interested in Indian affairs, so that all should act together and be in harmony, and so that the prominent persons connected with Indian affairs should act as one body and create a public sentiment in favor of the Indians."[24]

Annually to this meeting came members of the pro-Indian organizations, of religious bodies, and of philanthropic societies, and other public leaders. The first meeting, in 1883, declared at once for a general allotment law and up through 1887 this project occupied much of the attention of the conference.[25] There were from time to time disagreements as to detail but the consensus of friends of the Indian heartily supported the general allotment scheme.

There seem, however, to have been protests from informed circles. In 1887 the Indian Rights Association referred to these objectors as "obstructionists."[26] Apparently some of them were anthropologists and ethnologists. At the fourth Lake Mohonk Conference, in 1886, one member said that opposition to allotment came in some measure from "the desire of the ethnological student to preserve these utensils for the study of his specialty." He went on to say, "Perhaps, in the face of Miss Fletcher's noble work among the Omahas, I may not do this (condemn all anthropologists). Certainly her philanthropy swallowed up her

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[17] Fourth Annual Report Indian Rights Association, 4, 18; Second Annual Report Indian Rights Association, in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XIII, 9716, 10212.

[18] Fourth Annual Report Indian Rights Association, 1886, 3, 4.

[19] Fifth Annual Report Indian Rights Association, 1887, 66, 67.

[20] Fourth Annual Report Indian Rights Association, 1886, 1. It is interesting that Senator Dawes had been a prohibition worker. See Eighteenth Report of the Board of Indian Commissioners (1886), 130.

[21] Fifth Annual Report Indian Rights Association, 1887, 36.

[22] Ibid., 14.

[23] Nineteenth Report of the Board of Indian Commissioners (1887), 90.

[24] Proceedings of the Third Annual Meeting of the Lake Mohnok Conference of Friends of the Indian, 1885, in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XIII, 10097.

[25] Fifteenth Report of the Board of Indian Commissioners, 1883, 41.

[26] Fifth Annual Report Indian Rights Association, 1887, 36.

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anthropology." [27] The writer has so far been unsuccessful in finding any express declaration against allotment by the anthropologists of the period. There was a society which was organized in 1885 under the name of the Indian Defense Association. This group was opposed to the immediate breaking up of reservations. The second resolution in their "platform" said, "That in the present condition of the mass of the Indians to confer upon him the title to his lands in severalty would not apply to him the motive and means of industry adequate to contend with the disadvantages of his condition and surroundings, while the motives to part with his land would be in the great majority of cases irresistible." [28]

However, the society proposed that lands be patented to tribes in trust "to secure permanent individual occupation and industrial use, and ultimately to enure, in severalty, to the Indians on a principle of distribution according to age and numbers. [29] Apparently this society was in agreement with other defenders of the Indian in their belief as to the ultimate solution of the Indian problem, but the organization regarded immediate allotment as too precipitate. The distinction was vital to the society and it explained its reason for organizing as follows: "* * * the fact that powerful organizations are already the advocates of the policy to be opposed renders it necessary that the effort to counteract their influences should be an organized effort also." [30] Among the officials of this ephemeral society was at least one professional ethnologist, the Rev. J. Owen Dorsey, who wrote many monographs on Indian social institutions, and who was a staff worker in the American Bureau of Ethnology.[31] It is interesting to note that another member of this organization's executive committee was John H. Oberly, then superintendent of Indian Schools, who that same year made the above-quoted eulogy of individualism at the Mohonk Conference. [32]

All ethnologists were not, however, opposed to the allotment movement. Miss Alice C. Fletcher, who was referred to above as a philanthropist, spent more than 30 years studying and working among the Omahas. In collaboration with the son of an Omaha chief she wrote a fascinating account of that tribe, which was printed by the Bureau of American Ethnology. [33] She was known to have been the person primarily responsible for the Omaha allotment act of 1882.

In 1881, J. W. Powell, Director of the Bureau of American Ethnology, expressed his approval of allotment in a letter to Senator Morgan, saying, "No measure could be devised more efficient for the ultimate civilization of the Indians of this country than one by which they could successfully and rapidly obtain lands in severalty. * * *" [34] So the Indian Rights Association, after castigating the "obstructionists" in 1887, was able to go on to say, "* * * the enlightened sentiment of the country is undoubtedly in favor of the law and its enforcement." [35] In other words, most everyone seems to have been enthusiastic about allotment—except the Indian.

INDIAN ATTITUDES AND CAPACITIES

No one should expect, of course, an informed and eager opinion about allotment from the Indian. Alien as he was to the white man's way and ignorant of his aims, the Indian would hardly welcome at first glance the civilized substitutes for his economy, ideals, and culture. However, it was the policy of the Indian Administration to regard the Indians as anxious for the establishment of the allotment system. In 1881 the Commissioner, in a letter to Senator Hill, listed the particular tribes that had petitioned for allotment and concluded by saying, "* * * it may truthfully be said that there are at this time but few tribes of Indians, outside of the Five Civilized Tribes in the Indian Territory, who are not ready for this movement." [36] As early as 1876 agents were reporting Indian

[27] Quoted by Lawrence Lindley, associate secretary of the Indian Rights Association, in an unpublished manuscript, pp. 2, 3. This is an excellent brief summary of the whole allotment policy and has been of great use to the present writer.

[28] Platform of the Indian Defense Association, 1885 in Miscellaneous documents relating to Indian Affairs (collected in Indian Office library), XIII, 9877.

[29] Ibid., XIII, 9878.

[30] Ibid., XIII, 9877.

[31] The Reverend Dorsey was also a member of the Anthropological Society of Washington in 1888. Taylor, op. cit., calls the members of the association "high-minded but utterly impractical" and says they were led by a professional reformer (pp. 60, 61).

[32] See above, pp. 8, 9. Oberley was also Commissioner of Indian Affairs for a few months in 1888.

[33] Alice C. Fletcher and Francis La Flesche, "The Omaha Tribe" in Twenty-seventh Annual Report of the Bureau of American Ethnology to the Secretary of the Smithsonian Institution, 1905–06 (Washington, 1911), 33–672.

[34] Congressional Record, Jan. 25, 1881, 911.

[35] Fifth Annual Report, Indian Rights Association, 1887, 36.

[36] Congressional Record, Jan. 20, 1881.

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sentiment in favor of allotment and presenting Indian petitions and this activity increased up to 1887.[37] In 1880 the House Committee on Indian Affairs favorably reported a bill allotting lands in severalty to the Miamies and Peorias. The report said that the bill had been drawn and introduced at the instance of the Indians themselves and that all revisions of the bill had been made in conference with representatives sent by the two tribes to Washington.[38] In 1881 the Omahas presented their petition, signed by 55 men of the tribe.[39] The reports of the agents indicate that as the Indian came more in contact with white settlement and got some experience in individual holding he was often readily won over to a support of the allotment system. For instance, the Yakima agent in Washington Territory reported in 1886 that but a few years before a majority of the Indians were so hostile to allotment that they would pull up the surveyors' stakes "almost as fast as they were driven." But now nine-tenths of the Indians "would gladly welcome" allotment.[40]

From the repeated statements of those Indians who favored allotment it is clear that what was first and foremost in their minds was a hope that patents in fee would protect them against white inroads upon their lands and against the danger of removal by the Government. A comment as early as 1876 from the Siletz agent in Oregon as to his charges' desire for allotment is typical. He said: "Nothing gives them so much uneasiness as the constant efforts of some white men to have them removed to some other country.[41] There seems to have been little understanding of or desire for a new agricultural economy on the part of the Indians. This was quite as true of the Omahas who at the time were regarded by white proponents of allotment as especially enlightened.

One of the 55 members of the tribe who asked for allotment expressed his sense of the changing order but concluded his statement (as nearly all the fifty-five did) with the usual argument. He said: "The road our fathers walked is gone; the game is gone; the white people are all about us. There is no use in any Indian thinking of the old ways; he must now go to work as the white man does. We want titles to our lands, that the land may be secure to our children." [42]

There were many expressions of Indian opposition to allotment in the early 1880's. The minority report of the House Committee on Indian Affairs in 1880 noted that since the act of 1862 provided for special protection of allottees in their holdings it was "passing strange" that so few had availed themselves of their privileges.[43] The Senecas and the Creeks made bold to memorialize Congress against disrupting with allotment their systems of common holding.[44] Realizing that they were opposing the trend of official policy the Creeks remarked: "In opposing the change of Indian land titles from the tenure in common to the tenure in severalty your memorialists are aware that they differ from nearly every one of note holding office under the Government in connection with Indian affairs, and with the great body of philanthropists whose desire to promote the welfare of the Indian cannot be questioned." [45] The Shawnees whom their agent represented as a "self-supporting * * * honorable, industrious people" were very anxious to preserve their tribal economy in 1883.[46] Even the Omahas, of whom 55 members had urged allotment, were, according to Miss Fletcher, originally opposed to allotment by a majority of two-thirds. Her explanation sounds very real: "It means trouble at first; and Indians are, like the rest of mankind, unwilling to vote for present trouble in order to secure an unknown and uncertain benefit."[47]

Certain tribes had specific objections to allotment. A memorial from the Creeks, Choctaws, and Cherokees in 1881 read: "The change to an individual title would throw the whole of our domain in a few years into the hands of a few persons." [48] Senator Dawes explained to the 1885 Mohonk Conference that since a railroad charter foolishly provided for a strip of land 20 miles wide through Indian Territory in case the Indian title should become extinct, the Five Civilized Tribes were suspicious of the Government and disinclined to have any dealings

[37] See agents' reports, Reports of the Commissioner of Indian Affairs (1876), passim; ibid. (1878), 142, (1880), 25, 50, 87, 171, (1881), 22, 25, 132, 177; especially agents' reports, ibid. (1882) and (1883).
[38] H.Rept. No. 1319, Apr. 28, 1880, 46th Cong., 2d sess., 1, 2.
[39] S. Mis. Doc. No. 31, 47th Cong., 1st sess.
[40] Reports of the Commissioner of Indian Affairs (1886), 247.
[41] Ibid. (1876), 124; see also Miscellaneous Documents relating to Indian affairs (collected in Indian Office library), IX, 7553-7558, Reports of the Commissioner of Indian Affairs (1880), 25.
[42] Fletcher and La Flesche, 636, 637; see also Reports of the Commissioner of Indian Affairs (1882), 112.
[43] H.Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 7.
[44] H.Ex.Doc., No. 83, Mar. 1, 1882, 47th Cong., 1st sess.
[45] Ibid., 26.
[46] Reports of the Commissioner of Indian Affairs (1883), 85; see also ibid. (1886), 98, 99.
[47] Second address of the Lake Mohonk Conference in Miscellaneous Document, XIII, 10084.
[48] Congressional Record, Jan. 20, 1881, 781.

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with it in questions of land title.[49] The Iowas in 1884 were against any scheme to allot land to their half-breeds because of a previous sorry experience when this class had been given allotments, had rapidly squandered them, and had then returned to live off the tribe.[50] The Senecas frankly preferred their old way of tribal philanthropy. Their council in 1881 passed a resolution against allotment and in favor of retaining their communal system. The resolution said:"Under this [communal] system no Indian, however improvident and thriftless, can be deprived of a resort to the soil for his support and that of his family. There is always land for him to cultivate free of tax, rent, or purchase price."[51]

It is difficult to analyze and weigh the motives of the Five Civilized Tribes in their particular opposition to allotment. Samuel Taylor, in his study of the Dawes Act, maintains that white cattlemen, who had secured special privileges from the sovereign nations of Indian Territory, were responsible for the latter's opposition and were indeed influential finally in getting the Five Tribes exempted from the provisions of the general allotment law.[52]

In those days the charge was often made that under the tribal system in Indian Territory certain Indians had cornered for their own use large tracts of land and being therefore powerful in their communities they had succeeded in persuading the tribal government to oppose allotment which would redistribute the land. The Commissioner of Indian Affairs wrote in 1886: [53]

"At present the rich Indians who cultivate tribal lands pay no rent to the poorer and more unfortunate of their race, although they are equal owners of the soil. * * * It will not do to say, as the wealthy and influential leaders of the nation contend, that their system of laws gives to every individual member of the tribe equal facilities to be independent and equal opportunity to possess himself of a homestead. Already the rich and choice lands are appropriated by those most enterprising and self seeking."

On the other hand, that same year the agent to the Five Tribes explained the land system in his report, saying that while tracts were occupied by and inherited by individuals, such possession was dependent on use. He concluded: [54]

Although this tenure of lands may seem strange to those who have not seen its qualities tested, it is a proposition which, from a public standpoint, might well be argued as superior to the fee simple in the individual. This system precludes a possibility of unjust pauperism so often imposed on worthy labor by force of modern circumstances or ancient customs surviving in modern times. However this question may be argued by political economists, there is no doubt in my mind that this is the true safeguard for the Indian people until they have grown, under the educational influences now working, up to the capacity of full American citizenship, until they are able to cope with that most ingenious of all thieves, the insidious land swindler."

The most usual argument of the Indians against allotment was that it interfered with their established tribal system. Senator Teller rather oratorically declared in 1881:

"I say today that you cannot make any Indian on this continent, I do not care where he is, while he remains anything like an Indian in sentiment and feeling, take land in severalty."[55] This statement is partially substantiated by the fact that opposition was likely to come from the full-bloods and older generations whereas allotment was more popular among the half-breeds and younger people.[56] Agents usually referred to the former group as "conservatives" and the latter as "progressives."

Agents frequently commented on this division of opinion and several times attributed the defense of the old order to the machinations of chiefs and headmen who feared allotment would mean tribal disintegration and a consequent loss of their power. James G. Wright of the Rosebud Agency wrote in 1885:

"The old 'fogies' or 'chiefs,' who look to their supremacy and control over the people, fearful of losing it, discourage and advise the people to continue in the old rut. It is a contest between the old stagers and the young and progressive, with the prospect of disregarding the 'chiefs', and the young men assuming the responsibility of their own act." [57]

[49] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian in Miscellaneous Document, XIII, 10137.
[50] Reports of the Commissioner of Indian Affairs (1884), 94.
[51] H.Ex.Doc. No. 83, Mar. 1, 1882, 47th Cong., 1st sess., 2.
[52] Taylor, op. cit., 36, 37, 60, 61.
[53] Reports of the Commissioner of Indian Affairs (1886), vi.
[54] Ibid. (1886), 155.
[55] Congressional Record, Jan. 20, 1881, 780.
[56] See letter of the Director of the Smithsonian Institution, ibid., Jan. 25, 1881, 911; also Reports of the Commissioner of Indian Affairs (1883), 53, (1887), 88, 112.
[57] Ibid. (1885), 44.

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This last statement may suggest some of the difficulties in the way of coming to a conclusion about a general Indian point of view concerning allotment. There was clearly no one point of view. Particular attitudes were shaped by particular situations, experiences, factional disputes, specific opportunities. There is above all the fundamental difficulty of determining what the sentiment of a tribe actually was. Petitions are no reliable index. The Omaha petition of 1881 for lands in severalty apparently was not representative of the tribe.[58] In 1882 Chairman Dawes of the Senate Indian Affairs Committee reported that the Umatillas had long desired allotment, that tribal chiefs had come to Washington in 1879 to ask for that privilege.[59] Yet in 1885 the Commissioner of Indian Affairs noted that in three different tribal councils called in that year by special agents and commissioners, the Umatillas had rejected an allotment agreement.[60] The regular Umatilla agent thought that this action was the result of the above-mentioned hostility of the mixed-bloods and of stockmen and others interested in the prevailing reservation set-up.[61] There is a final fact which must be taken into consideration in interpreting reports of Indian sentiments and of the results of allotment experiments, namely, that allotment had become an official policy. As Senator Teller maintained with probable accuracy there would be a tendency on the part of agents and subordinate officials to be influenced in their estimates consciously or unconsciously by the knowledge that allotment was the program to be furthered.[62]

What can be said from this survey is that there was no apparent wide-spread demand from the Indians for allotment. It should not be surprising that the greater number of Indains should be adversely disposed or apathetic in regard to the new policy. There were groups that for particular purposes favored allotment. Many were undoubtedly influenced by the persuasion of agents and other officials who were supporting the new program. On the other hand, there were Indian vested interests opposed to the change. And there was the inertia of a whole tradition stretching backward for generations. One could hardly expect the mass of Indians to be able to comprehend and desire a complete new way of life which their white friends had envisaged for them.

What has been said above about the difficulties in evaluating the accounts of Indian attitudes applies even more drastically to the assaying of reports about the success and failure of allotment experiments up to 1887. There are numerous testimonies to the success of these ventures. The Commissioner's description of the White Earth Reservation in 1880 indicated that those Indians had approached what their white friends probably regarded as an ideal Indian community. At least some of these Indians cultivated their lands in severalty. The Commissioner wrote:[63]

"Nearly all at White Earth wear citizens' dress, live in houses, send their children to school, attend church on the Sabbath, and lead a quiet, industrious, agricultural life. Many have surrounded themselves with the comforts of civilized life, and a casual observer would notice but little difference between their settlement and the white farming communities of the frontier."

The reports of many agents declared that their respective charges were as a result of allotment, approaching this ideal, as the following samples will show:

The Devil's Lake agent, Dakota, 1881:[64]

"Nearly all of them are located on individual claims, living in log cabins, some having shingle roofs and pine floors, cultivating farms in severalty, and none are now ashamed to labor in civilized pursuits. A majority of the heads of families have ox teams, wagons, plows, harrows, etc., and a desire to accumulate property and excel each other is becoming more general."

The S'kokomish agent, Washington Territory, 1881:[65]

"[The issuing of certificates] has gratified them very much and stimulated them to do more clearing than in former years. There has scarcely been an idle man on the reservation during the summer, and drunkenness among those living here is almost entirely unknown."

The Mackinac agent, Michigan, 1885:[66]

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[58] Comments of Miss Fletcher to Second Annual Meeting of the Lake Mohonk Conference of Friends of the Indian (1884) in Miscellaneous Document, XIII, 10084.
[59] S.Rept. No. 243, 47th Cong. 1st sess., ibid., VIII, 6179.
[60] Reports of the Commissioner of Indian Affairs (1885), lxxi, lxxii, 169, 170.
[61] Ibid. (1885), 170.
[62] Congressional Record, Jan. 20, 1881, 783.
[63] Reports of the Commissioner of Indian Affairs (1880), xl.
[64] Ibid. (1881), xxiv.
[65] Ibid. (1881), 171.
[66] Reports of the Commissioner of Indian Affairs (1885), 114.

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"The Indians are beginning to realize the value of these lands, are more eager to get them, and retain them more tenaciously than heretofore. They are farming better, and keep a sharp look-out that the agent does not allot land to those not entitled, being anxious that it shall be saved for their children."

The Crow Creek and Lower Brule agent, Dakota, 1886:[67]

"Allowing these Indians individual tracts of land has proved very beneficial, by giving them some idea of the rights of property, and causing them to take more pride in their homes and possessions. * * * Young people are asking for claims so soon as they arrive at legal age."

In 1880 the Commissioner observed that even some of the wildest Indians were taking to farming in severalty and to civilization. He wrote:[68]

"Except a few Indians who possessed houses and cultivated fields in the vicinity of Fort Sill, the Kiowas, Comanches, and Apaches have moved up to the Washita, and are settling down, not as before in large crowded camps, but in small groups and by families, and they are opening up separate farms instead of cultivating one large body of land in common. In this way tribal relations are being modified and the influence of chieftainship impaired. * * * A willingness to dispose of ponies for articles more helpful to civilization, and a disposition to adopt citizens' dress, are more favorable indications.

There seem to have been many examples of Indians who were struggling to learn the white man's way. Most of the 55 Omahas who petitioned for allotment in 1881 made such statements over their signatures. On the whole these statements seem quite authentic. The following is worth quoting in part:[69]

"When I was a boy I saw much game and buffalo, and the animals my forefathers used to live upon, but now all are gone. Where I once saw the animals I now see houses, and white men cultivating the land; and I see that this is better. I ought long ago to have tried to work like the white man; but for several years I have been trying, and perhaps in the future I can do much better for myself and my friends. * * * I want a title for my land. I am troubled about it, for I am not sure I can have the land if I do not get a title. * * * In the morning I get up and look at my fields, and I wish that God may help me to do better with my land and let it be my own."

In this connection, the writer suggests that a valuable study might be made of Indian attitudes toward and proficiency under the allotment system in terms of their particular economic backgrounds. The attitudes and adaptability of Indians as regards allotment might bear some ascertainable relation to the fact of their having been nurtured in primarily agricultural, pastoral, or hunting economies.

But alongside of accounts of Indian progress under allotment schemes there were conflicting reports and many declarations that experiments had been utter failures. There were even disputes as to the success of the allotment system among the Omahas. Long before the Allotment Act of 1882 these Indians had under previous treaties begun to abandon their villages and cultivate farms in severalty.[70] In 1884 the Indian administration began an experiment in partial self-government among the Omahas to accompany the policy of independent holdings.[71] In 1884 and 1885 there were testimonies given by the agent and Miss Fletcher that the Omahas were getting along well.[72]

However, the new agent sent to the reservation in 1886 took issue with these statements and reported that things were going badly.[73] Apparently the Commissioner did not agree with this latter view, for in his report of the same year he said that on the whole the success of the Omahas was such as "to afford to Indians everywhere the highest encouragement to adopt the same policy." [74] Apparently the Omaha situation was a complicated one, involving factional squabbles and all sorts of adjustments under the new political regime.[75] Very possibly the agent was expecting too much.[76]

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[67] Ibid. (1886), 69.

[68] Ibid. (1880), xxxiv.

[69] Miscellaneous documents, VII, 5246; see also Fletcher and La Flesche, 247, 622, 623. For accounts of how other Indians were successfully learning the white man's way, see Reports of the Commissioner of Indian Affairs (1876), 114 (1880), 137 (1881), xxiii; Miscellaneous documents relating to Indian affairs (collected in Indian Office library), XIII, 9871, 9872, 10083; H.Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 3-5.

[70] Reports of the Commissioner of Indian Affairs (1876), 97.

[71] Ibid. (1884), 1, 118.

[72] Ibid. (1884), xlix; Sixteenth Report of the Board of Indian Commissioners (1884), 38. See also Reports of the Commissioner of Indian Affairs (1885), 135.

[73] Ibid. (1886), 186, 187.

[74] Ibid. (1886), xx.

[75] Ibid. (1886), 186, 187.

[76] A member of the Board of Indian Commissioners visited the Omahas in 1887. While he noted much demoralization he believed the Omahas were in a transitional stage and were making progress. Nineteenth Report of the Board of Indian Commissioners (1887), 25.

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There were many unequivocal statements of the failure of allotment before 1887. In 1883 a Creek memorial to Congress quoted Secretary of War Cass as saying in 1835 that allotment experiments which permitted the alienation of lands had "wholly failed." [77] Indeed his generalization would have been equally true in 1887. Where Indians had the right of selling their lands it was in the nature of things that those lands should slip from their grasp. In 1878 the Mackinaw agent said that a treaty of 1855 had granted lands in severalty to certain adult Chippewas but "through the shameful neglect of the agents then and since in charge, they have frittered a large proportion of them away, and today, I am of the opinion, not 1 in 10 who have had these lands owns an acre, and they are as poor as if they had never owned them." [78] In his report of that year the Commissioner noted that five-sixths of the 1,735 Chippewas in Michigan who had received patents had lost their lands.[79]

A member of the Board of Indian Commissioners said in 1886 that titles in fee had been granted for nearly all the lands of the Isabella Reservation in Michigan and of the 92,000 acres so allotted only 1,000 acres were left in the Indians' hands.[80] The critical Senator Teller declared in 1881 that although over 60 treaties had provided for allotment in severalty since 1845 there were perhaps but three or four places where Indians had taken individual holdings and were still living on them.[81]

Of course, the advocates of allotment were well aware of this particular peril of the lands' being dissipated but they confidently hoped to guard against it by restricting alienation for at least 25 years. However, there was evidence that legal restriction had not been effective in protecting Indian lands. The minority report of the House committee in 1880 pointed to the example of the Catawbas whose land titles had been restricted from alienation for 25 years. The report said, "The Catawbas gradually withered away under the policy, until there is not one of them left to attest the fact that they ever existed, and their lands fell a prey to the whites who surrounded them and steadily encroached upon them." [82] In 1881 a petition from the Five Civilized Tribes cited the case of the Shawnees, Pottowatamies, and Kickapoos living in Kansas who had been allotted lands with the proviso that they could not be sold for 20 years unless the Indians became citizens. The petition stated that in 5 years every acre had been sold to white men and the tribes had to be shipped into Indian Territory.[83]

But according to various accounts the alienation of lands was but one of the failures of allotment. In 1883 the Creek memorial to Congress quoted figures purporting to show that Indian population declined more rapidly under the allotment system. The figures showed that in certain instances an augmented decrease in population was coincident with the period of allotment and that in some cases an acutal gain in population occurred after allotment had been discontinued.[84] But such figures are very unsatisfactory. Too many factors enter into the question of births and deaths to allow any certain correlation with allotment experiments in this period. Indeed there are no statistics before 1887 that are of use in attacking the problem.

The greater number of testimonies to the failure of the allotment system suggest that the fundamental obstacle to the policy's success lay in the Indians' attitudes toward civilized economy. The Indian simply did not take easily to the idea of becoming a citizen and an independent farmer. In 1876 the agent at the Great Nemaha Reservation said the Sac and Fox Indians were refusing to take allotments because they did not want to assume the obligations of citizenship.[85] Agents found it difficult to get the Indians to keep their minds on their work. The Fort Berthold agent wrote in 1885 [86]:

"They seem to tire quickly and are constantly offering excuses to be absent from their work, either to look for a lost pony or to visit some sick relative, or some other frivolous excuse. It is on this account that they require constant attention, and it is only by a constant drive, which we have given them, that they have accomplished so much."

[77] Miscellaneous documents relating to Indian affairs (collected in Indian Office library), VII, 5555, 5556.
[78] Reports of the Commissioner of Indian Affairs (1878), 75.
[79] Ibid. (1878), ix.
[80] Address before the Fourth Annual Meeting of the Lake Mohonk Conference of Friends of the Indian in Miscellaneous documents relating to Indian affairs (collected in Indian Office library), XV, 11571.
[81] Congressional Record, Jan. 20, 1881, 781.
[82] H.Rep. No. 1576, May 28, 1880, 46th Cong., 2d sess., 8.
[83] Congressional Record, Jan. 20, 1881, 781.
[84] Miscellaneous documents relating to Indian affairs (collected in Indian Office library), VII, 5596.
[85] Reports of the Commissioner of Indian Affairs (1876), 96. The Kickapoo agent wrote in 1877 that several allottees on the reservation had applied to return to common holdings and that others had abandoned the idea of citizenship. Reports of the Commissioner of Indian Affairs (1877), 119.
[86] Ibid. (1885), 30.

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The Fort Peck agent in 1885 found his Indian farmers lacking in the proper patience and restraint. He wrote: [87]

"The most of them have a great desire to eat their corn and potatoes and other vegetables before they get ripe, and many of them go in the night time and get their own vegetables, and then say that some one else has taken them. To prevent this I have stationed the police as much as possible at the proper places to protect the crops."

The Indians of the Sisseton Agency in Dakota first took up their allotments of course with no real sense as to the use and value of land. The agent explained how in 1876 the Indians in making their choices selected tracts which seemed to promise the easiest supply of fuel, water, and shelter. So they huddled together in ravines and along the wooded shores of lakes. Many of their allotments did not contain the 50 acres of arable land which had to be under cultivation before an allottee could receive a patent. In 1884 the agent was trying to persuade them to move out onto the fertile prairie.[88] Such testimony as this suggests very vividly what easy prey the Indians were to the land sharks.

The Commissioner in 1886 was aware of the cultural and temperamental obstacles to the progress of Indian independent farming. He wrote: "A majority of the grown-up Indians on reservations, through want of early training and by reason of repugnance to any kind of manual labor, which their traditions and customs lead them to look upon as degrading, are very poor material out of which to make farmers." [89] He made the following important addendum: "It must be understood, also, that many of them are located on reservations where the soil is poor, or no regular rains fall, or the climate is so severe and the seasons so short that it would be a difficult matter for a first-class white farmer to make a living." [90] Thus it is no wonder that confronted with the requirement that they toil and in the sweat of their brow eat their bread the Indians should often feel a nostalgia for the old life and all its ways. An agent in 1879 noted that the Otoes and Missourias were trailing behind other tribes in agricultural progress. He wrote: "They seem unwilling to give up the hope that they may yet return to the free and unrestricted life of their forefathers, and fear the development of farms and improvements will prevent the realization of that hope." [91]

The ideology of that departed life had included no real concept of property in land. To almost all Indians the land was "Mother Earth" and attaching to her property concepts would indeed have seemed sacrilegious.[92]

Furthermore, in their basic pastoral and hunting economy there was no need or room for the civilized idea of landed property. There are Indian legends that reveal a remote agricultural past and when the white man first came to America he found the Indian growing maize and vegetables all through the temperate regions, from the Atlantic to the Rockies.[93] But with the exception of the Pueblos the Indians of modern times derived their livings primarily from herding and the chase. Gardening was a drudgery for the squaw and not a dignified work for a warrior and huntsman.[94]

Where agriculture had been developed, the idea of the less deified "soil" took form but theories of ownership never seem to have gone beyond a vague recognition of a right to an area, based on use and occupancy.[95] One can therefore imagine the difficulties which the supporters of allotment encountered in implanting in the Indian mind that proprietary sense which was fundamental in the white economy. The agent to the Poncas, Pawness, Otoes, and Oaklands, in Indian Territory, wrote in 1886: "As a whole, however, the Poncas recognize no especial claim to their allotments, holding only that the land is the tribe's, in common. This matter of allotments to them of their lands in severalty is quite a favorite and hackneyed theory, and may be an exceptionally good one, but the practical features connected with it are not unattended by difficulties of considerable moment." [96] The minority report of the House committee in 1880 expressed more definite convictions about the matter. It read: [97]

[87] Ibid. (1885), 133.
[88] Ibid. (1884), 49.
[89] Ibid. (1886), xx.
[90] Ibid. (1886), xxi.
[91] H.Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 5.
[92] Fletcher and La Flesche, 269, 362, 363; Handbook of American Indians North of Mexico, Bureau of American Ethnology. Bull. 30, in 2 pts. (Washington, 1907), pt. 1, 756.
[93] "Primitive Agriculture of the Indians." Excerpt from Handbook American Indians, Bureau American Ethnology, Bull. 30, (Office of Indian Affairs, Bull. No. 1, 1928, 1-5).
[94] Flora Warren Seymour, article on government Indian land policies in Journal of Land and Public Utility Economics, II (1926), 93, 94; also her Story of the Red Man (New York, 1929), 366.
[95] Idem.
[96] Reports of the Commissioner of Indian Affairs (1886), 135. See also ibid. (1887), 58.
[97] H.Rept. No. 1576, May 28, 1880, 46th Cong., 2d sess., 8, 9.

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"From the time of the discovery of America, and for centuries probably before that, the North American Indian has been a communist. Not in the offensive sense of modern communism, but in the sense of holding property in common. * * * The very idea of property in the soil was unknown to the Indian mind. * * * This communistic idea has grown into their very being, and is an integral part of the Indian character. From our point of view this is all wrong; but it is folly to think of uprooting it, * * * through the agency of a mere act of Congress, or by the establishment of a theoretical policy."

The authors of the report were avowedly concerned more with matters of practice than of theory, but however they might define "communism" it seems clear that the Indians had been perhaps more communal in their general living than they had been in property notions. The Yankton agent in Dakota in 1887 found the traditional Indian neighborliness very disturbing so far as agricultural progress was concerned. "They want to be together", he said.[98] He told of seeing eight Indian teams in a less than 8-acre lot cultivating—between convivial rounds of sitting and smoking. He noted that all eight teams accomplished less in a day than one white man could.[99] He had seen 40 neighbors gathered around a threshing machine on which not more than 10 men could work at a time. At the noon meal all were on hand and at the end of the day everyone expected a sack or two of meal for lending his "gracious presence to the occasion." Under this system the owner of the field reaped for himself but a small fraction of what he had sown.[1] The agent noted another annoying cultural survival. "The grass dance", he said was still going on. These were occasions for the debauching of young girls and furthermore for the giving away of valuable property, "which is utterly at variance with the civilizing influences of successful farming." These "festivities of their pagan life" would continue he thought until these Indians were settled on their allotments. And he concluded, "That cohesion, which is bred of idleness, of a common history, a common purpose, and a common interest, and unites the Indians in a common destiny, must be broken up before dancing will cease."[2]

In conclusion, it can be said that the allotment policy had not been generally successful before 1887. It is understandable that optimistic observers with faith in allotment as an ultimate solution of the Indian problem should have been cheered by any small gains that they saw. No one could have expected of course an immediate and wholesale success after so revolunionary a change. Furthermore, the friends of the Indian had espoused the theory in the first place without great deference to the facts of experience. Their hopeful visions always projected the Indian as he should become, to the exclusion of seeing what he had been. To deny this assertion is to imply that the friends of the Indian were weak or insincere in their support of allotment, that they had knowingly advanced the interests of those who would despoil him of his lands. For allotment had not worked well from the first. In 1879 the Commissioner had reported to Secretary Schurz that in cases where Indians had been granted patents—even restricted patents—"with very few exceptions" the allottees had "fallen victim to the cupidity of the whites" and been defrauded of their lands. Characteristically, however, he observed that allotment in itself had many times been successful as a civilizing agent.[3] The conflicting sentiments in these assertions reveal the whole psychology of the friends of the Indian. They looked at failures in the allotment system as they, and other philanthropists, looked at failures in the American competitive society—with genuine regret but with the unshaken conviction that individual enterprise was the God-given way of civilization. For the friends of the Indian, the act of 1887 was an act of faith.

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[98] Reports of the Commissioner of Indian Affairs (1887), 56.
[99] Idem.
[1] Ibid. (1887), 57.
[2] Ibid. (1887), 60. For an analysis of the Indian customs of making gifts and their place in Indian economy see Margaret Mead, The Changing Culture of an Indian tribe (New York, 1932), 41–46.
[3] H.Rept. No. 165, Mar. 3, 1879, Cong., 3d sess., 2.

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Part II. The Working Out of Allotment to 1900

THE APPROACH TO THE NEW POLICY

The passage of the Dawes Act was of course the occasion for rejoicing and high high expectations on the part of the friends of the Indian. In September 1887 the fifth Mohonk Conference resolved: "The passage of the Dawes bill closes the 'century of dishonor'" [1] President Cleveland in his annual message the following year said: "No measure of general effect has ever been entered on from which more may be fairly hoped, if it shall be discreetly administered." [2] There was no doubt in the minds of the proponents of the allotment system that they were on the road to the complete solution of the Indian problem. When Professor Painter at the Fifth Mohonk Conference suggested a complete reorganization of the Indian service by putting absolute control in the hands of a board of commissioners Senator Dawes went so far as to say that the general allotment law had obviated the need for tinkering with the organization of the service. He said: [3]

"It seems to me that this is a self-acting machine that we have set going, and if we only run it on the track it will work itself all out, and all these difficulties that have troubled my friend will pass away like snow in the spring time, and we will never know when they go; we will only know they are gone."

Indeed this "self-acting machine" would finally render obsolete all Government machinery whatever. Senator Dawes went on to express a prediction of which an echo has been heard in discussions of the present proposed policy: [4]

"Suppose these Indians become citizens of the United States with this 160 acres of land to their sole use, what becomes of the Indian reservations, what becomes of the Indian Bureau, what becomes of all this machinery, what becomes of the six commissioners appointed for life? Their occupation is gone; they have all vanished; the work for which they have been created * * * is all gone, while you are making them citizens * * * That is why I don't trouble myself at all about how to change it [the machinery of administration]."

Dr. Lyman Abbott said: "The Indian is no longer to be cared for by the executive department of the Government; he is coming under the general protection under which we all live, namely, the protection of the courts." [5]

But while Senator Dawes was sure that their new machine was traveling in the right direction he did not expect it to run itself. At this same Mohonk Conference he said: "Don't say we have made this law and it will execute itself. It won't execute itself." He went on to plead for educating the Indian to his new way of life. [6] In other words, the solution of the Indian problem was to involve the withdrawal of Government control accompanied by an active policy of helping the Indian to meet his new opportunities and the problems of his new freedom. Furthermore the supporters of allotment were pretty much alive to the importance of proceeding cautiously and slowly in the application of the policy. The opponents of the original Coke bill had assailed it as a doctrinaire measure which sought to apply an untried theory wholesale and indiscriminately to all Indians. [7] The minority report of the House Indian Affairs Committee said in 1880 that the Coke bill would erect "a Procrustean bed" which all Indians would be cut to fit. [8] But in 1887 those who had worked for the general allotment law were soberly considering the responsibilities which their victory had brought them.

Senator Dawes had said to the Mohonk Conference in 1885, "When you have set the Indian upon his feet, instead of telling him to 'Root, hog, or die,' you take him by the hand and show him how to earn his daily bread." [9] The Indian Rights Association said of the Dawes bill in 1886, "* * * we deem it necessary to call public attention to the fact that the mere enactment of such a law is only the enlargement of opportunity. It does not, in itself, change the condition of a single Indian." [10] In 1887 the Board of Indian Commissioners reported: [11]

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[1] Nineteenth Report of the Board of Indian Commissioners (1887), 111.
[2] Parker, op. cit., 420.
[3] Nineteenth Report of the Board of Indian Commissioners (1887), 54.
[4] Ibid. (1887), 55.
[5] Ibid. (1887), 53.
[6] Ibid. (1887), 89.
[7] Congressional Record, Jan. 20, 1881, 780, 784, 785; H. Rept. 1576, May 28, 1880, 46th Cong. 2d sess., 7.
[8] Idem.
[9] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, in Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office library), XIII, 1013b.
[10] Fourth Annual Report Indian Rights Association (1886), 9.
[11] Nineteenth Report of the Board of Indian Commissioners, 6, 7. See Fifth Annual Report Indian Rights Association (1887), 4.

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"The law is only the seed, whose germination and growth will be a slow process, and we must wait patiently for its mature fruit. There are difficulties and perplexing questions to be settled and conflicting interests to be adjusted. Some of these are found in the character and habits of the Indians, themselves, while many are ready and have been waiting long for this beneficent measure; some nonprogressive Indians are still opposed to it, and will throw obstacles in the way of its execution. They see their power and importance as tribal chiefs slipping away, and they have enough human nature to cling tenaciously to their prerogatives."

The Commissioner expressed similar sentiments in 1887 and concluded by noting that the President had wisely ordered that allotment be applied only where Indians were known to be favorable to it.[12] But, alas, as Senator Dawes pointed out, the pressure was too strong for even the President to proceed at a measured pace. Instead of applying allotment to but one reservation, he had applied it to half a dozen by the end of September.[13] By the end of the year 27 reservations had been selected to work out the new system.[14]

The friends of the Indian, then, realized in 1887 that their job had hardly more than begun. Senator Dawes told the Fifth Mohonk conference that it was responsible for the passage of the allotment law "and the Mohonk Conference," he said, "is responsible today for what shall take place in consequence of it."[15] There was considerable talk of the need for further laws to give the Indian special legal protection in his new state. Senator Dawes thought that the allotment act was all the legislation necessary and if the Government would but "act with" the new system, all would go well.[16]

Nevertheless, the conference finally resolved that further legislation was required to guard the Indian in his rights and "to prevent his new liberty and opportunity from becoming a curse instead of a blessing."[17] President Magill of Swarthmore believed that the religious organizations must bear the brunt of preparing the Indian for civilized life. As for Government he said, "All we can ask of it, at present, is not to be a hindrance, while it cannot become a help."[18] The Rev. Charles Shelton quoted President Cleveland as saying, "No matter what I may do; no matter what you may do; no matter what Congress may do; no matter what may be done for the education of the Indian, after all, the solution of the Indian question rests in the Gospel of Christ."[19] Yet Bishop Huntington of New York had already told the conference, "I have not known, these 18 or 20 years of my acquaintance on the reservation, of a single instance of a real devout Christian character. * * * Not a man or woman have I found who makes spiritual life uppermost and foremost, and who are tender and strong in their attachment to Christ."[20]

Almost all of the supporters of allotment agreed that the great need of the Indian was to be education—of some sort. Some of the more realistic of the Indian's friends saw the importance of immediate and practical farm training. Senator Dawes had said in 1885:[21]

"It is now supposed that you can take an Indian against his will—by the nape of his neck, if I may say so—tell him to be a farmer and then go off and leave him, but you can't make anything of him under that process. An Indian will not make much of a farmer unless he can be inspired with a desire to be one, and unless you show him how. It is a work of time. * * * "

At the 1887 Mohonk Conference Miss Fletcher and Professor Painter both showed themselves aware of the Indian's need for industrial education.[22] Indeed the general subject of education was the dominating theme at that conference. But to most of the speakers it seemed that education meant chiefly Christianizing, the teaching of English, and training in morals and citizenship. For instance, the anti-climax of Dr. Ellinwood's following remarks is striking:[23]

"Now, I take it that, having the Dawes bill as a law, the process of disintegration will go on by causes and influences with which we need not concern our-

[12] Report of the Commissioners of Indian Affairs (1887), vi, vii.
[13] Nineteenth Report of the Board of Indian Commissioners (1887), 88.
[14] Ibid. (1887), 7; Report of the Commissioner of Indian Affairs (1887), vii.
[15] Nineteenth Report of the Board of Indian Commissioners (1887), 86, 87.
[16] Ibid. (1887), 91, 101.
[17] Ibid. (1887), 111.
[18] Ibid. (1887), 84, 85.
[19] Ibid. (1887), 68.
[20] Ibid. (1887), 61.
[21] Proceedings of the Third Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, (1885) in Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office library), XIII, 10133.
[22] Nineteenth Report of the Board of Indian Commissioners (1887), 50–53, 56–58.
[23] Ibid. (1887), 67.

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selves.[!] I take it that the greed of the Anglo-Saxon and of the white man generally is so strong that these reservations will be disintegrated just as fast as it is possible to overcome all restrictions. * * *

"But, sir, the moral and religious aspect of this question is the one with which we are concerned here tonight."

Five of the eight resolutions adopted by the conference dealt with education, and especially religious education, the burden of which was to be carried by church organizations.[24]

The Commissioner was very much aware of the new role education was to play in the administration of Indian affairs. In his report for 1887 he said: "The progress made in school work during the year has been most gratifying, and the interest in education, both among Indians and their friends, has clearly received a new impetus from the passage of the law providing for lands in severalty and citizenship." [25] The Commissioner went further to state the aims of Indian education: [26]

"There is not an Indian pupil whose tuition and maintenance is paid by the United States Government who is permitted to study any other language than our own vernacular—the language of the greatest, most powerful, and enterprising nationalities beneath the sun. The English language as taught in America is good enough for all her people of all her races. * * *

"The adults are expected to assume the role of citizens, and of course the rising generation will be expected and required more nearly to fill the measure of citizenship, and the main purpose of educating them is to enable them to read, write, and speak the English language and to transact business with the English-speaking people. * * * True Americans all feel that the Constitution, laws, and institutions of the United States, in their adaptation to the wants and requirements of man, are superior to those of any other country; and they should understand that by the spread of the English language will these laws and institutions be more firmly established and widely disseminated."

In general it is fair to say that the friends of the Indian in their first enthusiasm for fitting him to live in the new system established by the Dawes Act laid emphasis first on his being a citizen and second on his being an agricultural worker. This, again, was part of the whole prevailing socio-political theory. American was the land of the free. The Government should guarantee civil equality and then every man would have his opportunity to forge his own way to success.

THE DEVELOPMENT OF AN EDUCATIONAL POLICY

It is worth while to give some time to a consideration of the policy of Indian education as it was worked out through this period. The whole allotment project was an educational project. Its success or failure depended upon the success or failure of its educational policy. Although this truth was never lost sight of by the genuine friends of the Indian, the great degree of failure which their allotment scheme encountered was caused chiefly by the fact that their educational system failed in two vital respects. In the first place, education could not keep up with allotment. As has appeared above, the pressure brought to bear on the Government by interested whites prevented the intelligent planning and leisurely pace which should have characterized the execution of the allotment program. In the second place, the educational ideas of the friends of the Indian, although expressive of the highest motives, were but slightly related to the essential needs of a primitive people confronted with civilization. The whole educational theory supporting allotment was premised by the belief that in all respects the Indian should be treated as a white man. Moreover, the fundamental ideas of American education—for white or Indian—which dominated this period of history are being quite generally questioned by the present generation. Tragically enough, the education of the Indian which was planned for his liberation not only failed to reach its aim but contributed to his further subjection. It was an education adapted to a dominant race—or class—to the strong, aggressive, and able.

The year 1888 was marked by a greatly increasing interest in Indian education on the part of philanthropic groups. The Board of Indian Commissioners urged the importance of the subject and the Mohonk Conference spent most of its 3 days in a consideration of it.[27] There was much talk about establishing one

[24] Ibid. (1887), 111, 112.
[25] Report of the Commissioner of Indian Affairs (1887), xiv.
[26] Ibid. (1887), xxi.
[27] Nineteenth Report of the Board of Indian Commissioners (1887), 7; Twentieth Report of the Board of Indian Commissioners (1888), 47–68, 80–102.

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unified system of Government education, instead of the hodge-podge of Government schools, mission schools and contract schools.[28] But the only proposal that the Commissioner made in his report that year was the admirable one of dividing the boarding school dormitories up into smaller units, where the girls would learn housekeeping and the boys, gardening.[29] However, the Commissioner struck the key-note of the official policy which was to be developed. He said:[30]

"The Indian child must be taught many things which come to the white child, because of environment, without the schoolmaster's aid. From the day of its birth the child of civilized parents is constantly in contact with civilized modes of life—of action, thought, speech, dress—and is surrounded by a thousand beneficent influences that never operate upon the child of savage parentage, who, in his birth hour, is encompassed by a degrading atmosphere of supersition and of barbarism. Out from the conditions of his birth he must be led in his early years into the environments of civilized domestic life. And he must be thus led by the school teacher."

The Mohonk Conferences during the ensuing years furnished a forum for the threshing out of educational theories. The extreme in individualism and laissez faire was represented in the ideas of Captain Pratt, who, interestingly enough, was superintendent of Carlisle. In 1884 he had expressed himself in favor of immediate and compulsory allotment because be believed that the Indian would make no progress until he got his land, squandered it, and had to buckle down to hard work.[31] From time to time he repeated this theory in one form or another. In 1891 he said to the conference, "I would blow the reservations to pieces. I would not give the Indian an acre of land. When he strikes bottom, he will get up. I never owned an acre of land, and I never expect to own one." [32]

But this was certainly an extreme view which few others seem to have shared. Yet is shaded off into the educational theory which placed emphasis upon "character" rather than upon industrial training. President Gates of Amherst College said to an 1892 conference of Indian sympathizers, over which he was presiding, "Such workers as Miss Fletcher and Captain Pratt come to us and say, 'make more of the manhood of the Indian and think less of his property.' * * * I think the fact that he and Miss Fletcher and others lay the emphasis on man's personality and the kind of training that comes through trying to walk alone, through tripping and falling, through learning how easily property may be lost, should be carefully considered." [33] Miss Fletcher regarded allotment as an educational enterprise itself. She told the conference in 1890, "But allotment itself is an education; it startles an Indian and makes him feel that it is time for him to stir himself. * * * I do not feel afraid of severalty." [34] General Armstrong, superintendent of Hampton, agreed with her. He said, "There is a philosophy in that severalty business that people do not understand or realize. We teach citizenship as we teach swimming. An ounce of experience is worth a pound of theory."[35]

It was a found theory of the friends of the Indian that education would come to him through allotment especially because of his coming in contact with white settlement. Speaking of the allotment law, President Cleveland said in his annual message in 1888, "Contract with the ways of industrious and successful farmers will, perhaps, add a healthy emulation which will both instruct and stimulate."[36] These sentiments were often expressed. Indeed, plans were again and again proposed for speeding up and multiplying these contacts. When the Rev. J. M. Buckley, D.D., editor of the Christian Advocate remarked, "It must, of course, take ages to transform the Indians into beings resembling us." [37] Captain Pratt said, "How long would it take to assimilate them if we went about it with all our forces? Not more than from 3 to 5 years. We have plenty of room. It would only make nine Indians to a county throughout the United States."[38]

In 1890 ex-Justice Strong of the United States Supreme Court said to the Board of Indian Commissioners' conference, "I would, if I had my way in the

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[28] Ibid. (1888), 47–68.
[29] Report of the Commissioner of Indian Affairs (1888), xix.
[30] Idem.
[31] Second Annual Address of Mohonk Conference (1884) in Miscellaneous Documents Relating to Indian Affairs (collected in Indian Office library). XIII, 10083.
[32] Twenty-third Report of the Board of Indian Commissioners (1891), 86.
[33] Ibid. (1891), 151.
[34] Twenty-first Report of the Board of Indian Commissioners (1889), 152.
[35] Idem.
[36] Parker, op. cit., 420.
[37] Twenty-first Report of the Board of Indian Commissioners (1889), 81.
[38] Ibid. (1889), 83, 84.

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matter, plant no allotment of an Indian family within 10 miles of another."[39] The more experienced humanitarian, Miss Fletcher, rose to attack this drastic proposal. She said, "We cannot take an Indian up by the scruff of his neck and put him where we please. He has his home, such as it is, and his associations, and they have to be respected. There is a great deal in the Indian's life and efforts that one must be careful not to destroy, for it will not do to destroy too much when trying to reconstruct a people."[40] She proceeded to say that it was her policy to group relatives as much as possible on allotments. General Eaton at the 1889 Mohonk Conference expressed for those times an exceptional point of view. He said:[41]

"Let me allude to another fact which should be brought out in this connection—the lack of attention on the part of all our Indian movements as to the Indian family. Now, I want to know, from those of you who have been most intimate with the Indian, in how many cases can you find the history of the family? In how many cases can you, when getting the land in severalty, state the relation of those who are to inherit that land from the first patent? I believe, among the persons who have been at work for some time in carrying on this work of location in severalty, only one—Miss Alice Fletcher—has comprehended this idea, and begun to make a record of the children, and the relation of the uncles, aunts, and cousins to the parties benefited. It seems to me that there needs to be an emphatic movement on the part of this Conference, seconding this proposition of universal education reaching the family of the Indian, that that fundamental agency appointed by the Almighty may be properly used in the great transformation which we seek."

A program of assimilation, called the "outing system", was developed at Carlisle. It was a scheme of sending Indian children out to live in white homes. Captain Pratt often sang the praises of this system. On one occasion he said that the system should be extended until every Indian child was in a white home, and, presto! the whole Indian problem would be solved.[42] Miss Fletcher thought that the outing system had contributed to the success of allotment. She said in 1890: "It is easier to convince the young men who have had attrition with the East."

"It is one of the advantages of the outing system that it shows the Indian what a civilized community means in the development of a country."[43] She found the returned student invaluable when it came to persuading the older Indians to accept allotments.[44]

The friends of the Indian, following the good pedagogical tradition, pinned their faith on the rising generation. In 1894 Professor Painter explained that the clause providing inalienability for 25 years had been put in the Dawes Act to assure the land's remaining in Indian hands "until the old men should have passed away, and the sons and daughters shall be educated to appreciate the value of it, and then dispose of it if they wish, but not sooner."[45] For the most part, then, the allotment proponents hoped that the mere ownership of the land would educate the adult Indian to its use, but in any event the training of the young would lay the foundations for the future realization of all the blessings of the allotment policy.

There were some, however, who felt the need for an active policy of adult Indian education, especially for practical agricultural training. Particularly did this feeling find expression when some of the first results of the allotment policy began to appear. President Gates said to the 1890 Mohonk Conference, "The only education we gave the Indian by our laws regarding land, was to give him a training in the process of being systematically robbed."[46] Two men who were skeptical about the exclusive concentration on the education of the young—who sensed the futility of trying to educate the youth to carry on a system which was disintegrating around them while they were being educated—were Senator Dawes and William H. Lyon, chairman of the purchasing committee of the Board of Indian Commissioners. In 1889 Mr. Lyon appealed to the Mohonk Conference in behalf of adult Indian education and the following year he said to the meeting, "The great importance of educating Indian children and the different methods

[39] Ibid. (1889), 145.
[40] Ibid. (1889), 149.
[41] Ibid. (1889), 76.
[42] Twenty-second Report of the Board of Indian Commissioners (1890), 169-172.
[43] Twenty-first Report of the Board of Indian Commissioners (1889), 149, 150.
[44] Ibid. (1889), 61.
[45] Remarks to Twelfth Annual Meeting of the Lake Mohonk Conference of Friends of the Indian, in Twenty-sixth Report of the Board of Indian Commissioners (1894), 120.
[46] Twenty-second Report of the Board of Indian Commissioners (1890), 64.

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suggested have been fully discussed; but very little has been said, except by Senator Dawes, about educating the adult Indians in a way by which they can become self supporting."

"I think education for the adult Indiana in agricultural pursuits is very important, and, in my judgment, it has been greatly neglected."[47] At an 1890 conference of the Board of Indian Commissioners Senator Dawes again expressed his fears that the allotment of lands was going forward too precipitately, before certain Indians were prepared for it. He quoted a Commissioner of Indian Affairs as saying that "he never supposed it was incumbent on him to see that every Indian was fitted to take care of himself."[48] Senator Dawes that same year challenged the Mohonk Conference.[49]

"What have you done to prepare these people for their new home and for their new state? Hardly anything any of you call to mind—anything that the Government, that the friend of the Indian, that anybody has done to prepare an allottee for life on his allotment. The only persons that I have met who fully comprehend the necessity of preparing a new home before the old one falls down are those women who, under the inspiration of Miss Fletcher and Mrs. Kinney, have accomplished so much in building houses for the Indian. What has been done outside of that has been little more than to set the wild Indian out on 160 acres of land and leave him there. What is he to do? He has no covering over his head, no horse, no plow, no hoe, no seed. He never held a plow in his life, and still you put him there and bid him farm. No; the one thing which presses upon my mind more than any other, and has been from the beginning, the one thing I have suffered criticism for in many places, not excepting my own home, is the necessity of preparing the allottee for the allotment. I sometimes think you had better abandon the allotment altogether and keep him where he is unless this is done."

In 1889 Gen. T. J. Morgan was made Commissioner of Indian Affairs to the great joy of the friends of the Indian. He received the enthusiastic endorsement and continued support of the Mohonk Conference and of religious organizations.[50] The cattlemen and "boomers" of Indian Territory were said to regard the new Commissioner as an "eastern crank",[51] and the Senate withheld approval of his appointment until he had promised to be cautious in his educational reforms.[52] Commissioner Morgan had a special interest in education. In 1891 he wrote in his report, "When I assumed charge of this office I held the opinion that the solution of the Indian problem lay chiefly in the line of education, and that consequently one of the most important functions of the Commissioner of Indian Affairs was the perfecting of the scheme for bringing all Indian youth of suitable age under proper instruction.

"Accordingly I have given to this subject my most earnest attention during the more than 2 years of my administration." [53] The Commissioner's interest was not primarily in adult vocational training but in educating the Indian youth along American lines—in citizenship and "culture." In December 1889 he presented to the Secretary of the Interior a special report on education. Since his ideas were generally approved by the friends of the Indian and since therefore his ideas reflect the point of view directing the working out of the allotment policy it seems worth while to quote several excerpts from this report. The following items are culled from his statement of aims and purposes:[54]

"When we speak of the education of the Indians, we mean that comprehensive system of training and instruction which will convert them into American citizens, put within their reach the blessings which the rest of us enjoy, and enable them to compete successfully with the white man on his own ground and with his own methods. Education is to be the medium through which the rising generation of Indians are to be brought into fraternal and harmonious relationship with their white fellow-citizens, and with them enjoy the sweets of refined homes, the delight of social intercourse, the emoluments of commerce and trade, the advantages of travel, together with the pleasures that come from literature, science, and philosophy, and the solace and stimulus afforded by a true religion. * * *

[47] Twenty-second Report of the Board of Indian Commissioners (1890), 114; see also his remarks to the Mohonk Conferences of 1889 and 1891, Twenty-first Report of the Board of Indian Commissioners (1889), 110, Twenty-third Report of the Board of Indian Commissioners (1891), 87.

[48] Twenty-first Report of the Board of Indian Commissioners (1889), 148.

[49] Twenty-second Report of the Board of Indian Commissioners (1890), 108, 109. See also his remarks to the 1892 Board of Indian Commissioners' conference, Twenty-third Report of the Board of Indian Commissioners (1891), 150, 151.

[50] See Twenty-first Report of the Board of Indian Commissioners (1889), 118–120; Report of the Commissioner of Indian Affairs (1892), 138.

[51] Twenty-first Report of the Board of Indian Commissioners (1889), 90, 91.

[52] Remarks of Senator Dawes to 1890 Mohonk Conference, Twenty-second Report of the Board of Indian Commissioner (1890), 107.

[53] Report of the Commissioner of Indian Affairs (1891), 53.

[54] Ibid. (1889), 94, 96.

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"The Indian youth should be instructed in their rights, privileges, and duties as American citizens; should be taught to love the American flag; should be imbued with a genuine patriotism, and made to feel that the United States, and not some paltry reservation, is their home. * * *

"They should be educated, not as Indians, but as Americans. * * *

"Education should seek the disintegration of the tribes, and not their segregation. * * *

"Co-education of the sexes is the surest and perhaps only way in which the Indian women can be lifted out of that position of servility and degradation which most of them now occupy, on to a plane where their husbands and the men generally will treat them with the same gallantry and respect which is accorded to their more favored white sisters."

As to policies and methods of education Commissioner Morgan advocated nothing radically new. He gave expression to what were generally prevailing theories about the Indians. But he did give impetus to the extension of the Indian educational system. His ideal was to establish a standardized school system in which attendance would be universal and compulsory and which in other respects as well would be a replica of the American public-school system. He wrote, "So far as possible there should be a uniform course of study, similar methods of instruction, the same textbooks, and a carefully orgainzed and well-understood system of industrial training. * * * The system should be conformed, so far as practicable, to the common-school system now universally adopted in all the States." [55] All Indians looked alike to him. First and foremost, they were alike in this one important respect: they were all in need of being made over into the image of the white American. And Commissioner Morgan was hopeful. He said, "It has no longer doubtful that, under a wise system of education, carefully administered, the condition of this whole people can be radically improved in a single generation." [56]

In his recommendations concerning the various grades of Indian schools, Commissioner Morgan carried his theories to their logical conclusions. He did not neglect the importance of vocational training. He said that the high schools should teach the domestic arts, agriculture, and machinery for "Without machinery the Indians will be hopeless and helpless in the industrial competition of modern life." [57] The grammar schools should acquaint the girls with household duties and the boys with farming and the trades. The report wnt on to say, "Labor should cease to be repulsive, and come to be regarded as honorable and attractive. The homely virture of economy should be emphasized. Pupils should be taught to make the most of everything, and to save whatever can be of use. Waste is wicked." [58] The Commissioner's recommendations and the tone of his remarks indicate that vocational training, as the rest of education, was to be a matter of teaching the Indian the white man's way—of teaching him to take his place in the economy of civilization. There is no mention of Indian arts and crafts.

But in harmony with the prevailing outlook of the friends of the Indian and with American educational theories in general, the Commissioner was really concerned with moral, civic, and "cultural" education.

He wrote, "While, for the present, special stress should be laid upon that kind of industrial training which will fit the Indians to earn an honest living in the various occupations which may be open to them, ample provisions should also be made for that general literary culture which the experience of the white race has shown to be the very essence of education." [59]

With reference to Indian high schools he said, "The chief thing in all education is the development of character, the formation of manhood and womanhood. To this end the whole course of training should be fairly saturated with moral ideas, fear of God, and respect for the rights of others; love of truth and fidelity to duty; personal purity, philanthropy, and patriotism." [60]

He said further,[61] "The Indian needs, especially, that liberalizing influence of the high school which breaks the shackles of his tribal provincialism, brings him into sympathetic relationship with all that is good in society and in history, and awakens aspirations after a full participation in the best fruits of modern civilization.

[55] Ibid. (1889), 95.
[56] Ibid. (1889), 94.
[57] Ibid. (1889), 98.
[58] Ibid. (1889), 101.
[59] Ibid. (1889), 95.
[60] Ibid. (1889), 98.
[61] Idem.

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The high school should lift the Indian students onto so high a plane of thought and aspiration as to render the life of the camp intolerable to them. If they return to the reservations it should be to carve out for themselves a home and to lead their friends and neighbors to a better mode of living. Their training should be so thorough and their characters so formed that they will not be dragged down by the heathenish life of the camp."

Americanization in the Indian grammar school was to be pushed to what seem today to be grotesque extremes. A few excerpts from the Commissioner's report will suffice.[62]

"Schoolrooms should be supplied with pictures of civilized life, so that all their associations will be agreeable and attractive. The games and sports should be such as white children engage in, and the pupils should be rendered familiar with the songs and music that make our home life so dear. It is during this period particularly that it will be possible to inculcate in the minds of the pupils of both sexes that mutual respect that lies at the base of a happy home life, and of social purity. Much can be done to fix the current of their thoughts in right channels by having them memorize choice maxims and literary gems, in which inspiring thoughts and noble sentiments are embodied.

"It is of prime importance that a fervent patriotism should be awakened in their minds. The Stars and Stripes should be a familiar object in every Indian school, national hymns should be sung, and patriotic selections be read and recited. * * * They should be made familiar with the lives of great and good men and women in American history, and be taught to feel a pride in all their great achievements. They should hear little or nothing of the 'wrongs of the Indians', and of the injustice of the white race. If their unhappy history is alluded to it should be to contrast it with the better future that is within their grasp. * * *

"Everything should be done to arouse the feeling that they are Americans having common rights and privileges with their fellows. It is more profitable to instruct them as to their duties and obligations, than as to their wrongs. * * *

"No pains should be spared to teach them that their future must depend chiefly upon their own exertions, character, and endeavors. * * * Society will recognize in them whatever is good and true, and they have no right to ask for more. If they persist in remaining savages the world will treat them as such, and justly so. * * *

"The school itself should be an illustration of the superiority of the Christian civilization."

The friends of the Indian interested themselves after 1889 particularly in the extension of the Indian-school system. In its report of January 31, 1889, the Board of Indian Commissioners urged compulsory education for all reservation Indians.[63] In October the Commissioner of Indian Affairs read to the Mohonk Conference the special report which he subsequently submitted to the Secretary. of the Interior.[64] The report was enthusiastically received and the following year the Commissioner was able to set down a long list of important educational leaders and organizations that had approved his program.[65]

In 1892 Congress passed a law (27 Stat. L. 143) permitting the Commissioner to enforce rules and regulations of attendance at Indian schools and the following year provided (27 Stat. L. 628, 635) that the Secretary of the Interior might withhold rations or other annuities from Indian families that failed to send children to school.[66] These measures had the warm endorsement of the Mohonk Conference.[67] In 1889 the Commissioner wrote concerning the cost of Indian education, "The Government of the United States, now one of the richest on the face of the earth, with an overflowing Treasury, has at its command unlimited means, and can undertake and complete this work without feeling it to be in any degree a burden."[68] It was a worthy appeal to the famous "Billion Dollar Congress" and the following year the legislators responded by raising the appropriation for

[62] Ibid. (1889), 101, 102.
[63] Twentieth Report of the Board of Indian Commissioners (1888), 4, 5. A missionary told the 1889 Mohonk Conference that on his travels through the reservations he had met nearly all the Indian agents and they unanimously favored compulsory education. Twenty-first Report of the Board of Indian Commissioners (1889), 79.
[64] Ibid. (1889), 62-73.
[65] Report of Commissioner of Indian Affairs (1890), viii. These persons and organizations were: The United States Commissioner of Education, the ex-Commissioner, the National Education Association, the American Institute of Instruction, the New York State Teachers' Association, and the various organizations of the Friends of the Indian.
[66] See Schmeckebier, 223.
[67] Twenty-third Report of the Board of Indian Commissioners (1891), 115; Twenty-fifth Report of the Board of Indian Commissioners (1893), 99, 100.
[68] Report of the Commissioner of Indian Affairs (1889).

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Indian education 35 percent and thereafter, except for the lean years following the panic, gradually increased the sum until the Government was spending $3,000,000 for the purpose at the beginning of the twentieth century.[69]

But there was no such expenditure of money and effort in the vocational training of adult Indians—in spite of Senator Dawes and Mr. Lyon. During a discussion of the legal status of the Indian and the future heirship problem, Senator Dawes said to the 1890 conference of the Board of Indian Commissioners, "I would concentrate the thought of the philanthropic and energetic friends of the Indian upon the single idea, How fast and by what means can you fit individual Indians for the opportunity which the law holds open to them to become self-supporting citizens of the United States? I would let the other questions go."[70] That year he told the Mohonk Conference that the proceeds from the sale of surplus Indian lands should be used to buy agricultural supplies and to pay additional farming instructors, instead of being distributed among the members of the tribes.[71] In 1891 Commissioner Morgan emphasized the importance of preparing the Indian for his allotment and said, "Land in severalty without education may prove a bane rather than a blessing."[72]

But what he seems really to have meant by education was that sort of training in morals, citizenship, and the arts which is sketched above. In 1889 the Commissioner noted with satisfaction that Congress had appropriated money for additional farmers to instruct the Indians and that year he sent out a letter of inquiry to each agent, asking about the work of his farmers.[73] But the Commissioner put forward no comprehensive plan for agricultural education among the Indians, nor did anyone else. The only attempt which the Government made along these lines was from time to time to make appropriations for "additional farmers" on the reservations. The white "farmer" and the "stockman" had been long since established as regular agency and school employees.[74] In 1884 Congress appropriated $25,000 for the pay of "practical farmers" in addition to the regular agency farmers at a salary not exceeding $75 a month to "superintend and direct farming among such Indians as are making effort for self-support" (23 Stat.L. 92). Two years later this amount was raised to $40,000 (24 Stat.L. 43). It was further raised in 1888 to $50,000 (25 Stat.L. 233), in 1890 to $60,000 (26 Stat.L. 355), and in 1891 to $70,000 (26 Stat.L. 1008). In 1896 the appropriation was cut to $65,000 but the maximum salary was also reduced to $65 a month (29 Stat.L. 324). Congress provided this amount annually thereafter into the twentieth century.

It is apparent that the appropriation for the agricultural instructors, whether it was $65,000 or $70,000, was pitifully inadequate for an effective carrying out of vocational training. In 1890 the Rosebud agent reported that he had two additional farmers but needed six to do the work properly.[75] He wrote that such an increase in his staff would bring to each family the visit of a farmer once a week instead of once every 2 or 3 weeks. Other agents made similar requests.[76]

Mr. Lyon said to the 1891 Mohonk Conference, "There are good teachers for the schools, but very few to teach farming. The Indian needs to be taught how to use a plow and a shovel and an ax. He can not get a living off the land without this instruction. The only solution of that difficulty is to get farmers for instructors." [77]

In 1897 the Board of Indian Commissioners urged Congress to provide for increasing the number of farmers to teach the 60,000 Indians that had been allotted land,[78] but their plea produced no effect. There were 241 employees in the Indian Service listed as "farmers", in 1887, 272 in 1897, and 320 in 1900.[79] In other words, at the opening of the century there were 320 farming instructors to minister to the wants of 185,790 Indians, exclusive of the 84,754 members of the Five Civilized Tribes to whom the Government was not yet furnishing this service.[80] And it had been the official theory that most of these Indians were to become agriculturists. In 1900 there were 343,351 acres of land actually cultivated by Indians.[81] The consequences of this lack of proper instruction are

[69] Ibid. (1901), 44.
[70] Twenty-first Report of the Board of Indian Commissioners (1889), 148.
[71] Twenty-second Report of the Board of Indian Commissioners (1890), 109.
[72] Report of the Commissioner of Indian Affairs (1891), 40.
[73] Report of the Commissioner of Indian Affairs (1889), 11, 12.
[74] Schmeckebier, 248.
[75] Report of the Commissioner of Indian Affairs (1890), 58.
[76] Ibid. (1890), 106, 142.
[77] Twenty-third Report of the Board of Indian Commissioners (1891), 87.
[78] Twenty-ninth Report of the Board of Indian Commissioners (1897), 11.
[79] Statistics compiled by Miss Gwen Williams in Employees Section of the Indian Office.
[80] Report of the Commissioner of Indian Affairs (1900), 656.
[81] Ibid. (1900), 677.

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suggested in the comments of the Rosebud agent in 1890. He wrote, "Unless Indians are so located that the farmer can be among them all the time but little can or will be accomplished as during his absence, which may be for 2 or 3 weeks. An Indian breaking an implement becomes discouraged and awairs his return."[82]

Nor was it true that the farmers made up in quality for what they lacked in quantity. Through this period the system of political appointments produced a crop of farmers who were concerned more with politics than with agriculture.[83] In 1890 the Commissioner recognized that the farmers were not all that they might have been and he thought that they might have accomplished more if they had been selected with more care and had been given better facilities and supervision.[84] Miss Fletcher remarked in 1892 that the farmers' work "would stand improvement."[85] Agents referred in their reports very seldom to the quality of the farmers' service.

But there were occasional complaints. In 1895 the Tulalip agent spoke of the "incompetency and carelessness" of his farmers and the superintendent of the Seneca boarding school in Indian Territory claimed that the position of farmer at the school had invariably been occupied by men whose capacities were no greater than those of a "tinker or chore boy."[86] In 1914 the Commissioner felt it necessary to send a circular letter to reservation superintendents informing them that farmers were to be employed in practical instruction in agriculture and not in clerical positions. The Commissioner remarked, "It is almost discouraging to contemplate that after years of employment of men who have been especially charged with the work of advancing the farming interests of the Indians not more has been accomplished."[87]

In conclusion, it may truly be said that whatever the intrinsic merits or flaws of the allotment system the Government failed utterly at the crucial point of the program's administration. The Government and the friends of the Indian realizing generally the need for education in the allotment program failed to provide the Indian with that basic vocational training by means of which, only, could he have become a self-supporting farmer. The proponents of allotment thought that if they could catch the Indian young enough, train him in a school in white culture and American citizenship, he would as a matter of course turn out an independent, ambitious farmer. As for the old people, the mere possession of land could be trusted to work the miracle of turning a nomad into a husbandman.[88] Of course the result was generally failure. While the young were being educated, their parents' farms disintegrated. The graduates left the schools with educations that had shattered their traditions and substituted little that was real, and they returned home in quest of the "main chance" to find a demoralized community. These young Indians were faced with a dilemma which was more hopeless than that confronting the American youth, who so often returns with an education to a society which does not really value that education. It was not with an old entrenched order that the Indian youth had to contend. It was with social disintegration. It is not to be wondered that most of the young Indians succumbed.

There are two main reasons for the Government's short-sightedness in its Indian educational policies. In the first place, those who had been most articulate in the shaping of the Indian program—the idealists—were dominated by a point of view which had limitations that few of them could surpass. Their well-meaning tenet of individualism, which within the white society itself was not fostering the greatest good for the greatest number, was certainly not the solution of the Indian problem. But these people believed that if the Indian could be made to acquire all that American culture which was founded in individualism and competition, his salvation would be assured. In the second place, there had been powerful forces at work to destroy the reservation. Land-seeking settlers and wealthy business enterprises probably favored the allotment system as a means of freeing Indian lands. They were not primarily concerned with promoting Indian welfare. Once allotment was established, they would not be expected to spend much thought and time, and certainly not much money, in the improvement of the Indian so that he might be better equipped to stand up against them in business competition. They would agree with Commissioner

[82] Ibid. (1890), 59. See also p. 142.
[83] Schmeckebier, 248.
[84] Report of the Commissioner of Indian Affairs (1890), cxli.
[85] Twenty-third Report of the Board of Indian Commissioners (1891), 150.
[86] Report of the Commissioner of Indian Affairs (1895), 151.
[87] Quoted in Schmeckebier, 248, 250.
[88] The Meriam report, in discussing Indian agriculture, stressed this point especially. See Lewis Meriam et al., The Problem of Indian Administration (Baltimore, 1928), 7, 460.

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Morgan that the right kind of education for the Indian was the implanting of Americanism. There were a few realists among the friends of the Indian but for the most part he had no one to show him how he might really, in the end, come into his birthright.

THE APPLICATION OF ALLOTMENT

The application of allotment to the reservations was above all characterized by extreme haste.

In September 1887—7 months after the passage of the Dawes Act—the author of the measure told the Lake Mohonk Conference how President Cleveland had remarked when signing the bill that he intended to apply it to one reservation at first, and then gradually to others. Senator Dawes went on to say:[89]

"But you see he has been led to apply it to half a dozen. The bill provides for capitalizing the remainider of the land for the benefit of the Indian, but the greed of the landgrabber is such as to press the application of this bill to the utmost * * * There is no danger but this will come most rapidly, too rapidly, I think; the greed and hunger and thirst of the white man for the Indian's land is almost equal to his 'hunger and thirst for righteousness.'"

There were various reasons for this haste. For one thing, it is clear from Senator Dawes' remarks that the pressure of the western land-seekers and business promoters was steady and powerful, forcing the Government to a faster pace in the business of opening up Indian lands. Nor did the Government seem to move reluctantly; nor were restraining hands stretched out. In the first place, there was the feverish hurry which a political administration feels when it has a program to carry out. Senator Dawes said to the 1890 Mohonk Conference:[90]

"Within the last 6 years there have been four different Commissioners of Indian Affairs, each one having his own policy and his own convictions of the best methods of administering those affairs, and bound to carry out those convictions. I knew one administration that in 4 years changed the policy of the Indian Bureau three times. The administration is therefore bound to adopt that policy which it can complete within 4 years, if possible, or at least so far advance in that as to secure its completion, and not trust to the chances of the future or to the policy that successors may take up and carry out."

In the second place, it must be remembered that most of the leaders in the allotment movement fundamentally believed that legislation had solved their problem. The general allotment law meant that the Indian was assured an opportunity to make his way in the world which was all that an American asked. What reason would there be for delay in starting the Indian on the free high road to wealth and civilization? This prevailing faith in the almost automatic efficacy of allotment made it possible for the Government to yield in this instance to irresistible pressures with a clear conscience. The same economic and social forces which Carl Schurz had shown in 1881 to be pushing the Government into adopting the allotment policy[91] were now hastening its application. Very suggestive are the comments of Commissioner Morgan in his report of 1891. The Commissioner, who was known as a reformer and an "eastern crank", wrote concerning the need for reducing the reservations:[92]

"Whatever right and title the Indians have in them [their lands] is subject to and must yield to the demands of civilization. They should be protected in the permanent possession of all this land necessary for their own support, and whatever is taken from them should be paid for at its full market value. But it cannot be expected under any circumstances that these reservations can remain intact, hindering the progress of civilization, requiring an army to protect them from the encroachments of home seekers, and maintaining a perpetual abode of savagery and animalism. The Indians themselves are not slow to appreciate the force of the logic of events, and are becoming more and more ready to listen to proposition for the reduction of the reservations and the extinguishment of their title to such portions of the land as are not required for their own use."

The point of view expressed in this statement would hardly encourage caution and delay in administering allotment. Indeed, for the general purposes of civilizing the Indian and of giving the white man land, the general allotment law was too slow.

In 1890 the Commissioner reported, "In numerous instances, where clearly desirable, Congress has by special legislation authorized negotiations with the

[89] Nineteenth Report of the Board of Indian Commissioners (1887), 83.
[90] Twenty-second Report of the Board of Indian Commissioners (1890), 107
[91] See above, p. 14.
[92] Report of the Commissioner of Indian Affairs (1891), 46.

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Indians for portions of their reservations without waiting for the slower process of the general allotment law." [93] In 1888 Congress had ratified five agreements with different Indian tribes providing for allotment and for the sale of surplus lands.[94] The following year Congress passed eight such laws.[95] A member of the Board of Indian Commissioners in 1891 estimated that the 104,314,349 acres of Indian reservations in 1889 had been reduced by 12,000,000 acres in 1890 and by 8,000,000 acres in the first 9 months of 1891.[96] This rapid reduction of the reservations met with the approval of the friends of the Indian. In 1889 General Whittlesey, secretary of the Board of Indian Commissioners, informed the Mohonk Conference of the agreements which Congress had ratified and were about to act upon and which would release for sale millions of acres of Indian lands. He seemed generally pleased with this progress and apparently regretted that the Cherokees had not come to their senses and agreed to the sale of some 6,000,000 acres in the Cherokee Strip. He said, "There is a strong opposition on the part of the Cherokees; and that opposition will not be overcome for a year or two." [97] In official eyes this whole policy was completely justified. Commissioner Morgan wrote in 1890:[98]

"This might seem like a somewhat rapid reduction of the landed estate of the Indians, but when it is considered that for the most part the land relinquished was not being used for any purpose whatever, that scarcely any of it was in cultivation, that the Indians did not need it and would not be likely to need it at any future time, and that they were, as is believed, reasonably well paid for it, the matter assumes quite a different aspect. The sooner the tribal relations are broken up and the reservation system done away with the better it will be for all concerned. If there were no other reason for this change, the fact that individual ownership of property is the universal custom among the civilized people of this country would be a sufficient reason for urging the handful of Indians to adopt it."

The economics of these land transactions especially appealed to the Commissioner. His estimate of the area of reservations in 1889 was 116,000,000 acres. On these lands lived 250,483 Indians. He figured that 30,000,000 acres would give each Indian a 160-acre lot. Excluding the lands of the Five Civilized Tribes, the Government could sell the remaining Indian lands at $1 an acre and realize $66,000,000. The interest on this sum alone, at 5 percent, would pay the entire cost of Indian education, and the principal could be gradually applied to help the Indian develop his allotment.[99]

In the meantime, the work of applying allotment was pushed rapidly forward. In 1888 the Commissioner complained that allotment was being slowed up for want of sufficient appropriations,[1] but he had nothing really to worry about. His successor, Commissioner Morgan, was not one to allow allotment to drag. In 1888 the Commissioner had reported that 3,349 allotments had been approved since the passage of the Dawes Act.[2] There were 1,958 allotments approved in 1890, 2,830 in 1891, 8,704 in 1892; and in this last year Commissioner Morgan reported that since February 1887 the Indian Office had given its approval to 21,274 allotments.[3] In this same year, 1892, he told the Mohonk Conference that the allotments which were about to be made would bring the grand total of all the allotments which the Government had made to over 80,000. He concluded it was time to slow down.[4] His successors seem to have acted upon his advice until the opening of the new century, as the following figures show: [5]

Allotments approved 1893–1900

Year:	Number	Year:	Number
1893	4, 561	1897	3, 229
1894	3, 061	1898	2, 015
1895	4, 851	1899	1, 011
1896	4, 414	1900	8, 752

[93] Ibid. (1890), xxxviii.
[94] Ibid. (1888), 294, 302, 320, 322, 335–336, 340–344
[95] Ibid. (1889), 421, 432, 438, 440, 447, 449, 460, 463, 464.
[96] Twenty-third Report of the Board of Indian Commissioners (1891), 51.
[97] Twenty-first Report of the Board of Indian Commissioners (1889), 57.
[98] Report of the Commissioner of Indian Affairs (1890), xxxix.
[99] Ibid. (1890), xxxvii, xl.
[1] Ibid. (1888), xxxviii.
[2] Table in Report of the Commissioner of Indian Affairs (1916), 94.
[3] Ibid. (1892), 184.
[4] Twenty-fourth Report of the Board of Indian Commissioners (1892), 37.
[5] Report of the Commissioner of Indian Affairs (1893), 23 (1894), 20 (1895), 19 (1896), 25 (1897), 21 (1898), 40 (1899), 43 (1900), 53, 54.

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In the years prior to 1887 the Government had approved 7,463 allotments with a total acreage of 584,423; from 1887 through 1900 it approved a total of 53,168 with an acreage of nearly 5,000,000.[6] Commissioner Morgan's boast of 80,000 allotments had not materialized yet it seems as if allotment had gone ahead fast enough. Certainly Indian lans were disappearing fast enough. In 1891 and 1892 the Commissioner's reports contained interesting samples of what allotment meant in terms of reducing the total amount of Indian lands. The following tables of acreage show the disposition of land on reservations as a result of special agreements: [7]

	1891			1892	
	Pottawatomie	Iowa	Sac and Fox	Cheyenne and Arapahoe	Sisseton and Wahpeton
Allotted	286,494	8,658	87,683	529,682	310,711
Open for settlement	266,241	207,174	365,990	3,500,562	673,872
Reserved for school funds	22,650	12,271	25,194	231,828	32,840
Reserved for other tribal purposes	490	20	800	32,343	1,347

These figures suggest the rate at which Indian lands were being transferred to white ownership. Of the 155,632,312 acres of Indian lands in 1881, there were 104,314,349 acres left in 1890 and 77,865,373, in 1900.[8] Of course with the speeding up of allotment tribal lands were dwindling at an even faster pace. In 1900 5,409,530 of the total 77,865,373 acres of Indian lands were lands allotted in severalty. So satisfactory was the speed of allotment to Board of Indian Commissioners that in 1891 it was contemplating a very early disappearance of Government supervision over the Indian. The Board's report stated in that year: [9]

"Another suggestion we venture to offer in connection with land in severalty, and that is the gradual closing up of Indian agencies. When patents have been issued and homesteads secured, when Indians are declared and acknowledged citizens, and are actually self-supporting, the supervision of the Government and the arbitrary rule of the agent may be safely withdrawn. * * * We make this suggestion, not as immediately practicable on a large scale, but as a working hypothesis, an ideal to be reached in the not distant future. In some cases it may be practicable very soon."

This faith that the allotment system would mean an early decline of Government supervision and placing the Indian on his own responsibility continued to be expressed by the friends of the Indian through the 1890's. But the hope was not realized. In 1900 there were in existence 61 agencies—3 more than in 1890.[10] But while the maintenance of the agency system was in large measure dependent upon the needs of the service, it was apparently even more dependent on the needs of the agents. The Indian Rights Association reported in 1900 that Commissioner Jones had recommended to Congress the discontinuing of 15 agencies but that the agents had been able to bring such pressure through their friends at the Capitol that Congress had agreed to the eliminating of only one.[11]

As regards the acceptance by the Indians of the universal allotment program anyone who scans the reports of the agents is struck by the enthusiastic approval which they record. Beginning with 1887, the year of the Dawes Act, and running through the 1890's, agents again and again write that the Indians are delighted with the prospect of getting allotment and impatient for the work to begin.[12] The board of Indian Commissioners reported hopefully in 1890: [13]

"All Indians are not ready to take allotments or sufficiently advanced to make good use of homesteads if granted to them. But we believe that a majority

[6] Ibid. (1916), 93, 94.
[7] Ibid. (1891), 44 (1892), 81.
[8] Statistics compiled by the Land Division of the Indian Office.
[9] Twenty-second Report of the Board of Indian Commissioners (1890), 9.
[10] Report of the Commissioner of Indian Affairs (1890), 512–514; Ibid. (1900), 743–745.
[11] Eighteenth Annual Report Indian Rights Association (1900), 57. This report lists the agencies as 58 in 1900 but Report of the Commissioner of Indian Affairs (1900) lists 61. See pp. 743–745.
[12] See Report of the Commissioner of Indian Affairs (1887), 92, 93, 121–123, 125, 185, 228; Ibid. (1888), 25, 34, 50, 56, 70, 87, 109, 111, 151, 183, 204, 208, 211, 212, 238, 243; Ibid. (1889), 172, 182, 197, 199, 217, 223, 251, 273, 297; Twenty-first Report of the Board of Indian Commissioners (1889), 152; Twenty-third Report of the Board of Indian Commissioners (1891), 13, 14; Report of the Commissioner of Indian Affairs (1892), 296, 350, 403, 419, 517.
[13] Twenty-first Report of the Board of Indian Commissioners (1889), 9.

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now desire to enjoy the benefits of the act, and others will, within a few years, be prepared for its application, when they see its stimulating effect upon profitable industry and its influence in promoting better habits of life."

There is no doubt that the idea of allotment was making headway with the Indians, but there is considerable doubt that its progress was the result of a spontaneous and wide-spread interest of the Indians in becoming hard-working American farmers. For one thing, there are indications that the ambitious agents were turning on the pressure. Agents quite naturally comment to that effect. For instance the Klamath agent wrote in 1888 that 800 Indians had signed up for allotments when the advantages of the system were "pointed out to them." [14] In that same year the Yankton agent wrote about a determined opposition to allotment which was led by the old chiefs and which was successfully overcome by two companies of soldiers from Fort Randall.

The agent concluded by remarking that when the survey was finished there was not one Indian on the reservation who did not want his allotment.[15] The Quapaw agent in 1887 reported, "We have talked 'allotment' on all suitable occasions, and, as a rule, the Indians are gradually coming to see that it will benefit both themselves and their children."[16]

This persuasion in its milder forms seems a natural procedure nor would it be disquieting to an impartial critic if he believed it had a real educational value; if he believed it was a method of making the Indians want to be and know how to be, industrious farmers. But there is evidence which suggests that the high-pressure campaigns which were carried on by officials were aimed primarily at achieving "results." The Devils Lake agent wrote in 1891:[17]

"Brought up from time immemorial to regard any kind of labor with aversion, as the Sioux Indians on this reservation have been, it will necessarily require years of training to make them successful agriculturists, or even to eke out a living from the soil; but while this is so they can in the interval not only sustain life, but acquire property by engaging in grazing. Soon after my arrival I met Judge Joseph R. Gray, special allotting agent for this reservation, who has succeeded in allotting nearly 63,000 acres of land without so much as a murmur from the allottee."

And apparently the high-pressure campaigns were achieving results. The Osage agent wrote in 1892:[18]

"For the past two years a persistent effort has been made to induce them to locate a claim for each member of the tribe, establish the corners and issue to the claimant a certificate for the same. While the full bloods more especially have never consented that this should be done, yet the agitation has caused a general rush for the claims, until it is difficult to find one that has not been located."

Where the Indians were not merely stampeded but more independently and purposefully desired allotment, their motives were varied. There were probably many who saw individual landed property as an opportunity to become independent, prosperous farmers. But allotment, the white man's system, also appealed to many as a means of acquiring social prestige. The secretary of the Board of Indian Commissioners said to the Mohonk Conference in 1890, "The Indians are very proud of the papers they have already received from the Government. * * * They regard themselves as owners of lands and as on an equality with their white neighbors. They feel they have taken a place they never occupied before." [19] And at that same conference Senator Dawes revealed an Indian motive for seeking allotment which was fraught with dire forebodings for the future. He said: [20]

"The Indian of today is not the Indian who was in this country when the present policy was inaugurated. * * * The Indian as an Indian has already disappeared in this country. He has partaken of the spirit of change. He begins himself to be uneasy. He is discontented; he is determined he will no longer stay in the places and ways of the Indian of 10 years ago. He has caught the idea of selling his land. He has caught it of the white man. It has been found that the easiest way to negotiate with the Indians for a portion of their reservation is to propose to pay a part, if not all, of the purchase money by distribution per capita among the Indians. * * * It might as well have been thrown into the Pacific Ocean, for any permanent good it would bring the Indian. * * *

[14] Report of the Commissioner of Indian Affairs (1888), 208.
[15] Ibid. (1888), 70.
[16] Ibid. (1887), 92, 93.
[17] Twenty-third Report of the Board of Indian Commissioners (1891), 13, 14.
[18] Report of the Commissioner of Indian Affairs (1892), 391.
[19] Twenty-second Report of the Board of Indian Commissioners (1890), 66.
[20] Ibid. (1890), 107, 108.

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"Twenty-five years ago the Indians could not understand the idea of allotment. Now they are crazy to have allotment, because along with it comes the provision that they may sell to the Government the balance of their land."

On the other hand, as before 1887, there were many Indians reported to be vigorously opposed to allotment. A sampling of agents' reports show many recorded instances of Indian opposition continuing on into the twentieth century.[21] The motives of these dissident Indians were very much of the same variety as those of the obstructionists who were active before the Dawes Act was passed.[22] In 1887 the Commissioner concluded that Indian opposition would be prompted by four attitudes: Indians were loathe "to give up their savage customs;" they were suspicious of "any innovation upon their nomadic way of life;" they were ignorant of allotment's purposes; and their minds had been poisoned and their fears aroused by designing white men. The Commissioner noted that "a personal selfish motive" had been found at the bottom of every case of Indian opposition which had come to the notice of the Indian Office.[23] The Commissioner fails to explain exactly what he meant by this last generalization, but it could hardly apply to the whole sweep of Indian opposition. It would seem that the Indian Office had not investigated intelligently a very representative selection of cases—if one can trust the information which emerges from the agents' reports. In these reports one senses, usually in spite of the agent, the Indians' instinctive fear of this white man's system. For instance, there was the frequently expressed fear that allotment would in one way or another end in the Indians' losing their lands. The Kickapoos, Pottawatomies, and Absentee Shawnees still feared that under allotment their people would go the way of their profligate relatives who received allotments and ran through them quickly back in the 1860's.[24] In 1889 the secretary of the Wisconsin Indian Association told the Mohonk Conference how her organization had beaten a congressional measure which provided for a special allotment to the Oneida Indians. She said the ardent support of the bill by the constituents of a certain Wisconsin Congressman had made her organization suspicious. She went on to say:[25]

"I visited the Oneidas on the 4th of July this year. * * * The best educated among the Oneidas are afraid of allotment. The 'fringers' of the reservation, the outside element, were in favor of it, had been in favor of the Hudd bill, but the conservative element were afraid that their lands might, even with allotment, be lost through additional legislation. Their great fear was that in the coming winter, or even later, some new legislation might allow the sale of their allotted lands, and they expressed great anxiety for the weaker Indians, and even for themselves, lest they might not be able to stand against the machinations of the whites, who were so interested in the 5-year clause."

There is considerable testimony to the fact that the Indians knew pretty well what the white man's system had meant for their race. One of the members of the Board of Indian Commissioners reported in 1890:[26]

"The Osages as a tribe are almost unanimously opposed to taking their land in severalty. Eighteen years ago they purchased this reservation of the Cherokees for a home, and as such they want it to be. They argue that the time for such action has not yet come; that they are not prepared in any way to have white settlers for neighbors, and especially that variety of white men with whom it has been their misfortune to come in contact. About 250,000 acres of an area of over 1,500,000 is tillable land, the other is only suitable for grazing, and this they contend is no more than is needed for themselves and children."

This refrain is repeated in the reports of various agents. The Indians were opposed to allotment because they feared white economic penetration (in the matter of both individual lands and tribal holdings) and they feared white cultural penetration. A majority of the Flatheads were fighting allotment in 1887 because they believed the Government would sell their surplus lands to whites, "thus breaking up their reservations and mixing the Indians up promiscuously with white settlers."[27] The Coeur d'Alene agent in 1887 expatiated upon the integrity and orderliness of the Indians in his charge and then remarked

[21] Report of the Commissioner of Indian Affairs (1888), 69, 70, 99, 111, 240; Ibid. (1889), 143, 186, 192, 200 214, 230, 250, 268, 297; Ibid. (1890), 23, 28, 108, 129, 190, 194, 231, 225; Ibid. (1892), 299, 330, 399, 403, 486; Ibid. (1900), 233, 305, 381.

[22] See above pp. 38ff.

[23] Report of the Commissioner of Indian Affairs (1887), x.

[24] Ibid. (1887), 123; (1889), 20, 217; (1890), xlvi.

[25] Twenty-first Report of the Board of Indian Commissioners (1889), 78, 79.

[26] Ibid. (1890), 27. The Osage population was about 1,500 in 1890, which would allow for an average of about 166 acres of arable land per capita.

[27] Report of the Commissioner of Indian Affairs (1887), 140; see also Ibid. (1889), 217.

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that their tribal council had voted unanimously against allotment, "saying they had always been friendly to the whites and wanted to remain that way but as yet they were not willing nor capable of mixing with them." [28] Indeed the most frequently mentioned source of Indian hostility to allotment was to be found in their sense of tribal solidarity and in their disinclination to give up their Indian ways.

The agent at Cheyenne River wrote in 1887 that a majority of his Indians were against allotment and that those who lived in the large camps were particularly opposed. He wrote, "A very few have been induced to leave the camps and take separate places, but, as stated last year, the Indians in these camps spends most of their time in dancing." [29] In that year the International Council of Indian Territory, to which 19 tribes sent 57 representatives, voted unanimously against allotment and the granting of railroad rights-of-way through their lands. The council's resolution on the allotment question, which was sent to the President of the United States, cited these tribes' "sad experience" with allotment and assailed the policy as one which would "ingulf all of the nations and tribes of the territory in one common catastrophe, to the enrichment of land monopolists." [30] The Commissioner's report of that year attributed this opposition to the Five Civilized Tribes who he said were exempted from the Dawes Act anyway and among whom were persons with large tracts of land which they would lose under an allotment system.[31] The year before the agent to the Five Civilized Tribes had risen to the defense of their economic system [32] but his successor in 1892 corroborated the Commissioner's opinion and noted that members of the Five Tribes were beginning to see that their tribal economy served the interests only of the few. He believed there was a growing sentiment in favor of allotment.[33] Nevertheless, there is a compelling ring to the appeal of the International Council of 1887: [34]

"Like other people, the Indian needs at least the germ of political identity, some governmental organization of his own, however crude, to which his pride and manhood may cling and claim allegiance, in order to make true progress in the affairs of life. This peculiarity in the Indian character is elsewhere called patriotism, the wise and patient fashioning and guidance of which alone will successfully solve the question of civilization. Preclude him from this and he has little else to live for. The law to which objection is urged does this by enabling any member of a tribe to become a member of some other body politic by electing and taking to himself a quantity of land which at the present time is the common property of all."

The following year the agent to the Five Tribes observed that the half-breeds were becoming favorably inclined toward allotment but, he said, "The full-bloods are against it, as a rule, as they fear it will destroy their present government, to which they appear attached." [35] This same cleavage which characterized Indian opinion before the passage of the Dawes Act is apparent all through the nineties.[36] This cleavage expresses the fundamental fact that the allotment controversy was a struggle between two cultures. With the irresistible penetration of the white civilization, the conflict within the tribes crystallized into two factions, the half-breeds and the full-bloods, the young and the old, the "progressives" and the "conservatives", the sheep and the goats.

The progressives seemed to be winning the day. A member of the Board of Indian Commissioners was confident of this in 1891. He wrote, "The taking of land in severalty is a subject in which these [the Fort Peck] Indians do not seem to have much interest. Doubtless, if the scheme was fully explained and the benefits clearly set forth, there would be no objections on the part of the Indians so intelligent as these appear to be. Of course, it is a question of only a short time when assent to the proposition will be universal." [37] This prophecy proved to be right. But of course, the final appearance of this universal "assent" did not mean that the progressives had won the argument. It was the Government that won the argument. The agent to the Kiowas, Comanches, and Wichitas wrote in

[28] Ibid. (1887), 205.
[29] Ibid. (1887), 20. See also Twenty-second Report of the Board of Indian Commissioners (1890), 27.
[30] Report of the Commissioner of Indian Affairs (1887), 116, 117.
[31] Ibid. (1887), x-xiii.
[32] See above p. 40 (insert).
[33] Report of the Commissioner of Indian Affairs (1892), 250-252.
[34] Ibid. (1887), 117.
[35] Ibid. (1888), 135.
[36] See miscellaneous documents relating to Indian Affairs (collected in Indian Office library), xvii, 14066; Report of the Commissioner of Indian Affairs (1888), 93 (1889), 182, 230 (1890), 31 (1892), 294, 457 (1895), 255 (1900), 233, 381.
[37] Twenty-third Report of the Board of Indian Commissioners (1891), 16.

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1888, "These Indians seem to be, without a single exception, opposed to the allotment of their lands in severalty at present. I believe most of them realize, however, that the time is coming when they will have to yield to it." [38] Indians were able to see the time coming because of situations like the one which the Ponca agent reported in 1892. He wrote, "It is but justice to say much opposition was in the air, the Indians obstinately refusing to receive their allotments; but through persevering efforts 300 allotments have been made * * *." [39]

The Yankton agent, who persuaded his Indians to take allotments by importing two companies of soldiers from Fort Randall, explained his technique of administration in 1888. He wrote, "Conciliation is always the best policy in dealing with Indians, but when this fails, with the Indians clearly in the wrong, prompt, decisive action becomes necessary. There must be no yielding to Indian whims nor compromise to gratify Indian caprice, at the sacrifice of law and good government." [40] There was however one instance when the Government acted decisively and when it was the Government and not the Indian that was clearly in the wrong. In 1907 the Senate Committee on Indian Affairs conducted extensive hearings on the condition of the Mexican Kickapoo Indians. At the hearings copious testimony was presented to show that in 1891 the Government's representatives had forced upon the Mexican Kickapoos an allotment agreement to which they were violently opposed. It was shown that the Indian signatures to the agreement were for the most part forged and that there were numerous names included that belonged to no living Indians.[41] Perhaps entirely ignorant of all this, Congress had ratified the agreement (27 Stat. 1, 559). But there was at least one agent who showed distrust of high-pressure tactics. The Ponca, Pawnee, Otoe, and Oakland agent wrote in 1889: "I find from 4 years of experience, not lightly taken, that to substitute the ways of the white man for the ways of the Indian cannot be achieved short of prolonged, very painstaking, and very patient work. Small faith in the advice or counsel of the white man remains with the Indian character today."[42]

ADMINISTRATION AND CHANGES IN POLICY: LEASING

Officials of the Indian Service saw much that was hopeful in the first results of the general allotment policy. The reports of agents pretty generally asserted that allotment was going well and the Indians were making long strides in farming. A typical statement is that of the Tulalip agent's in 1889. He said that his Indians were taking "as much pride in their stock and crops as white farmers."[43]

Much emphasis was placed on the civilizing influence of allotment. The agent for the Crow Creek and Lower Brulé Reservations seemed impressed with his Indians' progress on the white man's road. In 1888 he wrote:[44]

"The advantage of placing Indians on individual allotments cannot be overestimated. Once gaining a proprietary right in a piece of land, the owner is immediately elevated above the common level, feels his importance, and takes to himself a commendable degree of pride. The 'tipe mitawa' becomes 'the home, sweet home,' and a longing is stirred within the Indian breast for more of the sweets of civilization."

The friends of the Indian were particularly enheartened by the unexpected progress of the Crows. In 1890 Miss Fletcher told a Board of Indian Commissioners' conference that she thought allotment was by then in an experimental stage only among the Crows and she was not sure it could still be called an experiment there.[45] This was indeed a triumph, for in 1887 Senator Dawes had expressed to the Mohonk Conference his great surprise that the Crows had been one of the first tribes to be chosen for allotment, since he regarded them to be of all savages "the most degraded." General Armstrong, of Hampton Institute, immediately corroborated this estimate and called the Crows "low-down, dark-minded, and savage." [46] Yet, at this 1890 conference the General took his cue from Miss Fletcher and quoted a hard-headed, realistic old Indian fighter as having been astounded at the way the Crows were progressing under allotment. General Armstrong believed this meant that three-quarters of the Indians were ready for allotment.[47] In 1889 the secretary of the Board of Indian Commis-

[38] Report of the Commissioner of Indian Affairs (1888), 99.
[39] Ibid. (1892), 393; see also Ibid. (1890), 194, 225, 231.
[40] Ibid. (1888), 70.
[41] S.Doc. 215, 60th Cong. 1st sess. (1907), 86, 249, 1621, 1641, 1651, 1655, 1888.
[42] Report of the Commissioner of Indian Affairs (1889), 195.
[43] Ibid. (1889), 289.
[44] Ibid. (1888), 29; see also p. 70 and (1889), 204 (1890), 164.
[45] Twenty-first Report of the Board of Indian Commissioners (1889), 152, 153.
[46] Ibid. (1887), 108.
[47] Ibid. (1889), 153.

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sioners told the Mohonk Conference how well certain wild tribes were getting on under allotment and concluded that the Dawes Act was not a failure.[48] Commissioner Morgan judiciously commented in 1891: "I have seen nothing during the year to lead me to change my views as to its [allotment's] ultimate success, although doubtless the change will come with too great suddenness to some of the tribes." [49]

There were, however, critics among the friends of the Indian who felt that the Dawes Act still left much to be desired. Professor Painter read to the 1889 Mohonk Conference a paper entitled "The Indian and His Property", which assailed the legal and administrative restraints imposed upon the economic freedom of the Indian. Professor Painter wound up by saying: "His condition under the severalty law is no better than under the old reservation system, unless it go so far as to destroy utterly the old conditions imposed by that system. A step is taken, it is true, in the right direction, but not long enough to take him out of his difficulties.[50] The president of the Westchester County Historical Society, of New York State, was so moved by the professor's arguments that he remarked: "We have fondly supposed that the passage of the allotment bill would be a panacea for almost every ill in this Indian problem; and, lo, Professor Painter tells us, and a little examination for ourselves will show us, that the last state of this man is likely to be worse than the first." [51]

Those who were dissatisfied with the results achieved by the Dawes Act saw various causes of failure. For one thing, the whole emphasis of the allotment policy was laid upon farming, and critics from time to time pointed out that large sections of the Indians' lands were not suitable for agriculture. In 1891 Miss Fletcher estimated that two-thirds of the Indians lived on lands of this sort.[52] The Reverend Thomas Riggs, of the Dakota Mission, said to the 1890 Mohonk Conference: "We have tried to turn hunters into farmers. We have tried this not only in a good country where it would be difficult enough to teach agriculture to an Indian, but on the Plains, in regions where out of 5 years we may possibly have a good crop 1 year.[53] For another thing, the Government was continuing a policy which was a cause, as well as an index, of allotment's failure A speaker at the 1890 Mohonk Conference described at length the evil consequences of the rationing system. He showed how it had pauperized the Indians and now deterred them from farming, since they feared if they raised crops the Government would cut down their allowances.[54]

The chairman of the purchasing committee of the Board of Indian Commissioners also addressed the meeting on the subject. He said that he had expected the allotment system would bring an annual decrease in the requisitions of meat and flour for the Indians. As a matter of fact, the requisitions had each year increased. He told how the Government, to encourage stockraising at the Fort Berthold Reservation, had built an enormous barn—a barn large enough to house cattle "from a thousand hills." Yet at that moment the Government was sending much larger rations of beef to that reservation than it sent before the barn was built. The speaker thought the barn was probably used for ponies. He said the whole trouble was a lack of good teachers.[55]

Many friends of the Indian who believed that the allotment system was not accomplishing all that it should were inclined to hold the Government responsible because of its failure to give adequate aid to the allottees. These critics charged that the government put Indians on their allotments and expected them to farm without training, tools, or equipment. Professor Painter told the 1889 Mohonk Conference how one Indian, with several hundred acres which composed the grants to himself and family, found "that he had indeed a vast but unusable possession; a large land estate, but without teams, implements, money, houses or experience, and consequently without power to utilize a foot of it."[56] It was not true that the Government made no efforts whatever to equip the Indians for farming. But it made very slight efforts. The appropriation act passed in 1888 provided for the allocation of $30,000 to the purchase of seed, farming implements, and other things "necessary for the commencement of farming" (25 Stat. L. 234). In 1888 alone 3,568 allotments had been made.[57] The appropriation

[48] Ibid. (1889), 126.
[49] Report of the Commissioner of Indian Affairs (1891), 43.
[50] Twenty-first Report of the Board of Indian Commissioners (1889), 104–106.
[51] Idem.
[52] Twenty-second Report of the Board of Indian Commissioners (1890), 175.
[53] Ibid. (1890), 142; see also (1889), 111.
[54] Ibid. (1890), 142.
[55] Ibid. (1890), 114, 115; see also Report of the Commissioner of Indian Affairs (1891), 149.
[56] Twenty-first Report of the Board of Indian Commissioners (1889), 105; see also (1890), 109.
[57] Report of the Commissioner of Indian Affairs (1888), 444.

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therefore, granted less than $10 to every new allottee setting out on his farming career. There is, furthermore, no way of knowing how much of this money was expended for this purpose. However, it looked like the beginning of a policy and the Board of Indian Commissioners commended the Government for the step, while at the same time it hoped that in the future the appropriation would be increased.[58]

The following year the same amount was provided (25 Stat.L. 998) but in 1890 no such appropriation was made. In 1891 Congress raised $15,000 for the purpose (26 Stat.L. 1007) and this sum was continued through the next 2 years (27 Stat.L. 137, 630). After 1893 the appropriation acts up to 1900 included no such items. Agents' reports all through the period bear testimony to the sad needs of the Indians for material assistance in their farming. The agent to the Kiowas, Comanches, and Wichitas in 1890 wrote: "It was exceedingly hard to divide 115 plows among the three-hundred-odd Indians who declared they wanted to use them." [59] The Nevada agent wrote in 1892: "In a word, they are too poor to purchase tools to work with, and at present date have done nothing with the lands in consequence of their inability to buy necessary farming implements, etc." [60] This complaint is heard over and over again.[61] The failure of the Government to provide adequate equipment to the allottees was like its failure to provide vocational training. These omissions show the Government's inability to comprehend that the whole allotment program, if it was to succeed, should first of all have been an educational program which would realistically be concerned with the Indians' economic needs. But the Government had failed in these respects before. The Omaha treaties of 1854 (10 Stat.L. 1043) and of 1868 (14 Stat.L. 667), which provided for a form of allotment, required the Government to furnish the Indians with implements, stock, and milling services. Yet these promises were never carried out.[62] One of the Indians who signed the petition for the Omaha allotment bill in 1881 said: "Three times I have cut wood to build a house. Each time the agent told me the Government wished to build me a house. Every time my wood has lain and rotted, and now I feel ashamed when I hear an agent telling me such things." [63]

There were some attempts at private aid to the new American farmers. The largest venture seems to have been originated by Miss Fletcher and taken up by the Women's National Indian Association. It was a small-loan service to the Indians to help them build homes. In 1889 the president of the association reported that several thousand dollars had been invested in this enterprise and in 4 years 30 or 40 houses built.[64] But private philanthropy also proved entirely inadequate for the purpose of helping the Indians to make a go of allotment.

The reasons for this whole failure seem to be that in the first place most of the friends of the Indian showed a great lack of imagination and of any practical notion about what allotment for the Indian involved. They thought the law would work the transformation and would by definition make the Indian a farmer. All he then needed was Christianizing and culture. Therefore, in the second place, the law once passed, the friends of the Indian rested upon their laurels. They rested from thinking and toiling in behalf of the Indian, except when they were stirred by Senator Dawes, Miss Fletcher, and the other official leaders and convention goers. It is what happens to reform movements that pin their faith on legislation and finally achieve their laws. It happened to Indian reform as it happened to prohibition. Miss Anna L. Dawes, daughter of the Senator, said to the 1890 Mohonk Conference: [65]

"I am quite sure that, while it is true that the interest of the country in the Indian and the sense of justice among the people at large is greatly increased and the whole situation is better understood it is also true that particular concrete interest is declining. At first it was a very glorious work. There were earnest public meetings and it was all quite exciting and very interesting. That time has passed by. With few exceptions the work is no longer interesting. That does not seem true up here, but when we get home we find the general public do not think or care very much about the Indians. The public cares little about details in the matter of help for the individual—as to who has a house here, or a fence there, or a floor somewhere else. No one is willing to keep up the constant effort which is necessary to carry out such work."

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[58] Twentieth Report of the Board of Indian Commissioners (1888), 6.
[59] Report of the Commissioner of Indian Affairs (1890), 187; see also p. 71.
[60] Ibid. (1892), 321.
[61] Ibid. (1888), 29 (1892), 443 (1893), 338, 339 (1898), 222 (1899), 326.
[62] Fletcher and La Flesche, 623, 624.
[63] Ibid., 637.
[64] Twenty-first Report of the Board of Indian Commissioners (1889), 115, 148, 149.
[65] Ibid. (1890), 128.

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When vigilance in regard to a public issue declines in the democracy, it is the rule that government will follow the line of least resistance. Therefore the ever-vigilant private interests swayed the Government in its policies. So Congress neglected to provide the funds adequately to carry out the allotment program, the Indian administration attended to administration (and teaching the Indian "culture"), and about all that was given to the Indian was the freedom and American right to be exploited by shrewd white men.

A young Indian student at Yale addressed the 1889 Mohonk Conference in prophetic language. He said:[66] "I believe, as has been said, that if the Indian takes up his land in severalty, in the conditions that he is now in, he will be worse off than if kept on the reservations. During these 25 years, the period of transition, the Indians are to be prepared for the duties of citizenship. Unless there is something done in that period I think the Indians will be worse off than before."

To eradicate the evils which they recognized in the allotment system the friends of the Indian characteristically turned to legislation again. In the first place, there was the very obvious need for civil-service reform within the Indian department. Commissioner Morgan, who entered office in 1889, was especially hostile to the spoils system and determined to root it out of the Indian Service. General Armstrong said to the 1889 Mononk Conference: "If the Commissioner can carry out his idea he will be a 'bigger man than old Grant.' Let us back him up."[67] In 1889 and 1890 the Mohonk Conference adopted resolutions denouncing the spoils system and urging the President to extend civil service to all appointments made by the Indian office.[68] The following year Mr. Herbert Welsh of the Indian Rights Association informed the conference that Indian agents could not be on the civil-service list under existing law.[69] However, the conference expressed gratitude, in its resolution, for the fact that some 600 Indian Office employees had been brought under civil service, and it urged that the spirit of the law be applied to the appointment of Indian agents.[70] Thereafter the friends of allotment worked for changes in the law to make the agents civil-service appointees and by a series of laws the way was paved for the rather general removal of politics from the Indian Department shortly after 1900.[71]

Defects in the system which, in the second place, occupied the attention of the friends of the Indian were those resulting from the fact that allotted lands must be free from State taxation. The Dawes Act, providing for the 25-year Federal trust period during which time the land might not be encumbered (24 Stat.L. 389), meant, it was clear, that no State could tax the allottee's holdings. As a result, the friends of the Indian were noting in 1889, States were refusing to assume any responsibilities for Indian communities and were withholding such services as the upkeep of schools and roads. It was also apparent that this situation was a source of great hostility to Indians on the part of white neighbors.[72] The Mohonk Conference resolved in 1889 that the Federal Government should work out a system whereby funds from the sale of surplus lands should be turned over to States for the specific purposes of Indian education, in lieu of taxes.[73] Indian sympathizers continued to agitate this question through the 1890's.[74] There was at least one instance when the Federal Government adopted this policy which the friends of the Indian urged. In 1892 Congress passed a law reducing the Colville Reservation in the State of Washington (27 Stat.L. 62). Section 2 provided that the Secretary of the Interior might use funds from the proceeds of the sale of surplus lands for the purposes of Indian education and "for the payment of such part of the local taxation as may be properly applied to the lands allotted to such Indians, as he shall think fit, so long as such allotted land shall be held in trust and exempt from taxation." In 1926 and 1928 deficiency appropriation acts carried out the terms of this 1892 law by providing for the payment of sums to certain counties of Washington (44 Stat.L. 174, 45 Stat.L. 899). However, there was never any general legislation on the subject nor did it become the practice of Congress to pass special laws of this sort. In fact, this act of 1892 relating to the Colville Indians is the only example which the writer has found of Federal grants to local governments in lieu of Indian taxes.[75]

[66] Ibid. (1889), 112.
[67] Ibid. (1889), 74, 75.
[68] Ibid. (1889), 118 (1890), 127.
[69] Twenty-third Report of the Commissioner of Indian Affairs, (1891), 91, 92.
[70] Ibid. (1891), 115.
[71] Schmeckebier, 84, 84n.
[72] Twenty-first Report of the Board of Indian Commissioners, (1889, 107-109.
[73] Ibid. (1889), 118, 119.
[74] Ibid. (1890), 110, (1894), 7.
[75] Mr. Dodd and Mr. Govern of the Indian Office, Finance and Fiscal Divisions, respectively, knew of no similar legislation.

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In the third place, the most enthusiastic supporters of the allotment policy felt that its first results showed that it needed important revision, itself. In his report for 1889 the Commissioner observed that Indians were asking for equal allotments to all individuals, and he recommended that the law should be so amended. He noted that there was a special need to protect the married women whom the Dawes Act had excluded from allotment benefits. The plight of the Indian wife was often desperate since the husband, under the easy-going marriage system, might capriciously turn her out of his house and off his land.[76] Miss Fletcher was reported to favor the change to equal allotments for the same reason and for the reason that the existing differential was unwise and unjust in other ways. She pointed out that the Dawes Act gave 160 acres to the old and infirm and only 40 acres to the young and able-bodied who were best qualified to work the land.[77] The Board of Indian Commissioners that same year urged upon Congress the equalization of allotments.[78]

This proposed change was, significantly, bound up with another and still more important change which most friends of the Indian came to demand. Professor Painter's dissertation to the 1889 Mohonk Conference on the Indian and his property stressed his theory that the Indian could not progress so long as he was hindered by the restrictions of the Dawes Act; especially by the restrictions on his economic liberty. The author favored giving the Indian the freedom to utilize his land to his best advantage.[79] The Mohonk Conference that year heard some talk about the leasing of Indian lands and the freeing of the Indian from bondage. Justice Strong, previously associate justice of the United States Supreme Court, said: "But on one subject I am perfectly convinced; namely, that the Government has not the shadow of a right to interfere with an Indian's having an allotment, either with the use of his property or with the manner in which he shall educate his children * * *"[80] But especially the point was emphasized that leasing part of his land would bring the Indian the wherewithal to cultivate the rest.[81] Other arguments from time to time were brought forward by Indian sympathizers to show how leasing would help him.

The Omaha and Winnebago agent in 1890 estimated that 60 percent of the Winnebago land belonged to women, or to the aged or to the very young—none of whom could cultivate his allotment. The agent also cited the case of students who were away at school and whose lands were lying unused and fallow. He argued that if all these persons were able to lease their holdings they would be supported by the rents therefrom. And he added a further and familiar argument: "Another feature, and by no means of the least importance, is the presence of good farmers, interspersed as they would be over the entire reservation, who would, as object lessons, be of incalculable value in teaching the principles of farming. This is not theory. We see the proof continually. * * * With a law constructed as I have indicated, I do not think idleness would be encouraged, and much good would result, and by leasing to small farmers for cultivation the pernicious practice of leasing large tracts to cattlemen would be avoided."[82]

Indeed there was only one prophetic voice of warning raised against the leasing proposal, and that was Senator Dawes'. It is true that Professor Painter, while urging greater freedom for the Indian in the use of his property, had emphasized the evils of tribal grazing leases; but although he referred to these leases as deterrents from labor, he was mostly concerned with "the margin created by these lands about the Indian home" which served, "as did the old reservation, to shut out the industrious settler from a contact with the Indian which would help his education."[83] But Senator Dawes told the 1890 Mohonk Conference that a law which made it easy for the Indian to lease his land would frustrate all their hopes for the Indian's future. He said:[84]

"I know there are instances of hardship under this inalienable allotment system, and instances of worthy young men who want to leave their allotment and go into some other business or get an education; and in an endeavor to meet those cases we are in danger of overthrowing the fundamental idea of the whole system, that controlling idea that work on one's own homestead is the most potent of all civilizing agencies for the Indians. We are trying to meet these

[76] Report of the Commissioner of Indian Affairs (1889), 17.
[77] Twenty-first Report of the Board of Indian Commissioners (1889), 8.
[78] Ibid. (1889), 9.
[79] Ibid. (1889), 105–109.
[80] Idem.
[81] Ibid. (1889), 110, 112.
[82] Report of the Commissioner of Indian Affairs (1890), 137.
[83] Twenty-first Report of the Board of Indian Commissioners (1889), 105.
[84] Twenty-second Report of the Board of Indian Commissioners (1890), 108.

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exceptional cases by permitting the allottee to leave his land when the agent, or the Secretary, or some one else, 'may deem it for his advantage so to do.' In all this we forget that the Indian, as a rule, won't work if he can help it, and that the white has never been known to take his foot off from an Indian's land when he once got it on. A bill has already passed the House, and is now pending in the Senate, authorizing the leasing of allotted lands whenever the agent shall deem it best for the Indian. Such a law, in my opinion, would speedily overthrow the whole allotment system. The Indian would at once seek to let his land and relieve himself from work; and there would be whites so ready to take possession that all barriers would soon be broken down. Thus the allotment law would be gradually undermined and destroyed, and the Indian would abandon his own work, his own land, and his own home, which we have talked about as the central pivot of our efforts in attempting to civilize the Indian."

But the legislative committee of the Mohonk Conference that year gave a report on the bill pending in Congress which provided for the granting of allotments to Indian married women, the guaranteeing of inheritance to the issue of Indian marriages, and for the leasing of allotments. The committee said, "We are of opinion that these are measures of great importance, and our representatives in Congress shall be urged to pass these bills without delay."[85] The conference unanimously adopted a resolution which read, "That Congress be urged not to abrogate the 25-year postponement of power to convey or contract away lands, any further than by a guarded power to lease on cause being shown, such as is contained in S. 3043."[86] Likewise, the Indian Rights Association, in its report for the year 1890, urged the adoption of the pending measure.[87]

The decision to allow the Indian to lease his land was fraught with grave consequences for the whole allotment system. Probably it was the most important decision as to Indian policy that was made after the passage of the Dawes Act. Yet, interestingly enough, the significance of the leasing question seemed to be dwarfed in the eyes of contemporaries by the pressing matter of equal allotments. It is true that after the Attorney General ruled in 1885 that tribal grazing leases were illegal, the Commissioner of Indian Affairs recommended annually until 1889 a law permitting such leases.[88] But he made no proposal of leasing allotments.

And no doubt his advocating of grazing leases was looked at with suspicion by the friends of the Indian, as were most of his official acts.[89] The question of leasing allotments had been raised at the 1889 Mohonk Conference,[90] but the Indian Office took no stand on the question in that year. As has been said, Commissioner Morgan was interested in the question of granting equal allotments to Indians of all ages and both sexes.[91] In January 1890 he wrote a letter to the Secretary of the Interior enclosing a bill providing for the granting of 160 acres to every Indian—man, woman, and child. The following month the President transmitted the bill, together with Commissioner Morgan's letter to the Senate Committee on Indian Affairs.[92] The Commissioner mentioned several tribes which had opposed allotment because they disliked the system of unequal grants to the different classifications and he thought that if 160 acres were given each Indian "there would be less hesitation on the part of many of the tribes to the taking of land in severalty."[93] He also stressed the predicament of cast-off Indian wives under the existing system and the importance of dealing more liberally with the young Indians who were the future hope of the race.[94]

Accordingly, on March 10, 1890, Senator Dawes introduced in the Senate a bill to "amend and further extend the benefits" of the Dawes Act.[95] Section 1 of the bill provided for the granting of 160 acres to every Indian. The previous agitation of this question by the official and unofficial friends of the Indian furnished an adequate introduction to this legislative proposal. But section 2 of the bill seems to have come almost unheralded from Senator Dawes, the man who a

[85] Ibid. (1890), 122.
[86] Ibid. (1890), 125.
[87] Eighth Annual Report Executive Commissioner Indian Rights Association (1890), 9, 10.
[88] Report of the Commissioner of Indian Affairs (1888), xxxix.
[89] The cirticism directed at the Commissioner especially by the Indian Rights Association was claimed by that organization to be the cause of the Commissioner's dismissal and of the appointment of J. H. Oberly in his place. Seventh Annual Report Executive Commissioner Indian Rights Association (1889), 9, 10.
[90] See above p. 101.
[91] Ibid., p. 100.
[92] S. Ex. Doc. No. 64, Feb. 17, 1890, 51st Cong., 1st sess., 1–4.
[93] Ibid., 2.
[94] Ibid., 3.
[95] Congressional Record, Mar. 10, 1890, 2068.

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few months later publicly expressed his misgivings about the leasing policy.[96] Section 2 of the Senator's bill read: [97]

"That whenever it shall be made to appear to the Secretary of the Interior that, by reason of age or other disability, any allottee under the provisions of said act or any other act or treaty cannot personally and with benefit to himself occupy or improve his allotment, or any part thereof, the same may be leased upon such terms, regulations, and conditions as shall be prescribed by said Secretary, for a term not exceeding 3 years for farming or grazing, or 10 years for mining purposes."

Section 3 legitimatized the descendants of Indian parents who had cohabited according to Indian custom. After being referred to the Indian Affairs Committee, the bill was amended by the committee to grant 80 acres to every Indian married woman instead of 160 acres to each Indian, and to extend the benefits of section 3 to all mixed-bloods. Section 2 was left entirely as it had been when first introduced by Senator Dawes.[98] On April 23 the bill, as reported by the committee, was engrossed, read for the third time, and passed by the Senate without debate. The House Committee on Indian Affairs promptly amended the Senate bill.[99] The committee changed section 1 so as to allot 80 acres to every Indian, and it changed section 2 to read: "That whenever it shall be made to appear to the agent in charge of any reservation Indians, that, by reason of age or any other sufficient cause," an allottee could not utilize his allotment he could lease his lands subject to the approval of the Secretary for as long as 5 years in the case of farming or grazing, or 10 years in the case of mining lands.[1] Thus it was to be made easy for an Indian to become a landlord. On September 29 the House turned its attention to this bill for a few minutes. One Member asked to have clarified the phrase "nonresident Indian"; and then, without further debate, the House passed the amended bill.[2] The Senate disagreed to the House amendments,[3] but a conference committee reached a compromise which was accepted by both Senate and House on February 23, 1891.[4] Eighty acres were to go to each Indian, but an Indian could rent his land only when unable to work it "by reason of age or other disability." The Indian must apply for a lease to the Secretary of the Interior directly and not to the agent, and farming and grazing leases of allotted lands could be for no longer than 3 years.[5] In other words, there was to be something in the way of restraint exercised upon Indian leasing. The President signed the bill on February 28, 1891 (26 Stat.L. 794).

Again one is impressed by the lack of interest shown in the leasing question, even among the legislators. There was not one word of debate in either House on the leasing provisions of the bill nor, for that matter, was there any real debate on any part of the measure. The only interest shown was in the question as to whether each Indian should get 80 or 160 acres. Chairman Perkins of the House committee said representatives of the Board of Indian Commissioners and of the Indian Rights Association were urging passage of the bill but were mostly indifferent as to which of the two acreages was allotted.[6] The committee report on the original House bill included a letter from a former special Indian agent and statements by General Whittlesey of the Board of Indian Commissioners and Professor Painter, national lobbyist for the Indian Rights Association. These gentlemen all urged the need of equalizing allotments, and Professor Painter mentioned the importance of enabling the Indian "to use" his land, but one of them discussed the leasing question. They all, however, endorsed the House bill.[7] Indeed, the Indian Rights Association preferred the House bill, with its more liberal leasing policy, to the original Senate measure. The association liked the phrase "or any other sufficient cause", since it would permit women and students away at school to rent their lands.[8] The Commissioner observed in 1890 that the Senate proposal to give 80 acres only to married women did not touch the basic problem of equality. He noted also that the Senate had added measures for leasing allotments and for legitimizing Indian offspring. He gave

[96] See above, p. 102.
[97] Copy of bill in Senate Document Room files.
[98] Idem.
[99] H. Rept. 1809, Apr. 29, 1890, 51st Cong., 1st sess., 1, 2.
[1] Idem; see Twenty-second report of the Board of Indian Commissioners (1890), 122.
[2] Congressional Record, Sept. 29, 1890, 10705, 10706.
[3] Ibid., Sept. 30, 1890, 10710. L
[4] Ibid., Feb. 23, 1891, 3118, 3152.
[5] Sec. 3, 26 Stat. L. 794.
[6] Congressional Record, Sept. 29, 1890, 10705.
[7] H. Rept. 1700, Apr. 24, 1890, 51st Cong., 1st sess., 1, 2.
[8] Eighth Annual Report Executive Commissioner Indian Rights Association (1890), 9, 10.

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both provisions his blessing, especially the latter provision.[9] The 1891 Mohonk Conference resolved that the year had been most fruitful in legislation; and the resolutions listed several enactments of Congress, but the act of February 28 was not numbered among them.[10]

The annual report of the Indian Rights Association for 1891 made no comment on the new law.[11]

Because of this apparent prevailing indifference and lack of contention as regards the leasing question it is difficult to form any very clear idea as to the origin of the policy. However the western land-seekers and business interests felt about the original allotment policy it was obvious that the leasing of Indian lands was entirely favorable to their interests. No opposition to the leasing project in Congress could be looked for in that quarter. As in the case of the allotment policy there is no evidence to show that white westerners formulated the new program. However, a demand for the leasing of Indian lands could have come quite naturally and spontaneously from western communities. White men saw before them fertile Indian acres now in the hands of individual owners. For the most part these Indian owners were not active farmers who made the most of their lands. On the other hand, they were always tractable in money matters and would be very willing to rent—if the Government would let them. What would be more natural, then, for ambitious settlers and entrepreneurs to apply to the Government for its consent to their developing lands which would otherwise be idle and wasted? Whatever the western white had to do with originating the leasing policy it is inconceivable that he did not help the policy forward.

In general, the philanthropists seem to have favored leasing, although not with the same enthusiasm that marked their interest in allotment. After all, leasing did not appear to be an exciting and drastic change of policy. It was another and strictly logical stage in the development of the principle underlying allotment. The arguments of Professor Painter about the Indian and his property appealed to the friends of the Indian: What was the use of making the Indian a responsible individual if you did not give him the freedom to go ahead? How could he go ahead in the world if he could not have free use of his property? The cure for the ills of freedom was more freedom. Senator Dawes, the most clear-headed of the friends of the Indian, would not blind himself to the dangers of allowing the Indian to lease his lands. He painted those dangers in vivid colors to the Mohonk Conference in 1890.[12] Yet 7 months before he had put forward his leasing bill in Congress. In 1891 the Senator told the Mohonk conference that he had previously been opposed to the leasing idea but he had seen the Indians so often grow discouraged in their attempts to break the prairie lands that he concluded it would be wise to let the Indians rent parts of their lands. Thus the owners would have funds to develop their remaining acres while the rented portions would be improved by the lessees. But the Senator warned that the policy must be carefully administered.[13] There was, however, one voice raised against the leasing system. In 1892 the Sac and Fox agent wrote from Oklahoma:[14]

"Should authority be given for the Indians to lease their lands, nearly all of them would avail themselves of the privilege and their land would be immediately taken by whites (probably for subleasing purposes) at ridiculously low compensation and the Indian would squander the proceeds and still live an idle, vagabond life. The average Indian is not competent to make leases and care for his own interest. As it would require constant watchfulness to protect him from imposition, I consider that leasing would be detrimental, and that the land would soon become impoverished. * * *

"There have been no leases made by authority at this agency."

On the other hand, several agents expressed decided approval of the new leasing policy although they usually agreed that the term of 3 years for agricultural leases was too short a time to attract the right sort of lessee. They recommended that the period be extended to 5 or even 10 years.[15]

One of the agents expressed more or less adequately the complex of motives which were behind the leasing policy. The Santee agent wrote concerning leasing in 1892: "It would seem probable to me that it might give the Indian

[9] Report of the Commissioner of Indian Affairs (1890), xlviii, xlix.
[10] Twenty-third Report of the Board of Indian Commissioners (1891), 50-52, 115, 116.
[11] See comments on legislation in Ninth Annual Report Executive Commissioner Indian Rights Association (1891).
[12] See above, p. 102.
[13] Twenth-third Report of the Board of Indian Commissioners (1891), 99.
[14] Report of the Commissioner of Indian Affairs (1892), 404.
[15] Ibid. (1892), 504 (1893), 248, 339 (1894), 136.

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more idea as to the value of land to see others making use of it, and be also a source of income for himself and it certainly would be a source of gratification to the whites to see the land in use instead of lying idle." [16]

The Indian administartion set out at a very cautious gait to apply the leasing provision to allotments. The Commissioner in his report for 1892 said: "Agents are expressly directed that it is not intended to authorize the making of any lease by an allottee who possesses the necessary physical and mental qualifications to enable him to cultivate his allotment, either personally or by hired help."[17] He said that but two allotment leases had thus far been approved by him.[18] The next year the Commissioner promulgated a set of rules for the making of leases. The rules were primarily concerned with defining the terms in the phrase, "by reason of age or other disability." "Age" applied to all Indians under 18 and all those disabled by senility. "Other disability" applied to all unmarried Indian women, married women whose husband or sons were unable to work the land, widows without able-bodied sons, all Indians with chronic sickness or incurable physical defect, and those with "native defect of mind or permanent incurable mental disease." [19] The Commissioner reported that four allotment leases had been allowed that year.[20] However, the Commissioner made one remark which indicated that he did not regard as important in administration one of the safeguards which Senator Dawes had insisted on. The Senator had secured an amendment to the House bill taking away from the agents the power of recommending leases and requiring the Indians to apply directly to the Secretary of the Interior.[21] But in 1893 the Commissioner wrote: "The matter of leasing allotted lands has been placed largely in the hands of Indian agents in charge of the agencies where allotments in severalty have been made." He went on to say that all leases must be approved by the Secretary after recommendation by the agent.[22] How much this adminstrative ruling was in itself responsible for the subsequent speeding-up of leasing cannot be paid for at that point a most important change was made in the law. Apparently those who were in favor of the leasing policy were coming to the conclusion that one could not have too much of a good thing. They were perhaps influenced by such hopeful arguments as that put forward by the agent to the Cheyennes and Araphaoes in 1894. He wrote: [23]

"As the average number in each family is about five, it will readily be seen that when they are required to make their homes upon one allotment, and the remaining four leased to white men who would cultivate the same on shares, that the portion due the Indian family would be more than actually required for subsistence, and that each year they would have a surplus to sell, the proceeds of which could be invested in stock or improvements on the home tract."

At any rate, the general Indian appropriation act, which became law August 15, 1894, contained a provision which changed the critical phrase in the act of 1891 to read "by reason of age, disability or inability", extended the term of agricultural and grazing leases to 5 years and permitted 10-year leases for business as well as mining purposes (28 Stat. L. 305). Nevertheless, the Commissioner said in his report that year: "It has been repeatedly stated that it was not the intent of the law nor the policy of the office to allow indiscriminate leasing of allotted lands * * * If an allottee has physical or mental ability to cultivate an allotment by personal labor or by hired help, the leasing of such allotment should not be permitted."[24] But a new rule which the Commissioner added to those defining "age" and "disability" read: "The term 'inability' as used in said amended act, cannot be specifically defined as the other terms have been. Any allottee not embraced in any of the foregoing classes who for any reason other than those stated is unable to cultivate his lands or a portion of them, and desires to lease same may make application therefor to the proper Indian agent." [25]

The Board of Indian Commissioners, reporting early in 1895, made note of the change in the leasing law and expressed its gratification that the Commissioner had evowed his intention to see that no capable Indian should be allowed to lease his allotment. Nevertheless, the Board pointed out, there had been 295 leases of allotments approved in 1894 (as contrasted with four in 1893 and two in 1892).

[16] Ibid. (1892), 188.
[17] Ibid. (1892), 71.
[18] Ibid. (1892), 72.
[19] Ibid. (1893), 477, 476.
[20] Ibid. (1893), 27.
[21] Congressional Record, Feb. 23, 1891, 3118.
[22] Report of the Commissioner of Indian Affairs (1893), 27.
[23] Ibid. (1894), 234.
[24] Ibid. (1894), 32, 33.
[25] Ibid. (1894), 421.

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The Board was alarmed at the trend.[26] Outright dismay was expressed at the 1894 Mohonk Conference at the direction in which the leasing policy was carrying them. Professor Painter said that the original aims of the allotment system had been to give lands to those who were prepared to receive them; then to secure these lands by the 25-year clause so that the young might be educated to make use of them; and finally to modify the system to allow those who could not use lands to lease them.

He concluded: "I wish to call attention to the fact that in all three of these particulars, the principle of the bill, the spirit and intent of the bill, are being set aside and destroyed." [27] Significantly, he went on to suggest what the forces were that were promoting the changes in the system. He said,: "We have reached a crisis. It is the intention of men in the West, and their efforts are being more and more felt in Congress as the power of the West is becoming greater in controlling national affairs, it is the intention of these men to sweep away all these limitations and restrictions which the severalty law put in the power of the Indian to alienate his land." [28] The platform of the conference that year stated: "Recent laws permitting Indians to lease their lands are widely resulting in dispossessing ignorant Indians of their property rights, without an adequate return, to their great disadvantage and the enriching of designing white men." [29]

The Indian Rights Association in its 1894 report vigorously assailed the course which the Government was following. After denouncing the relaxation of restrictions upon leasing and upon even the sale of Indian allotments, the report concluded: "It cannot be said too strongly or urgently that attention should be aroused, and intelligent action at once taken, or the severalty law will prove as unavailing as treaties have been to protect the Indian in the possession of his land." [30] Apparently one could have too much of a good thing after all.

The commissioner on his part continued to declare that his purpose held to see that Indians who could farm their lands were not allowed to lease them.[31] The Board of Indian Commissioners in 1895 were pleased that the Commissioner took this stand, but even so they thought there should be legislative changes to restrict allotment leases.[32] If the Commissioner's rule was regularly applied it became clear that either the Indians were growing more incompetent or more incompetent Indians were being discovered for leasing increased by leaps and bounds. From 295 leases of allotments in 1894, the number grew to 330 in 1895, to 933 in 1896, and 1,287 in 1897.[33] There was little said about this development. For the most part from 1895 on the friends of the Indian busied themselves with such questions as improving the service, prohibiting the sale of liquor to the Indians, reorganizing the Indian administration, and extending the allotment system to the Five Civilized Tribes.

The reports of the Board of Indian Commissioners, the Indian Rights Association and the Mohonk Conference expressed little concern with the leasing question although a faith in allotment was continually reaffirmed. Nevertheless, the Indian Appropriation Act of 1897 changed the leasing system back to its original form. Indeed in one respect the provisions were even more restrictive than were those of the 1891 law. The maximum term for mining and business leases was fixed at 5 years. The term for farming and grazing leases was changed back to 3 years and the word "inability" was dropped so that "age or other disability" became the only legal grounds for permitting leases (30 Stat.L. 85). The Commissioner's report for 1897 commented on the fact that the leasing periods had been changed by the Indian appropriation act but, interestingly enough, he made no mention of the dropping of the word "inability." [34] The 1894 reports of the various societies of Indian sympathizers seemed to regard the leasing changes not important enough to mention, although the publication of the Indian Rights Association discussed other features of the appropriation act.[35] Whether or not the legislative changes were repsonsible for it, a slight change in policy was reflected in the number of leases that were approved in 1898. The figure dropped

[26] Twenty-sixth Report of the Board of the Indian Commissioners (1894), 7; see also p. 80, Report of the Commissioner of Indian Affairs (1894), 33.
[27] Twenty-sixth Report of the Board of Indian Commissioners (1894), 119, 120; see also Twelfth Annual Report Executive Committee Indian Rights Association (1894), 36–38.
[28] Twenty-sixth Report of the Board of Indian Commissioners (1894), 120.
[29] Ibid. (1894), 156, 157.
[30] Twelfth Annual Report Executive Committee Indian Rights Association (1894), 38.
[31] Report of the Commissioner of Indian Affairs (1896), 42.
[32] Twenty-seventh Report of the Board of Indian Commissioners (1895), 7, 8.
[33] Report of the Commissioner of Indian Affairs (1894), 33 (1895), 34, 35 (1896), 39–42 (1897), 41–43.
[34] Report of the Commissioner of Indian Affairs (1897), 40–43.
[35] Fifteenth Annual Report of the Executive Committee Indian Rights Association (1897), 22-27.

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to 948 as compared with 1,287 in the preceding year.[36] But at once enthusiasm for Indian leasing was rekindled. The Commissioner approved 1,185 allotment leases in 1899, and 2,590 in 1900.[37] In this latter year, the system was again changed by the Indian appropriation act. "Inability" was restored as a reason for permitting allotment leases, and the maximum period of leasing for farming purposes was extended once more to 5 years (31 Stat. L. 229). These changes were denounced by the friends of the Indian. The Board of Indian Commissioners, the Mohonk Conference, and the Indian Rights Association in 1900 severally deplored the new policy as encouraging the pauperizing and general demoralization of the Indian.[38] Apparently the change in policy had not been the doing of the Commissioner. He wrote in his report for 1900: [39]

"The better to assist them the allottees should be divided into small communities, each to be put in charge of persons who by precept and example would teach them how to work and how to live.

"This is the theory. The practice is very different. The Indian is allotted and then allowed to turn over his land to the whites and go on his aimless way. This pernicious practice is the direct growth of vicious legislation. The first law on the subject was passed in 1891. * * *

"It is conceded that where an Indian allottee is incapacitated by physical disability or decrepitude of age from occupying and working his allotment, it is proper to permit him to lease it, and it was to meet such cases as this that the law referred to was made. * * * But "inability" has opened the door for leasing in general, until on some of the reservations leasing is the rule and not the exception, while on others the practice is growing.

"To the thoughtful mind it is apparent that the effect of the general leasing of allotments is bad. Like the gratuitous issue of rations and the periodical distribution of money it fosters indolence with its train of attendant vices. By taking away the incentive to labor it defeats the very object for which the allotment system was devised, which was, by giving the Indian something tangible that he could call his own, to incite him to personal effort in his own behalf."

Thus it seems that the leasing policy had been pushed much further than the friends of the Indian desired. As to who had been pushing it there one can only guess. It is apparent that white settlers and promoters had found leasing a new and effective technique for exploiting Indian lands. So had Indian agents—according to the Indian Rights Association. The association's report for 1900 described the evil consequences of the leasing system under the new law and set forth grave charges: [40]

"It will readily be seen that with a liberal construction of this statute any Indian allotment can legally be leased, and we find that at all agencies the practice of leasing is a growing evil; the allottee becomes discouraged, leases his lands, and usually his house, built for him often partly at Government expense, and retires to the life of the camp. The leasing is usually encouraged by the agents or others having charge of the Indians for profit only, since it can easily be made a source of considerable income. The would-be renter seeks the agent having charge of the lands, makes an inferior offer of the rents of certain allotments, and agrees to pay the agent a stipulated bonus if he will recommend that the lease be made. Where many thousand acres are available for leasing, the income to the agent from this source might many times exceed his salary."

RESULTS OF ALLOTMENT TO 1900

Analysis of the achievements of the allotment system requires first some appraisal of the leasing practice which vitally affected allotment results. There were defenders of the leasing system all through the 1890's. It had certain immediate consequences which recommended it to friends of the Indian who were sincere if lacking in vision. There was the simple fact of allotted lands lying idle which the Indians either could not or would not cultivate. Such waste seemed wicked to a generation that was coming increasingly to set store by efficiency. How much better it was for the lands to be used and the Indians to be deriving an income from them. In 1890, before the passage of the leasing act, a member of the Board of Indian Commissioners regretted that the Government had ousted white

[36] Report of the Commissioner of Indian Affairs (1897), 41–43 (1898), 61.
[37] Ibid. (1899), 60 (1900), 76–78.
[38] Thirty-second Report of the Board of Indian Commissioners (1900), 16, 17, 85; Eighteenth Annual Report of the Executive Committee Indian Rights Association (1900), 58.
[39] Report of the Commissioner of Indian Affairs (1900), 13.
[40] Eighteenth Annual Report of the Executive Committee Indian Rights Association (1900), 58.

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share workers from the Kiowa, Comanche, and Apache Reservations. He said: "Farms that could only be worked in this way, owing to peculiar circumstances, are now lying tenantless and abandoned."[41] In 1895 various agents expressed their approval of the way leasing was working since it was bringing in to the Indians a sizeable revenue.[42] In 1898 the Sac and Fox agent in Oklahoma found that this benefit of leasing coincided even with an educational value. He wrote: "About one-half of their lands are leased and with the best of results, as a source of revenue to the allottee, and his contact with the white lessees is encouraging more of them to work themselves."[43] One would like to know whether the Indians' inspired ambitions led them to reclaim the other half of their lands from their teachers. But it was frequently insisted that leasing had wholesome educational results although these results were never very explicitly described as having already made themselves apparent. The Sisseton agent wrote in 1895: "I have not interfered or discouraged them in leasing their surplus land under such contracts for the reason that I believe it will aid them in their progress for independent action at some future time. It adds to their experience in doing business for themselves."[44]

But for the most part, the agents who expressed their approval of allotment leasing saw it as productive of practical results. It took care of minors, women, and the old folks,[45] and it was economically profitable. One agent said the Indians got more out of the leased lands than if they worked them themselves.[46] This last comment forbode ill for the allotment system. The Sac and Fox agent who in 1898 saw the leasing practice as an educational venture wrote 2 years before: "Those Indians who have refused to take their allotments have begun to realize what benefits accrue to those who have accepted them from the leasing system."[47] Leasing was undoubtedly a spur to the taking of allotments. But it seems hardly to have been a spur to the Indian becoming a farmer. Perhaps some Indian lessors learned the doctrine of hard work from their white tenants. But evidence seems to show that what they learned mostly was to reap where there they did not sow.

The agent to the Tonkawas wrote in 1894: "These Indians have all taken their land in severalty, and are anxious that their allotments shall be improved. They manifest this desire, however, more by the readiness to lease to white men than by diligent labor to improve their homes."[48] The threat that this tendency made to the allotment system was clearly foreseen by Senator Dawes when he warned the 1890 Mohonk conference of the dangers of leasing. He told of Indians whom he had known in Indian Territory who had been completely demoralized by the practice of allowing white men to work their lands on shares. The Senator concluded by saying: "The Indians outside the Territory have acquired this passion for giving up their land for money in hand. The allotment law, which had its origin in the idea that work on the soil was the one thing of all others necessary to civilize the Indian, is in danger of being itself undermined by this attempt to lease the land which the allotment compels them to occupy for 25 years."[49] But as has been shown above, the Indian administration was unable to work out effective checks upon the leasing policy to prevent its running to extremes. And Congress, but for the brief hope of restraint it offered by the act of 1897, seemed willing to let the Indian go his own sweet way in the real estate business.

The Pottawatomie and Great Nemaha agent wrote in 1898, "Their lands are leased to a very large extent with discouraging and dangerous results. As at first proposed, the ill results might have been checked, but with the numerous modifications that have been adopted an agency is becoming a machine through which large sums of money are disbursed to immoral, dissipated, and utterly thoughtless persons, who have neither occasion nor disposition to resort to labor, and many of whom are without moral perception."[50] At the end of the century the Board of Indian Commissioners said, "We take note of the fact that there is a growing tendency on the part of allotted Indians at certain reservations to look at their individual allotments of land, not as homesteads on which work is to be done for the support of the family, but only as property to be leased in

[41] Twenty-second Report of the Board of Indian Commissioners (1890), 31.
[42] Report of the Commissioner of Indian Affairs (1895), 260, 262, 335.
[43] Thirtieth Report of the Board of Indian Commissioners (1898), 13. See also the agent's comments in Report of the Commissioner of Indian Affairs (1892), 190.
[44] Ibid. (1895), 302; see also p. 260.
[45] Thirtieth Report of the Board of Indian Commissioners (1898), 14.
[46] Ibid. (1898), 18; see also p. 15, and Report of the Commissioner of Indian Affairs (1900), 361.
[47] Report of the Commissioner of Indian Affairs (1896), 272.
[48] Ibid. (1894), 253.
[49] Twenty-second Report of the Board of Indian Commissioners (1890), 108.
[50] Ibid. (1898), 24.

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order that the Indian who owns it may live without work upon his income from rent." [51] And the outspoken opinion of the Commissioner of Indian Affairs in 1900 has already been recorded.[52]

The Sac and Fox agency seemed to hold true to its faith in leasing as a civilizing process.[53] The Quapaw agent started out with the same faith. In 1894 he thought the white tenants had "done wonders toward civilizing the Indians." [54] In 1895 he saw the civilized millenium opening up for his Indians. He wrote: [55]

"A few months ago there was nothing at Wyandotte but a post office and a few houses. Now, since the leases have been approved, quite an impetus has been given to the town, and what with ground being broken for business buildings, bank buildings, schoolhouses, and churches of most all denominations, the town in a few years will put on the garb of an incorporated city. * * *

"The white laborers, or lessees, on this reservation, from the best information that I am able to get, will number about 5,000, and the majority of them are here through the solicitation of the Indians. * * * Through them the Indians learn that this is a country of free thought and free speech; that this is an age of self-endeavor, of advancement, and of growth; that the old custom must give way to a new order of affairs. The above can truly be said of the conscientious white settler and not be called 'rose-colored.'"

Whether or not this estimate could be called "rose-colored", the Indians were very soon given a lesson in free thought, free speech, and self-endeavor. In 1896 the agent had to report that he had gone after those whites who had illegal leases, and finally ordered them off the reservation. But those free American citizens held meetings, defied the agent, threatened his life, and were on the point of storming the agency when wiser counsel prevailed. He was finally able to expel 24 lessees and 300 others left rather than abide by the leasing rules.[56] This incident certainly had something to teach the Indian about civilization.

Perhaps the most flagrant example of the corrosive influence of leasing was that of the Omahas and Winnebagoes, in Nebraska. The Omahas were the great hope of the allotment enthusiasts. But in 1893 the agent wrote that leasing had gone far among the Omahas and Winnebagoes and that the former were renting their lands without the consent of the agent or Government.[57] In 1894 the Indian Rights Association reported, "Recent investigations among the Omahas reveal the fact that only a very few of these allottees, formerly sober, industrious, and progressive, who made a most hopeful beginning immediately after their lands were given them in severalty, are now living in their houses or cultivating their land. White men, who never expect to relax their hold, occupy them, and the Indians, for the most part, are in camps along the Missouri River, dancing and carousing." [58] The association pointed out that as a result of the most recent law anyone unable to cultivate his land "for lack of ponies or for whatever reason" could lease his allotment.[59] That year, 1894, Professor Painter told the Mohonk conference of his bitter disappointment in the Omahas especially, about whom he had been satisfied and enthusiastic as they had started out under the allotment system. He had recently visited the two reservations and found most of the land in white hands. Real-estate syndicates had leased lands even before the allotment was completed. One company had rented 47,000 acres from the Winnebagoes at from 8 to 10 cents an acre and sublet to white farmers for $1 to $2 an acre. The Winnebagoes got enough income from these lands to stay drunk part of the time. But the Omahas got much more.[60]

The illegal leasing of allotments had apparently gone to great lengths on these two reservations.[61] In 1894 the agent thought that the Indians were anxious to recover their lands and till some portion of them.[62] The following year this fighting agent set out in a vain effort to bring to heel a powerful land company. The Government ultimately furnished him with 50 extra police and 70 rifles as the local authorities rallied to the support of the land company and were reported to be arming a hundred deputies. Confronted by an injunction in the State courts restraining him from evicting the company's tenants, the agent at last gave in.[63] In 1894 the agent had written, "The settlers would almost unani-

[51] Ibid. (1899), 19.
[52] Report of the Commissioner of Indian Affairs (1900), 13; above p. 114.
[53] Report of the Commissioner of Indian Affairs (1892), 190 (1896), 272.
[54] Ibid. (1894), 136.
[55] Ibid. (1894), 150.
[56] Ibid. (1896), 149.
[57] Ibid. (1893), 193-195; see also (1892), 186.
[58] Twelfth Annual Report of the Executive Committee Indian Rights Association (1894), 37.
[59] Ibid. (1894), 38.
[60] Twenty-sixth Report of the Board of Indian Commissioners (1894), 120.
[61] Report of the Commissioner of Indian Affairs (1895), 37, 38.
[62] Ibid. (1894), 187, 188.
[63] Report of the Commissioner of Indian Affairs (1895), 37-41.

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mously prefer to lease under the rules and regulations of the Department; but are held, pecuniarily, by the lawless corporations and individuals who have subleased to them."[64] In 1895 the Commissioner explained the effective technique of this particular land company which had been able to flout the Federal authority. His explanation suggests very clearly why this outlaw corporation received the community's support. In many instances the company accepted notes from their subtenants in place of money rent. These notes in turn came into the hands of local bankers. As a result all of the powerful interests in the community were galvanized in opposition to the Government in its attempt to force evictions or collect legal rents.[65]

Whatever progress the Omahas, especially, might have made under the original allotment system it is clear that the leasing policy doomed their efforts to failure and themselves to demoralization. A modern anthropologist, who recently made an exhaustive study of the Omahas, wrote, "Never properly accustomed to farming, not yet sufficiently good farmers to make an income very superior, or half so reliable as the rent from a white tenant, two-thirds of the Indian men ceased to make any further economic struggle. * * * There was no incentive to improving a standard of living already so alien to them."[66]

The passionate denunciation of leasing by the Omaha and Winnebago agent in 1898 perhaps says the last word on the matter. He wrote that out of 140,000 acres allotted on the two reservations, 112,000 acres had been leased. He then wrote:[67]

"Leasing of allotted agricultural lands should never be permitted. The Indians should be compelled to live upon their allotments and support themselves by cultivating the land. They can do it, but will not unless compelled to. Not 1 acre of allotted agricultural land should be leased to a white man, and it would be far better to burn the grass on the allotted lands than to lease them for pastures to the white man. The Indians could use them to advantage for stock-raising if they would. The mixing of the Indians with the class of whites who live upon and hang around an Indian reservation means the production of a mongrel race, embodying all of the vices and none of the virtues of the dominant race; it means death industrially, morally, and physically to the Indian. Not a white man should be allowed within the limits of the reservation until the Government has so far advanced the Indian, by compulsion if necessary, in the industries of his reservation that they are a self-supporting community and all business and trades conducted by them. If they are to be allowed to mix, let the Indians go among the whites—not the whites among the Indians—and he will then meet them as an independent, self-supporting individual, capable, through proper instruction, to transact his own business as between man and man and with the better class of whites; not as now, as an ignoramus in the hands of unprincipled sharpers. * * *

"What a revelation it would be to our Mr. Indian if he could travel in the plane of average honor and virtue of the white man, instead of being forever brought in touch with the level of maximum vice, fraud, and deceit of the white race."

Yet in 1892 Miss Alice C. Fletcher had said of the Omahas, "The people are learning by the best of teachers, experience."[68] Miss Fletcher never lost her faith in the progress of the Omahas under allotment. As late as 1910 she returned to the reservation and the things that she saw reaffirmed her belief that the Omahas were on the right road.[69] Yet most of the evidence from the 1890's and the most recent analysis of the community piece together a picture of a demoralized people.

It is difficult indeed to make a complete generalization about the results of the whole allotment policy as they manifested themselves by 1900. As before the passage of the Dawes Act there is confliciting testimony and one must constantly sift and evaluate before one can render a verdict. Particularly is it hard to give a verdict when certain unknown persons among the star witnesses are under suspicion of being parties interested in the case. Most of the direct testimony as to the results of the allotment policy comes from the Indian agents. The serious charges preferred against some of the agents by the Indian Rights Association in 1900—that they connived with land sharks in leasing transactions—makes the reader deal cautiously with all agents' reports.

[64] Ibid. (1894), 188.
[65] Ibid. (1895), 41.
[66] Since the book from which this quotation was taken presented a study of the Omahas under a fictitious name and the author made every effort to preserve the anonymity of the tribe, it seems wise not to identify the book by reference here.
[67] Thirtieth report of the Board of Indian Commissioners (1898), 25.
[68] Ibid. (1891), 144.
[69] Fletcher and La Flesche, 640.

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The agents' reports from 1887 to 1900 continued to express approval and gratification about the allotment system. Indians were constantly being reported to be improving in their farming technique and interest. The Commissioner reported in 1891 that allotment had been pushed with "unusual vigor" that year and that the Indians were receiving their allotments with increasing favor.[70] In 1892 he sent out a questionnaire to all agents inquiring as to progress and received enthusiastic replies about allotment as a civilizing agent.[71] But the agents gave little specific information. In 1898 and 1899 the Board of Indian Commissioners circularized the agents with more specific questions. Again the agents pretty generally expressed their approval of allotment results. In the few cases where the agents believed the system had not been so successful they explained that the soil was not adapted to farming or that drouths had interfered.[72] But there is a disturbing vagueness about most of their replies. Indeed their reassuring general statements were often vitiated by some of their specific items of information. Some excerpts from the answers to the questionnaire of 1898 will serve as examples. The Sac and Fox agent in Oklahoma wrote, "The benefits to the Indian in taking his allotment are numerous. It brings him more directly in contact with civilization.

"He observes more closely the advantages of industry and frugality as seen in his white neighbors. He is brought face to face with the advantages of education, sobriety, and religious habits of life." He then stated that not over one-fifth of his Indians cultivated their lands.[73] The agent to the Nez Perces wrote that four-fifths of his Indians were living on their allotments. But he said that only 10 percent of the land was cultivated and even on these lands the Indians hired white men "to do most of the work." But the agent thought the allotment system had great benefits. "It gives the Indian a chance to be a man among men. * * * The allotment policy, if carried to a finish, will also work a hardship on my friend Cody, by soon depriving him of suitable material for his 'Wild West' shows." [74] The Lower Brule agent said his Indians cultivated the soil "to a very limited extent" for it was a very poor farming country. But he said, "In my opinion it is a great benefit to the Indians to allot them land in severalty, as it has a tendency to scatter them out from their camps and make them individually responsible for their own property." [75] The agent of the Poncas, Pawnees, and Tonkawas believed allotment was a great thing for the Indians. He thought the "benefits numerous and evils few." Yet he informed the Board that the Poncas were cultivating 1,500 acres and leasing 30,000; the Pawnees were cultivating 1,443 acres and leasing 36,784; and the Tonkawas cultivated 75 acres and leased 11,200.[76] If this agent thought that in such a situation the benefits were numerous and the evils few, he clearly did not grasp Senator Dawes' original conception of allotment. If the success of the allotment system was to be measured in terms of the prosperity that came through rents to idle but civilized Indians, then the whole notion of the allotment policy had changed since the early days.

However, certain answers to the questionnaires of 1898 and 1899, together with various regular reports of agents through the period, indicated that allotment was successful in all respects in the industrial, as well as the cultural, progress of the Indians. Usually these statements were very general, but, again, they sometimes included specific information which supported the agents' eulogies of the allotment system's results.[77] There is no reason to doubt that there were instances where allotment was working well.

On the other hand agents now and then reported that allotment had signally failed. Few of the replies to the questionnaires of 1898 and 1899 explicitly reported failures, and when they did, they usually included remarks attributing any shortcomings in the system to local, or at least particularized causes, which could be eradicated. The statement of the Devils Lake agent in 1898 is typical of these replies. He wrote.[78]

"The benefits of the allotment system are, first, a wider knowledge of individual property rights, consequently some degree of personal responsibility (though the latter is not a marked feature of the present generation on this reservation);

[70] Report of the Commissioner of Indian Affairs (1891), 38, 39.
[71] Ibid. (1892), 185–195.
[72] Thirtieth report of the Board of Indian Commissioners (1898), 12–25; ibid. (1899), 8–13, 30–75.
[73] Ibid. (1898), 13.
[74] Ibid. (1898), 22, 23.
[75] Ibid. (1898), 18.
[76] Ibid. (1898), 17.
[77] Ibid. (1898), 15–21; (1899), 30–75; see also Report of the Commissioner of Indian Affairs (1892), 504, 185. (1895), 149.
[78] Thirtieth report of the Board of Indian Commissioners (1898), 13; see also p. 22.

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second, a tendency to fixed habitation and home building; the evils seem to arise from ignorance on their part and the selection, in many instances, of lands totally unfitted to agriculture; third [*sic*], dividing the allotments in 40-acre lots, in some instances many miles apart, necessitating great inconvenience in the cultivation; fourth, alloting to children should be discontinued, the land being saved and allotted when the child becomes of age and has saved enough to cultivate it."

In answer to the questionnaire of 1899 many agents urged the abandonment of the exclusively agricultural policy of the allotment system with the implication that it had not succeeded They advocated in its place the development of cattle-raising.[79] In 1898 the Crow Creek agent, however, noting the failure of Indian agriculture on his reservation, regretted the lack of cattle-raising in words which challenged the very basis of the allotment system He wrote, "But if these people could have been given a sufficient number of cattle to start a common herd among them, and the reservation fenced, I think they would have been in a much better condition now * * *." [80] The Omaha and Winnebago agent, as he inveighed against the leasing system, wrote also in 1898: "The allotment of agricultural lands to Indians as at present made is a mistaken policy. If the Indians have a reservation of agricultural lands it should be kept in its tribal form for purposes of control, government, and isolation from disreputable whites. It should be apportioned in uniformly suitable tracts in size, locality, etc., for future allotment." [81] According to most of the reports of the agents through the nineties the Omaha allotment system, from which so much was originally hoped, was spelling ruin and demoralization.[82]

The Tulalip agent could say nothing good of allotment in 1895. He wrote: [83] "* * * there are a large number of Indians holding patents to land who do not live on their lands, never made any improvements—indeed, some do not know exactly where their lands are, while others do not live on a reservation and have been absent for several years. The only practical effect of such a policy is, under the allotment act of 1887, as construed by the courts in the West, to thrust citizenship upon the Indians when they are, as a rule, totally unprepared and unfit to discharge the obligations imposed upon them. The Indian is quick, however, to avail himself of one of the inalienable rigths of American citizenship, and gets gloriously drunk, having no dread of punishment by Indian courts or agent to mar the pleasure of his debauch."

The agent to the Cheyennes and Arapahoes in 1895 was finding that the familiar Indian cultural patterns were obstructing the allotment policy and the development of the proprietary sense. He wrote: [84]

"It has required energy and perseverence to induce settlement and permanent residence thereon. Their nomadic habits militate against the permanent occupation of any locality as a home. * * * To live in one locality is repugnant to the Indian idea of home. That they must have a permanent abiding place in order to make any sort of progress is evident. They must learn to cultivate a love of individual ownership. Property in common is not appreciated.

"The most common and pernicious custom among them is the habit of visiting their relatives and friends and eating their substance. * * * Their lavish hospitaility militates against the accumulation of wealth by individuals. Tribal visiting keeps alive old customs that should be abolished."

Agents who expressed faith in the allotment system as the solution of the Indian's problem found this inertia of tribal economy most annoying. The Shoshone agent wrote in 1894: "Like all barbarians, they are communists, and are loath to take up individually any untried pursuit. There are a few in each tribe who, with a little assistance, would soon develop into excellent farmers.[85] The agent to the Otoes found them bitterly opposing allotment in 1895. He wrote: "This way of living in camps should be broken up in some way, and I believe the proper means to obtain abandonment of all these evils is to segregate them and force them, if necessary, to a separate residence on their allotments." [86] Yet one agent apparently did not believe that this adherence to an older economy on the part of the Indians was always productive of evil. He wrote in 1892 concerning one band of the Sac and Fox: "They live in groups, breaking and cultivating land without regard to individual ownership. Yet I must say that this band is

[79] Ibid. (1899), 10–12.
[80] Ibid. (1898), 12.
[81] Ibid. (1898), 25.
[82] Report of the Commissioner of Indian Affairs (1892), 306, (1896), 197.
[83] Ibid. (1895), 318.
[84] Ibid. (1895), 243.
[85] Ibid. (1894), 337.
[86] Ibid. (1895), 261.

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above the average for sobriety, honesty, industry, and thrift, notwithstanding their determination not to follow the ways of the white man." [87]

Again it should be said that it is difficult to make a final estimate of the results of allotment in the nineties on the basis of available testimony, which is for the most part testimony of agents or other interested persons. If the agents' general comments could be accepted at their face value, the success of allotment up to 1900 could be considered proven. But, as was said above, the writer does not believe the agents' reports may be accepted literally.

For one thing, evidence indicates that there were agents, although perhaps they were fairly rare exceptions, who found the combination of allotment and leasing of Indian lands a lucrative business for themselves. For another thing—what was no doubt more generally true—allotment had become established as the official policy and all who were connected with the Indian Service must have been influenced, consciously or unconsciously by that fact. Falling in line with the policy did not necessarily imply sycophancy or opportunism. It would require considerable intellectual independence for an agent to stand out against the policy, whatever he might see about him in the way of its tangible results. He would need great confidence, even audacity, to pit his judgment against the convictions of all the "better minds" of the day. Again, it may be said, the allotment policy began and continued as an act of faith. So it was possible for an agent to report that allotment was working well on his reservation and at the same time submit figures which showed that the greater portion of the Indian lands were leased to white men. Indeed, the testimony which comes even from the friends of the Indian as to the dire results of the leasing policy toward the end of the century makes it seem improbable that the allotment system in the main was working well.

The writer's scepticism as to the real success of the allotment system in the period of the 1890's is based not alone on inference and deduction. The following table contains figures that are pertinent to the question whether or not allotment was producing results:

Land and crop statistics

[Unless otherwise indicated the figures are taken from the current volume of the Annual Reports of the Commissioner of Indian Affairs. The figures in parentheses are page references]

Date	Total number of allotments to date	Total number of leases to date	Number of families living on and cultivating allotments	Number of acres cultivated by Indians	Indian agricultural production (in bushels)				Page
					Wheat	Oats and barley	Corn	Vegetables	
1890	15,166		5,554	288,613	881,419	545,032	1,139,297	482,500	(480)
1891	17,996		5,883		1,318,218	798,001	1,830,704	541,974	(106)
1892	26,700	2	7,302		1,825,715	875,634	1,515,464	558,162	(816)
1893	31,261	6	7,579		[1] 1,722,656	883,170	1,373,230	462,871	(723)
1894	34,322	301	8,359		887,809	653,631	911,655	396,133	(598)
1895	39,173	631	8,366	369,974	[2] 1,016,754	[2] 875,349	[2] 2,226,944	476,272	(594)
1896	43,587	1,564	10,045		753,577	731,806	2,100,316	542,538	(551)
1897	46,816	2,851	10,659		788,192	805,466	1,123,260	703,770	(510)
1898	48,831	3,799	11,789		664,930	599,665	1,339,444	494,509	(630)
1899	49,842	4,984	10,704		982,120	850,387	1,386,977	445,935	(597)
1900	58,594	7,574	10,835	343,351	935,731	722,925	1,655,504	396,067	(677)

[1] Over 850,000 bushels of wheat raised by white lessees on Umatilla Reservation.
[2] Unspecified amount of wheat, oats, barley, and corn raised by white lessees on Indian lands.

NOTE.—Allotment and leasing totals, 1891–1900 taken from figures given above pp. 81, 111–113.

The figures given above, while by no means conclusive, indicate that the allotment system was not producing the results which the originators of the policy hoped for. In comparing the number of allotments with the number of families living and working on them, one must bear in mind that several allotments might be made to one family. The act of 1891 which granted 80 acres to every Indian made it possible for one family to possess an even greater number of allotments than before. It is unfortunate that there is no way of knowing the number of specific families allotted and the average number of allotments to each. But the above figures show that the number of families cultivating their allotments was

[87] Ibid. (1892), 403.

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by no means keeping pace with the allotment figures. The number of allotments per family grew from 2.7 in 1890 to 5.4 in 1900. Since it may be supposed that when Indians accepted allotments the family took as many as they could get, and since the only change in the law after 1890 which affected the question of eligibility for allotment was the extension of the privilege to married women, this increasing ratio of allotments to families cultivating them suggests a decline of Indian husbandry. Or at least it suggests a failure to reach the goal envisaged by the friends of the Indian. Even more disquieting are the statistics of Indian agriculture. The above figures show an increase in acreage of Indian farming from 1890 to 1895 which was far from proportionate to the number of allotments made in those years. Then from 1895 to 1900, although more than 19,000 allotments were made, the area of the land tilled by Indians actually decreased by over 26,000 acres. Nor if one takes the figures of crop production for what they are worth, can one observe the progress in Indian agriculture during these 10 years which the friends of allotment expected. But it may be argued that it is not fair to judge the allotment system only in terms of agricultural results; that figures on Indian grazing are also pertinent. Yet these figures themselves reveal no satisfying progress. The figures on the number of sheep owned by the Indians are of no use because of changes in methods of reporting them.

The horse-and-mule industry showed actual decline from 443,244 in 1890 to 353,387 in 1900.[88] This would not have troubled the friends of the Indian since they disliked his propensity for keeping ponies anyway. The cattle industry showed improvement—from 170,419 head in 1890 to 257,610 in 1900.[89] But this progress, again, was hardly commensurate with the extension of the allotment system. However, these figures on the Indian cattle herds indicate the soundness of the agents' recommendations in 1899 that the Indian cattle industry be expanded.[90] Yet fundamentally, the allotment theory was an agricultural theory. The thinking of its creators ran in terms of the Indian as a toiling farmer, living independently on his tilled acres. There was no equally strong argument for land in severalty based on a conception of Indian economy as primarily herding. Grazing lands had been invariably communal lands among the Indians, where there had been any conception of landed property at all. And the trend of the western cattle industry from open range to vast ranch taught the simple economic lesson, which the least economically minded must have grasped, that the way to develop Indian animal husbandry was not to cut up their lands into 80- or even 160-acre tracts. But above all it was this pastoral life, second only to the chase in encouraging vagrant camp life and heathenism, which the friends of the Indian wanted to smash and replace with the American culture of exalted agrarianism.

The reasons why the Indian allotment policy fell short of the goal which its white sponsors dreamed of are varied and yet they fit together rather neatly to make a panorama of American life in the 1890's. As the writer has discussed at some length, there was the fundamental fact that allotment with all its cultural implications was alien to the way of Indian life. If the allotment system were to have succeeded the Indian would, culturally, have had to be made over. The significance of this fact was never fully grasped by the philanthropists and the Government. Individual land ownership was supposed to have some magic in it to transform an Indian hunter into a busy farmer. As for education, it would be enough to inculcate in him the forms if not the substance of the American social heritage. So the Indian, hopefully if not enthusiastically, went, unprepared, out upon his allotment, as an unarmed man would go unwittingly into a forest of wild beasts.

For if white land seekers and business promoters did not create the allotment system, they at least turned it to their own good use. Where the land was valuable white interests formed a ring about the Indian reservation; a ring which exerted a relentless pressure in all directions, until the forces was felt in Washington itself. This pressure came from fundamental social forces—from the movement of settlement and enterprise, like a great glacier, moving westward into new lands. It is not surprising that the Government in most cases possessed of good intentions and usually determined to withstand the pressure, yielded here and there.

There is plenty of evidence of this pressure at work. In 1890 the Commissioner disapproved of the Government's yielding unduly. He wrote: "There is always a clamor for Indian lands, but there is no such pressing need for more land for

[88] Ibid. (1890), 480; (1900), 677.
[89] Idem.
[90] See above, p. 125.

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white settlement as to justify undue haste in acquiring it. * * * Nor is it good policy to remove Indian tribes from one place to another, especially from one State or Territory to another, merely to satisfy the selfish ends or to suit the convenience of the whites. It creates discontent, destroys the natural attachment for the soil, disturbs whatever progress in localization and settlement may have been made, and retards progress in every way." [91] One can but marvel at the prevailing point of view of a public who would require such an exposition. But the Commissioner believed there were times when justice for the Indians and profit for the whites could be combined. In 1891 he wrote that through cessions of unallotted lands the Government had "secured for white settlers 13,000,000 acres, which would otherwise remain waste and unproductive" while the Indians would "receive funds sufficient to give them a good start in their new life. [92]

First of all white interests were concerned with the breaking down of the reservation and were apparently working tirelessly to this end. The friends of the Indian, as has been said before, looked to allotment as a means of making secure at least "half a loaf" for the Indian. Professor Painter believed that even the western whites expected (or feared) that allotment would accomplish this aim. He told the Mohonk conference in 1889: [93]

"The passage of the severalty bill, which substitues a personal title evidenced by a patent protected by law for a tribal right of occupacny duirng the good pleasure of Congress or of the Executive, if the reservation is one by tribal order, has awakened the frontiersman to the fact that he must secure such concessions, adjustments, and cessions he desires at once, before allotments are made, since it will be more difficult to set aside the provisions of this law than to procure the abrogation of a treaty made with a people too feeble to enforce it. Hence this great activity and increasing facility in Indian legislation."

A member of the committee for legal assistance that same year urged upon the Mohonk Conference the necessity of hastening allotment among the Mission Indians of California. He said: [94]

"The work should not, however, be delayed for any uncertain action of Congress but meanwhile he pressed under the severalty act; for in southern California, as elsewhere, the local press spends much of its energy in urging the breaking up of the reservations and the removal of the Indians, giving an exaggerated impression of the size and value of the reserves, the number and condition of the Indians, and their injurious effect upon the welfare of the country. Such attacks are supposed to emanate from the whole body of settlers in the vicinity of the different Indian settlements; but, to the close observer, it is evident that, while they influence to some degree the feeling of whole communities, they are chiefly inspired by a few seeking private gain."

Apparently the pressure in this particular case was so strong that the friends of the Indian found they had to yield in order to salvage anything for him. An investigating committee reported to the Board of Indian Commissioners early in 1890 that an agreement had been reached with the Potrero Mission Indian which settled a dispute with the Southern Pacific Railway Co. The Indians had objected to Congress's giving some of their lands to the railroad for a right of way. The agreement moved the Indians into a valley, gave to the railroad other lands in exchange for those to be occupied by the Indians, and cut down the reservation from 144 to 26 sections. The committee said, "A settlement such as is proposed, at first glance would seem to be a great sacrifice to the Indians." The committee went on to show that by the new arrangement the Indians would be secure in water rights and in their holding of the best fruit land.

The committee concluded, "It is also to be kept in mind that it is hopeless to attempt to stem the progress of an active white settlement, even if it is desirable, and a pacific adjustment of disputed titles, such as that proposed, is not to be rated as of little value."[95]

Besides the lands that were thrown open to settlement, white men were interested in tribal lands that remained. This was especially true of the cattlemen. Professor Painter dealt at length with this question in his speech before the 1889 Mohonk conference. He said, "We need now to face the fact, and deal with it, that the surplus of the reservation, after allotment, is a danger that threatens much. * * *" He explained how the Winnebagoes had leased their surplus lands for grazing, but because of "collusions between the officials in charge and the cattlemen, whose interests were looked after by influential politicians", 15,000 cattle were grazed on their lands for $300, when the rent

[91] Report of the Commissioner of Indian Affairs (1890), xxxix.
[92] Twenty-second report of the Board of Indian Commissioners (1890), 9.
[93] Ibid. (1889), 104.
[94] Ibid. (1889), 94.
[95] Ibid. (1890), 12.

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should have been at least $7,500. He added that the $300 went mostly for bribes.[96]

When it came to the actual designation of allotments, white influence was also busy. General Whittlesey, of the Board of Indian Commissioners, said to the Mohonk conference in 1891, "Another hindrance [to the allotting of lands] is the influence brought to bear by surrounding white settlers, who are waiting to get possession of the lands that may be reserved after allotments are completed. If there are valuable tracts of land, they try to prevent those lands from being allotted, and to prevent Indians from selecting them, by bribery and by other means."[97] Miss Fletcher contributed from the rich store of her allotment experience to a discussion of this point at a Board of Indian Commissioners' conference in 1890. She said:[98]

"The whites say, 'You are giving the very best land to the Indians.' I hope you will never have a thousandth part of the lectures I have had to take for pursuing this policy. I have had people tell me the capacity and incapacity, the powers and the lack of powers of the Indians and how useless this effort was to benefit them and that I should be throwing away this fine land. I have had committees follow me around in my allotment work to look after the interests of the white people. I have been talked to in a pleasant manner and in an unpleasant manner on the subject of my pushing the Indians where they were bound to die out, and annoying white people with neighbors they did not want to have."

This sort of activity on the part of the white neighbors continued through the period. In 1898 the agent of the Mission Tule River Reservation in California wrote: " * * * there is such a stubborn resistance on the part of many white people to the Indians occupying the lands set apart for them that the friction between Indian and white neighbors is constant."[99] Small wonder it seems that there should be such constant complaint from officials and friends of the Indian that so many Indians were located on lands unfit for agriculture.

The whites found various opportunities for exploiting the Indians under the allotment system. In 1890, General Whittlesey reported that there was a growing demand for the Government to distribute among the Indians on a per capita basis tribal funds that had been so heavily swelled by sales of surplus lands. He said, "That is their own desire, and the desire of many of those who surround them, who know how soon such money disappears." [1] The Umatilla agent who found agriculture languishing on his reservation in 1894—especially among the full bloods—wrote: "The few mixed bloods who farm their allotments do so with stock, machinery, and provisions furnished by merchants or bankers, who take a mortgage on the crop, afterwards taking all the crop." [2] And there was a long story of flagrant corruption and exploitation in the activities of lumbering companies who manipualted the allotment system to their great profit, on up into the twentieth century.[3]

By the middle of the 1890's the friends of the Indian began to express dismay at the course their humanitarian policy had taken in the hands of person who were not always humanitarians. In 1888, the Commissioner was confident that the allotment system was such a threat to the vested interests as to evoke their bitter opposition to the plan. He wrote: [4]

"Considerable opposition to the allotment policy has been developed from two sources. Those who believe in the wisdom of tribal ownership, and in the policy of continuing the Indian in his aboriginal customs, habits, and independence, oppose it because it will eventually dissolve his tribal relations and cause his absorption into the body politic. On the other hand, those who expected that the severalty act would immediately open to public settlement long-coveted Indian lands, oppose it because they have learned that these expecteations will not be realized."

But apparently the white land seekers did not fare so badly under the Indian allotment system. Professor Painter said to the 1894 Mohonk conference: "Allotments are ordered, not with reference generally to the conditions of the Indian, but to the greed and demands of the white people about the reservation who wish to secure surplus lands. I could, had I time, call attention to reservations where the effect of allotments has been to set back the Indians for 20 years."[5]

[96] Ibid. (1889), 104, 105.
[97] Ibid. (1891), 96.
[98] Ibid. (1889), 150.
[99] Ibid. (1898), 14.
[1] Ibid. (1890), 129.
[2] Report of the Commissioner of Indian Affairs (1894), 269.
[3] See W. K. Moorehead, The American Indian in the United States (Andover, Mass., 1914), 59, 62, 71 ff.
[4] Report of the Commissioner of Indian Affairs (1888), xxxviii.
[5] Twenty-sixth report of the Board of Indian Commissioners (1894), 120.

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The Indian Rights Association in its report of that year maintained that the first and essential safeguard of the allotment had been neglected—namely, that allotment should be applied according to the needs of the Indian. The report maintained that this principle had been "flagrantly disregarded" and went on to say: "Reservations were designated for this purpose [allotment] in many cases by order of the President, and others by means of treaties, procured by means which ought to bring the blush of shame to every citizen, where the greed of the whites, not the interest of the Indians, demanded it. Irreparable injury was thus inflicted upon a number of tribes from which they will slowly, if ever, wholly recover." [6] In 1895 the Commissioner showed himself well aware of the forces that were crippling Indian development. He made a shrewd comment on his times and a significant forecast. He said: "The whites in some sections of the country seem to have very little respect for the rights of Indians who have segregated themselves from their tribes and sought to avail themselves of the benefits of the Indian homestead and allotment laws enacted expressly for them by Congress, and I apprehend that the opposition to them will increase as the public domain grows less and less." [7]

Thus it is clear that the Indian administration was continuously struggling against terrific odds in its efforts to preserve for the Indian some freedom and opportunity as against the encroachment of white enterprise. And under the constant pressure of many of its powerful citizens the white government made what now appears to be fatal mistakes in administration. One student of the allotment movement believes that the act of 1891 was the most important step toward ruin. This law by granting the Indian the right to lease and at the same time allotting to each member of the family—to babies and octogenarians—an equal amount of land developed in the Indian idleness and avarice. Children ceased to be a responsibility and became indirectly a source of revenue through their leased allotments. As a result the family was disrupted as a producing unit and the Indian's interest became pecuniary instead of industrial.[8] The present writer agrees with this analysis, but he is inclined to think that basically the leasing policy in almost any form would have meant ultimate defeat for the allotment system.

To be sure, if the Government had thrown most of its effort into industrial education and, at the same time, could have held the leasing down only to those cases where it was crystal clear that the allottee was unable to use his land, the allotment system might have survived the leasing practice. But of course the powerful and steady pressure from the whites and from the Indians, themselves, meant that the leasing policy would swerve with these forces and be held fast by far-sightedness and restraint. Congress yielded and removed almost every restriction upon the leasing practice. So the Indian came more and more to look upon land as a source of revenue from the labor of someone else. And he was started on this course almost at the outset of what was to be his career as a hard-working, independent farmer. Of course this demoralization by no means reached all Indians. There were unquestionably many instances where the leasing of allotments was a practical and wise solution of an Indian's problem. Nor was leasing applied to the greater number of allotments in this period. It is unfortunate that there are no figures which show the amount of allotted land which was leased by 1900. There are no figures even to show how many allotments were leased, since in some cases one lease might cover the holdings of several Indians.[9] The only figures available are those quoted in the table above and they show that leasing was developing fast toward the end of the century—that 7,574 leases had been approved by 1900.[10] There is no way of telling what relation this figure bears to that of 58,594 allotments granted by 1900 or to the figure of 10,835 families who were living on and cultivating their allotments in that year. Agents reported at times that Indians lived on their allotments and cultivated portions of them and leased the remainder to whites.[11] From what these figures suggest, it would certainly not be true to say that the leasing policy dominated the allotment system in this period. But the point is that a practice was begun which was carried far in the next century and which retarded Indian agricultural development. Of the 6,463,840 acres of agricultural lands allotted to Indians by 1916, 2,357,542 acres were in the hands of lessees.[12]

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[6] Twelfth Annual Report Executive Committee Indian Rights Association (1894), 36, 37.
[7] Report of the Commissioner of Indian Affairs (1895), 22.
[8] Flora Warren Seymour, Story of the Red Man (New York, 1929), 376; letter from Mrs. Seymour to the writer.
[9] Information from Mr. Roblin.
[10] See above, p. 128.
[11] Thirtieth Report of the Board of Indian Commissioners (1898), 12–25; ibid. (1899), 30–75.
[12] Report of the Commissioner of Indian Affairs (1916), 112.

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Furthermore, the leasing of allotments must be regarded as a step toward their sale. Senator Dawes in 1890 warned the friends of the Indian that if the white man once got his foot upon Indian land he would never take it off.[13] There was much truth in this statement. Especially would it be hard to make the white man get off when the Indian was not anxious to see him go. Accustomed to thinking of his allotment in terms of rent, the Indian landlord could be easily persuaded to seek the right to sell his land for a sum that was immediately greater than the periodic revenue from his leasing. In 1890 Senator Dawes told how various tribes were beseeching the Government to distribute to them their tribal funds. One of the tribes he cited was the Osages. He said: "The Osages, who have in their wealth depreciated and gone back year after for 20 years, think the wisest way is to take the 7 millions or more belonging to them in the Treasury and have a great feast with it as long as it will last." [14] With such prodigal ideas of tribal finance the Indian could hardly be expected to show much providence in his personal affairs. And it was patent that he did not. Yet there were officials in the Indian Service who favored the alienability of Indian lands. As early as 1890, when allotment was just getting under way on a large scale, the secretary of the Wisconsin Indian Association reported that the Oneida agent had recommended to Washington that legislation be passed giving his Indians immediately patents in fee. The association was up in arms over the matter.[15] In 1898 the Quapaw agent wrote that leasing had been highly successful on his reservation and that he believed the most progressive Indians should be allowed to alienate portions of their lands.[16] Congress in the 1890's began the process of breaking down the safeguard of inalienability which had been thrown around Indian allotments and which was almost completely dissolved by the Burke Act of 1906 (34 Stat.L. 182). In 1893 a law was passed (27 Stat.L. 633) cutting down the trust period for the allottees among the Puyallup Indians from the original 25 years to 10. In 1894 Congress authorized the Citizen Pottawatomies and Absentee Shawnees in Indian Territory to sell, with the Secretary's approval, all of each allotment in excess of 80 acres. Members of those tribes who lived outside the Territory were to be free to sell what they pleased (28 Stat.L. 295).

Against these acts the Indian Rights Association protested vigorously, as a showing a dangerous trend, and the Board of Indian Commissioners and the Mohonk Conference joined the association in denouncing the act of 1894.[17] The friends of the Indian sensed that the breach had been made in the dyke.

A contemporary writer gave a terse summary of the shortcomings in the development of the allotment policy. In his Indians of Today, published in 1900, G. B. Grinnell wrote: [18]

"The fatally weak points in the allotment law, as now carried out, lie in the tendency to apply it to all tribes, no matter what their condition, progress, or situation, in the provisions that citizenship shall go with allotment, and in subsequent legislation allowing allotees to lease, or in some cases even to sell, their lands. In all these respects the policy is radically wrong and should be changed."

Although these acts of the Government today seem serious mistakes, there are many things which the fair-minded critic must consider and which must temper his judgment of the case. In the first place, one who reads the records must conclude that in the main the acts of the Government were in good faith. They were for the most part sincere efforts to defend and help the Indian. In the second place, the Government in its Indian policies had to deal with the dominating elements of the American economic order. At almost every point the Government had to contend with the economic interests not only of expanding corporate wealth but of milllons of settlers—ordinary people, citizens of the democracy, voters. From the first, the Government was doomed to lose the fight. Indeed, in the matter of the Indian policy especially, one cannot indict the Government without indicting a people. In the third place, it must be remembered that the theories behind the Indian policies were logical elements of the prevailing, social philosophy. It was not merely the case that the Government was forced by the pressure of private interests into wholesale allotment, leasing, and the removal of restrictions on alienation. All of these proposals harmonized with the laissez-faire theory which produced allotment.

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[13] See above, p. 102.
[14] Twenty-second report of the Board of Indian Commissioners (1890), 108.
[15] Ibid. (1890), 147.
[16] Ibid. (1898), 15.
[17] Twelfth Annual Report Executive Committee Indian Rights Association (1894), 38; Twenty-sixth report of the Board of Indian Commissioners (1894), 8, 79, 80.
[18] G. B. Grinnell, Indians of Today (New York, 1900), 167; see pp. 168–170; see also Report of the Commissioner of Indian Affairs (1900), 448.

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It must be remembered that allotment was not originally conceived as an educational technique which would require great effort and care in administration. The Government was not to run a col ossal nursery school. Allotment was to work all by itself. Through allotment the magical principle of private property was to teach, develop, and refine the Indians as it had supposedly done everyone else. If the Indian was taught acquisitiveness and property put within his reach, then all would go well. This remained the dominating idea of the friends of the Indian. In 1896 President Gates of Amherst College addressed the Mohonk Conference as its presiding officer in words which show the perdurance of the American faith in self-interest. He said: [19]

"We have, to begin with, the absolute need of awakening in the savage Indian broader desires and ampler wants. To bring him out of savagery into citizenship we must make the Indian more intelligently selfish before we can make him unselfishly intelligent. We need to awaken in him wants. In his dull savagery he must be touched by the wings of the divine angel of discontent. Then he begins to look forward, to reach out. The desire for property of his own may become an intense educating force. The wish for a home of his own awakens him to new efforts. Discontent with the tepee and the starving rations of the Indian camp in winter is needed to get the Indian out of the blanket and into trousers—and trousers with a pocket in them, and with a pocket that aches to be filled with dollars! * * * The truth is, that there can be no strongly developed personality without the teaching of property—material property, and property in thoughts and convictions that are one's own. By acquiring property, man puts forth his personality and lays hold of matter by his own thought and will. Property has been defined as objectified will. We all go to school to property, if we use it wisely. No one has the right to the luxury of giving away until he has learned the luxury of earning and possessing. The Saviour's teaching is full of illustrations of the right use of property. I imagine that we shall look back from that larger life which lies before us 'on the farther side of the river of death,' and shall regard the property we have held and used here, not as in itself an object and an end, but as much as those of us who have had the benefit of kindergarten training look back now upon the little prizes and gifts that were put into out hands in the kindergarten classes, things which were of no sort of value or consequence except as out of their use we got training for the larger life, and for the right use of stronger powers.

"There is an immense moral training that comes from the use of property. And the Indian has had all that to learn. * * *"

Such a transcendental notion of property as a guiding principle in life would not lead to a theory which required the Government to undertake the active training of the Indians. Indeed, "strong government," and "paternalism", in Indian affairs had in the past been identified with oppression. The friends of the Indian turned away from all this as their forefathers had turned away from Great Britain. And for Americans, the new direction was toward laissez-faire, and freedom. The Government was to *protect* the Indians; but, as Lyman Abbott said in 1887, the Indian (it was hoped) would not be cared for by the executive branch of the Government: like everyone else he was to come under the protection of the courts.[20] The friends of the Indian, therefore, would not be urging new functions upon an organ of the Government which they had already declared to be moribund. In specific situations, however, the philanthropists felt the need of Government action. In 1899 the Board of Indian Commissioners recommended that there be set up in the service an effective registry of Indian births, marriages, and deaths. But characteristically the Board hastened to add (with its own italics), "* * * our Board is *recommending additional machinery* in the Indian Service, *only in order to hasten the period at which all special laws for, and all special administration of Indian affairs, may come to an end.*" [21] The Indian was soon to be a man among men.

It is only fair to give a contemporary his chance to summarize and justify the Indian policy in the nineteenth century. The Reverend J. M. Buckley, D.D., editor of the Christian Advocate, said to the Mohonk conference in 1889: [22]

"I do not believe that our fathers committed an unpardonable sin when they assumed that the Indians did not own this whole continent. * * * I therefore do not feel that those who discovered this country, and found it inhabited by savages, and took possession of it to introduce civilization, committed the un-

[19] Twenty-eighth report of the Board of Indian Commissioners (1896), 35, 36.
[20] See above, p. 56.
[21] Thirty-first report of the Board of Indian Commissioners (1899), 19.
[22] Ibid. (1889), 80.

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pardonable sin. They did what the world has been doing from the beginning of history till then, and what it has been doing ever since. * * *"

But, of course, the policy of the people who came here was a compound of greed and hatred, necessity and conscience; and from the beginning till now all these elements have been at work, sometimes one in the ascendancy, sometimes another.

Mr. WERNER. Mr. Chairman, Mr. Sloan is here and he has a statement he would like to make, and I would like to have him heard at this time.

The CHAIRMAN. We will be glad to hear Mr. Sloan.

Mr. WERNER. I see he is out at the present time, and will state this for the record:

I have received a petition signed by representatives of the Sioux, which I would like to have read and included in the record, and I have also received a letter from George Whirlwind Soldier, addressed to the honorable chairman of this committee and the honorable chairman of the Senate committee, and I would like to have these incorporated in the record.

The CHAIRMAN. They might all be submitted. There are a great many of them that other members have, and I have a great many of them myself.

Mr. WERNER. This is a very short petition, and this is a statement of policy here. Of course, I would not want all of the names signed to the petition to go in the record.

The CHAIRMAN. Then, without objection, the petition may be included in the record.

(The said petition is in words as follows:)

Hon. EDGAR H. HOWARD,
Chairman of the House Committee on Indian Affairs:

We, the undersigned Indians of the Rosebud Sioux Tribe, of Rosebud Reservation hereby most respectfully protest against the enactment of S. 2774, or S. 2755 or H.R. 7902 because, even though our tribe should not organize, these bills would automatically result in the following:

1. It would repeal the authority vested in the Secretary of the Interior to issue certificates of competency, fee patents, or to remove restrictions.
2. It would repeal existing law authorizing Secretary of the Interior to determine the heirs of deceased Indians.
3. It would repeal existing law that permits an Indian to make a will with the approval of the Secretary of the Interior.
4. It would not only repeal the general allotment law of 1887 but all allotment laws, incorporated in treaties and agreements made with the Indians.
5. It would authorize the extension of the Indian Reservation without the authority of Congress as now required by existing law.
6. It would extend the trust period in trust patents in perpetuity, or until authorized by Congress.
7. It would repeal existing law with reference to inheritance, thereby destroying vested rights.
8. It would permit the Secretary of the Interior to cancel any trust patent.
9. It would prohibit the sale of lands, except to an Indian or the community, or the tribe.
10. It would authorize the Secretary of the Interior to sell the inherited lands of the Indians.
12. If, in the event the bill should be enacted and the community should be charted, as to any Indians not living in the reservation on February 1, 1934, in order to be enrolled and participate in the tribal estate, would have to be of not less than one-eighth Indian blood. This would seriously effect a large number who removed from their reservation.
13. Most of the things it is supposed to do in giving the Indians a large voice with reference to the employees on the reservation can be accomplished now by administrative action.

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14. It would set the Indians apart in a socialized community contrary to the spirit and genius of the American people of which the Indians should remain a part.

(Signed) THOMAS A. MCLEAN
(And 157 others).

Mr. WERNER. Here is the letter which I would like to have the chairman read, with the exception of the last paragraph, which deals with matters personal and political. But if the chairman desires to have that read, it is all right with me.

I offer that for the record.

The CHAIRMAN. The Chair did not clearly understand the gentleman's request. Was it his desire that the whole of this letter, signed by George Whirlwind Soldier, be submitted for the record?

Mr. WERNER. No, Mr. Chairman; I rather think that the last paragraph in there is a statement of conclusions on the part of the writer and may be touched with bias. The last paragraph is personal, and I think the first two paragraphs would best be offered for the record.

The CHAIRMAN. Then, the letter reads as follows:

WOOD, S.DAK., *May 2, 1934.*

Hon. THEODORE B. WERNER,
House of Representatives, Washington, D.C.

DEAR MR. WERNER: I enclose herewith a petition to the Honorable Lynn J. Frazier, Chairman of the Senate Committee on Indian Affairs, and to the Honorable Edgar H. Howard, Chairman of the House Committee on Indian Affairs. I am sending this to you in order to inform you about its contents and if you care to make a copy of the heading for your future information I will be pleased.

The Government officials seem to be trying to force this Collier program upon the Indians. Collier has taken Roe Cloud away from his duties as superintendent at Haskell and is making a campaigner of him, the same as the politicians do before election. This appears to me to be entirely out of place to take a Federal employee and, in fact, several Federal employees, and make campaigners out of them instead of sending this bill to the different tribes and letting them select some attorney to explain anything to them which they do not understand.

Mrs. GREENWAY. Mr. Chairman, would I be permitted to ask a few questions?

The CHAIRMAN. Certainly.

Mrs. GREENWAY. I wonder if Mr. Commissioner would help me a little on this. I have tried very hard to give as sincere and helpful thought to the Wheeler-Howard bill as I know how. I would like to have you tell me if I am correct in this:

I tried to analyze that bill, particularly since you made the statement the other day that certain phases of it are so very serious. As I understood what you said the other day, you felt certain phases of that bill must be faced at this time.

Am I correct in understanding that the first and major problem that has brought that bill into life is the fact that the allotment system is resulting in the loss of lands that were meant for the Indians, to the Indians?

Mr. COLLIER. That is correct; and that a large number of Indians are without any land.

Mrs. GREENWAY. Then, also, there is a very definite and entire change of the school and educational system of Indians, is there not?

Mr. COLLIER. I would not say that. I would say it enables us to carry our education forward into the professional and trade specialties which we have not been able to do.

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Mrs. GREENWAY. That has some relation to the mission schools?

Mr. COLLIER. No connection whatever. It is to enable us to put these young folks, through advanced training, in colleges.

Mrs. GREENWAY. You mean the mission schools are continued?

Mr. COLLIER. Oh, yes; they are not affected at all.

Mrs. GREENWAY. The third purpose—and I want you to tell me if these are the three major matters to be covered in that bill—is the executive experience that the Indian should have in the management of his own affairs, to fit him for eventual citizenship. Is that correct?

Mr. COLLIER. That is correct; and I might say this, Mrs. Greenway, that the executive experience can be split into two types of experience —their political experience and their business experience.

While in the long run we do think some means of giving him political experience is important, yet we feel the more urgent thing is to fit him for business enterprises, and that is something probably nobody will dispute about, because that is an elementary right.

May I add that the extension of financial credit is basic, and that is one of the emergency matters.

Then we feel very strongly that some readjustment of the civil service must be arranged for so that Indians will not be excluded if they are fit. They are discriminated against now under the present civil service, and it cannot be helped.

Mr. WERNER. Is there not some way in which that discrimination can be eliminated?

Mr. COLLIER. We think so.

Mr. WERNER. By other than this law?

Mr. COLLIER. It will require some law.

Mr. WERNER. Now, Mr. Commissioner, are you familiar with the Executive order that was issued by President Cleveland in connection with the employment of Indians in the civil service?

Mr. COLLIER. I am not, but I imagine it is similar to the one issued by President Roosevelt, which enables us to employ certain Indians for lowly positions without civil service.

Mr. WERNER. Is it not possible, in view of the stand of the President and the Secretary of the Interior, that you could intercede with them and have an Executive order issued permitting you to get that authority to employ Indians on the reservation in all of the positions, entirely aside from the civil-service regulations?

Mr. COLLIER. I doubt that. What we can do now in the case of a given Indian we want to appoint, we can go to the President for an exception, and can always, by Executive order, override the civil service, and he has done it twice for us, as I recollect.

However, that is a thing in which you have to be very conservative, and it seems to me that we should have authority to create a civil-service list of eligible Indians from which appointments can be made, and that the merit principle ought to be recognized.

We ought to recognize that the Indians have not been given the education by which they can qualify in the civil service.

Mr. WERNER. Why is it necessary to set up another instrumentality when the present instrumentality can serve the purpose in drawing up the proper regulations for classification of those who are eligible to take the examination?

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Mr. COLLIER. I might say that the President could exempt all Indians, and it would have to be this kind of a thing to meet the situation where we have 7,000 positions, approximately, we would have to have an Executive order by the President excepting all of those positions where Indians were concerned. Then we would have to go to work and by rules and regulations apply it on some sort of merit system.

It seems a much more simple thing for Congress to say there shall be created a special Indian civil service. It is a more regular procedure, and I imagine the other method would be severely resisted by the civil service people.

Mrs. GREENWAY. I might say I have a communication representing 850 protests in the matter of the civil service in the merit system of the picture.

Those people say they have builded their lives on it, and that this would be revolutionary and entirely destructive.

Mr. COLLIER. Are they protesting against the feature of local or Federal employees?

Mrs. GREENWAY. I do not believe I could answer that accurately.

Mr. COLLIER. There have been protests by the federation of Federal employees, but that is distinct from the idea that the Indians should not take employment if they have academic requirements.

Mrs. GREENWAY. Would it not mean the displacement of present employees?

Mr. COLLIER. It would mean that where an Indian was found to be equally qualified, then he should be put into employment.

Mrs. GREENWAY. If I may, I will go on, but I thank you for assuming, however, that I might, in judging the bill, in its purposes—first, to correct the allotment that takes land from the Indians; then the educational system to be adjusted, and the executive experience to be given to the Indians.

Now, if I may go a little further without monopolizing too much time I want to say I particularly do not want to be an obstructionist, but I think the only way not to be is to be perfectly sincere and try to be useful in this picture. I think the bill as it presents itself is not a bill I can support in its present form, and I want to give my reason, so as to save your time, and I hope you will see my reasons are constructive and are not going to paralyze the future hopes of this bill.

First off, I would like to have the privilege of hearing from the members of this committee what they really think about this bill, after they have been home and discussed it with their Indians, and I cannot help feeling there will be quite a difference of opinion after that.

I know that some members of the committee feel it peculiarly applies to their tribes. I know my files show both sides of the picture, and there is a constantly increasing amount of prejudice against this bill in the last, I might say, 2 weeks, from unexpected sources.

Then I would like to have a little bit of an idea of what the cost of this experiment is going to be. At the same time I do not want to adjourn and have it said that we failed to help the Indians in some step-up into this picture where it legitimately should be.

I wonder if I have made myself clear.

Mr. COLLIER. I think we have a meeting of minds here. I have previously stated our view, for example, about title 4, the court section.

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While we think there is a real problem there that has to be met, we think we have to go forward to a practicable solution, and we do not consider that has the urgency that other parts of the bill have.

We are perfectly willing to say that that may go over, and are inclined to recommend that it shall go over.

Mr. CHRISTIANSEN. That is the court section, Mr. Commissioner?

Mr. COLLIER. Yes; that is the section dealing with the Court of Indian Affairs. There are other parts of the bill which we must say are practically, highly complicated. There is no reason why the committee should take our judgment that they are going to work out the way we think.

Mrs. GREENWAY. Which part do you refer to?

Mr. COLLIER. I will mention one, this scheme of allowing the Indians to force removal of Federal employees. I belive in it, but there are people who say it would compel the superintendent to become a politician in order to hold the goodwill of the Indians.

I just mention that as one of the controversial things which might well be looked into some more.

We previously had in the bill a certain method of taking care of the allotment proposition. We began by saying that the Secretary could himself transfer the title of an allotted Indian to the tribe.

We have abandoned that, making it voluntary.

Now, the Blackfeet have very strongly brought up the plea that the transfer of the title to land belonging to dead allottees should also be made voluntary, and they believe it could work out that way successfully, and we say that is a complicated question.

Mrs. GREENWAY. How are you going to meet the argument of an Indian such as brought here the other day, who gave us his protest really in behalf of the second and third generation?

Mr. COLLIER. That is what I am saying now. There are things on which I imagine there would be agreement, about the airship of lands. Everybody agrees when they are cut up into fragments they are practically useless to all parties. Thrre should be some way to enable those lands to be amalgamated by purchase back into the tribe.

In other words, some provision to make the administration practicable and to enable the heirs to get some money out of the property.

I believe a formula could be worked out to meet some of the more pressing questions we have, and leave others for future consideration.

Mrs. GREENWAY. Has the matter of allotment been formulated?

Mr. COLLIER. It has not been formulated by us, and that is why we are so anxious for the committee to go into session because I strongly believe when the committee does go into session it will be found that there will be a precipitance of agreement on certain things and it will be possible then to agree to waive certain other questions for the future, but we can get at certain things now.

Mrs. GREENWAY. While there is so much disagreement in this committee, could there be legislation of a compromise nature, let us say, on the single question of allotment, which would prevent the unfortunate phases of this to continue until we could get together again?

Mr. COLLIER. There might be universal agreement that we ought to stop any more allotment until Congress considers the thing; in other words, that we ought to stop any other alienation by men until Congress consideres the matter completely.

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Mr. WERNER. With that thought in mind yesterday I introduced in the House a bill that ought to be here today. I would like to have the chairman at this point read this bill, which has to do with this question, and which is very simple, very short, and, I think, is very effective.

The CHAIRMAN. The bill presented by Mr. Werner reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all existing trust periods of Indian allotments, held under restrictions against alienation, and any new allotments which may hereafter be made, shall be continued under such restrictions, until further action thereon by Congress. The authority of the Secretary of the Interior to issue fee patents, or certificates of competency or otherwise to remove restrictions on allotted lands now held by individual Indians is hereby repealed: *Provided,* That the Secretary of the Interior may approve sales of allotted lands or inherited interests in allotments where funds are necessary to preserve the life or health of Indians needing such care and attention, and there is no other relief available.

Mr. COLLIER. That is an important element in this bill before us, which can be picked out, and I imagine there would be no opposition to that.

Mrs. GREENWAY. It may be that I am a little dumb, but I would like to see that bill analyzed.

Mr. WERNER. It simply means that there will be the permissive power to dispose of the land of the Indian, and there will be no further opportunity to dispose of allotted lands.

No Indian can sell his land, and the land will be preserved to him, free from all encumbrance, until Congress deems otherwise or takes further action.

If this law had been in force, these lands would not have been dissipated.

I have even heard the statement, and I believe I am correct, that not 1 foot of land has been lost to the Indian through the connivance of the Indian Bureau.

I think if this law is passed by this session of Congress and we could pass some other features that would meet the existing emergency, then we could take time to make a careful study of all of the other features, and of a plan which would in the end be beneficial as well as acceptable to the North American Indian, and lift him out of his present morass.

That is the position I have taken on this committee and shall continue to take, because I consider that I am in fact a representative of the people who sent me here.

I feel very sincere about this matter. My position has been misrepresented, and I am willing to accept that for what it is worth, but that shall not deter me from doing the thing I think best to the furtherest limits of my ability. I would like by direction to strike at the very evils that exist, and to quickly terminate all dissipation of Indian lands and Indian property, and to preserve now for those Indians that which they still hold.

With that in view I introduced the other bill which was passed and signed, so I would like now by direction to do the things that ought to be done, and not run down a blind road where nobody knows whether you will run into a bog hole.

Mr. CHRISTIANSON. Mr. Chairman, I believe Mr. Werner's meets 1 of the 2 essential objectives. I am not sure about the proviso at the end of the bill which provides in an emergency need land may be

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sold. If I know my Indian friends, they are always in urgent need, and if that were given as a good excuse for conveying land, the principal purpose of this bill, I am afraid, would be entirely nugatory. I am saying, however, that this meets 1 of the 2 essential objectives I think we ought to try to reach at this session.

It stops dissipation of the Indian estate through allotment.

I am wondering, however, whether it would not be well to put in some sort of machinery whereby, through voluntary action, Indians might organize themselves cooperatively for economic purposes.

In our respective States the citizens generally have that power, because we have our corporate laws. We have the Volstead-Capper Act, a Federal act which governs such associations, but, so far as I am aware, there is no legislation at the present time whereby the Indians, acting voluntarily, can organize themselves into cooperative associations for the purpose of running enterprises.

Am I right in that statement, Mr. Collier?

Mr. Collier. You are right.

Mr. Christiansen. I think that is an objective that is very worthy.

I am further of the opinion that there should not be any element of compulsion in this, and that whenever Indians are asked to enter into such an economic community, they do it voluntarily and of their own free will, but there I think the law should afford the machinery under which they could do it, because there is still a residuum of the Indian people that have not fitted themselves or equipped themselves where they can fit themselves into competition with the white man's society.

The Chairman. Do you not think it would be possible when we shall consider this bill for amendments, to incorporate into the measure some suggestions offered by yourself and Mr. Werner, so as to at least make the bill more resposive to your own thought?

Mr. Christiansen. I presume that would be only a matter of elimination. It would be a matter of eliminating from the bill all of those things which some of us consider unwise and too premature, and too complicated, at this time, at least.

Mr. Collier. May I suggest one thing, too, which couples up with your suggestion.

Let us assume we have already the idea of compelling the Indians to put their heirship land into a tribal estate. We have, however, the condition of these allotments with hundreds of heirs having a small equity, and one heir having a small equity in many allotments, which makes the administration very costly, even more than the yield of the land in some cases.

Then, if there could be established this thing Governor Christiansen is talking about, whereby the Indians could organize for economic or business purposes, and then the owners of the allotment, including the heirs, should be given authority to trade with that economic cooperative association and vest the title in that for shares of stock—there would be the means of overcoming this condition we are facing in the heirship lands.

But even that is predicated on something else in the bill, on the appropriation of money wherewith to buy the land.

Mrs. Greenway. But, then, will we not be in the position that every time anybody dies and leaves land to his children, the Govern-

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ment will have to buy back, and we will be repeating and repeating in purchasing that land from the heirs.

Mr. COLLIER. I do not think so, Mrs. Greenway, because the heirs own what they have got now. Insofar as land which they own can be acquired by the tribe, the tribe then can afford to pay the heir a cash price or the rental value of that land.

Mrs. GREENWAY. When you speak of the tribe, where does the tribe get the resources to do that?

Mr. COLLIER. There are two sources. The tribes are constantly in receipt of revenue from various sources which could be used for acquiring these lands; and, then, the Government itself can appropriate money with which to buy it back.

It is an economical thing for the Government to buy it back, because, first, the cost of administering these lands runs into millions a year; and, second, the Indians are so poor at the same time that the Government is feeding them. It is good business for the Government to acquire these lands if it can make the Indian self-supporting, because it gets rid of a huge cost, and therefore we regard this scheme of land acquisition as essential to working out what Mr. Werner has in mind and what we have in mind.

Mrs. GREENWAY. Would it not mean that the land now owned by the Indians would, in about two or three generations, be wholly bought back and owned by the Government?

Mr. COLLIER. It might even take it back and reallot it.

Mrs. GREENWAY. That is the thing that troubles me. If it is reallotted it would have to be rebought, and we would be constantly in a revolving picture.

Mr. COLLIER. Regarding the future unborn heirs, Congress might adopt the Canadian system whereby the title remains in the Government and the individual receives an assignment of land, the right to keep and use it himself and for his heirs to keep and use that same land. Congress has not got to go on forever carrying out the errors in the allotment system, but it should pick out the spots in it that are good and carry them on.

But we do not need to foreclose that question if we can get somewhat now the relief that the Indians immediately need.

Mrs. GREENWAY. What happens to a dozen heirs of a once fairly big estate who are met with a unit that does not sustain them? Who feeds them and cares for them?

Mr. COLLIER. They get their little rental out of that, if it can be rented.

Mrs. GREENWAY. And if it is not adequate, what is done?

Mr. COLLIER. If it is not adequate they may work for a living, they may live off of relatives, or live off of the Government. That is the usual thing, and a lot of them do both.

Mr. CHRISTIANSON. Mr. Commissioner, I am wondering if we are not overemphasizing the importance of fee ownership of land.

It seems to me that the individual owner of shares of an Indian estate might just as well lease this land to this coöperative association set-up as to sell it, and there should not be much necessity of appropriations by the Federal Government with which to buy land.

My personal opinion is that in the quite near future land, as such, in fee-simple title, is not going to have very much value, and that a lease is going to be just as good as a fee title, assuming the lease is

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renewable on such terms that a person making improvements will be satisfied he will live to enjoy the improvements.

I know of lands in the Middle West that were worth $200 an acre that you can buy any amount of for $40 an acre, because taxes absorb the rental income.

Mr. COLLIER. That is what the Blackfeet have been endeavoring to say, and I think that they are right; that if a land-owning scheme could be set up and the Indians could surrender their fee title to the corporation, they would do it, because they would get more yield out of the land and more income or rent money. They would make a voluntary exchange, because it would be more profitable, as well as helping them.

They insist it is so much more advantageous to the individual to have his land held by a real-estate company, instead of owning the fee.

Mr. CHRISTIANSON. On the other hand, if the individual does not choose to turn his land over for a share in the cooperative society, it would be perfectly possible for the cooperative society to pay that individual a rental for the use of the land.

Mr. COLLIER. Yes; as is done right now.

Mr. CHRISTIANSON. As a matter of fact, I think we are overemphasizing the importance of ownership of fee title to land.

It is a part of our inheritance, because for two or three hundred years white men in this country have sought land, but the white man is just coming to the knowledge now that the fee title has no value, and the only value it has is in the use he can make of it.

Mr. COLLIER. The reason we are in this position now, the allotment law forces us to go on administering small parcels.

Mr. PEAVEY. As I understand, the purpose of this hearing was to continue the hearing on the bill H.R. 7902. While it is valuable to hear the discussion that is going on, yet it seems to me that the discussion would better come in executive session.

I would therefore like to make a motion at this time as to future committee procedure, and I would like to preface that motion with a remark or two as to what seems to me to be the proper procedure of the committee.

It occurs to me we are diverting here somewhat. The chairman of this committee has, it seems to me, been exceedingly courteous to every member on this committee and every friend of every member who had any legislation for consideration at this session.

It seems to me in view of that fact, and in view of his personal and official attitude toward the members of the committee, we owe it to the chairman of the committee to at least give his bill some courteous consideration, such as that which you would give to any other member of the committee who had legislation before us, and the courteous consideration would be the proper committee procedure; that is, to take this bill up in executive session, read it, section by section, amend those sections, if necessary, then report the bill favorably or unfavorably to the House.

If that meets with the approval of the committee, I move we proceed in that manner.

Mr. DIMOND. Mr. Chairman, if the committee would permit, I would like to make a statement in reference to the Alaskan situation under the proposed bill.

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The CHAIRMAN. The motion will be stated and it will be withheld for the purpose of hearing the gentleman from Alaska.

The motion pending is that the committee shall go into executive session for further consideration of the bill. I think that is the simplest language we could use.

Now, Mr. Dimond, you may be heard.

Mr. DIMOND. Mr. Chairman, as soon as I received copies of the bill I sent them to a good many individuals and institutions in Alaska, the Alaska Native Brotherhood, and also to other associations.

While I have not at hand any indication of the Indians as a whole that the associations have taken any action with respect to the bill, yet I have here a letter addressed to me by Mr. William L. Paul, who resides at Juneau, Alaska, and who is counsel for the Alaskan Native Brotherhood.

I may state that the Alaskan Native Brotherhood is an association that includes nearly all of the Indians in southeastern Alaska, somewhere between 5,000 and 7,000 in number. Mr. Paul is an attorney at law, has served as a member of the Alaskan Legislature and is a very able man. He is now a member of the executive committee of the Alaskan Native Brotherhood, as well as being a member. He writes under date of February 27, 1934, as follows:

HON. A. J. DIMOND,
Washington, D.C.

MY DEAR TONY: Referring to H.R. 7902, I have read it very carefully and wish to say that it seems to be the first sound step ever taken by the Indian Department to solve the Indian question on a sound basis.

There is very little that can apply to Alaska, and that little appears to be entirely beneficial—the matter of education principally.

Some people without an understanding of the legal position of the Alaska native would think that these natives would come under the bill. Such questions could be solved when we got to them. In the meantime, I hope you will feel free to support the bill, and that you will also inform Mr. Collier of our general approval of the bill.

With sincere good wishes, I remain,
Yours faithfully,

WILLIAM L. PAUL.

In this connection it may be of interest to the committee to know of one experiment that has been carried out in Alaska, and it may have some bearing upon certain features of the bill that perhaps can apply to Alaska.

In 1887 a missionary of the Church of England named Willian Duncan—or, some time before 1887—went to British Columbia and engaged in work with an Indian tribe in British Columbia. Trouble arose there partly with the bishops, and partly with the native government, so Mr. Duncan came to Washington in 1886 and 1887, and as a result of the visit he received permission from the Government to migrate to Alaska, which he did, taking with him several hundred members of this tribe, and they settled in the Annete Islands.

In 1891 Congress passed a bill setting aside the Annete Islands for the exclusive use of the Metlakahtla Indians.

These Indians after arriving in Alaska under the leadership of Duncan, commonly known to them as Father Duncan, established a sawmill, salmon canneries, and I think they are by far the most prosperous and economically best off of all of the Indians in Alaska.

It seems to me rather odd this favor should be done to the Metlakahtla Indians who did not dwell in Alaska originally, but simply

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migrated there, and they received this reservation to be used by them in common, as they are getting along much better than the other Indians.

It shows what can be done in this behalf, and these Indians have advanced in civilization. They show aptitude to music, their children attend the schools, and they are fairly prosperous and much better off than the other Indians.

If it were not for the rights of other people that have come to life, I would like to go back and establish a reservation for the other Indians I think they would have been much better off if in the beginning there had been set aside a reservation of our Alaskan territory for the benefit of the natives, and they could have taken care of them in this fashion without hurting anybody else. But now, of course, the white men have come in and taken up the best locations and if one tries to change the status there will be great difficulty. In 1891, when this act was passed, nobody cared about the Annete Island group, and this worked out very satisfactorily.

I thank you, Mr. Chairman, for permitting me to make this statement.

Mr. WERNER. Mr. Chairman, Mr. Sloane is here, and he has a very brief statement he would like to make.

The CHAIRMAN. Mr. Sloane, will you tell us, please, about how long you would like to have so that we can regulate our affairs?

Mr. SLOANE. Less than 10 minutes.

The CHAIRMAN. You may proceed.

Mr. SLOANE. Mr. Chairman, I may state to you again, I am a member of the Omaha Tribe of Indians in Alaska, and have been active in their tribal affairs, much of which the chairman of this committee is familiar with. I have a telegram from a number of allottees with reference to the Collier bill, and I have also been asked to prepare a brief on behalf of the Yakama delegation. As I understand it, the Solicitor of the Interior Department claims the right under the constitutional provision in respect to commerce among Indians to lessen the inheritance of allotments and also to take from the allottees the right to dispose of their property by will.

The act of Congress under which the allotments were made is the fifth section of the act of February 8, 1887, which is as follows:

> That upon approval of the allotment provided for in this act by the Secretary of the Interior, he shall cause patents to be issued therefor in the name of the allottees, which patents shall have the legal effect and declare that the United States does and will hold the land thus allotted for a period of 25 years in trust for the sole use and benefit of the Indians to whom such allotment shall have been made; or in case of his decease of his heirs, according to the laws of the State or Terriroty where the land is located; and that at the expiration of such period the United States will convey the same by patent to said Indian or his heirs as aforesaid, in fee discharged of said trust and free from all charge and incumbrance whatever.

The right of inheritance as vested in the allottee and the obligation as guaranteed by the United States in this act to convey the fee at the expiration of the period to the allottee or his heirs, gives a vested right in the heirs to the allotment fee.

I may say a few years ago what was known as the "Bursum" bill sought to take from the Indians their allotments at the discretion of the Commissioner of Indian Affairs. The man who made the most strenuous fight against that principle was our present Commissioner

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of Indian Affairs. The same principle in part, at least, is in this bill that is before you for consideration at this time, and I feel that it is under the same prohibition of a decision of the Supreme Court as was the Bursum bill at the time it was before Congress. The principal part of that decision which applies are as follows:

Mr. GILCHRIST. Cited in what volume of the reports?

Mr. SLOANE. In 224 United States Reports, pages 677 and 678. It is said by the Supreme Court in that case as follows:

> There have been comparatively few cases which discuss legislative power over private property held by Indians, but all those few recognize that he is not exempted from the protection guaranteed by the Constitution. His private rights are secured and enforced to the same extent and in the same way as other resident citizens of the United States. His right of private property is not subject to impairment by legislative action even. While he as a member of the tribe is subject to the guardianship of the United States as to his political and personal status, there was no intimation that the power of wardship conferred authority on Congress to lessen any right of property which had been vested in the individual Indian by prior laws and contracts. Such rights are protected from repeal by the fifth amendment to the Constitution of the United States.

You will notice this decision says a grant that is made to the Indians by Congress or by law, rather, where there is an agreement, it will be protected. The fact is that in these allotments there is an agreement between the United States of America and the individual Indian to whom the allotment is made, and he gives up his claim to all of the lands held in common for the particular land which is granted to him, and the court in this case said that if a consideration was necessary it was given in the transaction by which the allotment was made.

So, I am standing upon the proposition that these allotments are grants, and by law a contract.

My own tribe were allotted under the special act of Congress of August 7, 1882, and that was an agreement absolutely between the Omaha Tribe of Indians and the United States of America, and the language of the allotment act is the same as it is here.

I thank you, Mr. Chairman.

The CHAIRMAN. Mr. Elwood Harlan, president of the tribal council of the tribe of which Judge Sloane is a member desires to be heard with reference to this bill, and he will be heard at this time.

STATEMENT OF ELWOOD HARLAN, PRESIDENT OF THE TRIBAL COUNCIL OF THE OMAHA TRIBE OF INDIANS, OF MACY, NEBR.

Mr. HARLAN. Mr. Chairman, ladiesa ndg entlemen of the committee: We have had a number of discussions among the people at home in regard to the Wheeler-Howard bill, which is now being considered, but I regret to say, before I go any further, that my friend from my reservation, Mr. Sloane, today received a telegram from the very ones that we had assigned as a special committee to go over the proposition and take it up with an attorney in Omaha, which is 80 miles from our reservation, that they made two trips, and reported that it was all right, and that I was instructed to appear before the committee here in favor of the Wheeler-Howard bill.

Now, Mr. Sloane has a telegram stating that I was not representing the four persons named in the telegram, which Mr. Sloane should have put in the record.

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We have, as Mr. Sloane said, been allotted under the act of 1882, and in going over the record for the tribe, I find that special act was brought about by our young attorneys, members of our tribe, in other words, in fraudulent ways.

In 1874 the Omaha Tribe of Indians held lands under title called certificate of occupancy. That title is to remain in the person holding that certificate, and after he is dead the heirs were to take it, and there shall be no white person permitted unless approved by the superintendent or Indian agent in charge.

Later we had a representative, I am sorry to say he has gone beyond, in other words he is dead; he had gone to the Indians along in 1881 telling them that the Government is going to move them down to a worthless country, and the Indians being afraid of that move, and my people seeing it was better to do otherwise, and hurriedly there was passed that special allotment act by which my people have been deprived of their property rights under the treaty of March 6, 1865.

Under that treaty these people were given these lands and it was agreed they would continue with that kind of land, holding certificates of occupancy.

This one man I refer to was a graduate of law, he thought he was able to compete with the white people and thought that these Indians should have the title, which is the patent, but today we are here without it.

We are appearing before the committee to protect us for that reason. I think you gentlemen of the committee ought to hear further about my people, the Omaha Tribe of Indians, and the status their holdings are in.

We have the Indians thinking they are going to be protected, and they go to work and they deed their inherited lands to their children with restrictions against alienation, but in going over the records I find that those lands we have thought they are saving for their children, I am afraid is subject to taxation and should be encumbered regardless of the restrictions of alienation, with the approval of the Secretary of the Interior, because of the fact under the extension given by the Executive orders.

That is the only hope my people have that those lands that are under trust patents should be theirs, and we have not very many of those on the Omaha Reservation. In fact, we have not any one allottee having his trust patent in his hand or in charge of the Government official.

It is all inherited land, from 200,000 acres down to 25,000 acres left. Besides that, the little amount of land that is on hand, Congress passed a law to tax that, and I am also delegated to bring that up so that I could secure a repeal of those acts.

They are burdened with taxation, and yet the title has never been released by the Government; and today, when the depression set in, those poor Indians are just existing, and that is one thing I am waiting to have a special hearing on that special bill introduced to repeal the taxation against the Indian lands that are held in trust.

Mr. Chavez. Let me ask a question: I understand, Mr. Harlan, you are in favor of the Wheeler-Howard bill?

Mr. Harlan. Yes, sir.

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Mr. PEAVEY. I renew my motion, Mr. Chairman; but obviously you will not have time to give any great consideration to it in the few minutes, and therefore I ask leave to amend that motion and move that when the committee adjourns today, tomorrow being our regular meeting day, that we immediately begin tomorrow and, following the consideration and disposal of any immediate regular business that may be on the chairman's desk—that we close the hearings on 7902 today and, following the disposal of the business on the chairman's desk tomorrow—we take up at once in executive session the consideration of 7902, for amendment or adoption, and for report to the House either favorably or unfavorably.

The CHAIRMAN. The motion is rather long, and I will not try to restate it, but the reporter has it.

By unanimous consent there is a gentleman who will be given a minute or two. You will have to make it brief, because we have got to adjourn. State your name to the reporter.

STATEMENT OF RICHARD L. KENNEDY, WASHINGTON, D.C.

Mr. KENNEDY. My name is Richard L. Kennedy, and I am the Washington representative of Indians Rights Association. It will take me only a minute to say what I have in mind. I am before you to ask leave to file, as of today, recommendations by this organization with reference to the Wheeler-Howard bill when such recommendations and conclusions have been formulated and prepared.

Mr. DE PRIEST. Mr. Chairman, I stated at the last meeting I wanted to hear further from the Indians on this matter. It seems this legislation is very essential and apparently a matter of emergency; but we have heard so many things of emergency of late, and they rush everything through on an emergency program. But, I think we ought to go into this legislation thoroughly before we rush it through the House. There is no member of the committee that thoroughly understands it, and I think I am liberal when I say that. No member of the committee has been in contact with the reservations, and no member of the committee knows what the Indians really think, outside of the correspondence we are receiving.

It appears to me the importance of this legislation is such that it should not be hurried into action. It was introduced about the middle of February, and this is the middle of May—3 months—and I am of the opinion we ought to have a committee of five to go through the Indians reservations this summer at the expense of the Government to make a thorough investigation of this and report back here. They ought to be members that have Indian reservations in their districts and probably are acquainted with Indian conditions better than the rest of us are. I therefore recommend that a committee of five be appointed to visit these Indian reservations and tribes and thoroughly acquaint themselves with the wishes of the Indians and report back to this committee.

Mr. COLLIER. Mr. Chairman, may I make a suggestion?

The CHAIRMAN. By unanimous consent, you may.

Mr. COLLIER. My suggestion is, considering we are in need of some quick legislation, as has been suggested, and while there are some things on which the committee shouhl be further informed—I do not think we ought to wait a year. I am perfectly confident

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this committee going into executive session would produce a bill which would take care of the urgent matters, and then it would be eminently desirable for the committee to go into the field to consider these long-range questions.

However, there are elements in the bill I am confident every member of the committee would recognize and agree on.

May I also say at this point we have gotten through this year with the Indians because we have had very large emergency grants to spend. If we had not had them there would have been a desperate condition among the Indians, and next winter we will have the amount of those grants, and there are elements in this bill which, if enacted, will have a direct relation to the condition of the Indians.

Mrs. GREENWAY. Mr. Chairman, may I just say, as I seem to have diverted the discussion, I think Mr. Peavey's expression of courtesy and his desire to give the chairman's bill attention is the proper one, and my only suggestion was just for the very reasons Mr. Collier stated, that it might lead to the solution of some of the immediate questions; but if Mr. Peavey feels we should go forward slowly on this, I would like to second his motion.

The CHAIRMAN. The Chair has not heard a second to Mr. De Priest's motion. Mr. Gilchrist, we will now hear from you.

Mr. GILCHRIST. I favor Mr. Peavey's motion. I have sat here and listened carefully to the hearings. I am one of the two or three that do not represent Indians, and I want to look at this thing in a judicial way. I think the chance lies in us going into executive session and finding out what we think about this bill. There are some things in this bill that I, at least, am inclined not to favor just now. For instance, I do not know that I want to set up a separate system of courts, a separate system of municipalities, but there are certain other things in the bill I am in favor of.

The economic condition of the Indians, to the extent that they are self-sufficient, has been growing less and less for 150 years, I think probably.

It seems to me we ought to go into this bill and discover what is in it in executive session, and that is why I want to favor Mr. Peavey's motion.

The CHAIRMAN. Will you state your motion again, Mr. Peavey?

Mr. PEAVEY. I move that when the committee adjourns today that we adjourn until tomorrow; following the disposition of any regular business on the chairman's desk that we then take up in executive session consideration of bill 7902, and read the bill section by section for amendment; then to report the bill favorably or unfavorably.

(The said motion was approved.)

Mr. WERNER. Mr. De Priest's motion may receive some support at that time.

The CHAIRMAN. Here is a gentleman who wants to be heard for a few minutes. You will come forward and give your name to the reporter.

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STATEMENT OF WILLIAM C. GRACE, OF WASHINGTON, D.C., REPRESENTING MRS. KENNEY AND OTHERS OF THE OSAGES IN OKLAHOMA

Mr. GRACE. Mr. Chairman, I should like to know the reason for section 20, title 3, on page 40 of the bill as printed. In other words, I should like to know why the Osages have been excepted from the bill.

Mr. COLLIER. Those features are being taken care of in an accompanying bill.

Mr. GRACE. Is that 8174?

Mr. COLLIER. Yes; but it does not have the Osages, of course.

Mr. GRACE. Is it not true that the great crime committed against the Indian is due to the taking off of restrictions and the appointment of the guardian?

Mr. COLLIER. That is one of the great crimes?

Insofar as the companion bill does not extend protection to the Osages, we want this bill amended to extend it to them, because obviously the Osages are intended to have the same protection and are entitled to it.

The CHAIRMAN. Mr. Sloane, you asked to be heard again. We will hear from you now.

Mr. SLOANE. I just wanted to verify in part what Mr. Hall said, that the Omaha Indians were left with the alternative of removing or standing the allotment, and it was that which brought about the act of 1882.

In regard to the persons I represent through the telegram, those are those who still hold lands which they do not wish to contribute to the community and wish to stand upon their rights under the law independently of such organization.

Mr. GILCHRIST. They would have the right to under your idea of the law, regardless of the passage of this bill?

Mr. SLOANE. Yes.

Mr. GILCHRIST. So that this bill would not affect them at all if your theory is correct of the law, and I assume it is.

Mr. SLOANE. The only trouble about that is that if such an act is passed it gives the Department at least some show of exercise of arbitrary power, and we think the case of *Choate* v. *Trapp* settles the question.

Mr. GILCHRIST. Did that case discuss the property rights under the treaty of March 6, 1865?

Mr. SLOANE. I am familiar with that treaty; yes.

Mr. GILCHRIST. Did the case discuss those rights?

Mr. SLOANE. They were to take other lands in severalty, and it was to descend to them and their heirs. On a construction of that act by the Circuit Court of Appeals of the United States of the Eighth Circuit, Judge Sanborn held those certificates were sufficient of inheritance. The Supreme Court of the United States reversed that, so that it left the Indians without any rights under the treaty at all.

Mr. GILCHRIST. So that the case in 224 United States did in fact pass upon the property rights under the treaty of 1865?

Mr. SLOANE. No, sir; the case of *Choate* v. *Trapp* passed upon the grant of allotments with the right of nontaxation, which was con-

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dered a valuable right. Then they passed another act taking that away from them, and the court held they could not impair their holdings granted by law or contract, that they were inviolate, and not subject to repeal.

Mr. WERNER. By unanimous consent I request that the brief of that bill being prepared by the Yakama delegation be accepted when it is presented.

The CHAIRMAN. Is it extensive?

Mr. WERNER. Mr. Sloane, is your brief very long?

Mr. SLOANE. The brief I have prepared will be only one single page.

The CHAIRMAN. The brief will be accepted, by unanimous consent.

(The brief referred to is as follows:)

MEMORANDUM OF VESTED RIGHTS IN ALLOTMENTS

The contention of the Interior Department that it may take away from the those vested rights that were a part of the contracts of agreement ie Indians and the United States, and for which a consideration was fully expressed in the law, is not in accord with the decisions of the Court of the United States.

nts of the allottees is fixed in section 5 of the act of February 8, 1887 388), and is as follows, except as modified by later statutes, but do not tments made under this law. Said section is as follows:

. That upon the approval of allotments provided for in this act by the of the Interior, he shall cause patents to issue therefor in the name of tees, which patents shall have the legal effect and declare that the tates does and will hold the land thus allotted for a period of twenty-s, in trust for the sole use and benefit of the Indian to whom such allot- hall have been made, or, in case of his decease, of his heirs according to laws of the State or Territory where such land is located, and that at the iration of said period the United States will convey the same by patent to Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of a charge and incumbrance whatsoever: *Provided*, That the President of the United States may in any case in his discretion extend the period."

One of the reasons that the Indians accepted allotments in severalty was that it made their homes secure to themselves and to their children. Many tribes saw only alternative of taking allotments or being removed to some other territory. The Omaha Indians were threatened with removal to Indian Territory. The Poncas were removed from Nebraska to Oklahoma.

A few years ago it was sought through the Bursum bill to take from the Indian allottees whatever rights they had under their allotments. This bill, the Bursum bill, caused much discussion, and great publicity was given against it by Hon. John Collier, now Commissioner of Indian Affairs. The bills S. 2755 and H.R. 7902, known among the Indians as the "Collier bill", violate the same principle that he fought in the Bursum bill.

The Supreme Court of the United States has said that no right that has been granted to an Indian by a prior law or contract, by which it has become a vested right, can be repealed. That part of the decision follows:

There have been comparatively few cases which discuss the legislative power over private property held by Indians. But all of those few recognize that he is not excepted from the protection guaranteed by the Constitution. His private rights are secured and enforced to the same extent and in the same way as other residents and citizens of the United States.

* * * * * * *

His right of private property is not subject to impairment by legislative action, even while he is a member of a tribe and subject to the guardianship of the United States as to his political and personal status.

* * * * * * *

But there was intimation that the power of wardship conferred authority on Congress to lessen any rights of property which had been vested in the individual Indian by prior laws and contracts. Such rights are protected from repeal by the provisions of the fifth amendment [of the Constitution of the United States].

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CHOATE *v.* TRAPP (224 U.S. 677–678; 56 L. 946–947)

The allotments vested in the allottee the right to transmit to his heirs the allotment made to him in accordance with the laws of the State where the land is located. That may only be changed by the laws of descent of the States, and not by special enactment that affects the rights of a class or race. It will be a reflection for Congress to attempt any such legislation.

Respectfully submitted.

THOMAS L. SLOAN,
Attorney for Yakima Indian Delegation.

The CHAIRMAN. Under the rule of this committee, we will stand adjourned until the meeting tomorrow morning.

(Thereupon the committee adjourned to meet at 10 a.m., Wednesday, May 9, 1934.)

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