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CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN

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HEARINGS BEFORE THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE SUBCOMMITTEE ON THE JUDICIARY UNITED STATES SENATE EIGHTY-EIGHTH CONGRESS

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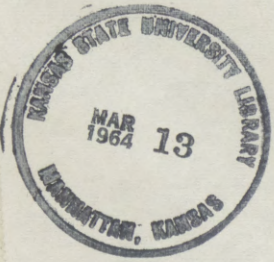
FIRST SESSION
PURSUANT TO

S. Res. 58

PART 4

MARCH 7, 1963

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CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN

THURSDAY, MARCH 7, 1963

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

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 457, Old Senate Office Building, Senator Sam J. Ervin, Jr. (chairman of the subcommittee), presiding.

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

Senator ERVIN. The subcommittee will come to order.

First I would like to say that I regret very much that we seem to be running in what the railroads call a "hotbox" this morning. I hope it will be cooled off a little later.

This morning the Subcommittee on Constitutional Rights resumes hearings on the constitutional rights of the American Indian.

The subcommittee initiated its investigation into this area in late 1961. Since that time, hearings and staff investigations have been conducted in seven States and the District of Columbia. At these hearings, the subcommittee has heard from tribal governing bodies, individual Indians, and Federal and State officials charged with administering Indian affairs throughout the country. Already, two volumes of hearings concerning the constitutional rights of the American Indian have been printed and a third volume presently is with the Government Printer awaiting publication.

The investigations to date have revealed that the American Indian lives under perhaps the most complex maze of laws of any American citizen and that he has numerous constitutional problems. Among these problems is the difficulty in ascertaining which governing body, Federal, State, or tribal, has jurisdiction over him in a given instance. Another very real problem of the American Indian citizen is his difficulty in obtaining representation by legal counsel; in some instances it appears that he is deprived of his 6th amendment right to counsel in criminal cases; in other instances, where approval of tribal counsel by the Secretary of the Interior is held in abeyance for years, there is serious question of deprivation of the right to due process as guaranteed under the 5th and 14th amendments. Other problems have spanned the broad field of constitutional rights and include such matters as religious freedom and equal protection of the laws.

In addition to the subcommittee's work in these areas, a careful study is being made of the Indian court system to determine the extent to which the Indian is afforded a fair and just hearing through such recognized court procedures as trial by an impartial jury. The

subcommittee also is directing its attention to the procedures used by the courts of the various jurisdictions to acquaint Indian defendants with their rights as citizens of the United States.

I am happy that the subcommittee has been able to schedule hearings while many tribal groups are attending meetings in Washington, D.C. This opportunity for members of various Indian tribes to present testimony concerning their constitutional rights to the subcommittee should be both interesting and meaningful. By the same token, it should be of inestimable assistance to the Congress at such time as it considers legislation concerning the rights of the first Americans.

Do you have a statement?

Mr. CREECH. No.

Senator ERVIN. Do you have a statement?

Mr. WATERS. No, I have not.

Senator ERVIN. Call the first witness.

Mr. CREECH. Mr. Chairman, the first witness this morning is Mr. Paul Jones, chairman of the Navajo Tribal Council of Window Rock, Ariz., and he is accompanied by Mr. Norman Littell, general counsel for the Navajo Tribe in Washington, D.C.

Mr. GRAHAM. Mr. Chairman, I am associated with Mr. Littell. He is on his way here at the moment. Is there any possible way to make a shift in the presentation of witnesses?

Mr. CREECH. Surely.

Mr. Whittier, are you ready to proceed?

Mr. WHITTIER. Yes, sir.

Mr. CREECH. In that case, Mr. Chairman, the first witness will be Mr. R. Max Whittier, general counsel of the Shoshone-Bannock Tribes of Fort Hall, Idaho.

Mr. Whittier will be accompanied by Mr. Edward Boyer, chairman of the Shoshone-Bannock Tribes.

Mr. Whittier.

STATEMENT OF R. MAX WHITTIER, GENERAL COUNSEL, SHOSHONE-BANNOCK TRIBES, FORT HALL, IDAHO; ACCOMPANIED BY EDWARD BOYER, CHAIRMAN, SHOSHONE-BANNOCK TRIBES

Senator ERVIN. We are delighted to have you gentlemen with us this morning.

Mr. WHITTIER. We are delighted to be here, Senator. If it please you, Honorable Senator, and assistants—

Senator ERVIN. You may either stand or sit down, whichever way you please, to give your presentation.

Mr. WHITTIER. Well, I think my knees will not shake so if I sit down.

It is indeed a privilege to appear before this subcommittee. We did not anticipate this opportunity when we arrived in Washington Sunday morning, but we thank you for the opportunity. We regret that our presentation has not been more thoroughly thought through, but we have done the best we could, and if there are any voids or vacancies in the presentation, if the subcommittee has any questions, we will be happy to furnish by supplements any documents that would be of assistance to this committee.

The Fort Hall Indian Reservation is an area in southeast Idaho of approximately 860 square miles located between Idaho's second and third largest cities—Pocatello to the south; Idaho Falls to the north. There are approximately 2,600 Indians that reside thereon, the majority of them being members of the Shoshone-Bannock Tribes.

There is one small unincorporated town located on the reservation with very limited shopping facilities, and for the most part the tribal members must travel off their lands to purchase their needed supplements of life which are not produced by the Indians themselves. By reason thereof, the exposure of the Indian tribal members to the white man's police jurisdiction is greater than would be the case in a normal situation of an Indian nation. The people on this reservation are as a whole a poor people with very limited financial resources. The literacy level is high—an estimated 90 percent of the tribal members being able to read, write, and speak the English language.

Social and employment conditions existing in and about this reservation restricts and minimizes the benefits that are derived from a high literacy standard and lays the basic foundation for many unfortunate instances where civil rights violations occur and continue to occur every day.

But all civil rights violations do not occur by reason of the exposure of the Indians to the white man's court. It appears today in my opinion that as the situation now stands, there is no such thing as civil rights recognized on the Fort Hall Indian Reservation.

To understand this strong statement, I think the committee must understand what the law-and-order provisions are, insofar as it relates to these Indians.

The tribe is operating under a constitution and by-laws, and law-and-order code established along the lines of that antiquated pattern set out in the Code of Federal Regulations governing the conduct of law-and-order matters on reservations not having a code of their own.

The law-and-order code provides for a court system to be established consisting of two chief judges whose duties shall be regular and permanent and three associate judges, the said judges to be appointed by the tribal business council with the approval of the Commissioner of Indian Affairs.

The tribal judges can be dismissed or discharged only with the approval of the Commissioner.

By reason of the failure of the Bureau of Indian Affairs, the court system has dehydrated itself to a point where only one absolute tribal judge is recognized and all control over the court by the tribal council has been divested by the Commissioner's office. Justice is being dispensed in a rampant fashion by this one absolute trial judge without any consideration being given to the wishes of the tribal council or the members' constitutional rights.

Let me illustrate: Last summer there was a feeling among tribal members that Dolores L. Paniogue was not properly exercising the functions of her office and a petition was filed by these members with the business council for her removal. After a hearing by the council, a resolution was passed removing her from office. A copy of all pertinent records is being attached to this statement as an exhibit.

(This document follows at p. 831.)

This resolution was passed on the 14th day of August 1962. It was forwarded by Superintendent Charles Spencer. No action has been taken by the Bureau of Indian Affairs to this date, insofar as the chairman of the tribe is advised.

Immediately this tribal judge started political action against the council and council members. She started a movement of supposedly "interested individuals" holding public meetings, with the press present, allegedly for the purpose of promoting the good feelings between the whites and the Indians. These meetings turned out to be a forum for slandering the tribal chairman and members of the tribal council. Every effort on the part of the chairman was openly and publicly criticized by this tribal judge.

One instance which points up the situation which is well documented occurred last September. A deputy game warden by the name of Jimmy Yupe was arrested by the Power County, Idaho, authorities for a violation of State laws, to wit: killing game on private land.

The council was approached by certain individuals to interfere on Mr. Yupe's behalf. The council decided to let the State court proceed with no outside interference, to hear and try the case after they determined Mr. Yupe's constitutional rights were protected and that he was represented by competent counsel.

Mr. Yupe was found guilty. This tribal judge immediately condemned the council and myself for not bringing pressure on the State court and at a public meeting of the tribe held on January 5, 1963, arranged for a gathering of outside individuals to invade a tribal meeting and recommend that the tribal chairman be removed from office because he refused to interfere with the lawful functions of the State court. The meeting turned into a riot, and had to be adjourned.

As you will note, the tribal judge threatened to "play dirty" thereafter in her tribal judge functions. This she has carried out.

And I have a transcript of that statement attached as an exhibit to this presentation.

(Transcript is retained in the subcommittee's files.)

There is a provision, under article V of the constitution, that a tribal council member can be removed if he is found guilty of a misdemeanor.

Shortly after this meeting there was filed, against Edward Boyer, a criminal charge of perjury, and he was arrested and brought before the court of Judge Delores Paniogue. He asked her to disqualify herself because of her stated prejudice. She refused. He then asked to see a copy of the complaint. On the complaint the only details stated as to the crime was the word "perjury." He requested the details. He was advised that he would find that out at the time of trial.

I was contacted. I traveled to the tribal court at Fort Hall and requested that I be afforded a conference with the court. I was refused because I was informed I was a professional attorney. I then advised the law-and-order personnel present that the complaint did not meet constitutional standards of advising the accused of the crime that was charged, and should either be amended or dismissed. I was later advised that the law-and-order personnel had contacted the Portland area office and they had been advised to proceed as they had in the past; that there was no necessity to advise the accused of any details except the name of the crime.

I then asked them to advise me personally of the details of the crime. They then reluctantly pointed out a portion of the transcript, more than 18 months old, where Mr. Boyer, in substance, stated he thought he had seen a lease with an Indian by the name of Edmo.

The transcript of this entire proceeding is included as an attachment. (The following transcript and a copy of the lease appear at pp. 835-840.)

At Mr. Boyer's trial, the court changed the alleged charge to another statement, and Mr. Boyer was tried on the latter charge. The court then produced a transcript of the alleged proceedings on which Mr. Boyer was charged, other than that which was furnished to me; that is, transcripts containing different wording was presented to convict Mr. Boyer than that which had been delivered to me by the secretary earlier. Judge Paniogue went to this length to disqualify Mr. Boyer from office, but fortunately Mr. Boyer demanded a jury trial and the jury found in favor of Mr. Boyer.

Superintendent Spencer of the Fort Hall Indian Reservation, as well as James Officer of the Bureau of Indian Affairs, has been advised of this situation but have declined to take action to remedy this situation.

The shocking thing to me is the attitude of the Bureau employees on constitutional rights. One such employee made the remark to me, "I certainly don't know why all of this is being stirred up. We didn't have any trouble with the Indians until they found out they had constitutional rights."

I have had other remarks made to me by lesser law-and-order employees that the U.S. Constitution does not apply because all matters governing Indian rights are covered by the law and order code, and they are conducting their acts accordingly.

An accused in the tribal court is never advised of his constitutional rights. There is no appeal from the action of this one absolute judge since there has never been an appellate court established. I am urging that action be taken by the appropriate officials at this time to remedy this, but failure on the part of the Bureau of Indian Affairs to give cooperation and guidance makes the council reluctant to act because they have a feeling of helplessness and despair.

I would appreciate it if the subcommittee would permit me to supplement this testimony with exhibits showing a good cross-section of the criminal complaints filed in the tribal court and I believe these points mentioned will be made much clearer.

Indian constitutional rights are not being recognized in a good many instances in their treatment by State and local civil authorities and courts.

Up until July of last year the Fort Hall Reservation was being policed by, and jurisdiction was freely exercised by, State authorities and State courts.

Many complaints were made by the Indians concerning their treatment, but no action was taken to cure the abuses. Then one, Nannie Pokibiro, was arrested by State authorities in Indian country late one night for the offense of driving while under the influence—intoxicated. She was summarily tried, convicted, and sentenced by the court to 30 days in jail and \$300 fine, even after the State authorities had been advised that she desired to consult counsel. An investigation revealed that the woman was not driving. It was related to me that she had never driven an automobile in her lifetime.

Appropriate action was taken to have this action reviewed and the court issued a decision decreeing that the State had no jurisdiction on the reservation.

Immediately certain State and municipal authorities started a newspaper campaign against the Indians, slandering their names and advising the public that Indians had no law enforcement. Groups were organized to openly oppose the tribal organization and promises were made by these State and county officials that Indians would be prosecuted vigorously if they were found in certain areas of the city of Pocatello and suspected of violating the law.

Indians alone were singled out for this attack, although citizens of many races abound in this area. This act on the part of these groups has caused the decent law-abiding Indians to be subject to ridicule and contempt on a racial basis. Very little thought is given by these State and local officials to limit their condemning remarks to law violators alone.

I have here a list of 78 fatalities of Indians occurring on or near the reservation where Indians have been the victims of accident or acts of others. My information is that there has never been a prosecution by State officials for these fatalities or homicides. And I do not have that list this morning. I had to send back to the reservation to get it, but it will be delivered and I will leave it as an exhibit.

(The list of fatalities appears at pp. 841-843.)

I have another list where five Indians have been prosecuted for deaths of non-Indians where Indians were involved. At the time of preparing this presentation I did not have it, but there was recently a little boy by the name of Rudolph Pahviste stabbed to death in the city of Blackfoot, on December 21, 1962.

Mr. Pahviste was apparently the victim of a fight which occurred between other parties. I have the complete transcript of the coroner's inquest investigating this particular fatality. I ask that this transcript be reviewed to see how the prosecuting attorney brought in every bit of evidence possible and directed or phrased his questions in such a way as to free the person from any criminal conviction by reason of the stabbing of this Indian boy.

This is a complete transcript, and I will leave it with the committee for its examination.

(A summary of the transcript with coroner's court verdict is retained in the subcommittee's file.)

Senator ERVIN. I will ask the counsel to make a synopsis of what the transcript shows and then return the transcript to you.

Mr. WHITTIER. All right.

There is a place in Blackfoot called the Inbetween Bar. On this particular night, Pahviste and an Indian by the name of Fisher entered into this particular place, which is one of the few set aside for Indians to frequent in this particular town.

This fellow by the name of Fisher went up to a group of mixed Indians and Mexicans and started to talk to them. Mr. Pahviste was not anywhere around this particular area. When Mr. Fisher walked over there, he and the Mexicans became embroiled in a little argument over a hat that the Mexican had taken away from this Indian. A fight resulted.

A Mexican stood on his feet, hit Mr. Pahviste, knocked him clear to the rear of the building, and then followed him to the rear of the building and stabbed him to death and then left.

A coroner's inquest was held and the coroner's verdict was that the homicide was justifiable.

Senator ERVIN. It would seem to me, on the facts as you have recited them there, that it would be at least manslaughter—

Mr. WHITTIER. Yes, and I will just illustrate here some of the types of questions or questioning that was conducted by the prosecuting attorney in the hearing, the coroner's inquest.

There was some reference made to some cue sticks. There was a poolroom. It was a poolroom and a bar.

And there was some reference to the cue sticks that were in the hands of some of the Indians. The Indians, each and every one of them, got up and testified that they used this when the Mexican attacked them with a knife to defend themselves, and they did not use them to strike anyone.

It appears that because there was somebody stabbed, there was some blood upon one of these cue sticks, and this is the questioning of the prosecution:

Question. If both of those cue sticks that were broken have blood on them, the one that you saw broken on the floor must have gotten the blood on it before it was broken on the floor, isn't that correct?

Answer. I don't know.

Question. You didn't see it used?

Answer. I seen him swing it a couple of times; that was all.

Question. Were you there when the officer came in and the Mexican boy ran out the door?

Answer. I was standing there.

Question. Did you see who the Indian boy was that chased after him?

Answer. No, I didn't. Everyone was excited and moving around.

Question. Did he have a cue stick in his hand?

Answer. I couldn't say whether he did or not.

Now, that was the only testimony which possibly related to the cue stick and the one that was accused.

Then they go on to a Mr. Roger George, who testified that he saw the Mexican hit this Indian boy and knock him clear into the rear of the building, follow him and stab him to death in the rear of the building.

And still the prosecutor, through his questioning, and probably if I had been on the coroner's jury myself and not acquainted with the law, I probably would have gone along with the coroner's jury, because all the questioning brought out the idea of justifying this act on his part.

I have some newspaper clippings of an event that has happened since I left the State of Idaho last Saturday, where two Indians drank some poisonous substance.

They were picked up by the law officers and thrown in jail. This is an article from the Idaho State Journal, the Pocatello paper, which I received this morning.

It says:

A drinking party on the Fort Hall Indian Reservation claimed its second victim today.

Bannock County sheriff's offices said Corbin Besto, 35, a laborer from the reservation, died at 7:20 a.m. today of the effects of drinking Solax, a commercial cleaning solvent containing methyl alcohol.

Fort Hall Indian police were called Friday night to a residence on the reservation. They found Mrs. Reeta Poengerah, 35, dead inside the building, and Besto unconscious in an automobile outside.

Besto was taken to the Bannock County jail. Deputy Sheriff Dave Fortsch, of Bannock County, who investigated Besto's death, said the Indian was watched closely, since the effects of drinking Solax can cause death as long as 3 days after it has been consumed.

At the 5:15 a.m. check, Besto was alive, but when he was given his breakfast at 7:20 a.m., officers found him dead.

Officers said they did not know if anyone else was at the Friday night drinking party.

Instead of taking this boy to the hospital, they took him to jail, and he died in jail that night.

Now, that situation has probably been something that has developed over the years. It is not something that has just come about. It is something that has been created by the white and Indian relationships over the years, where they justify the acts that any time an Indian is picked up, they throw him in jail first, and then if they decide he is sick, they put him in the hospital, rather than doing what they should do by taking him to the hospital first.

The tribal council has been constantly frustrated by the Bureau of Indian Affairs acting through the superintendent in attempting to improve the standard of law enforcement on the reservation.

On August 21, 1961, the tribal council passed a resolution for aid and assistance from the FBI and qualified law enforcement personnel to review the whole law enforcement program with them and make recommendations.

The resolution was returned unapproved by the superintendent on the basis the tribe does not have an adequately trained staff for such undertakings. A copy of the resolution and reply is attached.

Two resolutions were passed making law enforcement personnel subject to the direction and control of tribal council. The resolutions were rejected. (The resolutions appear at pp. 831-835.)

In the case of *Bessie Judson v. Zelfhia Towersap*, a copy of the complaint being made a part of this presentation, an attempt was made by certain unscrupulous individuals to discredit a highly educated and fine Indian girl by a slander suit against her. Efforts were made to see that this baseless action be dismissed through the superintendent's office and the judge. The superintendent refused to protect this girl's constitutional rights and to remove this arbitrary judicial officer and the girl had a decision rendered against her.

What was the offense she was charged with? "Trying to conduct an arts and crafts class."

The committee should read this classic example. No date is charged in the complaint. No actionable slanderous material related in the complaint. But the court's decision stands—no appellate proceedings being available to this girl. (Civil complaint of *Bessie Judson v. Zelfhia Towersap* appears at pp. 843-844.)

The Bureau of Indian Affairs have permitted their employees to participate actively in internal political affairs of the tribe. Objections were made. James Officer's letter is submitted to you to show the Bureau's attitude. (The letter follows at pp. 844-845.)

These are some of the things I have noticed in a period of less than 1 year. Time being short, I had no time to prepare more.

I have a few recommendations to make in view of the above and foregoing.

If the Commissioner of Indian Affairs is unable to pierce the veil of bureaucracy that prevails in the Bureau of Indian Affairs, then major reorganization should be undertaken and if necessary the present Bureau abolished, and a new branch of Government formed which has enough flexibility to provide for the tribes to move forward expeditiously in a program with a purpose, permitting the Indians to assume local control rather than its four bosses.

The role of the Bureau of Indian Affairs should not assume the position of the conquered over the vanquished, but such role should be considered in light of a partnership as a signatory to a treaty.

That appropriate appellate and review procedures be established within the framework of the U.S. district courts, whereby the tribal judges are subject to the control and supervision of the U.S. district judges, and a procedure set up whereby aggrieved Indians may have their cases reviewed on an appeal to a U.S. court.

If there are any questions, I will be happy to try to answer them.

Mr. CREECH. Thank you.

Senator ERVIN. Mr. Creech, you may proceed.

Mr. CREECH. Thank you, Mr. Chairman.

Mr. Whittier, I gather, from your statement, that there is no provision in the tribal constitution for the provisions of the Bill of Rights of the Federal Constitution; is that correct, sir?

Mr. WHITTIER. There is not. There is not that I know of—I will withdraw that.

There is a section which sets up a bill of rights, but it is so vague that it is unworkable. It has not been worked and utilized, and it has not been recognized by the tribal courts, in my experience.

I am leaving a copy of the tribal constitution and bylaws with you. (This document is retained in the subcommittee files.)

Mr. CREECH. Is it your position that although there is a provision in the tribal constitution to safeguard constitutional rights as provided in the Federal Constitution, they are not adhered to by the tribal courts?

Mr. WHITTIER. I probably did not make my answer broad enough: There is no reference in the tribal bill of rights to the U.S. Constitution.

Mr. CREECH. I see.

Mr. WHITTIER. There is no reference. There is a brief statement of what the bill of rights are, that the tribal members may take advantage of, but there is no further reference to the U.S. Constitution or constitutional rights.

Mr. CREECH. On page 1 of your statement, you say:

It appears today in my opinion that as the situation now stands, there is no such thing as civil rights recognized on the Fort Hall Indian Reservation.

By whom do you mean civil rights are not recognized? By the Federal authorities there or by the tribal court?

Mr. WHITTIER. By the tribal court, who has assumed exclusive jurisdiction over all rights on the reservation. There has been no action taken by the Federal authorities to stop this, even though the tribal council passed a resolution last August to try and remedy this situation.

Mr. CREECH. You mentioned, also, that a resolution was passed by the business council and forwarded to the Secretary of the Interior in August of 1962 but, as of this date, there has been no response to this resolution by the council.

Is this the usual situation, insofar as your experience has been—

Mr. WHITTIER. In my—

Mr. CREECH (continuing). In forwarding communications to the Secretary of the Interior?

Mr. WHITTIER. In my experience, that has been the classic example; the very usual experience, because there seems to be an entire lack of communications or liaison, insofar as law and order or civil rights, between the Bureau of Indian Affairs and the tribal council and the tribal members.

Mr. CREECH. Well, is this delay also experienced by the tribe when it asks for approval of its choice of tribal council?

Mr. WHITTIER. Yes; I had my name submitted to the Secretary, I think. Mr. Boyer here is the chairman. They started using my services last July, and I have not received a paycheck yet. I understand the contract was approved the day I left for Washington, but I have not received a paycheck since I started working.

Mr. CREECH. So it took you some 8 months to have your contract approved?

Mr. WHITTIER. That is correct.

Mr. CREECH. I was interested, also, in your statement concerning the problem of the council meeting, at the bottom of page 2, that the meeting was invaded by outside individuals.

I wonder if you would identify for the record these outside individuals? Are they members of the tribe who live off the reservation?

Mr. WHITTIER. Well, Mr. Boyer was there and I was not. All I have is the information he furnished, and he could probably identify these individuals.

Now, this tribal judge herself does not reside on the reservation. The group that accompanied her, Mr. Boyer has told me, and he identified their voices to me on the tape recording that he took of the entire proceedings. The majority of them lived off the reservation or had a degree of Indian blood that is not recognized to be a member of the tribe themselves.

Mr. CREECH. In other words, the people who attended the session were not members of the tribe or not on the rolls of the tribe; is that correct?

Mr. WHITTIER. That is right—is that right, Mr. Boyer? Speak up.

Mr. BOYER. What is that?

Mr. CREECH. The people who attended the meeting were not recognized members of the tribe or on the tribal roll?

Mr. BOYER. They have rights, except that they would have to live on the reservation so they could vote.

Mr. WHITTIER. He said that they have recognized Indian rights but they do not reside on the reservation and therefore would not have a voting privilege on tribal affairs.

Mr. CREECH. Well, is the judge a member of the tribe? Is she a voting member?

Mr. BOYER. What is that again?

Mr. WHITTIER. Is she a voting member of the tribe?

Mr. BOYER. Except on amendments to the constitution; she has that right.

Mr. WHITTIER. He said except for the amendments to the constitution she has voting rights.

She does not reside on the reservation and therefore would not have voting rights in tribal affairs.

Mr. CREECH. Does the constitution specify or the law-and-order code specify whether the tribal judges provided for are to be residents on the reservation?

Mr. WHITTIER. It does not.

Mr. CREECH. It does not?

Mr. WHITTIER. It makes no provision for that.

Mr. CREECH. Does your law-and-order code or does your constitution preclude representation by legal counsel; and by that I mean professionally trained counsel, in the tribal court?

Mr. WHITTIER. There is a provision that prohibits the appearance of a professional counsel or representation of an Indian by a professional counsel.

Mr. CREECH. Is this provision still adhered to, notwithstanding the decision order of the Secretary of the Interior which precluded counsel in the courts of Indian offenses?

Mr. WHITTIER. Yes; I have advised the tribal judge of the action of the Secretary, and also I think the 10th Circuit Court of Appeals, and she, notwithstanding this, has refused to recognize professional counsel for Indians.

Mr. CREECH. You say you advised the law-and-order personnel who in turn contacted the Portland area office, and were advised to proceed as they had in the past. They said there was no need to advise the accused of any details except the name of the crime. I am making reference here to Mr. Boyer's case. Then, further in your statement, you mention that a Bureau employee remarked that they did not have any trouble with the Indians until they found out they had constitutional rights.

Later you stated that lesser law-and-order employees have said that the U.S. Constitution did not apply because all matters governing Indian rights are covered by the law-and-order code.

Now, I wonder if you would give us, for the record, some specification as to whether these statements were made to you by members of the staff of the Bureau of Indian Affairs?

Mr. WHITTIER. Yes. One was an Indian juvenile officer by the name of John Woodnall, and another was Annette Jones. She is the lady who witnesses the signatures on all complaints and also the tribal secretary, Lucille Hincy. She is one who advised me also.

Mr. CREECH. Now, can you identify who made which remark?

Mr. WHITTIER. Well, one of the discussions occurred in the presence of Annette Jones and John Woodnall when I was trying to explain to them what the necessary elements of a proper complaint in a criminal matter was. Each of them, and I believe it was Mr. Woodnall, with Annette Jones concurring, who prepares the criminal complaints, said: "We are governed by the law-and-order code and not by the U.S. Constitution."

Then Lucille Hincy said that she could not see why there was all of this fuss; that she never had any trouble with the Indians until such time as they were advised that they had constitutional rights.

Mr. CREECH. In your view, does the Bureau of Indian Affairs actively work to safeguard the individual's constitutional rights?

Mr. WHITTIER. I do not believe they do.

In fact, I have taken it up with the superintendent, explaining to him the need for some action to be taken to protect these constitutional rights. And he said, "Well, there have always been troubles like this." He said, "There isn't much that you can do about it." Those are the reasons given.

Mr. CREECH. It is your position that this is not a relatively new situation, that—

Mr. WHITTIER. No, it has been tolerated—

Mr. CREECH (continuing). That it has been traditionally the situation?

Mr. WHITTIER. It has been tolerated for some time. I realized it for quite a little time myself.

I worked with the Department of Justice, with the U.S. attorney's office from 1957 through 1959, and I was quite aware of it from seeing some of the investigations that came across the desk from the Federal Bureau of Investigation on Federal criminal matters. They would recite details of instances that occurred locally. That is where I first became aware of it myself.

Mr. CREECH. Well, why have not the two chief judges and the three associate judges been appointed by the council in accordance with the law-and-order code?

Mr. WHITTIER. Well, there has been an attempt to appoint another chief judge. I did not bring the resolution with me, but they attempted to appoint one when this matter where the judicial powers were apparently being used for purposes other than the dispensing of justice came up.

I suggested to the tribal council that they appoint another chief judge to sit with her concurrently in matters, and this resolution was passed, I believe, in January, and there has been no action taken.

Mr. CREECH. Has that resolution also been sent to the Secretary?

Mr. WHITTIER. Yes.

Mr. CREECH. The Secretary of the Interior.

Has there ever been a court of appeals established to hear those cases where an appeal was desired?

Mr. WHITTIER. Not to my knowledge. I do not know. Mr. Boyer could tell you.

But in my experience, since I have been there, there has not been one and, in fact, the Bureau personnel charged with the administering of law and order, were very much surprised when I asked them who were the appeal court judges. They had never heard of such a thing as an appeal.

Mr. CREECH. Well, what has happened previously when an Indian did not like the justice dispensed by the court and wanted to appeal?

Mr. WHITTIER. You could answer that, Mr. Boyer.

Mr. BOYER. They asked for a jury trial.

Mr. CREECH. They asked for a jury trial? So this was the only type of appeal you had from the judge's decision?

Mr. BOYER. That is the only one that I know of.

Mr. CREECH. In other words, you are tried before the judge and if you feel that the sentence is unjust, then you can ask for a jury trial?

Mr. BOYER. That is right.

Mr. CREECH. But there is no appeal to a higher court?

Mr. BOYER. Not that I know of.

Mr. CREECH. It is still the same court with the same judge presiding?

Mr. BOYER. Yes.

Mr. CREECH. Has the Bureau indicated that it feels it is desirable for the tribe to establish an appellate court, provided for by your law-and-order code?

Mr. WHITTIER. There never has been any communication from the Bureau on that even though I discussed it with the superintendent. As I say, there never has been any communication. In fact, I called Mr. Robert Burnett about this very problem in the middle of February, concerning the judge, asking him to take it up personally with the Bureau.

I will relate what he told me. He said that he had talked to James Officer. Mr. Officer reported to him that there was going to be no action taken on this resolution to remove this tribal judge.

Mr. CREECH. I believe that the Fort Hall Reservation was policed by State and local authorities until last July; is that correct?

Mr. WHITTIER. That is right.

Mr. CREECH. Would you explain why or how this situation existed, and why, the reason for a change in the police protection.

Mr. WHITTIER. They just tolerated it. No one ever had contested the jurisdiction of the State until the complaints become too numerous.

In fact, the reason I was first contacted by the tribal council was to investigate some of the infringements of constitutional rights against Indians. This was the first contact I had with the tribal council.

After I investigated this one case, I immediately filed an appropriate action to have the jurisdiction matter clarified. I thought that maybe the Bureau would work hand in hand with us to establish an appropriate court where the Indians' criminal and civil matters could be appropriately handled. I have been very much disillusioned.

Mr. CREECH. Well, the State had not assumed jurisdiction under Public Law 280 of the 83d Congress—

Mr. WHITTIER. No, there was not any action taken by the State under Public Law 280 until this newspaper campaign began against the Indians.

The act was passed in the Idaho Legislature and submitted to the Governor on February 22 of this year, and there had been no action taken by him when we left Idaho.

Mr. CREECH. Notwithstanding the fact that the State did not have jurisdiction over the reservation, State and county law-enforcement officers came into reservation territory?

Mr. WHITTIER. They had been exercising jurisdiction—

Mr. CREECH. And they exercised jurisdiction?

Mr. WHITTIER. Yes.

Mr. CREECH. And Indians have been arrested and tried by local and State courts. Is that correct?

Mr. WHITTIER. Yes.

Mr. CREECH. In your experience, has the Indian, who appears in a county or State court, been treated any differently from a non-Indian citizen?

Mr. WHITTIER. Well, yes; I think very definitely they are, because it has been my experience that when any Indian appears before these courts he is automatically guilty.

I do not ever recall, in my experiences, except the test cases, that we have taken of an Indian being found not guilty of an offense. I just don't recall of any.

Mr. CREECH. Does this apply also to the off-reservation Indians in that area of your State?

Mr. WHITTIER. Well, I am not fully enough acquainted to give you an answer on that. Maybe Mr. Boyer has that information. I do not have that. I am not that fully acquainted with it.

Mr. CREECH. You do not know what happens when an Indian leaves the reservation?

Mr. WHITTIER. No.

Mr. CREECH. I see.

Mr. WHITTIER. You mean—I may have misunderstood your question. I understood your question to be about Indians living off the reservation.

Mr. CREECH. Yes, Indians living in the neighboring towns off the reservation, are they subject to unreasonable and unwarranted interferences from local and State law-enforcement officers?

Mr. WHITTIER. I do not think there is any effort to determine where the Indian lives.

I really do not think there is any effort on the part of the State authorities to determine whether he lives on or off the reservation. The mere fact that he lives on the reservation I do not think makes any difference. I think it is probably the racial aspect of it that would probably indicate any difference in treatment that there might be.

Mr. CREECH. Do the Fort Hall Reservation Bureau officials intervene, to see that the Indian receives equitable treatment in the local courts?

Mr. WHITTIER. There has been no effort that I know of on the part of any Bureau officials to see that the Indians' constitutional rights are protected.

I have seen no effort at all. Mr. Boyer, if he has anything to add, will be—

Mr. BOYER. Not that I know of.

Mr. CREECH. Now one case that you cited here, the case of Mrs. Nannie Pokibiro; you mentioned that she was arrested, I believe, in her home in the middle of the night?

Mr. WHITTIER. In her home in the middle of the night, summarily brought into the court and sentenced, merely because she was found in the automobile on reservation grounds.

Mr. CREECH. And she was arrested not only by tribal police but by—

Mr. WHITTIER. By State police.

Mr. CREECH. And taken into a State court?

Mr. WHITTIER. Yes.

Mr. CREECH. When she was on the reservation?

Mr. WHITTIER. She was on the reservation.

Mr. CREECH. Was she on a State highway?

Mr. WHITTIER. No, she was not.

Mr. CREECH. She was not? She was on a road maintained by the Federal Government—

Mr. WHITTIER. That is right.

Mr. CREECH. On the reservation?

Mr. WHITTIER. That is my understanding; yes.

Senator ERVIN. Do you have any questions?

Mr. WATERS. Thank you, Mr. Chairman.

Mr. Whittier, as a former U.S. attorney, I wonder if you could tell us whether or not you ever had many of the 10 major crimes submitted to your office for prosecution or if that situation was in effect while you were there?

Mr. WHITTIER. Yes, the Federal Bureau of Investigation is very active.

They did take care of—I know of no crime that would fall within the classification of the 10 major crimes that was not presented to our office. They were very, very active in seeing that investigations were completed and presented for prosecution.

Mr. WATERS. Mr. Whittier, there have been some suggestions that U.S. attorneys, not necessarily in your area but in other areas, were less than enthusiastic with respect to the prosecution of the 10 major crimes. Inasmuch as we have a former assistant U.S. attorney right here, I wonder if you would care to tell us what attention those cases got and what percentage of the cases were declined?

Mr. WHITTIER. Well, I would say, frankly, from the experience I had in the office, they probably received as much attention as any other branch of criminal prosecution that I know of.

In fact, I would say that as far as the 10 major crimes and the assumption of jurisdiction on the major crimes, it was very adequately taken care of, and it is to this day.

The U.S. attorneys are apparently very conscientious in handling those. It is when you fall into the field of police jurisdiction of crimes other than the 10 major crimes, in their civil relationships, the true negligence and fault lies.

Mr. WATERS. Mr. Whittier, you suggested the tribal judge had threatened to "play dirty." Are those the words she used?

Mr. WHITTIER. Yes, I have the transcript right here, if you would like me to read it.

Mr. WATERS. What was the understanding of the impact of those words? Do I understand them to mean that—

Mr. WHITTIER. It was a threat—I think, a threat against Mr. Joe Thorpe, the vice chairman, and Mr. Ed Boyer, who was the chairman. I will read it to you. This is a speech that she made. It says:

In the Ged Za-Dump, the paper that is put out by Frank and Myrtle Thores, she is the one who does the writing for Frank, it was stated that Jimmie Yupe pled guilty.

Jimmie Yupe did not plead guilty and I defy anyone to tell me that Jimmie Yupe plead guilty. He did not plead guilty. However, he was given a fine of \$100 with \$40 of it suspended.

Ben Davis paid Jimmie Yupe's fine and if this council—the majority of the council had any honor at all they could have gone to appeal that case.

Just you people wait when you go out salmon fishing this summer and just you wait when you go off the reservation to do any hunting and see what happens. I can just about predict what happens after what happened down in Power County. Now, that's all I've got to say.

Another thing which I think is real dirty—and I can play the game just as dirty as what the council did to me—at the time that Olive Boyer was selling her land she needed money. She went to Ben Davis and he loaned her \$25; she needed more money; Ben Davis loaned her another \$85. She sold her land and hasn't been back to see Ben Davis. Now, that's the kind of treatment that good old man was given by the majority of the council. Think about it, people.

Mr. WATERS. I understand, as an attorney for the defendant you would regard that as reason to take a change of venue but, of course, there is not any other judge to which you could take a change of venue?

Mr. WHITTIER. And this would have to be considered along with these newspaper articles; and I think the newspaper articles published, supposedly quoting meetings that she has conducted, are much stronger than this statement.

Mr. CREECH. We are referring to this lady as a judge. As we understand it, she is not necessarily a lawyer?

Mr. WHITTIER. No, she is not.

Mr. CREECH. She is not admitted to the bar?

Mr. WHITTIER. She is not. She has no training—

Mr. CREECH. And this Nannie Pokibiro was arrested in the automobile?

I understand she was just physically present and had no operation in any part of the vehicle, and was that case subsequently dismissed?

Mr. WHITTIER. Yes, when I contested the matter I also put the jurisdictional matter before the courts, and the decision was rendered in favor of her as being an Indian and not subject to State jurisdiction.

Mr. WATERS. I read your words here where she was summarily tried and convicted and sentenced. I take it that she demanded her constitutional rights in a State court as an American citizen to have the advice of counsel and was denied that right?

Mr. WHITTIER. That is right. That was given to me, her brother-in-law, and another man—I don't recall his name right now—who came to me early the next morning and asked if I would not represent her. And I went up there and asked her if she had not requested the right to have counsel, and she said "Yes."

I also talked with the justice of the peace who handled the case, and asked him if she had not requested counsel, and the remark he made—I had better not say the quote—but it was, in substance, to the effect that, well, she does not know what she wants.

Mr. WATERS. And he did not allow her to call you?

Mr. WHITTIER. He would not set aside the plea of "Guilty" and would not permit her to enter a plea of "Not guilty."

Mr. WATERS. And your only course was to take the other measure?

Mr. WHITTIER. That is right, and I was in contact with this court within 8 hours after she was arrested.

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

Thank you, Mr. Chairman.

Senator ERVIN. I would infer from your testimony that the ideals of fairplay, which is one of having a trial conducted with the code neutrality of an impartial judge, does not favor or is not looked upon with favor on the Shoshone Bannock Reservation?

Mr. WHITTIER. I believe that would be a fair statement of my thoughts, yes.

Senator ERVIN. Do you not think there ought to be some kind of machinery set up which would insure to every Indian the right to have a review, if he sees fit—

Mr. WHITTIER. Yes.

Senator ERVIN (continuing). To ask for at least a tribal——

Mr. WHITTIER. Yes, I certainly do and, in my statement, I so recommend that such be set.

Senator ERVIN. We are certainly grateful to you and Mr. Boyer for appearing before us and giving us the benefit of your observations and experiences in this very important field.

Mr. WHITTIER. Thank you very much for the opportunity.

Mr. BOYER. Thank you very much.

EXHIBIT No. 1. PETITION FOR THE REMOVAL OF TRIBAL JUDGE DOLORES L. PANIOGUE

PETITION

We, the undersigned, residents and citizens of the Fort Hall Indian Reservation and members in good standing of the tribes thereon located, do hereby petition, request, and demand that Mrs. Dolores L. Paniogue be removed from the office of police judge and deprived of any authority, either temporarily or permanently, in the said office for the following reasons:

1. That the said judge is arbitrary and unreasonable in her decisions and does not listen to or follow any advice or suggestions.
 2. She does not rule in accordance with the law or evidence but is guided solely by her own personal opinions.
 3. She does not rule in accordance with the accepted laws or customs of the reservation or in accordance with the evidence submitted in the individual case.
 4. She has many likes and dislikes, biases and prejudices, and rules in accordance with them.
 5. She favors her friends and persecutes persons she dislikes.
 6. She does not reside on the reservation; does not participate or belong to Indian customs, organizations, or festivities.
 7. She is not trained in and does not live in and does not know or understand Indian living, language, customs, or habits nor does she care for the same or desire to learn thereof.
 8. That, for the aforesaid reasons, she is incompetent to judge or understand, direct or guide, Indian lives upon the reservation.
- (Approximately 100 signatures on the petition submitted to the subcommittee.)

EXHIBIT No. 2. RESOLUTION OF AUGUST 8, 1961, REGARDING HIRING OF
LAW ENFORCEMENT OFFICERS

RESOLUTION 1481

Be it Resolved by the Business Council of the Shoshone-Bannock Tribes, That Resolution 203, dated February 12, 1952, is hereby rescinded and that all law enforcement officers hired by the tribes shall be under the direct supervision of the Fort Hall Business Council.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, and under article VI, section 1(r) of the constitution of the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho.

Dated this 8th day of August 1961.

EDWARD BOYER,
Chairman, Fort Hall Business Council.

CERTIFICATE

I hereby certify that the foregoing resolution was passed while a quorum was present by a vote of four in favor, none opposed, and two not voting on the date it bears.

LUCILLE HINCY,
Tribal Secretary, Fort Hall Business Council.

EXHIBIT No. 3. LETTER OF AUGUST 18, 1961, REGARDING TRIBAL RESOLUTION FOR
HIRING LAW ENFORCEMENT OFFICERS

FORT HALL AGENCY,

Fort Hall, Idaho, August 18, 1961.

MR. EDWARD BOYER,
Chairman, Shoshone-Bannock Tribal Business Council,
Fort Hall, Idaho, August 18, 1961.

DEAR MR. BOYER: With reference to Tribal Resolution No. 1481 enacted August 8, 1961, it is my feeling that probably the implications contained in this resolution have not been fully realized by the tribal business council, therefore, I am returning it without my approval.

Your attention is called to Resolution No. 203 approved by the Secretary of Interior March 28, 1952, which provides in part that "The law-and-order program of the Fort Hall Reservation, including employees of the Indian court and all employees, regardless of source of funds for payment of salaries, are under the general supervision of the superintendent of the Fort Hall Reservation, * * *." It is my opinion that this is the only authority we have permitting our Indian service law enforcement officers to assist the tribe in administering their law-and-order program, and that should Resolution No. 203 be rescinded it would then become the full responsibility of the tribal business council to administer and enforce those duties outlined in the tribal law-and-order code approved September 27, 1938. The sudden changeover in this administration, without a doubt, would disrupt to an undue extent the law enforcement program on this reservation.

I also wish to point out, to you, your attorney's letter of August 9, 1961, in which he indicates further deliberation on the law-and-order program before any definite action is taken.

Your attention is called to article VI, section 2, of your constitution which provides that should the superintendent refuse to approve a resolution it may be referred to the Secretary of the Interior for further consideration. If the council does not agree with my failure to approve this resolution they should then reenact it as written and ask for the approval of the Secretary of the Interior. My reason for suggesting that it be reenacted is that the Secretary has 90 days from its reenactment to pass upon the resolution. If it is reenacted and immediately sent to the Secretary, through channels, he will have a longer period of time in which to consider it than would be the case should you forward the resolution enacted August 8.

It is my opinion that should you refer this resolution to the Secretary you should outline to him your program for administering the law-and-order code of your reservation. Also, indicating, if any, those responsibilities you wish to leave under the control of the Bureau and suggesting methods of carrying out such a program.

Should the tribal business council decide they would like to consider other methods of administering the tribe's law-and-order program, our office will be happy to work with you at any time.

Sincerely,

CHARLES S. SPENCER, *Superintendent.*

EXHIBIT No. 4. LETTER OF AUGUST 30, 1961, REGARDING LAW AND ORDER

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
FORT HALL AGENCY,

Fort Hall, Idaho, August 30, 1961.

MR. EDWARD BOYER,
Chairman, Shoshone-Bannock Business Council,
Fort Hall Reservation, Fort Hall, Idaho.

DEAR MR. BOYER: It is observed that Resolution 1486 rescinds Resolution 203 as did Resolution 1481, which I returned to you unapproved by letter August 18, 1961, explaining that because of the possible void created in the law-and-order program between the time the Government would be divested of its responsibility toward the law-and-order ordinance of the Shoshone-Bannock Tribes approved September 27, 1938, and the time the tribe would be able to fully assume these

responsibilities. It is still my opinion that the tribe does not have an adequately staffed and trained law enforcement organization to assume these duties, nor is your law enforcement personnel readily available by telephone or otherwise to respond quickly in case of an emergency. I am therefore returning, without approval, Resolution 1486.

In Resolution 1486 you also petition the assistance of the Federal Bureau of Investigation and the Justice Department to go over the whole matter of law enforcement with you in making recommendations for adequate law enforcement on the reservation by the tribes. I encourage you in this move and do not feel that you are being handicapped by the nonapproval of this resolution since you are making a very similar request in Resolution 1487 which does not require secretarial review because it does not modify Resolution 302, nor does it basically change your law-and-order program at this time.

In developing your revised program you should consider all phases of law and order such as juvenile delinquency, domestic relations, civil actions, fish and game control, etc., which are either wholly or concurrently a problem of the tribe.

The same right of appeal cited in my August 18, 1961, letter applies to Resolution 1486; also my offer to help in developing your law-and-order program is again extended.

Sincerely,

CHARLES S. SPENCER, *Superintendent.*

EXHIBIT No. 5. RESOLUTION OF AUGUST 21, 1961, REGARDING LAW AND ORDER

Whereas, in an effort to correct the deficiency on the matter of law enforcement on the reservation, the tribal council hired one game warden to assist on the matter of non-Indians trespassing on the reservation on the matter of hunting and fishing and poaching on the reservation;

Whereas the chief Bureau law enforcement officer of the Bureau of Indian Affairs Fort Hall rendered to the game warden a special commission in connection therewith;

Whereas the Congress of the United States passed a special law in an attempt to assist the tribes in such enforcement against encroachment on the reservation;

Whereas subsequent memorandums and communications and decisions of the Bureau of Indian Affairs has placed such law enforcement in a state of confusion;

Whereas, in December 1960, the Bureau of Indian Affairs issued a memorandum attacking the personal reputation of one of the game wardens and such memorandum omits a full and complete setting up of the facts in regard thereto and only results in further confusion and merely deprives the tribes of a fair handling of encroachments on the reservation: Now, therefore, be it

Resolved by the business council of the Shoshone-Bannock Tribes, That the game warden work with the chairman of the council in seeking the assistance of the FBI, Justice Department, in securing a fair solution to the confused law enforcement situation with regard to poaching on the reservation, in order that the tribes can retain and have fair and just jurisdiction on the matter.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended and under article VI, section 1 (r) of the constitution of the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho.

Dated this 21st day of August 1961.

EDWARD BOYER,
Chairman, Fort Hall Business Council.

CERTIFICATE

I hereby certify that the foregoing resolution was passed while a quorum was present by a vote of four in favor, none dissenting, and two not voting on the date it bears.

LUCILLE HINCY,
Tribal Secretary, Fort Hall Business Council.

EXHIBIT No. 6. RESOLUTION OF AUGUST 21, 1961, REGARDING LAW AND ORDER

Whereas in 1952 the Business Council of the Shoshone-Bannock Tribes was persuaded by Bureau of Indian Affairs personnel to transfer authority of the tribes of law enforcement personnel over to the jurisdiction of the Bureau of Indian Affairs;

Whereas it is now apparent that law enforcement on Fort Hall Reservation is now unsatisfactory and in a very confused situation;

Whereas, although at the last session of the Congress of the United States a Federal law as passed intended to give adequate protection to the tribes on the matter of trespassing and hunting and fishing, the matter is still, because of letters and memorandums of the Bureau and complaints of members of the tribes, confusing and not adequately being handled: Now, therefore, be it

Resolved by the Business Council of the Shoshone-Bannock Tribes, That Resolution 203 be, and it is hereby, rescinded; and be it further

Resolved, That the chairman of the business council be requested, and he is hereby authorized, to seek the assistance of the Federal Bureau of Investigation, Justice Department, a fully qualified, experienced law enforcement agency, to go over with him the whole matter of law enforcement on the reservation with the view to making recommendations for the adequate law enforcement on the reservation by the tribes; and be it further

Resolved, That the chairman select a committee of three members of the tribes to work with him on this matter, and that the matter be worked at from the view of the members of the tribes that law enforcement on the reservation be retained by the tribes and not transferred elsewhere; and be it further

Resolved, That an effort also be made to seek adequate training for law enforcement work among members of the tribes with the view to the tribes retaining control of its own law enforcement on the reservation and making such law enforcement efficient.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, and under article VI, section 1(k) of the constitution of the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho.

Dated this 21st day of August 1961.

EDWARD BOYER,
Chairman, Fort Hall Business Council.

CERTIFICATE

I hereby certify that the foregoing resolution was passed while a quorum was present by a vote of three in favor, none dissenting, and three not voting on the date it bears.

LUCILLE HINCY,
Tribal Secretary, Fort Hall Business Council.

EXHIBIT No. 7. RESOLUTION OF SEPTEMBER 21, 1962, REGARDING HIRING OF LAW ENFORCEMENT OFFICERS

RESOLUTION 1617

Whereas on August 8, 1962, by Resolution 1481, the Fort Hall Business Council took action to rescind Resolution 203, dated February 12, 1952; and

Whereas Resolution 203 was also rescinded by Resolution 1486 again on August 21, 1961; but the Bureau of Indian Affairs has failed to comply with these resolutions: Now be it

Resolved by the Business Council of the Shoshone-Bannock Tribes, That again action is hereby taken to rescind Resolution 203, dated February 12, 1952, and that all law enforcement officers hired by the Shoshone-Bannock Tribes shall be under the direct supervision of the Fort Hall Business Council.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, and under article VI, section 1(r) of the constitution of the Shoshone-Bannock Tribes of the Fort Hall Reservation, Idaho.

Dated this 21st day of September 1962.

EDWARD BOYER,
Chairman, Fort Hall Business Council.

CERTIFICATE

I hereby certify that the foregoing resolution was passed while a quorum was present by a vote of four in favor, none opposed, and three not voting on the date it bears.

LUCILLE HINCY,
Tribal Secretary, Fort Hall Business Council.

EXHIBIT No. 8. LETTER OF SEPTEMBER 28, 1962, REGARDING LAW AND ORDER

FORT HALL AGENCY,
Fort Hall, Idaho, September 28, 1962.

Mr. EDWARD BOYER,
Chairman, Fort Hall Business Council,
Fort Hall, Idaho.

DEAR MR. BOYER: I am returning herewith Resolution No. 1617 without my approval.

My letters of August 18, 1961, and August 30, 1961, returned to you two similar resolutions. In these letters I explained that it was my belief the tribal business council had not sufficiently organized their law and order program nor did they have trained personnel to take over the responsibilities included in the tribal law-and-order code.

I again wish to assure you that our office is willing to help develop a law and order program and when the tribe has available and is prepared to employ the necessary trained personnel and has available the necessary radio communication and other facilities to carry on the law and order program, I will be willing to consider a resolution revoking Resolution No. 203.

I again wish to point out your right to appeal my decision to the Secretary of Interior. If you decide to follow this course you should take early action as the Secretary is required to act within 90 days of the enactment of the resolution.

Sincerely yours,

CHARLES S. SPENCER, *Superintendent.*

EXHIBIT No. 9. TRANSCRIPT OF TRIAL OF KESLEY EDMO, DECEMBER 8, 1961, FORT HALL INDIAN COURT

JURY TRIAL IN THE CASE AGAINST KESLEY EDMO, RESULTING FROM A COMPLAINT SIGNED BY MYLO BRUNETTE, DATED NOVEMBER 27, 1961

On December 8, 1961, the Fort Hall Indian court was called to order by Chief Judge Dolores Paniogue, presiding.

The complaint as follows was read by the clerk of the court, Lucille Hincy:

"The above-named defendant is charged by this complaint with the offense of assault and battery in violation of section 2, Code of Indian Tribal Offenses, to wit: The said defendant did on or about the 26th day of November 1961, in the Fort Hall jurisdiction: My wife and I went over to the Ross Fork Creek School to look at the work that the council is having done there. Defendant told me I didn't have any business there, and told us to leave.

"He grabbed me by the shirt and hurt my chest, and he pushed me out through the door.

"Contrary to the regulations made and provided and against the peace and dignity of the Fort Hall Indian Reservation."

The following jury members were selected after each party in the case was allowed to challenge members of the jury who might be prejudiced against him: Hudson Grant, Kenneth Cosgrove, Wilson Jack, Leonard Stone, Andrew Punkin, and Kenneth George.

The judge explained to the jury their duty and the fact that Kesley Edmo had plead "not guilty" to the charge of assault and battery.

KESLEY EDMO. Any time you go to any person's place, you should ask for permission. The council has a committee, if they want to inspect any of these buildings. They have the land committee to do it. His [Mylo Brunette's] wife said that she wanted to know where the tribal car was. This was on Sunday, about 11:30 [in the morning]. She asked my son where the tribal car was.

JUDGE. Where were you when this took place?

KESLEY EDMO. We were in church. I asked her [Doris Brunette] why they were in the basement of the school building. I am the caretaker of the building.

JUDGE. Does that include the residence and the school part?

KESLEY EDMO. Yes. So I asked her about the car. She said that every time she wanted to use the car, I was using it. I asked her what rights her husband and her brother-in-law have here.

JUDGE. What did you mean by "here"; did you mean on the reservation or in the buildings?

KESLEY EDMO. Both. I forget what he said, but I grabbed him. This was at the top of the steps.

JUDGE. Is there a door at the top of the steps?

KESLEY EDMO. Two doors, one outside and one going into the school building.

JUDGE. Were you both inside the building?

KESLEY EDMO. Yes.

JUDGE. When you got home, they were at this place?

KESLEY EDMO. Yes.

JUDGE. Inside the building?

KESLEY EDMO. Yes.

JUDGE. You contend that they were inside the building and evidently you feel they had no business inside the building?

KESLEY EDMO. That's right, not without my permission.

JUDGE. This is because of your being the caretaker? You also stated that you were the caretaker because the council gave you that responsibility?

KESLEY EDMO. Yes.

JUDGE. How long have you lived there?

KESLEY EDMO. Since 1954; April.

JUDGE. Is it the present council who assigned you to be caretaker?

KESLEY EDMO. To begin with it was a Government building and it was assigned to me by the superintendent, by Perver Farvar.

JUDGE. Do you pay rent?

KESLEY EDMO. Yes; I did at the time.

JUDGE. You don't now?

KESLEY EDMO. No.

JUDGE (to Kesley Edmo). Is there anything else you want to mention which will be relevant to this case?

KESLEY EDMO. He [Mylo Brunette] said we were building a little Iron Curtain around there and we ought to fence this reservation in if we want to keep everybody out. His wife said that we were Communists. I want him to give me a definition of a Communist.

JUDGE. I have read a book on communism, which the Government says that every American should read so that you will know what you are up against and in this book it says that you cannot call a person a Communist unless you see his card or unless a person has attended a Communist cell meeting with the accused.

(Kesley Edmo read from some text the meaning of a Communist.)

KESLEY EDMO. Every time you marry into this tribe, you do not belong to this tribe.

JUDGE. A person cannot hold rights on two reservations. Is that what you mean?

KESLEY EDMO. Yes. When a man marries a woman it is his responsibility to look after his family. What would happen if this were the case?

JUDGE. You are bringing in another fact which is not relevant.

(Maxine Edmo was called to the witness chair and duly sworn in by the clerk.)

JUDGE. Were you there when this happened?

MAXINE EDMO. My oldest daughter was home looking after the smaller ones when the Brunettes came over. She [Doris Brunette] knocked at the door and my oldest daughter came to the door; she was taking care of the little ones. She opened the door and Mrs. Brunette came in and went over the living quarters first. My oldest boy was with the Farmer boy and when he saw the two pickups come into the yard, he came back to the house.

KESLEY EDMO. When she came around the door I asked her what she was looking for and she said the tribal car. They [Mylo and brother] were not with her.

(At this point Kenneth Cosgrove, one of the jury members, protested being called from the courtroom to serve on the jury and claimed that he was a preju-

diced juror. The judge asked whom he was prejudiced against and Kenneth Cosgrove said he did not know Mylo Brunette, that he had only heard bad reports about him.)

(The judge excused Kenneth Cosgrove at this point and each of the parties involved in the trial were asked if it would be permissible with them to continue the trial with only five jurors. Mylo Brunette and Kesley Edmo agreed that the trial should continue with five jurors.)

MAXINE EDMO. Doris quarreled with Leo and told him that Kesley was just suppose to work 5 days a week and the car was supposed to be in the garage on the weekends. She said that in the council she had been told that it was her responsibility to check on the wiring. She said that as a councilwoman, she had the right to do this. When we got back, this is what the boy and girl said. Just as we went around the house they were coming out of where the schoolroom used to be. They were coming up the stairs. He had a measuring tape in his hand. I believe that Doris came up and then Mylo. Mylo said he hadn't closed the door and he went back down and Kesley asked her if she was looking for the tribal car and she said "Yes, it was gone." Mylo came back up the stairs and said something about our wanting to build a little Iron Curtain. Kesley asked Mylo what business he and his brother had around there. The other fellow was measuring the fusebox, and it was then that Mylo spoke up and said that he had all the rights here. That is when he said something about building a curtain around the reservation and Mrs. Brunette "hollered" something about being Communists. He claims that he was yanked through the door. He was outside the door, that is when Kesley grabbed his shirt.

JUDGE. On the steps?

MAXINE EDMO. On the outside cement step.

Mrs. Brunette came up the steps and said something about leaving my husband alone.

JUDGE (to Kesley Edmo). As a result of his mentioning an Iron Curtain, you grabbed him? When he mentioned Iron Curtain, is that when you grabbed him?

KESLEY EDMO. It was before then.

MAXINE EDMO. She called out that we were Communists.

JUDGE. Before or after she called you Communists?

MAXINE. It was after, as a result of his saying we were building an Iron Curtain.

JUDGE. Is this true?

KESLEY. Yes. They said they wanted to get me out of the building so they could move someone else in.

MAXINE EDMO. They said they could move someone else in and get more money for the tribe. I said, "Yes, move some of your Puerto Ricans in." After that the water would not come through the pipe. I think they must have shut the water off when they were down in the basement. The one door where they were going to build a shower and washroom, it was nailed from inside, it goes into the women's toilet. This was forced open after they left. They should have come in and ask us for the key while we were there. That is when they left.

(Edward Boyer was called as a witness and sworn in by the clerk.)

JUDGE. What is the status of that building?

EDWARD BOYER. Kesley says that he has been living in the building since 1954. At the beginning he paid rent when it was under the jurisdiction of the Bureau. Now the jurisdiction seems to have changed, and it is now under the jurisdiction of the tribes. It is a tribal land.

JUDGE. The Bureau turned it over to the tribe?

EDWARD BOYER. The building. The building was turned over to the tribes.

JUDGE. You stated that Kesley was allowed to live in the tribal building?

EDWARD BOYER. I couldn't remember how it was done, but I think it was about last year Kesley Edmo made an agreement with the tribes that he would stay there and be a caretaker, this was at the same time he was employed by the tribes.

JUDGE. What do you mean by caretaker?

EDWARD BOYER. Taking care of the place. I tried to get each and every one of these persons staying in these buildings to pay some rent, and Kesley Edmo was the only one willing to pay and the tribes did not accept his offer and he is now staying up there taking care of the place. That is about all I know about that.

JUDGE. What are some of the responsibilities of the caretaker? Kesley stated that he has a key. Is that right?

EDWARD BOYER. He is responsible for taking care of it. I always go up there and get permission to see things. I get permission to get into the buildings, like anyone else.

JUDGE. Is that Kesley's home?

EDWARD BOYER. Yes. He has the full say over that.

JUDGE. If I wanted to go up there and go in, I would have to get permission from Kesley?

EDWARD BOYER. Yes.

JUDGE. If a group wants to hold a meeting in there, they would have to make arrangements with Kesley; is that right?

EDWARD BOYER. That is right.

(Mylo Brunette was sworn in to testify.)

JUDGE. You have heard the testimony given by the defendant. I might just ask you a question or two. You are not a member of this tribe?

MYLO BRUNETTE. No, I am a Chippewa from Minnesota.

JUDGE. How long have you been living here?

MYLO BRUNETTE. About 9 years. I would like to say that I am not on trial. Edward Boyer said that he assigned this building to Mr. Kesley Edmo. Could you produce this arrangement?

EDWARD BOYER. The secretary is looking for it.

MYLO BRUNETTE. I would like to see that agreement, so that my wife or I could go up there without seeing Mr. Edmo. Kesley Edmo is on trial for assault. He admitted that he did this and I don't think there is much more to this. I could get my wife, my brother and they would just say the same thing. He has already admitted his own guilt.

JUDGE. I am only trying to bring out the facts in this case. I would hit anyone in the face or shoot a person coming to my door if I did not want them.

MYLO BRUNETTE. He did not give me any time before he grabbed me by the shirt. My wife went in and asked his daughter because they were not home. I think the defendant has already admitted his guilt.

JUDGE. We are not here to fight.

MYLO BRUNETTE. If you want my wife and my brother to testify—

(Doris Brunette was sworn in to testify.)

JUDGE. You went into the building first. Did you ask permission of those inside?

DORIS BRUNETTE. I knocked on the door and said I would like to get in and look at the wiring. She said yes. I told her I wanted to check the wiring. The chairman had told me that it was my duty as councilwoman to check these things. My brother-in-law knows more about these things and that is why he was with us. He could give us an estimate on the job.

When Kesley got on the top step, he grabbed Mylo's collar and said, "You don't have any right here", and I guess he didn't see me because I was down the steps.

KESLEY EDMO. If you were going to look at the wiring, you should have looked in the attic.

DORIS BRUNETTE. He acted like a Communist and that was how the name calling came about. The chairman said that it was up to me to look into these things as my duty as a councilwoman.

KESLEY EDMO. Before, on any case when they wanted anyone to inspect the place, it was the land committee.

(Daniel J. Brunette was sworn in and testified.)

DANIEL J. BRUNETTE. My sister-in-law, being it was Sunday, figured everybody would be home. They wanted to get an idea of how much it would take to get this building into business, make a shower and bath. I am a builder at home by trade.

JUDGE. You were asked to go by your sister-in-law and your brother?

DANIEL J. BRUNETTE. Yes. To find out how much it would cost and if it was necessary.

KENNETH COSGROVE. I have never met this man before—Mr. Brunette—but I have heard so many things by people who don't like him. They have called him so many names and it looks like there is a lot of prejudice, but I still think there is too much prejudice about people who marry into the tribe. I think that is the trouble with Mr. Brunette. So many people think he is a Puerto Rican and all kinds of nationalities, that he is killing game and he has been brought to court many times and he has got out of it. I am one of the tribe who married someone out of the tribes. About the Iron Curtain—I have

heard a lot of people in town say that you are trying to build an Iron Curtain around the reservation to keep out all the other people. I think Kesley has real deep feeling against this man. About this building—I remember when Kesley was given the right. I was under the understanding that buildings are for the good of all the members of the tribes, unless there is a sign saying that they were supposed to keep out. There was no sign about trespass. I understand that it is the responsibility of every councilman in the district to look after things, then maybe she had the right. I am prejudiced sometimes myself. There are other nationalities here and you should not be prejudiced just because they are married into the tribe.

(Teola Truchot was sworn in and testified.)

TEOLA TRUCHOT. Where are the resolutions concerning caretaker's responsibilities? Susie George was the caretaker and she had to be notified ahead of time and she would clean up and then after she would clean up, then they turned it over to the tribe. We had a lot of trouble with these school buildings. We have had two or three difficulties. We had to notify Susie George, I wouldn't want someone coming into my office if it was assigned to me. I don't think anyone should take it upon themselves to walk into anyone else's house.

JUDGE. I said the things I did because I do not live on the reservation. I have to be on guard.

TEOLA TRUCHOT. When Homer Cutler lived there, we had to ask him. I think it is the responsibility of the council; they should look into this. They should look into our constitution and bylaws. We are in a mixup today. They should set up the qualifications for councilmen, there are only two in the constitution. It is still up to the council. I think he is the caretaker and no one should walk in without his permission.

DORIS BRUNETTE. Teola Truchot says that it is up to the council, and that is how I got this permission. It is up to you as a councilwoman. The place was not locked up. The outside was * * * and the school building was not locked. It must have been the place where they keep their tools.

(Letter read from the tribal secretary concerning the business lease. File reviewed by the judge.)

(Russel Pokibiro sworn in and testified.)

RUSSELL POKIBIRO. We are supposed to work under the chairman of the business council and he told us to check these tribal buildings, five of them on the reservation. Who sent her or him over there. We are supposed to go out there and check on them buildings, when the chairman of the council says that. So we went over there, I don't know who sent her over there.

JUDGE. Did you check it?

RUSSELL POKIBIRO. No we did not get any word from the council.

JUDGE. When was it known that there would have to be repairs?

KESLEY EDMO. Last year, a year ago. Ed had been up there and figured what it would cost. It was set up with a Delco system.

DORIS BRUNETTE. The work started after I was put in a councilwoman.

KESLEY EDMO. They had done work before when Vidal was on the council.

JUDGE. (addressing the jury). You have heard the testimony given by the defendant and you have heard the councilwoman say why she went up there. I think that is all I can tell you. It is your decision.

(Judge Paniogue instructed the jurors and read from the Law and Order Code, sec. 2. The jurors were given pencil and paper and escorted to the basement room by Officer John Moss. Leonard Stone was spokesman, elected by the jury and read the decision of the group—not guilty.)

EXHIBIT No. 10. COPY OF TRIAL BUSINESS LEASE WITH KESLEY EDMO

BUSINESS LEASE INFORMATION

1. Name of leasee: Kesley Edmo. Address: Fort Hall, Idaho.
2. Description of buildings and acreage: Ross Fork Schoolhouse quarters, building No. 301. Bus garage, building No. 302.
3. Length of lease: 5 years. Effective date: November 2, 1959. Expiration date: December 31, 1964 (December 31 of last year of lease).
4. Amount of rent to be paid and schedule of payments: Monthly rent of \$10 to be paid in advance to the tribal office.

5. Permanent type of improvements which the lessee may place on property with the privilege of removing.

6. Lessee will irrigate and maintain yard.

7. Lessor will not be held responsible for any accidents or injuries sustained on the lease property or on the old boarding school campus.

8. If at any time the due rent is not paid the lessee is to come in at the following regular council meeting.

9. Lessee will make all repairs necessary to this house at his own expense and the tribe will not make any repairs or remodeling.

10. Special requirements: (a) Inasmuch as this business lease replaces revocable permit which has expired I hereby waive the full 30-day notice on said revocable permit.

Date: November 2, 1959.

KESLEY EDMO,
(Signature of Lessee)
EDWARD BOYER,

Chairman, Fort Hall Business Council.

EXHIBIT No. 11. LETTER OF DECEMBER 11, 1961, REGARDING MYLO BURNETTE CASE
Law and order 170.

To: Charles S. Spencer, superintendent.

From: Willis C. Pankey, supervisory criminal investigation.

Subject: Mylo Burnette case—tribal court—December 11, 1961.

The complaint charging Mylo Burnette with trespass was read by Tribal Secretary Lucille Hincy. The complaint was made and signed by Kesley Edmo, and dated December 1, 1961.

Mylo Burnette plead not guilty.

The judge advised him of his rights, and all witnesses were duly sworn in.

Russell Pokibiro, Doris Burnette, Ed Boyer, Mylo Burnette, Kesley Edmo, and Jack Shoemaker, real property officer, testified.

The testimony given was the same as in Kesley's trial with the exception of Jack Shoemaker's testimony. He was not called at Kesley Edmo's trial.

Mr. Shoemaker testified that the lease matter had come up Friday, December 8, 1961, and that he had searched through all of his files but had been unable to come up with any lease information sheets or a copy of any lease between Kesley and the tribe for the use of the Bess Fork Creek Day School.

The judge said, "Nothing then was turned up in your office?"

Mr. Shoemaker said, "The record doesn't indicate one."

Mylo kept saying, "Why doesn't he, Kesley, produce this lease? He is in trespass if he doesn't produce one."

Kesley had a lease in 1955.

The judge asked Burnette why he went up on Sunday, not a good day to do business.

Russell Pokibiro said that he remembered going up last year and taking up a document when he was on the land committee.

Judge Paniogue said she did not have enough evidence to base a decision upon, so she dismissed the case.

Ed Boyer explained when he gave testimony before, he thought there was an agreement, but the agreement could not be found.

An attorney acted in tribal court during Mylo Burnette's hearing. He was evidently there on Mr. Burnette's behalf, but at no time did he interrupt or enter into the proceedings of the court.

After the trial was over, he talked to the Burnettes out in the tribal hallway.

Mrs. Hincy said his name was not given, and she did not know his name.

WILLIS C. PANKEY,
Supervisory Criminal Investigator.

EXHIBIT No. 12. CRIMINAL COMPLAINT, "SHOSHONE-BANNOCK TRIBES v. EDWARD BOYER," DECEMBER 8, 1961

FORT HALL INDIAN COURT, FORT HALL RESERVATION, IDAHO

Shoshone-Bannock Tribes v. Ed Boyer, Defendant

CRIMINAL COMPLAINT

The above-named defendant is charged by this complaint with the offense of perjury in violation of section 29, Code of Indian Tribal Offenses, to wit: The said defendant did on or about the 8th day of December 1961, in the Fort Hall jurisdiction: That the defendant did willfully and deliberately make false statements during the Kesley Edmo jury trial on December 8, 1961.

Contrary to the regulations made and provided and against the peace and dignity of the Fort Hall Indian Reservation.

(Signed) MYLO BURNETTE,
Complaining Witness.

Witness:

ANNETT R. SANFORD.

Dated: January 29, 1963.

EXHIBIT No. 13. INDIANS KILLED ON HIGHWAYS AND OTHER ROADS AND BY OTHER MEANS OF VIOLENCE ON THE FORT HALL INDIAN RESERVATION AND ADJACENT AREAS

1. Tom Dennison (listed as Dennison on Whittier's list, but believed to refer to Tom Danielson): Was walking on side of track, and was hit and killed by passenger train short distance south of Blackfoot, January 13, 1919.
2. Patze Wapee (unable to locate any information concerning this person. Not on census roll or in files).
3. Charlie Petterson (listed as Petterson on Whittier's list, but believed to refer to Charley Peterson, 4/4 Bannock): Was struck by auto while walking along highway, April 19, 1936.
4. Johnnie Baker: Date of death, September 16, 1936. Died of injury. Car ran over him while he was passed out on road.
5. Joe Warren: Date of death, November 11, 1944. Killed on highway, 6 miles south of Blackfoot. Hit by car while walking along highway.
6. Paul Eagle: Killed in car wreck, August 18, 1954.
7. Ernest Evening: Killed April 12, 1959, north of Fort Hall on Highway 91-191. Collided with semi-truck and trailer. Evening was the driver of his vehicle. Also killed instantly was his passenger, Reuben Watson, No. 10 on this list. The driver of the semi was hospitalized for shock. Evening started to pass another car, and hit the semi head-on. Accident happened at 2:40 a.m. on a Sunday morning.
8. Leo Deviney: Killed in hit and run accident, on reservation. (Investigated by this office, law and order, and the State police. Never solved.) Date of death, October 12, 1958.
9. Jacob Nephi: Killed September 14, 1954. Hit and run on Highway 91-191, 1 mile north of Fort Hall. (Tommy George, Indian, \$500 fine, and operator's license revoked 1 year.)
10. Ruebon Watson (refer to No. 7 above).
11. Andy Partridge: September 5, 1955, found dead in burning car which had been parked along Union Pacific Railroad right-of-way, Blackfoot, Idaho.
12. Louis Bagley: May 9, 1960, died in truck-train accident at Sheepskin crossing on reservation. (Indian, but not a member of Shoshone-Bannock Tribes).
13. Charlie Washakie: Nonmember Indian. September 10, 1953, hit by train on railroad crossing near boarding school, Fort Hall, Idaho.
14. Rudy Pahvitse: Died December 21, 1962. Was stabbed in a brawl in a bar in Blackfoot. It was a free-for-all fight involving Mexicans and Indians. Coroner's jury failed to reach a majority decision. Five of the eight voted in favor of justifiable homicide. There was insufficient evidence to convict Eduvi Ramos (Mexican) of homicide.

15. Peter Jackson: February 24, 1951, killed. Was hit by a car on Highway 91-191 near Ballard Road. Coroner's inquest found driver not guilty of criminal negligence.

16 and 17. Ernest Ottogary and Ben Tesheep, male Indians: Drinking. Caused accident on Highway 30, on reservation. Both killed instantly. Also caused deaths of two non-Indians in same accident. October 1, 1962.

18. Snooks Mosho: May 3, 1942, hit by oil truck while walking along Highway 30, 2 miles west of Pocatello. Mosho had been drinking.

19. Burt Broncho (listed as Bert Broncho): Killed in two-car crash on Highway 91-191 on Fort Hall Reservation. Broncho was drinking. Accident happened on August 31, 1962. Broncho apparently lost control of his vehicle. He swerved off the road onto a canal bank before veering into the northbound lane of traffic.

20. Louis Watson: Died October 23, 1956. Fell off while riding a freight train (U.P.R.R.) near Senter, Idaho, Lincoln County. Was drunk.

21. Kennedy Waterhouse: Died July 21, 1956. Fell off train and was killed near Winnemucca, Nevada.

22. Luke Weiser: Died July 1, 1948. Probably struck by train. He had been drinking. Found by Blackfoot railroad tracks.

23. Foster Miller (also shown as No. 62, Forrester Miller): Died December 28, 1962, of exposure and excessive consumption of liquor in Pocatello, Idaho.

24. Shanpe Deepwater (Shoup Deepwater): September 15, 1955, accidentally run over by a truck in Blackfoot.

25 and 26. Effie Ottogary and Edward Meeks: Killed in car-truck accident at Philbin and Reservation Roads on Fort Hall Reservation. Indian vehicle stopped at stop sign then started up and pulled in front of loaded grain truck. Driver of the truck was unable to avoid the collision.

27 and 28. James Martin and Viola Tindahay: Killed in two-car accident 2½ miles west of Tyhee. Date of accident, November 23, 1938.

29. Carrie Hope (Ottogary): Killed in car-train accident at Reservation Road crossing on Fort Hall Reservation, September 27, 1958. Also killed in same accident were Linford Hope (No. 31); Bell Neva Wildcat (No. 32); and baby, Ina Fisher (No. 33).

30. Jarol Fisher: Died in TB sanitarium, April 28, 1958.

31. Lynnford Hope: Killed in car-train accident with No. 29, September 27, 1958.

32. Velvera Wildcat: Refer to No. 29.

33. One baby: Refer to No. 29.

34. Shoshone Wheeler: Killed in hit-and-run accident, March 26, 1954.

35. Edmo LeClair: Died November 13, 1948, hit by a car on Center Street, Pocatello, Idaho.

36. Bush Mosho (Marshall): Died May 21, 1949. Hit by car on 500 block N. 5th. Driver of car absolved of all blame as Indian stepped directly into path of auto.

37. Roy Pahnemah: Killed June 9, 1952. Was asleep on railroad track, and was hit by train.

38 and 39. Ninnip Toane and Mrs. Toane: Both killed in truck-train collision 1 mile south of Fort Hall.

40. Bertha Mamoshoup (juvenile girl): Shot to death, May 13, 1962, at Idaho Falls, Idaho, by a male Negro. This was a State case and the man was prosecuted for second-degree murder.

41, 42, and 43. Lee Pohipe, Custer Bache, and Patsy Pooengerah: October 3, 1961, died of carbon monoxide fumes in car. Had been partying and had the little girl, Patsy, with them. The little 11-year-old girl had been raped before death by one of the men. The exhaust pipe of the car was loose at both ends resulting in carbon monoxide fumes filling the car. The occupants had apparently parked with the motor running. The cars ignition and lights were on when the car was found.

44. Merthan Snipe: Died August 30, 1953, of knife wounds in chest; sustained in a fight with a Mexican at Fort Hall.

45. Ellis Wood (listed on census as Alex Woods or Wood): Died April 18, 1953, in hospital. Died of uremia. Was 69 years old.

46. Franklin Baker (also known as "Moon" Baker): Was shot and killed on May 4, 1954, by another Indian, Tom Billie. This was a Federal case.

47, 48, and 49. Robert Kutch, Rebecca Edmo, and "Dude" Edmo (listed on census as Wesley E. Edmo): Killed in auto-truck collision on Ross Fork Road

near Mission Road. Indians ran into truck parked by side of road. Date of accident and deaths, October 30, 1953.

50. Richard Evening: Killed May 15, 1953, in car-train accident on reservation.

51. Renna Yupe (listed on tribal census as Reno Yupe): Died November 21, 1958. Autopsy revealed man died of natural causes. Man had a bad heart and also bronchial pneumonia. Also had 4 percent alcohol content in his blood.

52. Franklin Tendoy: September 17, 1958, body found in canal, badly decomposed. Cause of death not determined.

53. Josephine Evening (Josephine Evening Billie): Killed in auto accident on Highline Road on reservation. Investigated by State police and law and order officers.

54. Susan Rope (Susan Rope Horn): Died December 11, 1950; 23 years of age. Was drunk on highway. Hit by car and killed.

55. Elva Lincoln: Died of strangulation and head injuries due to weight of overturned auto lying across chest and head. Auto overturned into barrow pit. One-car accident, November 8, 1953.

56. Adrian Tom: Died in an auto wreck, June 7, 1953.

57. Wayne Perdash: Died of acute alcoholism and exposure. Died on Union Pacific Railroad right-of-way near Bannock Creek. Law and order paid for autopsy.

58. Dorothy Edmo: Found dead, June 23, 1955, Syphon Road, 300 yards east of Highway 91-191, south of Fort Hall approximately 6 miles.

59. Finley Broncho (Finley Art Broncho): Accidentally shot himself. Happened on Fort Hall Reservation, July 25, 1959.

60. Charles W. Edmo: Suicide. Shot himself in Pocatello, Idaho, January 16, 1961.

61. Amelia Nephi (Amelia Nephi Jackson): An alcoholic. Drank Clorox while under the influence of intoxicants. Not a suicide.

62. Forrester Miller: Same as No. 23, Forster Miller.

63. Tom Sequints: Froze to death, February 16, 1937.

64. Mr. Papse: Refers to Edward Papse who froze to death January 15, 1955. Victim was involved in accident on reservation, ran from scene and died from shock and exposure.

65. Amos Holbrook: Suicide, shot himself in the chest with a .22 rifle, October 5, 1958, on the Appenay place on Sambo Road.

66. Frank Smart: Died February 24, 1946, while in jail. Picked up in Pocatello, on North Third, lying on ground beside a coalshed. Died of acute alcoholism.

67. Kim Osborne (listed in tribal census as Thomas Kim Osborne): Suicide. Hung himself in Pocatello City jail, April 21, 1957.

68. Damon Baker: Killed in hit-and-run accident September 21, 1951.

69. Henry Fisher: Date of death, April 8, 1916. Could find nothing in files relating to his death, other than the date. Allotment No. 714.

70. Doty Lewis: Died July 26, 1954, of sunstroke and uremia anuria at St. Anthony Hospital in Pocatello, Idaho.

71. A baby (name of baby not given.)

72. Leslie Teton: Died in auto accident on Highline Road October 20, 1947.

73. Barney Farmer: Refers to Vernie Farmer who died of acute alcoholism on October 22, 1960.

EXHIBIT No. 14. CIVIL COMPLAINT, "BESSIE JUDSON v. ZELPHIA TOWERSAP,"
APRIL 13, 1962, FORT HALL INDIAN COURT

COURT OF INDIAN OFFENSES, FORT HALL JURISDICTION, U.S. INDIAN SERVICE

Bessie Judson, complainant v. Zelphia Towersap, defendant

CIVIL COMPLAINT

The above-named complainant, complaining of the defendant, declares:
Complainant is charging defendant of slander.

She made false statements against me, such as: That when I was on the Arts and Crafts Committee that I showed favoritism among the customers. That isn't true. She said I showed no cooperation in the meetings, that I sat with my back toward her. That isn't true.

My witnesses are Elsie Brown, Cora George, Willie George, Virgie Dixey, and Amy Dann.

By reason of the foregoing facts, the complainant demands that the defendant shall be adjudged to make just redress.

Witnessed :

BESSIE E. JUDSON, *Complainant.*

(Judge of the Court of Indian Offenses or
Employees of the Indian Service)

Acting Clerk, Fort Hall, Idaho, Jurisdiction.

Dated March 22, 1962 :

SHOSHONE-BANNOCK TRIBES.

EXHIBIT No. 15. LETTER OF FEBRUARY 8, 1962, REGARDING TRIBAL POLITICAL ACTIVITY OF FEDERAL EMPLOYEES

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., February 8, 1963.

MR. R. M. WHITTIER,
Attorney at Law, Pocatello, Idaho.

DEAR MR. WHITTIER: In your letter of January 25 you raise questions on tribal political activity of Federal employees who are members of the Shoshone-Bannock Tribes.

We note that the effect of the assimilated crimes statute (180 U.S.C. 13) is to incorporate the criminal laws of the several States into the laws of the United States so that violations committed upon land within the exclusive jurisdiction of the United States become subject to Federal prosecution. The Assimilated Crimes Act was extended to the Indian country by 18 U.S.C. 1152, but excepting, therefrom, offenses by one Indian against the person or property of another Indian or those offenses by Indians which can be punished by the local law of the tribe.

The conditions under which Bureau employees may hold office as an elected tribal official are covered by the personnel manual, the appropriate section of which has been copied and is enclosed for your information. Please note that these rulings apply only to Department of the Interior employees and were promulgated by the Secretary under the authority to regulate his employees. They have no application to persons who may be employed by other agencies of the Federal Government.

On September 10, 1940, subsequent to the amendment to the Hatch Act adopted July 19, 1940 (Public No. 753, 76th Cong.), the Solicitor for the Department quoted the amending provisions as follows and came to the conclusions indicated :

"Nothing in the second sentence of section 9(a) or in the second sentence of section 12(a) of this Act shall be construed to prevent or prohibit any person subject to the provisions of the Act from engaging in any political activity (1) in connection with any election and the preceding campaign if none of the candidates is to be nominated or elected at such election as representing a party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected, or (2) in connection with any question which is not specifically identified with any National or State political party. For the purposes of this section, questions relating to constitutional amendments, referendums, approval of municipal ordinances, and others of a similar character, shall not be deemed to be specifically identified with any National or State political party."

"Accordingly, it would seem that Federal employees may engage in political activity and hold elective offices in tribal governments in connection with elections where only local matters are involved and the candidates do not represent national parties."

On February 1, 1962, the superintendent of the Fort Hall Agency advised the chairman of the Fort Hall Business Council that he was returning, without action, Ordinance 1-1962, dated January 26, 1962. It was pointed out by the superintendent that what the business council hoped to accomplish by this ordinance could be accomplished only by an amendment to the constitution and

bylaws of the Shoshone-Bannock Tribes. There is no record that the provisions of Ordinance 1-1962 were subsequently proposed in a constitutional amendment.

We trust that the above information is responsive to your letter of January 25.

Sincerely yours,

(Signed) JAMES E. OFFICER,
Associate Commissioner.

PERSONNEL

(44 IAM C2.3.6)

9. *Indian employees and tribal representatives.*—No employee of the Bureau may serve as a representative in an elective or appointive position with the governing body of a tribe, band, pueblo, or organized community unless the superintendent has recommended, the area director has concurred, and the Commissioner has approved such employment.

A. An employee of the Bureau may serve in such elective or appointive position with a tribal governing body if, upon written recommendation and justification of the superintendent and the area director, the Commissioner approves his serving in that capacity. A copy of the approval shall be placed in the employee's official personnel file.

B. If the superintendent and the area director determine at a later date that such employee's work, or the interests of the service, are adversely affected by his serving in such tribal position, they shall recommend that the Commissioner revoke his approval giving their justification for the action. In such an event, the employee shall be required to relinquish one or the other of such positions. The employee shall be notified in writing of the reasons why it is not in the interests of the Bureau for him to serve in both capacities.

(1) If the employee decides to terminate his services with the tribal governing body, a copy of his written resignation to the tribal governing body shall be forwarded through the superintendent and the area director for noting and shall be filed in the employee's official personnel folder.

(2) If the employee fails to submit his resignation to the tribal governing body, his failure to do so shall be considered as sufficient grounds for separation from the Government service on the basis of refusing to comply with Bureau instructions. In such an event the separation procedures prescribed (in 44 I.A.M. S1) shall be followed.

C. An employee excused from duty to perform services as such a representative in either an appointive or elective office during assigned hours of duty must be carried in a leave-without-pay status if he is compensated by the tribe. If he is not compensated by the tribe, he shall be carried on annual leave, or on leave-without-pay if he has no annual leave to his credit. In this connection, reimbursement for subsistence and travel expenses is not considered compensation, but per diem payments in excess of such expenses are considered to be compensation.

D. During the entire period an employee is running for an elective tribal office he shall be required to take annual leave, or leave-without-pay, if he has no annual leave to his credit.

E. The restrictions do not apply to Indians who are employed on an intermittent or irregular basis where such employment does not require decisions or actions which might be influenced by their official connection with the tribe, band, pueblo, or organized community, nor shall these restrictions prevent an Indian serving as a representative from being employed on such a basis.

F. The term "representative" as used means the occupant of an elective or other position in the official governing body of the tribe, band, pueblo, or organized community or any position established by such governing body which carries with it the right to vote in the proceedings of that body.

EXHIBIT No. 16. LETTERS OF MARCH 8 AND 13, 1963, REGARDING ALLEGATIONS RECEIVED ABOUT FORT HALL INDIAN RESERVATION

MARCH 8, 1963.

Mr. JAMES OFFICER,
Associate Commissioner, Bureau of Indian Affairs, Fort Hall Agency, Fort Hall, Idaho.

DEAR MR. OFFICER: The Subcommittee on Constitutional Rights received testimony on March 7 from Max Whittier, general counsel, and Edward Boyer, chairman, for the Shoshone-Bannock Tribes located at Fort Hall, Idaho.

Many of their alleged violations concerned the activities of the Bureau of Indian Affairs and, in particular, of various branches under your jurisdiction.

It is my understanding that you are currently traveling in the Fort Hall area. Therefore, I am enclosing a copy of the statement given before this subcommittee by the Fort Hall representatives. I know that you would appreciate an opportunity to look into the matters suggested by their statement and I hope that you will advise us accordingly upon your return to Washington, D.C.

With all kind wishes, I am,
Sincerely yours,

SAM J. ERVIN, Jr., *Chairman.*

MARCH 13, 1963.

MR. JAMES OFFICER,
*Associate Commissioner, Bureau of Indian Affairs, Care of Fort Hall Agency,
Fort Hall, Idaho.*

DEAR MR. OFFICER: I understand you have requested from the subcommittee copies of the exhibits submitted by Max Whittier, general counsel for the Fort Hall Tribes, to accompany his testimony.

Enclosed are copies of those exhibits which should be helpful to you. Many of the exhibits mentioned by Mr. Whittier in his testimony are to be submitted to the subcommittee in the near future.

With all kind wishes, I am,
Sincerely yours,

SAM J. ERVIN, Jr., *Chairman.*

EXHIBIT NO. 17. LETTER OF MAY 18, 1963, REGARDING INVESTIGATION OF ALLEGATIONS RECEIVED ABOUT FORT HALL INDIAN RESERVATION

DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C. May 18, 1963.

HON SAM J. ERVIN, Jr.,
*Chairman, Subcommittee on Constitutional Rights,
Committee on the Judiciary,
U.S. Senate, Washington, D.C.*

DEAR SENATOR ERVIN: In your letters of March 8 and 13 you provided me with information concerning alleged violations of constitutional rights on the Fort Hall Indian Reservation, Idaho. These allegations were presented to your subcommittee by Fort Hall Tribal Attorney Max Whittier in a statement made on March 7, 1963.

While in the Fort Hall area during the month of March, I looked into some of these allegations and requested a full investigation and report by Agency Superintendent Charles Spencer. The superintendent's report arrived at this office during a period when I was away on trips to other reservations, and I regret not having been able earlier to provide you with copies. I am taking this opportunity, however, of sending you the superintendent's report with enclosures, all of which should be of assistance to your subcommittee in making its evaluation.

One of the issues of greatest contention at Fort Hall has concerned the action taken by the business council to remove the tribal judge, Mrs. Dolores Paniogue. To be effective, this action required the approval of the Commissioner of Indian Affairs. While at Fort Hall, I inquired into the circumstances surrounding the attempt by certain council members to dismiss Judge Paniogue, and came to the conclusion that there was no real evidence to affirm the charges that she had discriminated against persons appearing in her court. Rather, it seemed to me that her differences with the council stemmed in part from the fact that she treated friends and relatives of council members with the same degree of objectivity as others, whereas certain council members would have preferred that she grant such persons privileged treatment. Upon my return from Fort Hall, I recommended to the Commissioner that he disapprove the council's action to remove Mrs. Paniogue. This he did on March 29, 1963. A short time later, Fort Hall Tribal Chairman Ed Boyer appealed the Commissioner's decision. However, he was not supported in the appeal by a majority of the council members. We are in the process of informing Mr. Boyer that the Commissioner's decision related to an action taken by the Fort Hall Business Council and that an appeal from the decision must also be taken by the council, rather than by an individual member of it.

This Bureau is well aware of the problems connected with the administration of law and order on the Fort Hall Reservation, and has recently sent the Chief of its Law and Order Branch to the reservation to work with the superintendent, the tribal business council, and the tribal attorney to revise the law-and-order code and work out other ways of better protecting the lives, property, and constitutional rights of the Fort Hall Indians. With the cooperation of all concerned, I am confident that this can be accomplished.

If the subcommittee desires additional information, I shall be glad to supply it.

Sincerely yours,

JAMES E. OFFICER, *Associate Commissioner*

EXHIBIT NO. 18. LETTER OF APRIL 16, 1963, REGARDING THE INVESTIGATIONS OF VARIOUS COMPLAINTS AT FORT HALL INDIAN RESERVATION

APRIL 16, 1963.

MR. PHILLEO NASH,
Commissioner of Indian Affairs,
U.S. Department of the Interior,
Bureau of Indian Affairs,
Washington, D.C.

DEAR MR. NASH: This letter is in response to the letter directed to the undersigned from Philleo Nash, Commissioner of Indian Affairs, dated March 29, 1963.

At the outset, please let me state that I appreciate the Bureau of Indian Affairs being concerned enough to send a representative from Washington, D.C., in the person of James Officer, to investigate conditions existing on the Fort Hall Indian Reservation. I feel that open discussion sometimes creates a more complete understanding of the problems that exist and certainly can lead to no harm. I do feel, though, that the investigation was undertaken under such circumstances that there was a presumption against the regularity of the proceedings of the tribal council's actions as it pertains to the law-and-order situation existing on the Fort Hall Indian Reservation instead of finding a satisfactory meeting ground where the old problems could be resolved and the tribe could move ahead once again toward a better life.

First, let me refer to the position of the people to remove the tribal judge, Dolores Paniogue. You will note that the petition was drawn by the law firm of McDevitt & McDevitt for and on behalf of the members of the tribe. The tribal council did not employ this law firm, nor did they have anything to do with the law firm's drawing of this petition. The only function that the tribal council performed was to hold a hearing upon the petition and after a hearing rendered the decision. There is no transcript of the hearing or proceedings since the council's proceedings are not recorded at length. After a hearing was held the council did find that there was cause to remove Mrs. Paniogue and under the self-governing provisions of the treaty, constitution, and law-and-order code governing activities on the reservation, there should be a presumption of regularity which the Commissioner in following the Administrative Procedures Act should uphold unless there was evidence to the effect that the decision was arbitrary and capricious.

In the report of Mr. Officer the Commissioner stated his conclusion to be that the evidence was inadequate and contradictory and that he was not satisfied that Mrs. Paniogue's behavior warrants her dismissal. There was a finding that Mrs. Paniogue's conduct was "unquestionably inconsistent with the dignity and responsibility of her position." There was a finding that "good judgment should also have dictated that she disqualify herself from hearing the case involving the tribal chairman" and apparently the Commissioner found that she did not properly supervise the personnel working under her so that they did properly draw complaints but apparently the Commissioner felt that she was not responsible for the deficiency in her proceedings but assigned these deficiencies to the staff members of the Law and Order Division.

Mr. Officer could not help but notice that the clashes existing between the tribal court and the council made the impartiality of the administration of justice in the tribal court impossible as long as Mrs. Paniogue remained in the tribal judge position. A statement is made that the tribal attorney, R. M. Whittier, advised Mr. Officer that he had never spoken with Mrs. Paniogue and

that his request for a conference with her was denied by an assistant rather than by the judge herself. I do not think that the Commissioner was fully advised if this is his conclusion, since in the early part of February the attorney was sent to the Law and Order Office to discuss law and order matters with the personnel there and also the superintendent; that the undersigned was advised that Attorney Whittier did meet with the superintendent and did request that some sort of a meeting be arranged calling together the law-and-order personnel, including the tribal judge and the attorney, to work out these conflicts that existed and it appears that no action was ever taken as a result of this request.

Mr. Officer does not advise who the several tribal members were who stated that Mrs. Paniogue is the most competent judge ever to serve the Fort Hall court and it would be interesting to note who these members were for, at a recent call meeting of the tribe, a substantial majority of the tribal members expressed disapproval with this reported position.

Instead of making the position of the tribal council easier, it appears that Mr. Officer's visit out here and the report made on the tribal court has merely made the voice of protest more violent insofar as Mrs. Paniogue's relationship with the tribal council, for at a call meeting held April 9, Mrs. Paniogue's daughter, Angela Butterfield, openly attacked the tribal council and the tribal attorney, making statements imputing dishonesty to the council and the attorney and the following night, we are advised, a meeting of this group was held at Mrs. Paniogue's house to chart further action in respect to this problem. I think Mr. Spencer would agree that the only report that was made on this particular matter to the tribe was a reading of the letter from Philleo Nash to the undersigned and an attempt was made to forget the past and go forward but, apparently, this is impossible.

It is the firm belief of the undersigned that a good many of the problems in the law-and-order division are the result of promptings of experienced law officers from without the reservation. These people are attempting to destroy any semblance of self-government on the part of the council and if the Commissioner's decision is permitted to stand apparently they have succeeded since the tribal council is very, very discouraged since they cannot seem to have any of their wishes recognized. For that reason we wish at this time to give notice of appeal of the Commissioner's decision to the Secretary of the Interior with with the express hope that the Secretary of the Interior will recognize the presumption of regularity which is usually attached to an administrative proceedings. But, instead of the presumption on the part of the Bureau of Indian Affairs that all of the proceedings of the Shoshone-Bannock Business Council being irregular that the proceedings be given some semblance of recognition and a chance to see whether self-government can become a reality when given a chance.

Very truly yours,

EDWARD BOYER,
Chairman, Shoshone-Bannock Tribes, Fort Hall, Idaho.

EXHIBIT NO. 19. LETTER OF APRIL 5, 1963, REGARDING LAW AND ORDER

FORT HALL AGENCY,
Fort Hall, Idaho, April 5, 1963.

Through area director, Portland area office.

To Commissioner, Bureau of Indian Affairs, Washington, D.C.
(Attention of Mr. James Officer, Associate Commissioner.)

SIR: At the time of Associate Commissioner Officer's recent visit to the reservation he left with us a file containing the statement of Mr. Max R. Whittier, attorney for the Shoshone-Bannock Tribes, before the Senate Judiciary Committee, with certain exhibits, accompanying the statement. Mr. Officer requested that we furnish him some supplemental information, also our comments on certain statements made by Mr. Whittier which had been identified with marginal notes.

Most of this discussion will deal with these sections bearing marginal notes and should any additional information be desired, we will be glad to furnish it at an early date.

In discussing the general tone of Mr. Whittier's statements with him by telephone today, he stated that he used very broad terms in his statement and all of them may not have been basically factual but were desirable to illustrate his point. He further pointed out that the limited notice he had to appear before this committee did not give him time to properly prepare a text. He stated that he was notified at 1 p.m. that he was to appear before the committee, and made his statement at 10 a.m. the next forenoon.

The first marginal notes made by Mr. Officer concern the Jimmy Yupe trial in Power County. Mr. Whittier indicates in his statement that, "The council decided to let the State courts proceed with no outside interference"; this matter of no interference has been the subject of much controversy between certain factions and their supporters. The tribal council's minutes of October 16, 1962, approved November 13, 1962, cast a little different light on this subject, in that the chairman, and vice chairman had taken action, which is reflected in the following quote: "Mary Matte questioned the chairman concerning what happened in American Falls and said that the district attorney had reported that the chairman and vice chairman had told him to give Jimmy Yupe 'the works.' The chairman said they had taken the action they did because they did not want anyone to jeopardize our hunting rights." The feeling of a good many people seems to be well expressed in a letter addressed to Attorney Whittier from ex-tribal attorney, Ben W. Davis, dated January 18, 1963, (1) a copy of which I am enclosing.

Relative to "a gathering of outside individuals" discussed in the last paragraph on page 2, this situation is described in my letter to Mr. R. D. Holtz, area director, of January 11, 1963, (2) a copy of which I am also enclosing. The outside individuals, here mentioned, must be either enrolled members of the tribe working for the Fort Hall Agency or other enrolled members living in the peripheral area of the reservation who were present at the meeting. With the exception of myself, two or three other employees and a few Indians from other reservations married into the tribe, this was a solid gathering of members of the Shoshone-Bannock Tribes and I am sure that no nonenrolled members participated either in the voting or the discussions. In this same paragraph, it appears to me that Mr. Whittier is a bit presumptive when he states "the tribal judge threatened to 'Play dirty' thereafter in her tribal judge functions." It will be noted in the exhibit furnished the committee by Mr. Whittier, "Statement of Dolores Paniogue," that Mrs. Paniogue did say, "and I can play the game just as dirty as what the council did to me." This statement is a bit out of context as the other side was also making rash statements. I am sure that an impartial appraisal of the situation at that time would indicate that Mrs. Paniogue was speaking of her political activities and not of her decorum while on the bench. I asked Mr. Whittier how he felt she had carried out this threat, and he cited, as an example, only the case of Mr. Boyer against the Shoshone-Bannock Tribes with Mr. Mylo Brunette as complaining witness. There seems to be no evidence that Mrs. Paniogue had any part initiating this complaint. I am enclosing a copy of this complaint (3) and you will note that the exhibit furnished the committee by Mr. Whittier is much abbreviated. I have been advised and have fully satisfied myself that all defendants are advised of the charges against them to the fullest extent possible, and after questioning all likely members of my staff I can find nothing to support Mr. Whittier's statement that he was advised "there was no necessity to advise accused of any details except the name of the crime." Mr. Whittier strongly indicated to the law-and-order personnel that they were no longer to seek the services of our area solicitor since he was now fully representing the tribe in dealing with the Bureau. We could not agree that we were no longer to use the area solicitor relative to the Bureau's interest and confirmed our opinion in a conversation with the area director; however, in no case did we question Mr. Whittier's right or ability to present the tribes' side of a case. I am enclosing a copy of the memo (4) in which Mr. Boyer is credited with stating that "he thought he had seen a lease with an Indian by the name of Edmo."

Relative to the statement by Mr. Whittier on constitutional rights, I asked him who said, "I certainly don't know why all of this is being stirred up. We didn't have any trouble with Indians till they found out they had constitutional rights." Mr. Whittier advised me that Mrs. Sanford, clerk in our law-and-order office, and Mrs. Hincy, the tribal clerk, told him this. I am told and, I feel truthfully so, that Mrs. Hincy was never present at a time when Mrs. Sanford was talking to Mr. Whittier and, further, Mrs. Sanford says she did not make this state-

ment. This, I believe, as my main contact between law and order and this office has been through Mrs. Sanford for the last 2 years, and I have never had an occasion to question any statement she has made to me nor do I question her when she denies making this statement. If Mr. Whittier is referring to the conference he had with law-and-order personnel, there are three other witnesses that verify this. Mr. Whittier credits the last statement on page 3 to another law-and-order employee. In addition to our law-and-order staff members, Mr. Jensen of the FBI was present during the entire discussion, and he and each of the law-and-order people present, deny that any such statement was made.

It is not true that the accused is never advised of his constitutional rights. I have reviewed most of the more involved cases during the past 2 years; in each case where the defendant has plead not guilty, he been advised of his rights to a jury trial; with only one exception, the jury has, in each instance, found the defendant "not guilty"; therefore, there has been no occasion for an appeal in these trials. The losing defendant in the one jury trial that brought back a verdict of guilty, later, and on another occasion, appealed a decision of the judge. It is, therefore, obvious that she knew of her appeal right. In this latter case, I understand, she has withdrawn her appeal. From those who are regularly in attendance at court, I am advised that Judge Paniogue has always advised defendants of their right to a jury trial when they plead not guilty. She may have been a bit lax in not advising those found guilty of their right in an appellate court. Our office and the area office have repeatedly offered to help the tribe update their court procedure.

In paragraph 4, page 4, Mr. Whittier states: "Up until July of last year the Fort Hall Reservation was being policed by, and jurisdiction was freely exercised by, State authority and State courts." Other than highway accidents, I am sure the State court did not try to assume jurisdiction. They did, however, try to exercise some control over the county and State highways as indicated in Mr. Whittier's statement; this policy was dropped once it was challenged and serious highway offenses were taken before the U.S. commissioner or Federal court after that.

Relative to the group organizations mentioned in the last paragraph of page 4, Mr. Whittier advises me that he is referring to the same group referred to in paragraph 3, on page 2. This is an open-forum group of both Indians and non-Indians that have been meeting monthly by open invitation, mainly through the newspapers. These meetings and their purpose have been given wide publicity and Mr. Officer attended the last meeting of this group during his recent visit. Any reflection cast upon the tribal organization was mainly to their absence at these discussions. Mr. Whittier tells me that his reference to the county officials in the second sentence is something separate and apart from his reference to the group organization and deals with a problem centered mostly on East Center Street in Pocatello. I am enclosing (5) several clippings and a copy of my report to the area director on this situation.

Enclosed also is a list (6) referred to on page 5 of the report of the 78 fatalities of Indians occurring on or near the reservation. This list is the one prepared for Mr. Whittier in the tribal office and our law-and-order clerk has reviewed the ties of Indians occurring on or near the reservation. This list is the one prepared in our law-and-order files and from other sources. You will note that this list extends back to 1916. We were unable to get information on the five Indians reported to have been prosecuted for the death of non-Indians.

Resolution 1487, enacted August 21, 1961, is attached, along with three other law-and-order resolutions, all of which were returned to the tribe with an explanation (7), which is also attached.

Paragraph 5, on page 6, discusses the Bessie Judson complaint against Zephia Towersap. I am enclosing a photocopy of this complaint (8) which is substantially the same as the copy Mr. Whittier furnished the committee, except that this one reflects the formalization of the complaint by a member of the staff in the tribal office. Mrs. Towersap and her foster father, John Pokibro, who is also her uncle, discussed this case with me. I went to some length explaining Mrs. Towersap's right to a jury trial and her right to make an appeal in case she was unhappy with the decision. The complaint appeared to me to be properly made out and fully supported and I felt her constitutional rights were not in jeopardy, therefore, I did not feel that it was my place to try and influence the judge. In my telephone conversation with Mr. Whittier, today, he was

unable to make any specific reference to mishandling this case but still dealt in general terms. I assured him that both our office and the area office were ready and willing to help work out a more suitable law-and-order program.

Sincerely yours,

CHARLES S. SPENCER, *Superintendent.*

(Enclosures are retained in the subcommittee files.)

Mr. CREECH. The next witness is Mr. Paul Jones, chairman of the Navajo Tribal Council of Window Rock, Ariz. He is accompanied by Mr. Norman Littell, general counsel for the Navajo Tribe, of Washington, D.C.

Mr. Jones.

Senator ERVIN. The subcommittee is glad to have you with us.

STATEMENT OF PAUL JONES, CHAIRMAN, NAVAJO TRIBAL COUNCIL, WINDOW ROCK, ARIZ.; ACCOMPANIED BY NORMAN LITTELL, GENERAL COUNSEL FOR THE NAVAJO TRIBE, WASHINGTON, D.C.

Mr. JONES. Thank you, Mr. Chairman, for the opportunity to appear before this committee.

1. THE NAVAJO RESERVATION AND THE SURROUNDING STATES

The Navajo Tribe of Indians, approximately 94,000 strong, occupying the largest Indian reservation in the United States, consisting of about 24,000 square miles or some 16 million acres, is acutely conscious of the problems of conflicting jurisdiction between State law enforcement officials, including county officers, and the tribal police.

Our reservation lies in three States—Arizona, New Mexico, and Utah. In each of those States, we have confronted what nonlawyers sometimes think is a no man's land of the law in which neither courts nor law enforcement officers seem quite sure as to who is authorized to arrest an Indian, or a non-Indian, for crimes committed on the reservation.

It is most unfortunate when this problem of confusion as to jurisdiction is exaggerated and thrown into inflammatory headlines, as was recently done in the Farmington Times in an article addressed to "Mothers of San Juan County" in New Mexico over the possible rape of daughters by culprits who would go unpunished by reason of the commission of the crime on the Navajo Reservation. I was particularly unfortunate to have this hysterical hue and cry raised by an influential newspaper whose publisher, Lincoln O'Brien, is a member of a statutory advisory committee to the Secretary of the Interior on Indian affairs. The publisher either knew better, or should have known better.

We are just as much interested in the apprehension and punishment of criminals in Navajo land as Lincoln O'Brien or any other citizen of New Mexico. It is protecting the security of their own homes. I have personally satisfied myself that there is no "no man's land" where crimes of violence cannot be punished.

2. COURT DECISIONS

Fortunately, three decisions by a local trial judge in New Mexico dismissing indictments against non-Indians for crimes of violence, when committed on the Navajo Reservation, have been, in practical effect, reversed by a decision of the Supreme Court of New Mexico in February 1963 sustaining State jurisdiction over non-Indians on the reservation. I hope, and believe, that this will clarify the situation in all three States as to crimes of violence by non-Indians.

In the case of *Williams v. Lee* (258 U.S. 217 (1958)) in which the Supreme Court of Arizona had sustained the right of a non-Indian trader on the reservation to attach a flock of sheep belonging to one of our Navajo councilmen by process issued in a State court outside of the reservation but served on the reservation. When our general counsel took this case to the Supreme Court of the United States, the Supreme Court of Arizona was reversed. The defendant was a Navajo. We did not contend, and the Supreme Court of the United States did not hold, that there would have been no jurisdiction over a non-Indian if such a defendant were involved.

Historically, we have had, and do now have, as confirmed by *Williams v. Lee*, very considerable jurisdiction over our own affairs, including the arrest, trial, and punishment of Indians. However, Congress has, in its power over Indian affairs, provided in Public Law 280 for the extension of civil and criminal jurisdiction by the States of New Mexico, Arizona, and Utah, when those States make appropriate amendments to their laws. As the Supreme Court pointed out in *Williams v. Lee* (p. 271):

Congress has followed a policy calculated eventually to make all Indians full-fledged participants in American society. This policy contemplates criminal and civil jurisdiction over Indians by any State ready to assume the burdens that go with it. No departure from the policies which have been applied to other Indians is apparent in the relationship between the United States and the Navajos.

The Supreme Court was undoubtedly correct in assuming that the State of Arizona, with its numerous Indian tribes and very considerable reservation area, in addition to that portion of the Navajo Reservation which lies in the State of Arizona, did not wish to assume the burden of extending police, court, jail, and other administrative facilities over so vast a territory at a great burden to the taxpayers. The States of New Mexico and Utah have also refrained from extending jurisdiction over Indian reservations.

3. A NEW SOLUTION FOR THE JURISDICTION PROBLEMS

Keeping in mind that the common objective should be maintenance of law and order and coordination of law enforcement between States and Indian tribes, there seems to me to be two very hopeful new developments:

- (1) A new attitude on the part of some States; and
- (2) Very constructive legislation in Congress in Senator Metcalf's bill, S. 143, and Congressman Olsen's identical bill, H.R. 2104.

The new element in the very old jurisdictional problem is the concept of agreements negotiated between tribes and State officials as to

the extension of civil and criminal jurisdiction, or either of them.

(a) Senate Joint Resolution 1 in Arizona, 1962: There could be no better illustration than that offered by the State of Arizona, which came full cycle in its approach to this problem. Law enforcement became exceedingly acute in the rising tide of death, injury, and damage upon the highways, aggravated greatly by the fact that confusion existed in the law-enforcement agencies as to what officers could do in apprehending violators of State law, especially within the borders of any Indian reservation. Senate Joint Resolution No. 1 in the Arizona Legislature, introduced January 15, 1962, constitutes a pioneering resolution and declaration of State policy in reciting as follows:

Whereas it has been judicially recognized that Indian tribes are sovereign in their own territories and therefore the tribal council of each territory has full authority to enforce traffic and highway laws in any manner which the tribal council may determine.

The members of the legislature and the tribal councils are fully aware that each tribal council could promulgate and enforce traffic and highway laws in variance and even in conflict with the established laws and practices of the State.

Conflicts and variances in administration of traffic and highway laws may be avoided by agreement between the State highway commission and the tribal councils. Agreements can be reached which are based upon mutual understanding, cooperation, and the adoption of uniform laws and thereby uniform and consistent practices would exist in all areas of the State and to all persons.

The drafters of this resolution at first erred in providing that Indian tribes could agree with State officials to extend the State highway laws to a reservation and thereby extend State jurisdiction to enforce such laws. This is not legally possible. The Congress of the United States has not yet provided that States and tribes could agree on the extension of State jurisdiction. When Arizona legislators realized this, the joint resolution was accordingly amended to provide as follows:

1. That the State of Arizona through the State highway commission, or board of supervisors of the respective counties, with the approval of the Governor are authorized to enter into agreements with any of the tribal councils of the State which have adopted highway laws identical with or substantially similar and parallel to the highway laws of the State to provide for the joint or cooperative enforcement of highway laws against Indians and non-Indians in the State.

2. That in order to encourage cooperation in law enforcement without the complete assumption of civil and criminal jurisdiction by the State over Indian reservations, where this is in the public interest of the States and Indian reservations concerned, the Congress of the United States is hereby respectfully requested to authorize by appropriate legislation the negotiation and execution of agreements, their amendment or rescission by mutual consent for enforcement against Indians and non-Indians on Indian reservations within such States, or State laws in whole or in part, or of tribal laws which are identical with or substantially similar and parallel to State laws, as may be agreed upon between any State and any Indian tribe in respect to all or any part of a tribal reservation which lies within such State to the end that joint or cooperative law enforcement by State and tribal authorities may be agreed upon and put into effect to protect the best interest of the public and the Indians within such State.

Note that this joint resolution recognized realistically the law as it is; namely, that (1) Indian tribes have very substantial authority to regulate their own affairs; (2) State law could not be extended to the Indian reservations by an agreement between the State and the tribe, but only through congressional action; (3) where tribes adopt laws identical with or substantially similar and parallel to the State laws, agreements for joint or cooperative law enforcement could be

made between tribes and States; (4) that only Congress, in the exercise of its plenary powers over Indian affairs, can authorize this modification of Public Law 280 to allow and authorize agreements between States and tribes as to the extension of State jurisdiction and also to help the enforcement of State laws and tribal laws where the tribal councils "have adopted highway laws identical with or substantially similar and parallel to the highway laws of the State."

There was good reason for the Legislature of Arizona to take this action and to memorialize Congress to pass appropriate legislation authorizing agreements between State officials and tribal councils for the enforcement of State laws on reservations where this is deemed appropriate and also for cooperative enforcement of State and tribal laws where the latter were identical with or substantially similar and parallel to the State laws. This is in lieu of a complete extension of civil and criminal jurisdiction pursuant to Public Law 280, the expense and burden of which Arizona was not prepared to assume any more than the States of New Mexico and Utah are.

This Arizona resolution represents the most practicable solution and the wisest one for both the State and for the Indians. The Navajo Tribal Council, for example, has adopted as a law of the reservation a highway code which is identical with or substantially similar and parallel to that of Arizona, and this has also been done in respect to New Mexico. Naturally, it would be nonsense for the tribe to set up a separate licensing or inspection division, but it can, and did adopt, by reference, appropriate sections of the State law, and bow to the State authority in all of such matters.

There must also be differences in the measure of punishment. Fines of \$500 are beyond the economy of individual Navajos, but fines of lesser amounts will be just as punishing and effective when imposed by Navajo courts. The traffic regulations are identical with or closely parallel to the State law.

Election laws, too, have been adopted which are identical with or substantially similar and parallel to the State laws (Advisory Committee Resolution ACJY-118-61, passed July 27, 1961), and in complete deference to State authority in conducting these elections. The Navajo Tribe has even offered to pay all or any part of precinct expenses in conducting elections in view of the fact that the State cannot assess taxes on tribal lands as in the case of other taxpayers who contribute to the cost of elections. Naturally the tribe would not attempt to set up a separate and distinct voters system but has, in its adoption of election laws as part of its own tribal authority, deferred to the States and adopted by reference the States registration system, just as it adopted automobile licensing and registration authority as established by the States.

Enforcement can be had in tribal courts on the reservation paralleling enforcement in State courts against non-Indians outside of the reservation, or even against non-Indians on the reservation.

This is as far as we can go under the existing state of the law without action by Congress. Even as the matter stands, agreements have been worked out by law enforcement officials in Arizona and New Mexico, whereby Navajo police are deputized by State or county authorities from outside the reservation to act in the arrest of non-Indians violating the law. State or county authorities are similarly deputized

as Navajo police should it be necessary to pursue a law violator on the reservation. This already has proved its effectiveness as a cooperative effort of the State and the Navajo Tribe in securing law enforcement.

(b) The Metcalf-Olsen bills (S. 143; H.R. 2104), authorizing State and tribal agreements respecting jurisdiction: The appeal of Arizona to Congress was timely indeed, for Senator Metcalf and Congressman Olsen, both from the State of Montana, and having extensive experience with this problem, due to the widely scattered tribes of Indians in Montana, introduced identical bills in the last Congress, and again in this Congress. The present bills, S. 143 and H.R. 2104, which authorize agreements between officers of the States and the Indian tribes regarding the extension of civil and criminal jurisdiction and the revocation of such jurisdiction.

That the system works seems to be well proved by Congressman Olsen, who has said that when he was attorney general of Montana, there was no difficulty whatever in reaching agreements with tribal officials.

These two bills have the firm support of the Department of the Interior. I hope it may be made quite clear, if the bills are not already sufficiently clear, that agreements between States and tribes can be made piece by piece—subject matter by subject matter.

In other words, the greatest advantage of these bills would be partially defeated if the Navajo Tribe could only agree to extension of civil and criminal jurisdiction wholesale, for then, we are up against the same old financial limitation of the States in respect to the extension of law enforcement facilities over reservation lands.

As a practical matter, on the Navajo Reservation, we have more extensive police protection, better equipment, and jails than the counties of the States in which our reservation is located. I will submit a brief statement, in addition to this one, as to the tribe's past collaboration with State officials, law enforcement personnel, and facilities. It will be coming in shortly. I do not have it with me at the present time.

At this point I merely emphasize these fundamental facts:

(1) This new approach to the old controversy of State jurisdiction over Indian lands promises an escape from a practical and legal impasse in that tribal officers may negotiate agreements with their neighboring States suited to the needs of both and the common objective of law and order;

(2) This can be done, case by case and subject matter by subject matter, if the Metcalf and Olsen bills are properly interpreted (or if necessary, amended) to authorize what the Navajos are doing within the States of Arizona and New Mexico—agreeing as to enforcement of the highway code and election codes adopted by the tribe identical, as near as may be with the State law, so that law enforcement officers of the tribe and of the surrounding States and their counties are engaged in a common enforcement program;

(3) The educational advantage to Indians in learning to enforce these laws as their own, with their own police, courts, and jails is the only sure path to understanding the institutions in the States around them;

(4) This plan is based upon a long-established historic principle on which our Government was founded—the consent of the governed.

Senator ERVIN. Mr. Jones, do you think that the idea that was embodied in this resolution of the Arizona Legislature and again which is embodied in the Metcalf and Olsen bills is the wisest course to take, because it does require the acceptance of a complete—

Mr. JONES. Yes.

Senator ERVIN. But it would allow the States and the tribal councils to reach agreements in the areas where there was more danger, or more necessity, for uniform enforcement of the law and more danger of jurisdictional conflicts in the absence of such an agreement?

Mr. JONES. I agree to the extent where I have emphasized that the laws are similar.

Supposing the tribe has a definite law. That would be a little bit different, but what I am talking about is the tribe where we have similar laws.

There may be different sentences in there, which may give it a feeling of difference, but it is very little.

The essence of understanding goes together very close.

I think in that connection it works well. It does with us.

Senator ERVIN. And you think that Public Law 280, in its present form, is unsatisfactory because it would require a complete change all at once, when the State elected to take jurisdiction under the—

Mr. JONES. Yes, and that is the reason I refer to the statement that if this was amended in this way it would be more effective.

Senator ERVIN. Now, it is undoubtedly true, in your opinion, that in many areas which involve the application of law in individual cases that it is much better to have a determination of those cases made on the basis of the customs which the tribe is familiar with and has used in settling controversies for a long time?

Mr. JONES. Yes, sir. From a very casual standpoint, we have been looking up the different States regulations, whether it be traffic or other regulations, as it affects the States, and we are looking ahead to the time when we would have been absorbed absolutely by the State.

We do not think that is anywhere near in the near future, but we know it is coming.

It is inevitable but it is way out in the distance.

We might as well get acquainted with it right from the beginning and absorb as much as we can understand of it.

Senator ERVIN. I want to compliment you on the excellence of your statement. I am very much impressed with your observations.

Counsel has some questions.

Mr. CREECH. Thank you, Mr. Chairman.

On page 1 of your statement you refer to some unfavorable publicity which you feel the Navajo Tribe was submitted to recently in a press report concerning a crime which was committed on the reservation.

The article states, and I am quoting you:

The possible rape of daughters by culprits who would go unpunished by reason of the commission of the crime on the Navajo Reservation.

Well, in this particular instance is the newspaper alluding to the fact that prior to the February decision, which you have mentioned on page 2, non-Indians have not been punished by the State for crimes which they committed on the reservation property?

Mr. JONES. That is exactly—we have three instances of crimes committed by a non-Indian on the Navajo Reservation where the criminals

were apprehended and delivered to outside authorities, of the States for punishment.

The presiding judge released these criminals, saying that this crime was committed on an Indian reservation "on which I do not have jurisdiction."

They were just released, unpunished, cases of rape, murder, and abusing and beating a wife, non-Indians.

Mr. CREECH. But now the Supreme Court of New Mexico has indicated that the State does have jurisdiction over—

Mr. JONES. We have appealed to the Supreme Court and they say that they have.

We illustrated it here by saying, in the case of *Williams v. Lee*, where the Supreme Court took that stand it reversed the decision of Arizona's prior decision.

Mr. CREECH. Well now, in *Williams v. Lee* the defendant was an Indian. Is that not correct?

Mr. JONES. Yes.

Mr. CREECH. As the situation exists now on your reservation the Navajo tribal police are the only police who have jurisdiction on the reservation, as such, and they are cross deputized?

Mr. JONES. Yes. We have cross deputized our police in the area, particularly in the land we call the "checkerboard area."

We have white people intermingled with Indians living in that area.

It is not a whole reservation piecelike. It is located on the western side. The reason we cross deputized was to have a law enforcement body who can arrest on these various types of lands, Federal land, private land—I do not know. I think there are about four different kinds of land over there.

The State so far has, even though we did that, refused to carry out our agreements with them that deputization of our men would carry through.

I think this is due to the individual policeman. He is not sure of what land he is arresting individuals on. Therefore, the man refuses to be arrested. That has come to our attention, too.

Mr. CREECH. Well now, the case which you cite here on page 1, in the supreme court decision in New Mexico, would indicate that today, on part of your reservation, which is in New Mexico, the State authorities could arrest and try a non-Indian for the commission of a crime on the reservation. Is that correct, sir?

Mr. JONES. That is right.

Mr. CREECH. In the case of areas of your reservation which lie between Arizona and Utah, what is the situation there?

Mr. JONES. Well, cross-deputization goes on within the Indian reservation as far as the tribal council authority goes. That is considered Indian land.

Mr. CREECH. My question is, in the part of your reservation that lies within the States of Arizona and Utah, do the State law-enforcement officers arrest non-Indians for the commission of crimes on the reservation, and are they tried in the State courts of those States?

Mr. JONES. We have our own police who do the arresting on the Indian reservation and transfer the people to the State police.

Mr. CREECH. That does not answer the question as to whether the tribal police, who are cross-deputized, will arrest non-Indians and turn them over to the proper authorities in the States of Arizona and Utah. Are they, in turn, tried by the courts of those States?

Mr. JONES. Yes, sir. I hope that that will be followed through like we have in New Mexico, as mentioned here in the *Warren* case.

Mr. CREECH. Well, sir, you mentioned also, on page 2 of your statement, that you are personally satisfied that there is no "no man's land" where crimes of violence cannot be punished. Well now, you are referring here, I presume, only to the Navajo Reservation. Is that correct?

Mr. JONES. That is correct.

The feeling is that we do not want to have part of our reservation pointed to as a "no man's land" where anybody can do any type of crime. We do not want that.

Mr. CREECH. Yes, sir. Your feeling as to the problem of jurisdiction of the Indian, who resides or who commits an illegal act on the reservation, has been clarified by the ruling of the New Mexico Supreme Court?

Mr. JONES. Yes.

Mr. CREECH. Sir, you mentioned the attitude on the part of some States respecting jurisdiction. Do you feel that this attitude has been assumed voluntarily by the States or that it has been forced upon them by the Indian?

Mr. JONES. I believe that some of it was forced by the Indian. I do not know—I cannot say that I have talked with the State officials on why they have taken the attitude, but it does exist. Arizona was voluntary. They came across with it.

As I stated, they started in the wrong way but we sort of corrected it. I was called in and so were my attorneys, and we straightened it out as it is recorded in my statement here.

Mr. CREECH. Well, do you know of any other State, other than Arizona, which has manifested this attitude?

Mr. JONES. No.

Mr. CREECH. There have been successful negotiations between the Navajos and the State of Arizona concerning subjects of jurisdiction other than over highways?

Mr. JONES. Yes. We have an agreement particularly with the State of Arizona, where farmers who go out to work in Arizona have committed a certain crime, and come back to the reservation. They are followed by the county and we pick these people up and turn them over. If our people get in there and commit a crime off the reservation, we have the same agreement that they should deliver that individual to us.

Mr. CREECH. I see. Now, is this applicable to all crimes?

Mr. JONES. Yes.

Mr. CREECH. Sir, we have heard a great deal about the very effective law and order code of the Navajos, your police force, and your expenditures for law enforcement.

I wonder if you would care to tell the subcommittee something about your police force and the size, the type of law and order you have on the Navajo Reservation?

Mr. JONES. We have the superintendent of police's report, which I mentioned here, that will be delivered to the committee.

It is not quite ready yet but it will be coming. On the force we have had, 162 police at sometime.

We do not have that many at the present time.

I think we have 120-some-odd numbers on the police force at the present time. They operate through the reservation, with their headquarters in different sections of the reservation, where they report. With a setup of radio communications everything is reported by radio to the headquarters in Arizona.

Although they may be operating in Utah or New Mexico, all these reports of their daily activities go to the headquarters at Window Rock.

Mr. CREECH. Sir, you mentioned earlier that these tribal police also had jurisdiction in certain checker-board areas?

Mr. JONES. Yes.

Mr. CREECH. The subcommittee received complaints some time ago; I do not know that we have received any complaints recently, that the Navajo tribal police were arresting Indians who lived off of the reservation and bringing them on the reservation where they were being subjected to the jurisdiction of a tribal court.

Have you, as tribal chairman——

Mr. JONES. Yes.

Mr. CREECH (continuing). Received such complaints?

Mr. JONES. I believe that is something new to me.

We definitely go outside the reservation, as I mentioned, and in our agreement with the court we can go into a certain State and issue a writ to have that man apprehended and released to us, if the crime was committed on the reservation.

If that criminal has committed a State crime, well, it is up to the State to see that they come back to the State.

We do not pick them up off the reservation except in cases where they have committed a crime on the reservation.

Mr. CREECH. To your knowledge, then, this situation does not exist?

Mr. JONES. No; that is a new report to me.

Mr. CREECH. The subcommittee also has received allegations that police officials in Gallup, N. Mex., use excessive force in arresting Navajo Indians. Also it has been stated that Indians who are arrested by the local police are treated somewhat differently from non-Indian citizens who are subject to arrest.

Has your tribal council received such complaints as this?

Mr. JONES. Very true. We have a great deal of violence on that score, not only Gallup but Farmington and the city of Flagstaff.

You might have heard about the slave case where the jailer sold a bunch of prisoners to a man who wanted to have his farm worked.

He had a truck loaded and, at \$5 a head, he transported them over there under slave conditions to do a certain task with a man over there.

He paid the \$5 fine, that happened in Gallup.

Mr. CREECH. Is that the case where the judge agreed to release to a man in Gallup these people, upon the payment of a \$5 fine, but he held them over another day in order that he might also have the

prisoners whom they brought in that night, and they were subsequently taken to Colorado and turned over to a rancher there and forced to harvest crops?

Is that the case?

Mr. JONES. That is correct.

Mr. CREECH. Now, that case, I believe, is presently before the courts of Colorado, is it not?

I believe there is an action pending against the farmer involved for involuntary servitude.

Mr. LITTELL. If I may answer that, Mr. Counsel—

Mr. CREECH. Yes.

Mr. LITTELL. That is correct, and that man was convicted, but we have never been able to get anything done against the perpetrators of the crime in Gallup, one of whom is a chief police judge, whose name escapes me at the moment, who later was employed by the Department of the Interior.

This was done some time ago, not I believe in the present administration, but it was done.

He was the police court judge who shipped those people off. In fact, they were packed in a truck with an armed guard and not even permitted to stop, under rather appalling conditions.

We have never been able to get any action from the Civil Rights Commission or the Department of Justice or anybody else at the time of the crime.

Only the farmer has been held accountable and convicted, but I believe he was fined and released.

Mr. CREECH. To your knowledge is any action contemplated by the New Mexico authorities or against the New Mexico authorities by the Bureau?

Mr. LITTELL. I think no, because we have exhausted every conceivable effort to get something done in that outrageous, flagrant case, and we have not been able to get anything done in New Mexico.

Mr. CREECH. Have there been any similar instances since the occurrence of this case?

Mr. LITTELL. Not since then, but your question invokes the answer which Mr. Jones properly made.

It is a long history of violence in Gallup, I am sorry to say.

When I first landed there in 1947, there had been three men killed in the preceding 18 months. I mean Navajos killed by police. I took pains to extract one of the files, employed special counsel with the authority of the tribe, which is permissible under New Mexico law, because they have such limited financial resources in the prosecutors' office apparently. Two police were indicted in the most outrageous case I have ever seen because they arrested this man for drunkenness on the street.

They brought him into the bullpen in the jail. As he went into the door, being fully apprehended and within the control of the jailhouse and before they slammed the door on him, he called them a name, as an intoxicated man may do, and one of them stepped into the bullpen after him, took out his blackjack, and fractured the man's skull.

This is a case of what I am talking about.

He lay on the floor of the bullpen until late that night and the officers came in and dragged him under the water and turned some water on him. That is all.

They took him to a cell, lifted him into a bunk, where he died without ever regaining consciousness.

He was tried by the special counsel, with our very extensive collaboration and assistance, before the U.S. Commissioner, who slapped them on the wrist, that is the officers, and let them go because he said it was a case of mistaken identity.

He could not understand clearly which officer had killed the Navajo. And so ended our last serious effort to send police officers to the penitentiary for murder which frequently has been committed in that area.

Mr. CREECH. Mr. Jones, would you tell the subcommittee something about your own court system or the trial court of the Navajo Tribe?

For example, how many judges do you have and what are your qualifications for judges?

Mr. JONES. Only recently we adopted a new system, because of the efforts of the State in trying to assume jurisdiction and indicating that our judges were not educated well enough to undertake the judgeship on a Navajo reservation.

At that time, of course, they were elected every 4 years. They have to follow political procedures. It was my thought to do away with it, if we could, and have something like a Federal system, where the Supreme Court Justices and other judges serve for life or during good behavior.

We have adopted that system and, instead of changing judges every 4 years, we have permanent judges with education right along on the things that they should know about in order to be competent judges on the Navajo Reservation.

I think we have gone at it long enough to feel the advantages of keeping these judges where no political group can have a hand, and they can be independent from any group and right along with that, they can go out to the various State or Federal judge activities.

They are invited often by Federal judges in Albuquerque or Salt Lake City to sit in and absorb some new knowledge as to how these judges conduct their work. They also are invited by the Federal judges, the State judges, and supreme court justices, and so on.

Every time there is an opportunity for some sort of a seminar on judgeship nearby they go out there and take turns and absorb what might be new and what might be handy for them to know.

That is the instruction we have and it is working very well.

Mr. CREECH. Well, when a defendant comes before the Navajo court is he informed of his rights?

Is he told that he has any rights, that is the right to counsel in criminal cases?

Mr. JONES. Yes. At the present time, we do not hire regular attorneys for any defendant but they can choose from out of the neighborhood where they live or somewhere else for someone to speak for them as in the case of a regular lawyer.

Mr. CREECH. In other words, they are entitled to counsel but not legally trained—

Mr. JONES. Yes, and also jury service.

Mr. CREECH. Well now, can a defendant in a criminal case employ an attorney licensed as an attorney to represent him?

Mr. JONES. Not in the tribal courts, no.

Mr. CREECH. Not in the tribal courts?

Is the defendant told of his right against self-incrimination?

Mr. JONES. Yes.

Mr. CREECH. And I believe that a number of your people do not speak English?

Is that correct?

Are the courts conducted in Navajo or English?

Mr. JONES. That is correct. Between 65 and 70 percent of the adults do not speak English.

Mr. CREECH. Are your courts then conducted in Navajo?

Mr. JONES. Yes.

Mr. CREECH. And is there an interpreter provided in those instances where there is a language difficulty?

Mr. JONES. There is always someone. It is totally conducted in Navajo unless a non-Indian or someone who does not speak Navajo is involved. Then, there is an interpreter always on hand for that purpose.

Mr. CREECH. What are the bail procedures?

Mr. JONES. Well, sometimes a well-known person appears and, well, he is recognized that he is so-and-so and can deliver.

Sometimes an unknown person, maybe away from headquarters who is not that well known, he is required to leave certain funds that are available or something of that nature.

Mr. CREECH. I believe you mentioned earlier that the defendant is entitled to a jury trial?

Mr. JONES. Yes.

Mr. CREECH. And you do have an appellate procedure?

Mr. JONES. Yes, we do. We have to use the existing judges to reconvene. Out of the seven judges that we have we will probably have three sitting as an appellate court.

Mr. CREECH. Well now, when an Indian leaves the tribal court and goes into the Federal court, does he have difficulties utilizing and understanding the Federal court system?

I am thinking now of the 10 major offenses?

Mr. JONES. I do not believe so because we have been very concerned about their understanding. They have to read the laws.

They have to understand English. That is one of the requirements that we have. Formerly we had non-English speaking judges. They were not satisfactory.

Everything had to be interpreted out of a book. "What does the law say on this case? Read that to me." And that was done.

That takes a long time.

Now, there is a requirement that they have to speak and be able to read English.

Mr. CREECH. Well now, I was thinking primarily, sir, of the Indian, who is a defendant in a Federal court accused of committing one of the 10 major crimes.

Is he fully capable of utilizing the facilities of the court that are available to him?

Does he understand his rights, for instance?

Mr. JONES. That has been explained to him.

I have been an interpreter in the Federal court for quite a number of years, and all the requirements that the court exercises, and that the court should be aware of, are brought to his attention and he understands it before he goes to court.

We have 6 attorneys, in what we call a legal aid service consisting of three young men who also interpret these things for our Navajo people, what their rights are.

When they leave the legal aid department, they are fully aware as to their rights when they go to the courts.

Senator ERVIN. Pardon me just a moment. I have to go over to the Senate floor. I am going to ask the committee counsel to continue the hearing, and I want to thank you and your counsel for coming here today.

I think you have made some very wise observations and have given us some very interesting information.

On behalf of the subcommittee, I want to thank you and all the others who have come here to assist us here today. We hope that we can do something constructive in this field.

Something needs to be done.

I think there is probably less that needs to be done among the Navajos than among other tribes.

Mr. JONES. Thank you, Mr. Chairman.

Senator ERVIN. He has some other questions. I have to go over to the Senate on a matter.

Mr. CREECH. Mr. Jones, in connection with the Navajos' understanding of their constitutional rights, the subcommittee was told during the hearing in Colorado, by the executive director of the American Indian Development, Inc., that the organization has undertaken to read the Navajo tribal code to some 50,000 eastern Navajos.

It is said in many instances to be the first time that these people have had an interpretation of these documents given to them.

I wonder, sir, if you would comment upon this program?

Mr. LITTELL. Counsel, did you say he referred to a Navajo constitution?

Mr. CREECH. Yes; we were told at the time of the hearing in Denver, Colo., by the executive director of the American Indian Development Corp., that his organization was undertaking a project to read the Navajo constitution, tribal code, to some 50,000 Navajos.

Mr. LITTELL. There is no Navajo constitution. That is a mistake in his statement.

There is a Navajo code now codified in two volumes, the first Indian law code, I believe, which has been codified by professional codifiers.

If what he refers to is the codification of the Navajo tribal resolutions and their governing ordinances in every department of their life—that is doubtless what he referred to.

Mr. CREECH. Well, are you familiar, sir, with this program of acquainting eastern Navajos with these documents and of the success it has had?

Mr. LITTELL. No; I know that there are efforts all over the reservation and occasional meetings and discussions, but I am not aware of any organized effort.

I think similar efforts would be good for all American citizens of our own laws.

None of us know enough about them.

Mr. CREECH. The subcommittee has been approached from time to time by various members of the Navajo Tribe and of the Native American Church concerning the tribal prohibition against the use of peyote.

I wonder, sir, if you would care to explain to the subcommittee the tribal council's opposition to the use of peyote and whether, in your view, there is any denial of religious freedom to the Native American Church members on the Navajo Reservation?

Mr. JONES. That was instituted when I was interpreter for the Navajo Tribal Council in 1940.

We have had quite a bit of outside influence in our religious ways by the white people, and I think it was through this influence that that matter was exercised through a point that this law—the prohibition was not rated and sustained by the council.

We had a tribal chairman who was a Navajo missionary to his own people, and he thought that the use of peyote was detrimental to health and also affects the thinking of the people to a certain extent.

There were rumors to the effect that it was very injurious when that matter was first introduced to the Navajo Tribe from other tribes surrounding the Navajo Reservation.

Consequently, it was introduced to the Navajo Tribal Council for discussion as to what to do about it.

And so the consensus of the council was that we should prohibit it. It was a religion that was not our own but a great discussion was made by comparing it with the church activities where they used wine.

Well, the proponents of the use of peyote said instead of using wine, "We use this plant, substituting the wine in the religious ceremony."

But they lost out and the regulation was made against the use of peyote. It still stands.

We just had an election out there, Monday and Tuesday, in which this subject again was a matter of great discussion. We maintained the constitutional right of religious freedom for all people in the United States, referring to that particular amendment, should be exercised, and that is my feeling, too.

But, on the other hand, I have permitted rediscussion of this prohibition by the council 3 years ago. They haven't changed their minds about it—to their minds it is still injurious.

In referring to ancient customs where the law steps in, where physical torture was exercised worsens their belief.

I understand that some of them used to sacrifice young girls, but the law stepped in to prohibit this. Other instances were referred to.

This was injurious to the Navajo people. I think we should still prohibit that.

That is the stand they have taken.

However, as the newer educated men come in as tribal leaders, I think it will be taken out. You all know that it was brought to the Supreme Court and the Court refused to hear it.

It was up to the Navajo lawmakers to rescind the ordinance, but so far it still stands.

Mr. CREECH. Sir, the subcommittee has received some complaints from the members of the Native American Church that their members have been arrested by Navajo policemen outside the reservation. The complaints further state that they have not been permitted to contact anyone.

Are you aware of such complaints or have any been brought to your attention?

Mr. JONES. I am aware of the various rumors connected with it, not only on the Navajo Reservation but off the Navajo areas where States have prohibitions against it. California was the last State where Navajos were brought before a court and convicted.

This might be somewhat exaggerated, that they would not be permitted to contact people when they are in this trouble.

It has always been the case that they could contact their relatives or other people or whomever they so desired.

Mr. WATERS. Mr. Jones, I understand that you have a legal aid system in effect on your reservation which provides legal assistance for Navajo Indians.

Would you care to tell us a little bit about that?

Mr. JONES. Yes, we have three young men who come to us as graduates from law school.

They serve for a certain period as law clerks for our organization and finally get into the status of legal aid personnel.

We have at the present time three of them.

They look at the various misdemeanors, you might say, injuries to the individuals of our tribe. When there is a car accident, the report taken by the State or traffic police is brought to the legal aid personnel. They go and investigate it, and see where the trouble lies and what compensation, if any, is due the injured person.

They go outside in States. Suppose a Navajo lives in Idaho, and he ran afoul of the law over there and needs advice.

The report is made to the legal aid, with all the information obtainable as to where the crime is committed. The legal aid contacts a local attorney in the area to take the case for the injured Navajo to see what can be done for him.

It is not only on the reservation but it is all over where Navajos may find themselves.

We have Navajos as far east as Cincinnati, Ohio, working there on relocation programs.

Automobile accidents are the most injuries sustained by the Navajo people in which the legal aid agency takes part. The rightful person submits restitution or repairs the car.

Since the establishment of this institution, it was brought to my attention, that they have restored to injured persons at least half a million dollars. It looks like there will be another \$300,000 to injured persons from the present cases.

They are helping our Navajos very greatly and their services are in demand.

Mr. WATERS. In other words, as I understand it, any Navajo Indian, no matter where he is, who needs a lawyer can contact your legal aid bureau, who will determine what lawyer in that particular locality is acquainted with the type of case in which he is involved and secure legal assistance for him, whether it is in a civil case or whether he

needs a lawyer to defend him, whether he is accused of a crime, and this goes on no matter where it is in the United States?

Mr. JONES. That is correct.

Mr. WATERS. With respect to your Navajo police department, I understand that your training officers is a form of the Federal Bureau of Investigation—

Mr. JONES. That is correct.

Mr. WATERS. And from time to time your Navajo police come here to the training academy in Washington?

Mr. JONES. I believe we have.

Mr. WATERS. They are all acquainted with the up-to-date techniques in law enforcement and they try to put them in effect on the reservation?

Mr. JONES. Any vital information they must know we send our superintendent of police. He always brings those people with him to the various parts of this country and Canada, who need to have the information.

They went to Montreal, Canada, last fall to attend a chief of police convention, where they discussed these things. I think he took two of the men along with him.

Mr. WATERS. These officers are acquainted with all of the up-to-date methods that are required for the execution of their office, are they not?

Mr. JONES. As far as we are able to provide them.

Mr. WATERS. And their equipment is the most modern you can obtain also?

Mr. JONES. Yes.

Mr. WATERS. As a matter of fact, I understand that when you are through with that equipment it is usually purchased by some local law enforcement office?

Mr. JONES. Yes.

Mr. WATERS. Thank you.

Thank you, Mr. Creech.

Mr. CREECH. Thank you, Mr. Waters.

Thank you, Mr. Jones, very much.

As the chairman stated, the subcommittee is very appreciative of your coming here today and giving the subcommittee the benefit of your experience and knowledge. We appreciate the many kindnesses which you and the members of your staff have extended to us.

Mr. JONES. We are happy to give it to you and we thank you for allowing us to appear here.

Mr. CREECH. Thank you very much.

EXHIBIT No. 20. SUPPLEMENTAL STATEMENT OF PAUL JONES, CHAIRMAN,
NAVAJO TRIBE

PAST EFFORTS OF THE NAVAJO TRIBE TOWARD COOPERATION WITH STATE AND
COUNTY LAW ENFORCEMENT OFFICIALS; NAVAJO POLICE AND LAW ENFORCEMENT
FACILITIES

Cooperative law enforcement between the State or county law enforcement officers and Navajo police was informally accomplished, at least administratively by negotiations in 1948 between the general counsel of the Navajo Tribe and the sheriff of McKinley County, N. Mex., at Gallup. The sheriff of McKinley County had only one, and later two, deputies to cover the whole vast area of McKinley County. By deputizing Navajo police to make arrests of non-Indians and turn

them over to justices of the peace or county law enforcement officers the strength of the sheriff of McKinley County was greatly amplified without cost to the taxpayers of the State or the County. By deputizing the sheriff's officers as Navajo police, the county law enforcement officers could, for example, pursue a Navajo reckless driver on to the reservation and make an arrest.

This system, somewhat experimental at first was later institutionalized in 1953 by the appointment of the Governor's law enforcement committee consisting of the attorney general, district attorneys in Santa Fe, the U.S. attorney for New Mexico, and the sheriffs of McKinley, San Juan, Sandoval, and Rio Arriba Counties, the captain of New Mexico police, the Navajo judge, and the representative of the Navajo service.¹

A major problem was in so-called grazing district No. 7 off the Navajo Reservation which embraces the area of New Mexico east, called the "checkerboard area" because there are alternate sections of public lands occupied by Navajos and sections owned, leased, or grazed by private owners. It is about 130 by 160 miles in extent, or 13 million acres containing an Indian population of about 18,000 to 20,000—roughly 3,200 families.

This problem had been greatly aggravated by a ruling in the Bureau of Indian Affairs in 1945 in Washington, D.C., that none of the federally appropriated funds could be used for the employment of Indian police officers operating outside of Indian reservations and the Bureau consequently deactivated its law and order program in the checkerboard area. A very serious void developed in law enforcement between 1945 and 1953, filled in part after 1948 by the cross-deputizing referred to above.

A summary history of developments is set forth in a report prepared at my request by P. H. Nelson, superintendent of Navajo police, Fort Defiance, from which I quote:

"Exact time and date of discontinuing service in this area by the Bureau of Indian Affairs is not reflected in files. Apparently from that time until 1953 very little law enforcement service was provided to this area by the State and county enforcement agencies, save investigations of major crimes occurring therein by the State police and/or various county sheriff's offices, as well as the Federal Bureau of Investigation when certain categories of crimes were committed involving Indians on trust allotments.

"On December 18, 1945, the Navajo Tribal Council passed Resolution No. 1, entitled 'Extending the jurisdiction of the Navajo Tribal Court.' This resolution contained the following:

"Therefore, be it

"*Resolved*, That section 161.2, title 25, Code of Federal Regulations, be supplemented as follows:

"The court of Indian offenses of the Navajo Reservation shall have jurisdiction over all offenses enumerated in part 161, as amended, when committed by any Indian within the reservation for which the court is established and on any lands allotted, tribally purchased, public domain, land leased by the Navajo service, or otherwise set aside for administration by the Indian Service for the benefit of the Navajo Tribe of Indians; be it further.

Resolved, That the jurisdiction of said court shall extend over such lands for all purposes for the proper administration of law and order thereon."

"This resolution was approved by letter dated July 18, 1946, directed to Chee Dodge, then chairman of the Navajo Tribal Council, signed by G. Gerard Davidson, Assistant Secretary of the Interior, which stated in part, 'I hereby approve the ordinance. You are informed that this action will not deprive the State courts of jurisdiction over cases on lands that has not become an Indian reservation. If cases arise wherein the State or Federal authority will exercise jurisdiction lawfully vested in them, the reservation authorities will follow the procedures set forth in paragraph 2 of section 161.2, title 25, Code of Federal Regulations.

"The matter of the notification of assertion of Federal jurisdiction over purchased lands will form the subject of further consideration."

Nothing can be found in the records or files of the Navajo police department to indicate that the Navajo Tribe took any action to reestablish the police and court system in the Checkerboard Area under the authority of approved Resolution No. 1, until Resolution CJ-22-53 was adopted on January 23, 1953, which authorized the amount of \$1,800 for the reestablishment of the Navajo tribal court and jail at Crownpoint. This being an amendment to Item 13 of the

¹ Names included in the memorandum of Feb. 14.

Navajo tribal budget for fiscal year 1952. This resolution was approved by Barton Greenwood, acting commissioner, by letter of March 20, 1953, addressed to Allan G. Harper, area director, Window Rock, Ariz. The amount budgeted for law enforcement in the Checkerboard Area by the foregoing resolution and advisory committee Resolution No. ACJ-37-52, provided salaries and expenses for maintaining six policemen and one Indian judge, forming the nucleus of the present Navajo police organization operating in this area, year by year increased to its present personnel strength of 35 enforcement officers and 3 civilian employees in the police department, and 1 judge and clerk in the judiciary department, representing an approximate expenditure of \$250,000 annually. There are now 12 locations in this area where Navajo police department personnel are stationed.

Going back to Governor Mechem's committee on law enforcement, established in January of 1953, much is contained in the files in the way of recommendations for resolving the problem of law enforcement in the Checkerboard Area. Related thereto was the recommendation that the State police, and sheriffs and deputy sheriffs working in this area be commissioned deputy special officers of the Bureau of Indian Affairs, and that the six Indian police officers be commissioned by the chief of the New Mexico State police as deputy State officers; however, it appears that in further exploration of the latter, there was found to be no authority vested in the New Mexico State police chief or other executive officers in the State of New Mexico to so commission these Indian police officers. This was remedied by a suggestion that they be commissioned deputy sheriffs of the county in which they were stationed. The latter apparently met with no legal objection and was thus accomplished. In addition thereto, the committee suggested and proposed an amendment to section 1151, of United States Code, title 18, defining Indian country, that purported to eliminate the lands, including trust allotments outside of the reservation proper. This recommendation met opposition by then tribal chairman, Sam Akeah, and was not further pushed by the committee. Records do not indicate that any of the State patrolmen or sheriffs or deputies were at this time (1953) deputy special officers of the Bureau of Indian Affairs. It is worthy to note at this point that the county commissioners of McKinley County appointed the then tribal judge at Crownpoint, Walter Juan, a justice of the peace, enabling him to serve in a dual capacity. Also, that it was the Governor's committee on law enforcement that recommended the Navajo Tribe contribute the funds necessary for the operation of law and order in the Checkerboard Area. With the understanding, however, that the State of New Mexico would also participate, financially or otherwise, to provide adequate law enforcement to this area, beginning in fiscal year 1954. (Latter taken from a report directed to Allen G. Harper, area director at Window Rock, made by Robert W. Young, February 1953.) In the same document, Mr. Young made the statement that a minimum of 14 policemen would be necessary to adequately carry out law enforcement in this area.

Little else is said in the files relative to the situation in the checkerboard area until 1956; apparently the six policemen and tribal judge stationed there served as "oil on the waters" for about 3 years. By letter dated May 21, 1956, to G. Warren Spaulding, general superintendent of the Navajo Agency, William A. Brophy, then field solicitor, inquiry was made as to the progress toward resolving the law enforcement problems in this area. Mr. Brophy also inquired how the cross-commissioning recommendation by the Governor's committee was working out. The writer was at that time employed by the Bureau of Indian Affairs as chief, branch of law and order, Navajo Agency, and had been in this capacity since July 1, 1954, consequently drafted a reply to Mr. Brophy for Mr. Spaulding's signature on May 25, 1956. In reviewing this reply, I note that there were 16 enforcement officers stationed in the checkerboard area, as of that date, paid from tribal funds. All of these officers were commissioned deputy sheriffs of McKinley County; some carried commissions in Sandoval and San Juan Counties also. From the writer's personal knowledge, the bulk of law enforcement work in this area from 1954 to date has been carried out by Navajo tribal policemen, commissioned as deputy sheriffs of the various counties. (I do not recall one incident wherein a sheriff of any county involved refused to deputize our officers when asked to do so, nor do I recall any complaints registered by any of the sheriffs against any of our officers as a result of their activities as deputy sheriffs, save one incident of recent date involving a Navajo police officer commissioned by the San Juan County sheriff, Floyd Stocks, and this was resolved by conference between the writer and sheriff to the satisfaction of all concerned.) During Governor Simms' term in office, January 1955 through De-

ember 1956, only one joint meeting was held relating in part to this question: that was on January 24, 1956—a meeting of the State of New Mexico Commission on Indian Affairs (not to be confused with the Governor's committee on law enforcement). At this meeting the checkerboard area was not singled out, rather, conferees dealt on general topics of law enforcement among Indians and juvenile delinquency control.

During Governor Mechem's next term in office, he called a meeting of the following persons, on February 2, 1957:

Fred Standley, attorney general.
 Walter Kagel, first judicial district attorney.
 Joe Roach, chief, New Mexico State police.
 W. Wade Head, Gallup area director, BIA.
 P. H. Nelson, chief, branch of law and order, Navajo Agency.
 Thomas Olsen, Office of Field Solicitor, Albuquerque.
 Murray L. Grosse, field solicitor, Gallup area office.

This meeting was in response to a question presented to the attorney general by Dan Sullivan, the recently elected sheriff of San Juan County. Sheriff Sullivan had asked the attorney general for advice and direction concerning his authority to arrest Indians for traffic offenses on State highways within the Navajo Indian Reservation. At the meeting, Attorney General Fred Standley, took the position that the State had jurisdiction to make arrests of Indians as well as non-Indians for traffic violations on State highways within the Navajo Reservation, because the State of New Mexico was granted a right-of-way by the United States over such Indian lands in 1926, and that the New Mexico State police had been exercising such jurisdiction over Indians on Federal highways for some time, and that Indians when so arrested were taken before justices of the peace for prosecution, under the laws of New Mexico. Attorney General Standley inquired of Solicitor Crosse the Interior Department's position with respect to jurisdiction over offenses committed by Indians on Highway 666 within the Navajo Reservation, and he was advised by Mr. Crosse that the State had no jurisdiction over offenses involving Indians when committed upon the reservation. Attorney General Standley then inquired what the reaction would be if the State police continued to arrest Indians for traffic offenses within the reservation and continued to prosecute them in State justice courts. He was advised by Mr. Crosse that it would be objected to by the United States and Navajo Tribe and that it would probably result in litigation sooner or later. This led to further discussion as to ways and means to permit solution which would recognize or vest jurisdiction within the powers of a State for complete control over highway violations within Indian country. It was the general consensus that the only practicable solution would be through Federal legislation which would give the State absolute jurisdiction over all highways in Indian country. Governor Mechem suggested that the attorney general should proceed to prepare such legislation. The Governor said in the meantime he would take steps to reactivate his former committee on law enforcement in grazing district No. 7 and enlarge upon it to include the problems involving Indian reservations proper. Such committee would consist of tribal, Federal, State, and county officials who have problems on law and order within the Indian country, principally the Navajo Indian country.

On March 21, Governor Mechem held a second meeting in his office with the following persons in attendance:

Paul Jones, chairman, Navajo Tribal Council.
 Laurence A. Davis, Assistant General Counsel.
 William A. Brophy, field solicitor, Albuquerque area office.
 Murray Grosse, field solicitor, Gallup area office.
 P. H. Nelson, chief, branch of law and order, Navajo Agency.
 Fred Standley, attorney general.
 Dan Sullivan, sheriff, San Juan County.
 Howard Wilson, sheriff, McKinley County.
 Edward DePauli, district attorney, McKinley County.
 Mr. Carbenau, chief of police of Farmington, N. Mex.
 Manuel Gonzales, chief of police, Gallup, N. Mex.
 Paul Robinson, district attorney, second judicial district, Albuquerque.
 Paul Larazolo, U.S. attorney, district of New Mexico.
 Joe Roach, Chief, New Mexico State police.
 Robert Taichert, director, division of liquor control, State of New Mexico.

The general question of jurisdiction over Indian reservations, including the checkerboard area, was discussed at length by conferees, with sheriffs and the State police chief pointing up problems encountered—mostly relating to inability to enforce State laws against Indians on the Navajo Reservation proper. A summary of this meeting, dated March 25, 1957, was prepared by field solicitor Murray L. Crosse, and transmitted to the general superintendent of the Navajo Agency. From page 2 thereof, I quote: "The chief of the State police asked Chairman Paul Jones if he would have any objection if the State police continued full jurisdiction of traffic cases on Highway 666 within the reservation, and Chairman Jones stated that he would have no objection thereto: That the tribe wants to cooperate with the State on law enforcement in New Mexico and that he did not anticipate that the Navajo Tribal Council would place any obstacle in the way." I assume that the State police took this as a green light to continue asserting State jurisdiction over Indians on the State highways that they patrol within the Navajo Reservation in San Juan and McKinley Counties. As they did continue to arrest and try Indians in the justice courts in spite of the writer's and field solicitor's admonitions until Nelson Begay was arrested for drunken driving on Highway 666, south of Shiprock, and was convicted in the justice of the peace court at Shiprock. In the instant arrest our officers were at the scene and advised the State police officer that the offense was cognizable only in the Navajo Tribal Court. This advice was ignored by the arresting officer of the New Mexico State Police. Subsequently through the efforts of the writer and then assistant general counsel of the Navajo Tribe, the conviction was appealed to the district court, presided over by Judge C. C. McCullough. Judge McCullough set aside the conviction of the lower court for want of jurisdiction. The case was subsequently appealed to the Supreme Court of the State of New Mexico and Judge McCullough's decision was affirmed. Petition for a writ of certiorari was denied by the Supreme Court of the United States. Although the case before the New Mexico Supreme Court was one of whether laws of the State of New Mexico extended to an Indian committing an offense on a right-of-way on an Indian reservation, the supreme court nonetheless in its dicta, said in effect that the laws of the State of New Mexico stop at the reservation boundaries, period, irrespective of offender, Indian or non-Indian. This created considerable confusion in law enforcement circles at the time, however, the practice from that time until the present day was to ignore the dicta reference State jurisdiction over non-Indians and to adhere only to the decision that the State laws did not extend to Indian violators. That is, Federal and Indian tribal police, and State officers continued to arrest and cite non-Indian violators who were not involved in offenses against Indians and/or their property into the State courts and State officers began the practice of citing Indians arrested on the reservation into the tribal courts. Other than occasional personality differences or clashes, at the patrol level, between our officers and State officers the system, to the writer's knowledge has worked harmoniously, until the instant charge against Alvin K. Warner for driving while intoxicated on Highway 666 within the Navajo Reservation was dismissed for want of jurisdiction by District Judge C. C. McCullough. The arrest was made by a Navajo police officer on the basis of a deputy sheriff commission. In granting the motion to dismiss, Judge McCullough voiced the opinion that he found nothing illegal about the arrest, i.e., deputy sheriff commission issued to the Navajo police officer by the sheriff of San Juan County.

As to the issuance of Bureau of Indian Affairs deputy special officer commissions to members of the New Mexico State Police and the various sheriff's offices of the State of New Mexico, the first record contained in our files of a request for such commission was a list of 60 officers of the New Mexico State Police force, provided to the writer by Chief Joe Roach on the occasion of the writer's visit to the State police headquarters at Santa Fe on March 22, 1957, and a copy of a letter of transmittal of said commissions addressed to Chief Roach dated May 14, 1957, from Area Director W. Wade Head; these 60 commissions were of a nonexpiring nature. In addition to the foregoing commissions the files reflect that since January 1, 1957, a total of 20 law enforcement officers outside of the State police organization have been issued such commission; i.e., deputy sheriffs, municipal police, constables, game and fish personnel, etc. It is possible that additional State, county, and municipal officers have been so commissioned with the Navajo Police Department lacking knowledge of same, inasmuch as it was decided in 1957, that these commissions would be issued by the area director instead of the agency superintendent.

The same pattern of jurisdictional discussions took place with officials of Arizona over the same period of years culminating in the same consensus; i.e., cross deputization of law enforcement personnel, and has been carried out successfully and harmoniously with State and county law enforcement agencies. The only exception being the superintendent of the Arizona Highway Patrol having never to date requested Bureau of Indian Affairs deputy special officers commissions for his men patrolling highways within the Navajo Reservation, even though Arizona highway patrolmen have routinely arrested and cited Indian traffic violators into the Navajo Tribal Court since the decision in the *Denetclaw* case. Navajo police officers working the three counties of Arizona are commissioned as deputy sheriffs of the respective counties they are assigned to, when such commissions are requested of the sheriffs. Similar working arrangements have also prevailed in Utah.

In summary, I cannot say that the law enforcement agency heads of the various State, county, and municipal agencies have all, always been happy and content with these working arrangements, rather, I would say that the majority of them have adopted an attitude of tolerance in view of litigation over the past several years. One of the most often heard complaints is the variance in the applicable codes governing Indians and non-Indians, particularly the traffic code. I believe that an adoption per se of the three State traffic codes by the Navajo Tribal Council would do much to quell the disgruntled feelings of most of the State and county law enforcement agencies, and would give less rise and cause for these agencies to complain about their inability to protect the traveling public on the State highways running through the Navajo Reservation.

I have already made clear that the Supreme Court of New Mexico reversed the lower court in *State vs. Werner* which had dismissed an indictment against a non-Indian for a crime committed on the reservation. We believe this will greatly help our problem and increase the cooperation between tribes and States.

The tribe has a great deal to offer in the field of law enforcement over this vast area of three States. There are a total of 189 positions authorized in our tribal budget representing personnel services in the amount of \$929,233. The total budget this year is \$1,347,933.

We have had as high as 162 men on the police force but at the present time have about 120 with very modern communications from all points to the headquarters at Fort Defiance, and also Window Rock.

PAUL JONES,

Chairman, the Navajo Tribal Council.

Mr. CREECH. The chairman has authorized me to continue.

We can proceed now with another witness if someone would care to be heard at this time.

I realize that a number of you have other appointments and perhaps there is someone who would like to be heard at this time. Otherwise we will resume at 2 o'clock.

Mr. PANNER. I have a fairly short statement I would like to make at this time.

I am Owen J. Panner, general counsel for the Confederated Tribes, Warm Springs Reserve, Oreg.

Mr. CREECH. All right, Mr. Panner, we will be glad to hear from you.

STATEMENT OF OWEN M. PANNER, GENERAL COUNSEL, CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

Mr. PANNER. The Confederated Tribes of the Warm Springs Reservation of Oregon is a Federal corporation chartered under the Wheeler-Howard Act. The Warm Springs Reservation contains about 625 square miles and there are approximately 1,700 tribal members. As attorney for the Warm Springs Tribes I want to thank you for the opportunity to appear before the committee to discuss the question of constitutional rights and the American Indians.

To be more precise, rather than saying American Indians, I should say Warm Springs Indians. Being a smalltown lawyer and representing only one Indian tribe, it is difficult for me to offer any testimony of significant value on a general basis. In the short 8 years, I have attended national Indian conferences, it has become apparent that it is always dangerous to generalize on any subject concerning Indians. Each tribe has its own unique headaches. About the only safe thing we can generalize on is to say that they all do have headaches.

From the testimony of the Fort Hall delegation here, I think they have a migraine headache. As Chief Justice Marshall so ably put it in *Worcester v. Georgia*, each Indian tribe is a distinct, independent political community. Each has its own particular tribal customs.

The Warm Springs Tribe has its own tribally supported law and order program, and my remarks will be limited to Indians' rights in the tribal courts. We have a law and order code which was adopted in 1947 pursuant to the tribe's constitution and bylaws.

Under this code there is a chief judge and three associate judges who are appointed by the tribal council for terms of 4 years, which is in turn elected by the people every 3 years. None of these judges are attorneys and in fact there are no members of the tribe who have had any legal education. Nonetheless all are represented, and tribal members are unanimous in their wish to carry on the tribal law and order program, as it now exists.

The maximum penalty permissible is 6 months in jail and a fine of \$360. Without question, some defendants have disagreed with the decision of the court but I have never known one who disagreed with the system, or with the continuation of law and order in the law and order provisions made for a jury trial.

Provision is made for a jury trial in any case on request of the defendant. If the defendant wishes assistance in the defense of the charges, he obtains a spokesman to present his or her case. Such spokesmen are not professional attorneys but they are familiar with the Indian tongue, the court procedures, the Indian customs, and the law and order code.

No attorney prosecutes the case against the defendant. The judge simply calls the witnesses for each side. After the witnesses have told their story, the defendant, or his spokesman, has the opportunity to argue his case to the jury.

We have, incidentally, rules promulgated by the court which are made available to the defendant about the procedure, which is an informal procedure.

Keeping in mind that the jurisdiction of the court is limited to cases which would in effect be misdemeanors, it is my firm conviction that justice prevails substantially more often than in misdemeanor trials in the State courts.

The imposition upon the tribal courts of all the requirements of due process as we non-Indians know them, would mean the end of our tribal courts. If the defendant were represented by a professional attorney, the tribe would be required to employ a professional attorney to prosecute. All of us who have seen attorneys on opposite sides in the State courts where the justice of the peace was a layman realize that this is a hopeless situation.

If attorneys are on each side, it is imperative that there be an attorney to act as judge. On the modest budget available to the Warm Springs Tribe this becomes an impossibility and I suspect this financial limitation would be insurmountable by the great majority of the tribes.

Aside from the financial considerations, the trials are often conducted in the Indian language for the benefit of the jurors and the parties. Having tried some cases in the State courts in which it was necessary to interpret an occasional witness' testimony, I can imagine the problems involved in the interpretation of an entire trial.

Under the Warm Springs Code, in the event of a conviction there is a right of appeal in which all of the judges act as the appellate court except the judge who first tried the case.

And this, incidentally, is a trial de novo.

This system, adopted by the Warm Springs people is subject to change by them. They have under their constitution, powers of referendum and recall. A law and order committee regularly reviews procedures and makes recommendations to the court and the tribal council.

We have annual conferences with State, county, and Federal authorities. This includes not only prosecuting attorneys but the judges and all of these divisions and the other staff personnel, and all are eager to assist in working out the mutual problems that we have.

As the chairman of this subcommittee indicated in his speech to the National Congress of American Indians in Cherokee, N.C., last September, the Indians have had a long standing devotion to good government. As you pointed out, the Iroquois Indians recognized the right of popular nomination, the right of recall, and women's suffrage some 200 years prior to the U.S. Constitution. These same rights have been historic with the Warm Springs people.

We ask that in any proposed legislation you recognize the problems faced in tribal law and order programs and give the Indians a reasonable opportunity to continue to use their own initiative. In this regard I want to be emphatic that I am not talking about the problems of Indian rights in State courts or the many problems in unsettled jurisdictions.

In these areas there is little the Indians can do for themselves. Within the tribal courts, on the other hand, they have shown an ability we non-Indians might well emulate in protecting the rights of individuals.

I want to say, in addition to my statement, that from the testimony of the Fort Hall delegation here it appears doubtful to me that any legislation that this committee might propose would solve the problems of that particular nature.

I do not know whether it is possible, under those circumstances.

If the tribe has no effective government for the establishment of judges or the removal of judges, I do not know what legislation would assist.

I thank you very much for the opportunity to be here.

Mr. CREECH. Well, thank you, Mr. Panner. I have several questions I would like to ask you.

On page 2 of your statement you say that the imposition upon the tribal courts of the requirements of due process, as we non-Indians know them, would mean the end of tribal courts.

I wonder if you would expand upon the statement.

Mr. PANNER. I would be glad to, Mr. Creech.

It is my feeling that our tribal courts could not operate with professional attorneys in the court for two reasons or several reasons.

First is the financial problem. If the defendant has a professional attorney in the tribal court then it is apparent that the tribe must have a professional attorney to prosecute this sort of case.

Our budget at Warm Springs, which is a small tribe, runs approximately \$25,000 a year for the tribal court, as it now exists, and about \$25,000 for the police department.

I am being a little general on these because I do not have the budget, but the prospect of employing professional attorneys to prosecute these cases and a professional attorney to act as judge is a major undertaking.

Now, the next thing is that I do not believe that attorneys are capable in our tribal courts, the way they are operating; that is, as capable of as effectively presenting cases to the local juries as are the local Indian tribal spokesmen, who have been accustomed to doing it.

We attorneys know sometimes lawyers do not get over too well to our non-Indian juries. To imagine a lawyer attempting to argue to a jury, only half of whom understand his language, is most difficult.

And my criticism is that it would be financially not possible for the tribe to continue to handle it and, secondly, there would be no ability to try the cases in accordance with the jury procedure that we now have.

If you get to this situation we might as well abandon the tribal court and have the procedures in State courts.

I think these tribal courts are intended to bring the Indians along gradually to more and more State law, which is what has happened.

Our new law and order code does follow very much the State law in many respects, and we, like the Navajos, adopted a motor vehicle code which is synonymous with the State's motor vehicle code.

Mr. CREECH. Now, sir, with regard to the various State laws, I notice that the Warm Springs Reservation was exempt from Public Law 280. The hearings on this bill did not indicate why the Warm Springs Indians did not wish the State to assume jurisdiction over them.

I wonder if you would elucidate upon this?

Mr. PANNER. I will be glad to. That is a subject close to my heart.

The Warm Springs Tribe, I think, was excluded because the Bureau felt that the Warm Springs Tribe was doing a good job in handling its own affairs, and I think probably this is the test.

I think, as it should be, if the court is serving a useful purpose to the tribe and the tribal members, then it should be continued.

If it is not, then a look should be taken to see whether it should be carried on.

Mr. CREECH. And you feel, in this respect, that your tribal group, the group that you represent at Warm Springs Reservation, was unique in this respect?

Mr. PANNER. Oh, no; not unique. I think we are one of many tribes.

I do say that there are some tribes, probably, who have problems such as the Fort Hall delegation here today indicated.

I do not propose to solve their problems, but all I say is that they are a lot different than ours.

Mr. CREECH. Yes, I should have indicated in Oregon.

Mr. PANNER. Yes, that is true, because in Oregon all other tribes were covered by Public Law 280.

Mr. CREECH. Also you state, on page 2, that you are not talking about the problems of the Indians' rights in State courts or the many problems of unsettled jurisdiction.

You go on to say that in these areas there is little that the Indians can do for themselves.

I wonder if you would expand upon this statement, or be a little more specific as to what you have in mind when you say there is very little that the Indians can do for themselves?

Mr. PANNER. I think that those matters are necessarily matters which have to be assisted by Federal legislation and State legislation.

In those areas, we cannot expect to handle the matter within the Indian framework as we hope to be able to do with the tribal courts.

I think that all of us would concede that improvements need to be made.

The Assimilative Crimes Act has only recently been construed by the U.S. attorney in the Oregon district covering Indian reservations, which has been a great assistance.

I think that statement is a little deceptive in this. We can assist by cooperation with the authorities, but there are areas where we need assistance in Federal legislation such as, for example, the recent statute that the Congress passed on Indian hunting and fishing rights, and people violating those.

This was excellent. We need continued assistance along those lines.

My intent was to indicate that, within the framework of the tribal courts, if the tribes have demonstrated an ability to properly conduct their courts, it seems to me that they should be given an opportunity to do so.

Mr. CREECH. Based upon what you said earlier, about the imposition upon the tribal courts of requirements of due process, I assume you would be in accord with the position of some of the Department of the Interior officials, which the subcommittee has heard, that if the Bill of Rights guarantees were added to the tribal courts, they would not be able to function properly?

Mr. PANNER. I do agree with that; yes.

I think this is true because of not only financial considerations but differences in customs, language, and the fact that there are not Indian attorneys who are professional attorneys who understand the customs and languages.

Mr. CREECH. You have indicated your feeling that there should not be any insistence upon the defendants being represented by legally trained counsel.

I wonder, sir, what has been your experience with regard to your reservation group?

Has counsel ever been denied a defendant who wanted a legally trained counsel?

Mr. PANNER. As a matter of fact, in our old Law and Order Code there was an express provision against professional attorneys appearing in a tribal court.

Though I am not aware of it, I am sure that at some time it must have come up. I have only been with the tribe 8 years.

I am not aware of any Indian who has preferred outside counsel in our tribal court to the local spokesman, but I am sure it might have happened.

I think it is the type of thing that could happen any time and—
Mr. CREECH. I believe you mentioned that your law-and-order code had been amended recently?

Mr. PANNER. Yes.

Mr. CREECH. And, therefore, maybe this prohibition would no longer be in there?

Mr. PANNER. It has been taken out, Mr. Creech, and the reason it has been taken out is we do not feel that that is a proper provision.

If an attorney is otherwise qualified to represent an Indian in a tribal court he should be permitted to do so.

Under the new code he must be a member of a list of approved representatives that the tribal court will publish.

Presumably, this requirement will be that he understand the language and be acquainted with the Indian customs. This, of course, is the situation in any court, in our local courts, whether it is the U.S. district court of State courts, that a lawyer must be a member, admitted to practice before that court and acquainted with those customs.

So this is the approach that we have taken rather than saying that professional attorneys cannot practice.

Mr. CREECH. One more question.

This is more or less the sole criteria, once an attorney has been admitted to practice in the State courts of Oregon, if he is familiar with the language and customs of the Warm Springs Tribe, then he is permitted to practice before your court?

Mr. PANNER. Yes.

Mr. CREECH. I see.

Do you feel, sir, that the Warm Springs Indian, as an American citizen, should be entitled to all of the same protections as other American citizens?

Mr. PANNER. Well, I think this has to be taken in context with the ethnological background of the American Indian.

The Bill of Rights was imposed by us as Americans. The Indians have imposed their own system of government with, incidentally, the powers of recall and referendum.

They have their own safeguards, their own law-and-order code.

It seems to me, regardless of how good we may think our system is, that the Indians are entitled to govern themselves within these limitations in their own tribal courts.

Now, certainly, they are citizens of the United States, and when they come in contact with outside courts they are entitled to their full protections because they are Americans.

But where they are administering and properly running their own government I think they are entitled to run it within limits as they see fit.

Mr. CREECH. Well now, what recommendations would you make to the subcommittee concerning methods that will fully guarantee the individual Indian has constitutional rights?

Mr. PANNER. Well, I will be very frank with you.

I do not think that there should be any legislation directed toward controlling or regulating the tribal courts themselves.

I think if there is any responsibility in this area, it is with the Bureau to encourage and assist the Indians to develop a form of government that is—or a form of law and order that satisfies their particular reservation.

If this cannot be done, and if there is an inability of the tribe to maintain an organized government, then I probably think it is the Bureau's responsibility, and I think they have done this generally, to perhaps suggest that law and order should be abolished completely on the particular reservation.

It is hard for me to conceive of any legislation that this committee could pass which would solve a situation such as I have heard testified here today.

These things happen in State courts, too. We have seen justices of the peace in State courts even with all the constitutional guarantees who run rampant over people and avoid authority.

Mr. CREECH. Of course, in the State courts there is a provision for an appellate procedure.

Whereas, in some instances, apparently there are not appellate courts available to the Indian communities.

Mr. PANNER. I am not convinced of that entirely.

My understanding, if it is correct, is that Fort Hall, if it is following the regulations, does have an appellate procedure which should be available.

Now, here again you get back to the problem that one of you gentlemen mentioned.

If the tribal council is not able to establish and regulate the positions and create the appellate court then you have a complete breakdown which is not going to be solved by any legislation that you gentlemen could conceive of.

Mr. CREECH. You have talked almost exclusively about the situation on the reservation itself.

I wonder what your experience has been with the off-reserved Indian, the members of the Warm Springs Tribe who do not live on the reservation.

Also, speaking of the tribal court, on page 1 of your statement, you mention that provision is made for a jury trial. You further state that if the defendant wishes assistance in the defense of the charges, he obtains a spokesman to present his case. You go on to say that they are not professional attorneys but are familiar with the Indian tongue, court proceedings, and Indian customs in the law-and-order code.

Now, when an Indian is off the reservation and goes into a county or State court, is he advised there of his rights?

Does language create a problem for him or is he apprised of court procedures?

Mr. PANNER. Generally, in our area we have been very fortunate. I think our people generally are basically quite law abiding.

The local communities immediately surrounding the reservation have been most friendly and cooperative with the Indians.

There are, sure, occasional instances of injustice, but generally the judges have been careful to advise the Indians to have interpreters

where necessary to see that they do get counsel and, in my experience with the juries, they have been fair with the Indians.

In fact, I cannot think of a jury trial in the area where Indians have not been fully protected.

I do know that there have been occasional situations where people were thrown in the drum tank rather violently, none, fortunately as bad as Mr. Littell spoke of, but I think the same things happen among the non-Indians occasionally, too.

I think these are things that you have to solve on an individual basis.

Mr. CREECH. Mr. Waters?

Mr. WATERS. I have just a couple of questions, if I may.

I understand that your court seems to work rather well for you, according to your statement, and everybody is happy with it.

We had the situation where an Indian is sentenced to what is considered to be a relatively light penalty under the code.

What happens when he ends up in a county jail for a criminal offense where the penalty is much more severe in comparison with the tribal code and, in addition to the fact that because he is an Indian he does not have the right to counsel, as we think of an attorney of law?

Is there a public defender system in the State of Oregon who, in your area, would advise them of his rights?

Mr. PANNER. No; we do not have the public defender system.

We have a system of appointments by the circuit judge of counsel for indigent defendants of the bar as a whole. Our circuit courts are responsive to the requirements of indigent defendants.

It is our obligation, when appointed, to defend, and I think the attorneys generally do a good job.

Unfortunately, Oregon does not have such a system in misdemeanor cases. This is a brandnew field to the country as a whole, I think. How far down in these crimes do you have to appoint counsel?

Do you have to appoint them when a man is charged with a misdemeanor?

We do not in Oregon. He is entitled to employ counsel but if he does not have funds, so far there is no provision for appointing him.

But, in any case involving a felony the circuit court judge appoints competent counsel for any Indian who is charged with those crimes.

Mr. WATERS. Whether he requests it or not?

Mr. PANNER. Yes, unless the judge is satisfied that he fairly understands the charge and makes an intelligent decision to plead guilty.

There is not always counsel appointed. I would say that in 99 percent of the cases there is though, unless the judge is convinced that the Indian is fully understanding it and is carefully pleading guilty. Unless the judge is convinced of that he will appoint counsel to consult with him.

Mr. WATERS. Is this done by rule of court?

Mr. PANNER. Yes; and by statute also in felony cases.

Mr. WATERS. Then with respect to an interpreter, is one provided if the Indian does not understand English?

Mr. PANNER. Yes; and in that case there would be an attorney appointed also.

Any time an Indian does not understand English our judge would appoint an attorney.

Mr. WATERS. Thank you.

Thank you, Mr. Creech.

Mr. CREECH. Thank you very much.

We appreciate very much your coming, Mr. Panner. The contribution that you have made to this subcommittee's study has been very great and we appreciate it.

Would you like to be heard this morning?

Mr. SAUNOOKE. Yes, I have a little something here that I would like to give.

**STATEMENT OF O. B. SAUNOOKE, CHIEF, EASTERN BAND OF
CHEROKEES, CHEROKEE, N.C.**

Chief SAUNOOKE. Mr. Chairman, and distinguished members of the Subcommittee on Constitutional Rights, I am most honored to appear today before your subcommittee as a representative of the National Congress of American Indians and as chief of the Eastern Band of Cherokee Indians.

My statement will be very brief.

Mr. Chairman, I am not here to complain of any specific violation of constitutional rights. I shall leave that to the representatives of other tribes who have not previously had the opportunity to confer with you or other members of the subcommittee, an opportunity which you very graciously have already extended to me.

Rather, I come here today to emphasize the wholehearted support of my tribe and of my organization, the National Congress of American Indians, which the subcommittee has heard in its investigations of the constitutional rights of the American Indians.

As you know, this is a subject which deserves much attention. This great country has too long been concerned with the rights of other groups while it has ignored the rights of its original citizens.

I commend you, Mr. Chairman, on the bold initiative you have taken. I hope and trust that your study will continue and that legislation will result which finally will guarantee to the Indians the same rights which the nonresident people of the Nation now enjoy.

In conclusion, I would like the chairman to know that the Indians of the United States and of North Carolina, in particular, are deeply proud and appreciative of your work, and that of the subcommittee, in their behalf.

Thank you, Mr. Chairman, for this opportunity to present my remarks.

Mr. CREECH. Thank you, Chief Saunooke.

I am certain that Senator Ervin, and the other members of the subcommittee, are greatly appreciative of this expression by you on behalf of the National Congress of American Indians and the Eastern Band of Cherokees.

We appreciate very much the help that you have given the subcommittee in this study.

Chief SAUNOOKE. It is indeed an honor and a pleasure to have come before this subcommittee to give you this statement.

Thank you.

Mr. CREECH. Thank you very much.

If there are any other witnesses who would care to be heard this morning we shall be glad to hear you at this time.

If not, we will recess until 2 o'clock.

(Whereupon, at 12:45 p.m., the subcommittee was recessed, to reconvene at 2 p.m. on the same day.)

AFTERNOON SESSION

Senator ERVIN. The committee will come to order.

Our first witness this afternoon will be Mr. John B. Cummins, chairman; Edison Real Bird, vice chairman; Arlis Whiteman, secretary; and William Wall, tribal council member, of the Crow Tribe, Crow Agency, Mont.

Mr. Cummins?

STATEMENTS OF JOHN CUMMINS, CHAIRMAN; EDISON REAL BIRD, VICE CHAIRMAN; ARLIS WHITEMAN, SECRETARY; AND WILLIAM WALL, TRIBAL COUNCIL MEMBER, OF THE CROW TRIBE, CROW AGENCY, MONT.

Mr. CUMMINS. Mr. Chairman, Mr. Wall will make the statement for the tribal delegation.

Mr. Edison Real Bird has a short statement and also Mr. Whiteman. So we will call on Mr. Real Bird to make a short statement.

Senator ERVIN. Mr. Wall?

Mr. WALL. You have copies of our statement?

Senator ERVIN. Yes. You may proceed. You may read your statement in its entirety, or you may file it.

Mr. WALL. I will read the main statement and then submit some more material to you as part of the record.

Mr. Chairman, this is a statement representing the entire delegation, consisting of John B. Cummins, chairman; Edison Real Bird, vice chairman; Arlis Whiteman, secretary; Clarence Stewart, vice secretary; and William Wall, delegate-at-large. And I shall commence with my written statement at this time.

Mr. Chairman and members of the Subcommittee on Constitutional Rights, first we wish to extend our sincere appreciation for the opportunity of appearing before you and to express factual evidence in relationship to the welfare of our people, the Crow Indian Tribe. Our understanding of the purpose of this committee is that it is to hear the various tribes' representatives and learn from firsthand reports of their existing condition on the local level pertaining to the unfair treatment by the non-Indian on, and in surrounding areas of, the Crow Indian Reservation, which is located in the southeastern part of Montana.

In view of this approach, we wish to elaborate the conditions now in existence, which have resulted in the Crow Tribe's suffering the consequence of disappointing embarrassment in the eyes of the public.

Article VII, section 2, of the constitution of the Crow Tribe Council which was approved on June 24, 1948, by William Zimmerman, Jr., assistant commissioner, provides the following, and I quote:

2. The Crow Tribal Council is the medium, the body, the tribal organization through which the Crow Tribe speaks to the Government and the general public.

Agency policy: Heretofore, the members of the Crow Tribe have traveled many miles to the Crow agency office to transact business. This is particularly true of the members of the Pryor District which is a distance of 85 miles from the Crow agency office. Usually, they were free to secure any information that might be to their benefit such as the status of financial records through income from lease rental. This method of approach had been in practice for many years until Otto K. Weaver, the present superintendent, took the commanding position wherein he ordered "No admittance" signs on the doors of some branches of the office. Consequently, the Indian traveling for many miles, has to wait in line to see the superintendent or the administrative officer through appointment or registration and on numerous occasions the Indian is compelled to wait long, tiresome hours before he or she will have a chance to see the commanding officers. Sometimes the Indian gets tired and disgusted and returns home without any transaction, thereby defeating the purpose of the costly trip. Numerous members of the Crow Tribe are complaining about this tragic method. We, as tribal delegates, convey this very urgent matter to you members of this committee, and urge you to use every possible measure to correct this unfair treatment for the benefit of the Crow Tribe. We feel this system is not a BIA regulation, but a mere local policy which can be corrected.

Family-type program: Numerous complaints have been conveyed to the Crow delegation from the members of the Crow Tribe relative to the method now used pertaining to the family-type program, in which \$1,000 has been allocated to each enrollee for the purpose of purchasing a home, furniture, cattle, commercial business, or any concrete and lasting item that might be useful to the Indian in a form of perpetuality.

We do not question the program as it is now in operation, however, the method in dealing with the Indian is very questionable. It has been a known fact that when an Indian family of six or eight submits an application under the program to purchase or build a home, the officials under the family-type program usually supervise the material to build the home and likewise the purchase of furniture. The Indian family has no choice. If the matter were at the discretion of the Indians to purchase the furniture, the other items in the application submitted, from more than one store, it would be to their advantage because the Indian can purchase the material at a reasonable price. The present procedure is such that the Indian has no choice despite the fact that the money is rightfully theirs.

May I direct your attention to the \$12 million suit which the Indian Claims Commission awarded to the Crow Indian Tribe. At the very inception of the *Crow Claim* case, the Crow Tribe hired the Wilkinson firm by contract to represent the tribe. Ultimately, through the efforts of our attorneys, \$12 million was awarded to the Crow Tribe. I say to you without hesitation that all during the course of this hard and long struggle, neither the BIA nor the Department assisted the Crow Tribe, but when the case was finally settled in our favor the Department and BIA stepped in and commanded the full control and supervision of the award. As stated before, we do not question the program, but we do feel the method should be corrected for the benefit of the Crow Tribe. We again convey this urgent

matter to you and the members of the committee, and urge that the situation be corrected so that the Indian may have a free choice of purchasing power.

Overlapping leases: On November 29, 1962, Frank J. Barry, Solicitor, issued an opinion concerning the so-called overlapping leases and the competent leases of the members of the Crow Tribe. The Crow delegates feel that said decision has no effect on the presently existing leases and it will require a court action to declare the present competent leases to be null and void.

In very simple language, the 1927 amendment to the June 4, 1920, Allotment Act provides that no lease could be re-leased or renewed prior to 1 year before the "expiration" of its term on grazing leases and 18 months on farming leases. The Crow Competency Act came into effect in 1948 and provided that the Indian can lease his or her allotment and collect the rental fees without supervision by the Bureau. Through this act the Indian has been leasing his or her allotment for 5 years and collecting rental fees for 5 years in advance. Under the circumstances, the white lessee renewed the lease contract after 1 year had passed, and by this procedure the white lessee has a perpetual lease for 6 years. By this course of action the lessee has been violating the 1927 amendment, and, consequently, the Indian has no bargaining power. We, as delegates, call your attention to this very urgent matter and stress that every possible measure be taken to investigate, ultimately allowing the law to take its course. We feel that there are discriminatory aspects involved in this case, because we definitely feel certain that the white lessees actually and openly violated a Federal law and no action to correct the situation has been taken for the past 15 years.

Discrimination by neighboring towns: Among other clear-cut cases, the city of Billings, Mont., has been treating the Indian very unfairly. In numerous instances an Indian may have a drink or two of liquor but he minds his own business without disturbing other citizens. As soon as the city cops learn that the Indian has a breath of liquor they commence to push him around, causing the Indian to get mad and finally resulting in an argument, then the cop arrests the Indian on a drunk or disturbance charge. Usually a larger percentage of whites than Indians are obviously under the influence of intoxicating liquor on the skid row, nevertheless, the Indian drinker gets arrested immediately.

Recently, Walter Grey Bull, a Crow Indian, was dead drunk in a bar called Montana Bar, in Billings, Mont. One of the city cops came in attempting to awaken Mr. Grey Bull by pouring water on his face and kicking him on the seat and finally the cop called for help to the other members of the city cops. Finally, two more cops came in and almost carried the dead-drunk Indian out of the bar to a parked police car. Other Indians, as well as whites, Mexicans, and colored who were present saw the Indian loaded into the police car. I was also present and witnessed this incident. Those who saw the incident naturally took it for granted that the Indian was taken to the jail for the night. Whether or not the Indian was taken to the jail we have no proof, but early the following day the Indian was found dead at the outskirts of the city. Those of us who saw the incident felt that there was foul play involved.

Two years ago Harvey Young Swallow, a Crow Indian, was arrested by the cops in the town of Hardin, Mont. Instead of taking him to the city jail, they took him to the south city limits. At this point the Crow Reservation line is adjacent to the city limits, and at this point Harvey was unloaded. The weather at that time was below zero. The Indian had no choice so he attempted to reach the first Indian home, which is about 5 miles. Unfortunately, after the Indian had walked several miles, his fingers were frozen stiff. He was admitted to the Crow Indian Hospital, Crow Agency, Mont., where his fingers were amputated.

During the month of February, John Holds and his wife, both members of the Crow Tribe, entered Lobby Cafe, Hardin, Mont., for a meal and, unfortunately, the couple were refused service. The proprietor stated that they do not serve Indians at this cafe. Mr. Holds and his wife are willing to sign affidavits if it is necessary to support their version.

Gentlemen of the committee, we wish to direct your attention to the fact that products of sugarbeets, wheat, corn, and many other products, which are marketed at Hardin or Billings, are actually derived from Indian lands. A large percentage of the stock marketed in these places is also derived from Indian lands. The Indian through his land has been contributing various products directly or indirectly to Hardin and Billings for the past several years; nevertheless, the Indian has been treated very unfairly and this delegation feels it is purely discriminatory. We again direct your special attention to this unfair treatment and urgently request that you investigate with every possible influence you may possess to correct this outrageous situation.

Section II of 1920 Allotment Act: The Crow Allotment Act of June 4, 1920 (41 Stat. 751, provides under section II, in simple language, that there is a limitation of acreage of Indian lands to be purchased by one non-Indian person, company, or corporation, which is 1,280 acres of agricultural land and 1,920 acres of grazing land, and further provides a penalty of \$5,000 or imprisonment of not more than 6 months, or both such fine and imprisonment.

The law has been violated outrageously by numerous white operators. Both the BIA and non-Indian operators felt that, as an excuse, they knew nothing of the existence of the law, but we as delegates felt that ignorance of the law is no excuse.

At this point we wish to submit a written statement by William A. Wall, delegate at large, for the record concerning the historical background of the issue at hand.

I have the material here at this time. I have a statement, also, a short brief and other necessary material that will support the statement. So I submit them to the committee at this time for the record. (This material follows at p. 888-897.)

Senator ERVIN. These will be received for the committee files, and if appropriate will be made a part of the record.

Mr. WALL. In conclusion, in order that this committee may receive a firsthand report and information on the topics we presented here, and any other subjects which our people feel need investigation, we request that this committee arrange a hearing on or near the Crow Indian Reservation in southeastern Montana. We feel that numerous members of the Crow Tribe will be very grateful that such a privilege

be granted for the benefit of the entire membership of the Crow Tribe.

It is signed by all the delegates. And I thank you very much for this opportunity to express my statement.

Mr. CREECH. Mr. Wall, would you prefer to answer questions now, or would you rather wait until each of the gentlemen with you has delivered his statement and then have the questions?

Mr. WALL. I think as soon as the others get through with their statements, we can answer questions.

And may I ask, since we are not lawyers, that you make your questions very simple so that we can answer them.

Mr. REAL BIRD. In submitting Mr. Wall's statement, we included resolutions passed by the tribal council on February 2, 1953, concerning the violation of the acreage limitation of the Crow Tribe. Also, in February of 1962 concerning the overlapping leases we took a definite stand, and the tribal council passed a resolution, which we don't have at hand at the present time, but we will get it and submit it for the record later, probably this afternoon. Will that be OK?

Mr. CREECH. Certainly. The subcommittee will be happy to have you submit any information you may wish.

You may proceed with your statement.

Mr. REAL BIRD. My name is Edison Real Bird. I am vice chairman of the Crow Tribe of Indians and I am appearing in my official capacity. I am one of the official delegation of the Crow Tribe as authorized in Resolution No. 63-12 passed and adopted by the Crow Tribal Council October 13, 1962.

My testimony is related to matters of the Crow Tribe that I would like to call the attention of the committee to. My colleagues and fellow delegates submitted and testified on matters concerning the Crow Tribe. I am requested to include in our testimony additional information of importance that should be included in the hearing today.

When our lands are taken for a declared public purpose, our people are scattered and our continued existence is threatened. Such instances are taking over the Indian land base and cutting his ties with his land. One case is the proposed land grab made by the National Park Service to enlarge the present Custer's battlefield near Crow Agency, Mont.

They already own sufficient land base, but they want to grab additional land from the Crow Tribal members and for reasons unknown want additional 4,000 acres of individual allotted lands situated near the battlefield. This land is so situated that, if taken by the National Park Service, the Crow Tribe would lose access to the river. The landowners in the immediate area oppose granting additional land to the Custer's battlefield. Should this take place my people who live in the immediate area would not be able to utilize their land's potential value for their livelihood. There are a number of Indians who operate livestock enterprises near or on the area proposed by the National Park Service taking area. As a spokesman for the landowners, we are definitely opposed to any more conveyance of our land to the Custer's battlefield. It is the responsibility of this generation to make things possible for the next generation, and easier. So, should the National Park Service succeed in taking more land on the Crow Reservation it would cut the throat of my people who want to use these

lands for their livelihood and livestock enterprises. You will understand the Park Service now owns a great deal of land, most of the battlefield, and most of this land is lying there idle.

There is another matter of importance. There is in existence Federal legislation prohibiting hunting and fishing on the Crow Indian Reservation, as there is in the case of other reservations. This law is now in effect, but prosecution is never taken for violators of hunting and fishing on the Crow Reservation. The Crow Tribal Council adopted and passed a resolution prohibiting hunting and fishing on the Crow Reservation except to members of the Crow Tribe. Now numerous violations occur on the reservation where non-Indians actually hunt and fish. The Federal authorities are aware of the incident but they never try to enforce and protect the Crow tribal rights. Our game wardens are not authorized nor have authority to arrest violators. One requirement is that they stop the violator, take his automobile license number and his or her name, and turn it over to Federal authorities, who, in turn, never do a thing about it. This is one reason we would like to call attention of the committee, to the idleness of the Federal authorities who do not tend to enforce this law.

Another incident that we would like to call your attention to is what the Wyoming game warden does on the Crow Reservation. During the hunting season, the game warden from Wyoming would chase the wild game and try with all means to prevent the wild game from coming to the Crow Reservation where our people utilize all wild game that they can kill or obtain. It is a source of meat supply, and we utilize the hides, and et cetera. On numerous occasions the game warden would use his pickup truck or use an airplane and make his daily rounds to chase wild game into Wyoming and prevent them from coming on the Crow Reservation. This incident should not continue. It is infringing on the members of the Crow Tribes, on their hunting and fishing rights within the Crow Reservation.

I would like to thank the committee for giving me the opportunity to testify here this afternoon.

Mr. Wall mentioned the overlapping leases. We have an article here which appeared in the Billings and other newspapers throughout the United States concerning the Crow tribal leases and the Crow Allotment Act of 1925. Journalist Holmes Alexander made quite an accusation concerning the leases on the Crow Reservation, and it is quite interesting how he runs the Indian people down.

That completes my statement.

Senator ERVIN. Mr. Whiteman, do you have a statement?

Mr. WHITEMAN. Mr. Chairman, perhaps it might not be the place for my statement, so at this time I will withdraw my testimony for this afternoon.

I thank you for the privilege of appearing.

Senator ERVIN. We certainly appreciate your coming and meeting with us. We appreciate the information you have given us, and we trust that we will be able to come up with some constructive legislation which will assist in curing some of the disadvantages under which you live, and settling some of the questions of jurisdiction as to many of our tribes.

Mr. WHITEMAN. Thank you.

Senator ERVIN. Counsel has some questions.

Mr. CREECH. Mr. Wall, in your statement on page 6 you are saying that there is usually a larger percentage of whites than Indians who are obviously under the influence of intoxicating liquor, but the Indian drinker gets arrested immediately. Is it your position, sir, that the Indian is treated differently from the non-Indian, and that he is being deprived of equal protection of the law? Is that your position?

Mr. WALL. Yes. It seems to me that there are other nationalities on the skid row who are much drunker than the Indian, but, nevertheless, they usually point the Indians out and take them out of the crowd and put them in jail. That is the usual procedure that has been going on for years, it is not just a happening of yesterday, it has been going on for years.

Mr. CREECH. And this is in Billings?

Mr. WALL. That is right.

Mr. CREECH. Now, you spoke of a case of the Indian who was found dead outside the city limits after having been arrested the night before by the police officer. Was there a coroner's investigation?

Mr. WALL. Sir, I am not too familiar with it, but I have seen the case, and they have called on me and other leaders of the Crow Tribe to look into the matter. But this trip got in the way, we had to make this trip immediately, and so I left the matter.

But as soon as I get home, I will have to look into it. Whether or not an autopsy has been performed, I don't know. I will have to find that out as soon as I get home.

Mr. CREECH. In the case of Harvey Young Swallow, who was arrested in Hardin, Mont., why was he arrested?

Mr. WALL. As I understand it, he was picked up because all the joints and stores close at 2 o'clock in Hardin, and he was roaming around the streets, so naturally they took it that he was drunk. Whether he was drunk or not, I don't know.

But they picked him up because he was there after all the stores were closed.

If he was drunk he should have been taken to the jail for confinement, but he was taken to the outskirts of the town and left to go home. And he was on foot, and due to the very low temperature his fingers froze, and had to be amputated.

Mr. CREECH. Is it your contention that the police treat the members of the Indian community differently from the non-Indian citizen?

Mr. WALL. Yes, sir. These are two cases I am just pointing out. There are numerous cases besides this. But in order to save space in my statement I just pointed out these two cases.

Mr. CREECH. Now, Mr. Real Bird said on page 3 of his statement concerning the enforcement of the wild life regulations that your game wardens are not authorized, of course, to arrest violators. By that he means non-Indians, is that correct?

Mr. REAL BIRD. Yes. If our game warden, a member of the tribe, hired by the Crow Tribe, sees a non-Indian come within the boundary of the Crow Reservation, he has no authority to pick him up, all he can do is take the license number, and that is about the end of it.

Mr. CREECH. Now, if the same man is violating the game laws of the State elsewhere, if he is off reservation territory, a non-Indian is violating the game laws, he is arrested, isn't he?

Mr. REAL BIRD. Yes.

Mr. CREECH. He is arrested and tried for violating the State game laws?

Mr. REAL BIRD. Yes, sir.

Mr. CREECH. But if he is on the Indian reservation, nothing is done with him?

Mr. REAL BIRD. No. There is Federal legislation on that concerning hunting and fishing within the boundaries of an Indian reservation. I tried to get that done this morning, but we were unable to find the law concerning the hunting and fishing on Indian reservations.

But the Crow Tribal Council, through its governing body, voted unanimously through one of the tribal councils to prevent opening the Crow Reservation to hunting and fishing, with the exception of members of the Crow Tribe.

We have a lot of game, elk, deer, and smaller game such as pheasants and fish, and we have a lot of people that come in here, and we haven't had any prosecution for the last few years.

Mr. CREECH. Does it stem from the fact that there is confusion as to who has jurisdiction over these people and can prosecute them?

Mr. REAL BIRD. The law invites Federal prosecution.

Mr. CREECH. What you are alleging here, then, is that the Federal authorities have been lax in enforcing this law, the non-Indian who violates the game law?

Mr. REAL BIRD. Yes, sir.

Mr. CREECH. In your view, this is not one of the areas in which there is some confusion as to who has jurisdiction over the offenders. It is just a matter of the Federal officials not enforcing the existing law?

Mr. REAL BIRD. No, we know that it is the Federal official's responsibility according to the laws which were passed by Congress. But the Indian game wardens have no authority over the non-Indian violators.

Mr. WATERS. You are suggesting, then, that you are deprived of your property without due process because the wild game is used by the tribe for the purpose of food, is that right?

Mr. REAL BIRD. That question, I think, refers to the incident where the Wyoming game warden during the hunting season—the hunting season opens in Wyoming on October 1, and us Crow boys, we know when that elk is going to migrate to the Crow Reservation. So we wait there on the 2d day of October, knowing that once the non-Indians start shooting in Wyoming the elk will go back to the Crow Reservation.

But when that takes place, every morning he would fly to the reservation and chase all the elk back into Wyoming. Actually he is trespassing on our reservation, but I found out how he gets away with it. He leases a small tract of land, and he has to get to his land, and that is one of the main excuses, to get to that land, to drive back the elk.

In numerous cases, when individual members of the tribe go hunting, they come home with nothing.

Mr. WATERS. And the situation you referred to with respect to the police department, is this customary, that when they pick up an Indian, even though the weather is below freezing, they will just turn him loose and let him make his way back as best he can?

Mr. REAL BIRD. Mr. Wall made that statement. He would be in a better position to answer that.

Mr. WALL. I didn't quite hear the question.

Mr. WATERS. Mr. Wall, the point you have made in connection with the Indian who was taken out of the car by the police officers and found the next morning dead, is it customary for the police department, instead of locking up the Indians, to take them out of town to make their way home as best they can?

Mr. WALL. There are numerous cases prior to the ones I mentioned, but they were fortunate enough to catch a ride and go home. They were unloaded outside the city limits, and, as I say, they were fortunate enough to catch a ride from there and go home without having any mishaps.

Mr. WATERS. You were present at the apprehension of the one man?

Mr. WALL. Yes, sir.

Mr. WATERS. Did anybody ever make any inquiry to determine whether he was ever booked into the jail?

Mr. WALL. Not that I know of. All that I know is that another Indian named Ralph Turns Plenty, who is a cousin of the deceased, has been attempting to have some investigation made. But as I told the committee, we departed shortly after this incident happened, so I didn't have the time to look into it. As soon as I get home I intend to look into the matter a little more deeply.

Mr. WATERS. Thank you, Mr. Wall.

Thank you, Mr. Chairman.

Senator ERVIN. On behalf of the subcommittee, I want to thank you gentlemen for coming and being with us and giving us the benefit of your experiences and observations and discussions as to what things you think ought to be remedied. We appreciate it very much.

Mr. REAL BIRD. Mr. Chairman, on behalf of the Crow Tribe I would like to thank you for the opportunity to come and represent our people and state our wishes to the committee. People from home have called me long distance and urged that I submit this today.

Thank you.

Senator ERVIN. Thank you. We are privileged to have you here.

EXHIBIT NO. 21. SUPPLEMENTAL STATEMENT OF WILLIAM A. WALL REGARDING CROW ALLOTMENT ACT OF JUNE 4, 1920, AND ITS SUBSEQUENT AMENDMENTS

STATEMENT OF WILLIAM A. WALL, CROW TRIBAL DELEGATE

My name is William A. Wall, residing in Pryor, Mont. I am one of the official delegates elected to represent the Crow Indian Tribe in accordance with a resolution No. 63-12 passed and approved during a regular Crow Tribal Council meeting duly convened, dated October 13, 1962. I was formerly a chairman and secretary of the Crow Tribal Council.

I appear before you primarily to convey to you the true sentiment of the Crow Indian Tribe in connection with section 2 of the Crow Allotment Act of June 4, 1920 (41 Stat. 751), as amended by the act of June 8, 1940 (54 Stat. 252). In view of this approach I wish to elaborate in sequences pertaining to the history background of the issue at hand to the best of my knowledge.

First, may I direct your attention to the treaty with the Crows of September 17, 1851, at Fort Laramie, Wyo. The lands set aside for the Crows in this treaty are shown on the map herewith attached, as No. 517, on chart No. 1, which I submit for the record.

The treaty with Crows in 1868 was also made in Fort Laramie in the Dakota Territory. By the terms of this treaty, the holdings of the Crows were cut down from that shown as No. 517 on the chart No. 2 and 635 and 619, which I submit for the record.

By the act of Congress of April 11, 1882, the Crow Indian Tribe agreed to sell to the United States the tract of land shown as No. 619 on chart No. 3 (that part in green). The Crows were to receive \$30,000 per year for 25 years (22 Stat. 42; Kappler 195), which I submit for the record.

On March 3, 1891, an agreement with the Crows was enacted by Congress in which the Crows ceded the tract of land that is marked in blue lines on chart No. 4 and marked "ceded," for which the Crows were to receive \$946,000 (26 Stat. 989). I submit this chart No. 4 for the record.

The act of April 27, 1904, ratifies an agreement formerly made with the Crow Indians. The lands ceded and the Crow Indian Reservation remaining after this act, are shown on chart No. 5, herewith attached (33 Stat. 352), and I submit the same for the record. (Charts 1-6 designating the various lands of the Crow Indian Reservation are retained in the subcommittee's files.)

The act of August 31, 1937, provides that the city limits of Hardin were excluded from the Crow Indian Reservation (50 Stat. 884), which is shown on chart No. 6 herewith attached, and I submit the same for the record. You will note the map shown on this chart, No. 6, designates the present boundary of the Crow Indian Reservation. Despite the fact that the present boundaries of the Crow Indian Reservation have been greatly reduced in size through various acts of Congress, treaties, and agreements made with the Crow Indian Tribe, the remaining area of the Crow Reservation is a part of the original lands set aside for the absolute and undisturbed use and occupation of the members of the Crow Tribe under the provisions made in the treaty of 1868.

The members of the conference committee made their report on Senate bill 2890, on May 26, 1920, wherein Congress recognized the necessity of the land restrictions of section 2 of the act of June 4, 1920. Then and there the committee made their official report, and I quote the following:

"* * * House amendments Nos. 4, 5, 6, 7, 8, and 9 practically rewrote section 2 under the provision of which is sought to limit both the number of acres of land that any Crow Indian may sell and to fix the qualifications for eligibility to purchase. The necessity for some provisions of this nature lies in the fact that this bill proposes to practically divide the Crow Reservation among the members of the tribe, and it is not thought to be good public policy, or for the best interest of the Indian, to permit any one firm, person, or corporation to acquire any great acreage of land."

Consequently, the members of conference committee had the foresight to ascertain what would happen unless acreage limitations were inserted in the bill. They realized that it would be against public policy and against the best interest of the Indians to allow any one person, firm, or corporation to acquire any great acreage of land.

On June 4, 1920, Senate bill 2890 finally became a part of the statute books or became a law (41 Stat. 751), commonly known as Crow Allotment Act of June 4, 1920, and among numerous sections provided in the law I wish to direct your special attention to the first paragraph of section 2 of the act of June 4, 1920, in its final form or language, and I quote:

"Sec. 2. No conveyance of land by any Crow Indian shall be authorized or approved by the Secretary of the Interior to any person, company, or corporation who owns at least six hundred and forty acres of agricultural or one thousand two hundred and eighty acres of grazing land within the present boundaries of the Crow Indian Reservation, nor to any person who, with the land to be acquired by such conveyance, would become the owner of more than one thousand two hundred and eighty acres of agricultural or one thousand nine hundred and twenty acres of grazing land within said reservation. Any conveyance by any such Indian made either directly or indirectly to any such person, company, or corporation of any land within said reservation as the same now exists, whether held by trust patent or by patent in fee shall be void and the grantee accepting the same shall be guilty of a misdemeanor and be punished by a fine of not more than \$5,000 or imprisonment not more than six months or by both such fine and imprisonment."

On page 8, fourth paragraph, in Haley committee hearing, a letter was signed by Hatfield Chilson, Assistant Secretary of the Interior during the Eisenhower administration, which was filed as a part of the record, and the letter states in part, and I quote:

"This provision (sec. 2) of the 1920 act apparently was not enforced until a few months ago."

On page 157 of the Haley Committee hearing the records proved that photostatic copies of notices of sales of Crow Indian lands for September 22, 1919, October 13, 1924, and October 23, 1930, were on file with the House Committee on Interior and Insular Affairs, wherein the provision of section 2 of the 1920 act was made as part of the public notices of the Indian land sales. This overwhelmingly proved the fact that Secretary Chilson's statement was completely false.

On pages 192-193 of the Haley Committee hearings specifically indicates that among many violators of the section 2 provision of the 1920 act, the following were mentioned with their total acreage holdings, located within the boundaries of the Crow Indian Reservation: Kendrick Cattle Co., 134,000 acres, the Antler Land Co., 38,454 acres, H. W. Wilcutt, 16,454 acres, and Faddis-Kennedy, 14,632 acres. These records were secured from the files of Big Horn County office records, Hardin, Mont. Undoubtedly the above four operate totals of acreages accepted representing persons, companies, and corporations which in every case have tremendously exceeded the limitation clause specifically provided in accordance with section 2 of the act of June 4, 1920.

On April 14, 1956, the Crow Tribal Council held a council meeting pursuant to notice, with an agenda posted, and 100 copies were mailed to the various tribal members in the respective districts of the Crow Reservation, including the members of the Crow Tribe who resided in the Billings area, and the 7-day notice prior to the meeting was complied with.

I was the chairman of the Crow Tribal Council on April 14 meeting in which I presided. The minutes of this meeting were made as a part of the records during the Haley Committee hearing which can be obtained on pages 199-200 and 201. Your attention is directed at this time to the fact that Resolution 76 and the two resolutions combined as Resolution No. 77 were not listed in the agenda for this council call. The first resolution is entitled "A resolution of the Crow Tribe repealing certain provisions of section 2 of the act of June 4, 1920 (41 Stat. 751) as amended by the act of June 8, 1940 (54 Stat. 252), and with certain exceptions."

The second resolution is entitled "Resolution in re land sales on Crow Reservation." Copies of these two resolutions were submitted as a part of the record during the Haley Committee hearing, on page 203, and I submit copies of the two Resolutions No. 77 for this record. The fact of the matter was that William Bends presented the first Resolution No. 77 and Robert Yellowtail presented the second Resolution No. 77; however, the council combined the two resolutions as one after Mr. Yellowtail made a motion for the adoption of the two resolutions as No. 77. The first Resolution 77 was presented by Mr. Bends and the second Resolution No. 77 by Mr. Yellowtail. The motion was seconded by Mrs. Joy Toineeta. The results of the vote, as I was the presiding chairman for this occasion, declared the motion carried by majority vote.

On page 196 of the Haley Committee I wish to quote the following:

"Mr. METCALF. Now, Mr. Yellowtail, when you spoke in behalf of this legislation repealing section 2 before the Crow Tribal Council and encouraged adoption of Resolution 77, did you or did you not say that the Indian Bureau 'will revoke this all-or-nothing provision if we adopt this resolution'?"

"Mr. YELLOWTAIL. I don't recollect making that statement, but this man right here, this fellow here—"

"Mr. METCALF. I am asking you if you recollect making that statement.

"Mr. YELLOWTAIL. No; I don't recollect it."

I was the presiding officer for the tribal council meeting held on April 14, 1956, at which time the second Resolution No. 77 was presented by Mr. Yellowtail and he made this statement to the audience in the Crow Indian language, and I quote: "I have a piece of paper here in my hand (second Resolution 77). I am asking you to vote in favor of it and if you do, the Washington office will resume the Indian land sales, revoking the all-or-none policy." This was the exact words Mr. Yellowtail made at the council in presenting the second Resolution No. 77, and I am willing to submit under a lie-detector machine, if necessary, to verify my version of the matter.

Furthermore, Mr. Yellowtail's Resolution 77 being made as a part of the record in the Haley committee hearing on pages 203-204 wherein I call your attention to the last resolve clause on page 204 and I quote:

"Resolved further, That as soon as Congress has approved the passage of such a bill, the Secretary shall order the resumption of sales of restricted and trust lands on the Crow Indian Reservation."

My reason to exert more emphasis under factual measures as to the implementation of Resolution 77 during the council meeting on April 14, 1956, was the fact that a misrepresentation was made by Mr. Yellowtail when he implied that all-or-none policy would be stricken from the records upon the passage of his Resolution No. 77; naturally, the people voted in favor of his resolution, but upon the discovery of their action which led to misrepresentation, subsequently after several months of deliberation and consideration, the Crow Indian Tribal Council rescinded its action and such verifications can be obtained in accordance with the minutes of the Crow Tribal Council dated April 20, 1957, which were submitted as a part of the record in the Haley committee hearings commencing with the second paragraph on page 206.

Immediately after the passage of the two resolutions on No. 77 (as first and second) by the Crow Tribal Council, dated April 14, 1956, Senate bill 3698 was introduced by Senators Murray and Mansfield, of Montana, during the 84th Congress. Thereupon, on May 8, 1956, the Subcommittee on Interior and Insular Affairs held a hearing on S. 3698, in room 224 of the Old Senate Office Building, which later passed the Senate on June 11, 1956. The tragic part of this hearing as far as the Crow Tribe was concerned was that there was no record shown that I, as the chairman of the Crow Tribal Council during this period of time, was ever informed or invited to this hearing to present the views of the Crow Tribe. If the Crow tribal delegates were present during this hearing it would be to the great advantage relating to the repeal of section 2 of the act of June 4, 1920, for this reason, and that is, the Crow tribal delegates would be bound by the Resolution No. 77 approved and adopted on April 14, 1956; naturally, we would testify accordingly.

At this point, I wish to offer you for your reference a mimeograph copy of the hearings before the Committee on Interior and Insular Affairs of the United States, Washington, D.C., on S. 3698, which hearings were held on May 8, 1956. (The transcript is retained in the subcommittee's files.)

I wish to direct your attention to a letter addressed to Senator Joseph C. O'Mahoney, Washington, D.C., from Mr. A. R. Burnham, Lovell, Wyo., Post Office Box 755, wherein the letter was submitted to the committee as part of the record by Senator O'Mahoney, in which it can be obtained on pages 21-23 of the committee hearings on S. 3698. The letter is self-explanatory wherein a small operator can outbid a large operator during an Indian land sale because of the land in the unit controlled by what seems a growing monopoly which seems to be trying to squeeze out the small operator.

Consequently, the letter of Mr. Burnham, Lovell, Wyo., specifically indicates that the intent of the final language of section 2 has been impaired by the stringent provisions to prevent monopolization of the lands that will be offered for sale. I further make reference to another letter addressed to Hon. James Haley from Dominic Bumbaca, Decker, Mont., which was filed as a part of the record of the Haley committee hearings on pages 269-270, which is self-explanatory.

Reference is made at this point to Resolution No. 142, which was passed and approved during a Crow Indian Tribal Council meeting, duly convened, dated July 27, 1957, entitled, "A resolution of the Crow Tribal Council requesting the U.S. attorney of the district of Montana to investigate and prosecute all persons who have violated the provisions of section 2 of the act of June 4, 1920 (41 Stat. 751)." Said resolution was submitted as a part of the records of the Haley Committee hearings on pages 224-225. Apparently 5 years has elapsed, with no further action by the Attorney General to enforce the law which was requested by Resolution No. 142. A copy is herewith attached and I submit the same for the record.

Two letters were addressed to the Hon. James A. Haley, Washington, D.C., from Edward P. Whiteman, chairman, Crow Tribal Council, and William A. Wall, secretary, Crow Tribal Council, one letter was dated April 6, 1957, with enclosure of Resolution No. 77, and the other letter dated April 8, 1957, requesting the House Committee on Interior and Insular Affairs to extend the courtesy to the Crow tribal delegates to appear and to present the Crow Tribe's version when the committee holds hearings on S. 332. The letters referred to are submitted as a part of the record in the Haley committee hearings on pages 140 and 141.

I direct your attention at this time to a news item dated October 18, 1957, sponsored by A. Robert Smith, Washington correspondent, the Oregonian, with a heading, "Indians Get Scalped—Interior Averts Eyes." The article was very

interesting which contains factual opinions exerted by the Associated Press and United Press International. I also have another item with a heading, "Reprinted by Special Permission From the Portland Oregonian of December 19, 1957, for the Benefit of the Crow Tribe," by A. Robert Smith. For your reference, from the standpoint of the press release who were interested to convey facts to the general public, I herewith submit mimeograph copies of both articles for the record. (These articles are retained in the subcommittee's file.)

According to the records S. 332, H.R. 2381, and H.R. 7255 were introduced in 1957 during the 85th Congress. The Crow Tribal Council action on April 14, 1956, when Resolution 77 was adopted and approved, ultimately resulted in the passage of S. 332. However, H.R. 2381 and H.R. 7255 were not enacted as a result of special House subcommittee hearings held in Crow Agency, Mont., on October 18-19, 1957, sponsored by James A. Haley, chairman of the House Subcommittee on Interior and Insular Affairs.

During the year 1959, Senator James E. Murray of Montana, and Representative Keith Thompson of Wyoming, at their behest have introduced bills S. 55 and H.R. 439, during the 86th Congress, 1st session, to repeal section 2 of the act of June 4, 1920.

Pursuant to a petition signed by 438 members of the Crow Tribe, a resolution was incorporated which requested the chairman to call a council meeting of the Crow Tribal Council to consider a resolution attached to said petition entitled, "A resolution to repeal section 2 of the June 4, 1920, Allotment Act and for other purposes."

Thereupon, a Crow Tribal Council was called on May 2, 1959, when the chairman explained the contents of the resolution and stated that the meeting was open for a motion to pass and adopt said resolution. There was no motion made by any person present to adopt and pass said resolution contained in said petition, and the resolution was lost for failure of a motion.

James Big Lake then presented Resolution 191 and then moved the passage and adoption of the same, which entitled, "A resolution of the Crow Tribal Council reaffirming its opposition to legislative proposals to repeal section 2 of the Crow Allotment Act and requesting enforcement of section 2 and objections to passage of Senate bill 55 and H.R. 439, 86th Congress." There were 306 tribal members cast their votes in favor of the resolution and 5 tribal members against, who were: Robert Yellowtail, Donald Deer Nose, Rose Caplett Takes Gun, Eloise Pease and Daisy Mae Cooper. I submit resolution 191 for your reference.

On March 15, 1960, a departmental report on H.R. 439 was addressed to Hon. Wayne N. Aspinall, chairman, House Committee on Interior and Insular Affairs signed by Roger Ernst, Assistant Secretary of the Interior in which he stated, "We recommend that the bill be not enacted." I am submitting the letter to you for reference.

I understand Senators Mansfield and Metcalf introduced another bill to repeal section 2 of the 1920 act during the close of the 87th Congress, 2d session. Congress adjourned shortly after the bill was introduced without any hearing on the bill.

I also understand that John Carver, Assistant Secretary of the Interior was implicated in validating the illegal titles after he advised a Crow delegation that there would be prompt action pertaining to the enforcement of the law referring to section 2 of the act of June 4, 1920.

During the Haley subcommittee hearing (p. 124), discussions were made relating to the legality of the bill in question, some discussions were off the record. Ultimately Lee Metcalf (now Senator Metcalf, formerly a justice of the Montana Supreme Court) made this observation and stated, and I quote:

"* * * But we are thinking after line 5 of the bill as to retrospective or retroactive legislation. We are coming in and validating titles that were transferred in violation of this act, and we may be giving away property rights."

I am only a reservation Indian and my educational background is not in any sense to a high degree, but I do understand definitely what is right and what is wrong. My personal honest sentiment and version, speaking in behalf of the Crow Tribe, relating to the intent of the proposed bills which were introduced in the 84th, 85th, 86th, and 87th Congresses, is that this type of legislation is clearly unconstitutional for two reasons, and they are, that it would take a Crow citizen's property without compensation, and that it would take it for the enrichment of a private concern but will not be devoted to public use.

Past experience has taught me to believe that I am very fortunate and extremely proud to be classed as a ward Indian. We are classed as a nation within a nation wherein we possessed a vested property right through allotment acts and

once these rights have been conferred upon the Indians neither the Secretary of the Interior, the Commissioner of Indian Affairs, nor the Congress can abrogate or take them away.

At the inception of the formulation of section 2 of the act of June 4, 1920, there existed, according to records, that a definite concensus was established between the Congress of the United States and the Crow Indian Tribe on the present provision now contained in the law wherein any transfer in excess of the limitation clause should be null and void, and any violation of the provisions thereof shall constitute a fine and penalty.

My presentation to you concerning the history background in relationship with the issue at hand are all a matter of record in which you will note the fact that such material as evidence are clearly outlined in detail pertaining to the method and procedure relative to the position of the Crow Tribe. Unfortunately, they were guided by misinformation as well as political persuasion; however, immediately upon securing proper status they corrected their erroneous action and established a united front in opposing the passage of the various bills introduced in Congress relative to the repeal of section 2 of the act of June 4, 1920, and thereupon in May 2, 1959, Resolution 191 passed and approved by the Crow Tribal Council as their official document. The departmental report dated March 25, 1960, concurred in the said Resolution 191.

EXHIBIT No. 22. RESOLUTION OF JULY 27, 1957, REGARDING VIOLATIONS OF ACT OF JUNE 4, 1920

RESOLUTION 142 OF THE CROW TRIBE OF MONTANA

A resolution of the Crow Indian Tribal Council requesting the U.S. attorney of the district of Montana to investigate and prosecute all persons who have violated the provisions of section 2 of the act of June 4, 1920 (41 Stat. 751)

Whereas section 2 of the act of June 4, 1920 (41 Stat. 751), as amended, provides that no conveyance of land by any Crow Indian shall be authorized or approved by the Secretary of the Interior to any person, company, or corporation who owns at least 620 acres of agricultural land or 1,280 acres of grazing land within the present boundaries of the Crow Indian Reservation, nor to any person who, with the land to be acquired by such conveyances shall become the owner of more than 1,280 of agricultural or 1,920 acres of grazing land within said reservation, and said act further provides that any conveyance by any such Indian made either directly or indirectly to any such person, company, or corporation of any land within said reservation as the same now exists, whether held by trust patent or by patent in fee shall be void and the grantee accepting the same shall be guilty of a misdemeanor and be punished by a fine of not more than \$5,000 or imprisonment not more than 6 months or by both such fine and imprisonment.

Whereas the numerous individuals have violated the provisions of said section 2 and are therefore, guilty of a misdemeanor and subject to punishment by a fine of not more than \$5,000 or imprisonment not more than 6 months or by both such fine and imprisonment.

Whereas the U.S. attorney for the district of Montana has not heretofore prosecuted any of the persons, companies, or corporations, for the violation of said provisions of said section 2 of said act: Be it

Resolved, by the Crow Indian Tribal Council in tribal council duly assembled, That the Crow Tribal Council hereby requests that the U.S. attorney for the district of Montana, and his staff, immediately investigate and on finding that any person or persons have violated the provisions of said section 2, prosecute all offenders who have violated said provision of said law; be it further

Resolved, That a copy of this resolution be immediately delivered to the Honorable Herbert Brownell, Attorney General of the United States of America, and that a copy likewise be delivered to the honorable U.S. attorney for the district of Montana.

Passed, adopted, and approved this 27th day of July A.D. 1957, by unanimous votes adoption and no votes against adoption of this resolution.

Attest:

Chairman, Crow Tribal Council.

Secretary, Crow Tribal Council.

EXHIBIT No. 23. RESOLUTION OF MAY 2, 1959, REGARDING VIOLATIONS OF CROW ALLOTMENT ACT OF JUNE 4, 1920

A RESOLUTION (No. 191) OF THE CROW INDIAN TRIBAL COUNCIL REAFFIRMING ITS OPPOSITION TO LEGISLATIVE PROPOSALS TO REPEAL SECTION 2 OF THE CROW ALLOTMENT ACT, AND REQUESTING ENFORCEMENT OF SECTION 2 AND OBJECTING TO PASSAGE OF S. 55 AND H.R. 539, 86TH CONGRESS

Whereas section 2 of the Crow Allotment Act of 1920, was intended to protect the Crow Tribe by preventing allotted lands from falling into the hands of white landowners; and

Whereas the law has been repeatedly disregarded and violated since 1920, through no fault of the Crow Tribe but through the fault of the Bureau of Indian Affairs; and

Whereas as a result of the violations of law, large amounts of Crow allotted lands are now illegally held by white landowners and under the law should be returned to Indian ownership; and

Whereas extreme pressure is being exerted by white landowners who have violated the law to escape the consequence of their law violations and to have section 2 repealed; and

Whereas Senator James E. Murray and Representative Keith Thompson of Wyoming, at their behest have introduced bills (S. 55 and H.R. 439, 86th Cong., 1st sess.) to repeal section 2; and

Whereas the officials of the United States have not yet instituted action to enforce the law: Now, therefore, be it

Resolved, That the Crow Tribe reaffirms its opposition to the repeal of section 2; and be it further

Resolved, That the Crow Tribe condemns pressure by law violators to escape the consequence of their crime and to repeal section 2; and be it further

Resolved, That the Crow Tribe demands that the Attorney General of the United States, the Hon. William P. Rodgers, Jr., and the U.S. attorney for the District of Montana, the Hon. Krest Cyr, enforce the provisions of section 2 by commencing forthwith all necessary and appropriate suits and actions to set aside land transactions in violation of section 2 and to punish violators in accordance with said provisions of said law; and be it further

Resolved, That this resolution shall not be repealed, rescinded or amended, unless previous notice of a special meeting called for that purpose has been given by the chairman of the Crow Tribal Council at least 90 days before such special meeting, and then, only by a two-thirds majority vote of the eligible members present at such meeting, and the provisions of article VI, section 6 of the constitution and bylaws of the Crow Tribal Council, which provides that a simple majority vote shall control, that are in conflict with this resolution are hereby specifically amended insofar as said provisions relate to this resolution, provided that the Crow Tribe, through the Crow Tribal Council does hereby further resolve that any petition requesting the chairman of the Crow Tribal Council to call a meeting of the Crow Tribal Council for the purpose of repealing or amending said section 2 of the Crow Allotment Act of June 4, 1920, as amended, in any manner whatsoever shall not become a part of the agenda of a meeting of the Crow Tribal Council or otherwise presented or considered by the Crow Tribal Council until 10 years from and after the date hereof; and be it further

Resolved, That copies of this resolution be immediately dispatched to the Montana congressional delegation, and to the Honorable Richard Neuberger of Oregon, and the Honorable James A. Haley of Florida, in order that said Members of Congress be informed of the most recent expression of the intent of the Crow Tribe relating to section 2 of the 1920 Crow Allotment Act; and be it further

Resolved, That this resolution shall be in full force and effect from and after the passage, adoption, and approval of the same in open council meeting.

Passed, adopted, and approved by the Crow Tribal Council in a duly called session this 2d day of May, A.D. 1959, by 306 votes for adoption of this resolution and 5 votes against adoption of this resolution.

Attest:

Chairman, Crow Tribal Council.

EXHIBIT No. 24. RESOLUTION OF FEBRUARY 2, 1962, REGARDING VIOLATIONS OF CROW ALLOTMENT ACT OF JUNE 4, 1920

RESOLUTION No. 62-19. A RESOLUTION OF THE CROW TRIBAL COUNCIL RELATING TO OVERLAPPING LEASES ON COMPETENT INDIAN LANDS

Whereas the Solicitor of the U.S. Department of the Interior made an opinion holding that a renewal or an extension of an existing lease of competent Indian lands made under the act of May 26, 1926 (44 Stat. 658), as amended by the act of March 3, 1927 (44 Stat. 1365), and March 15, 1948 (62 Stat. 80), is void if such renewal or extension violates the 1-year or 18-month prohibition contained in the 1926 act, supra, as amended; and

Whereas the matter of such violations involve both the property rights of the Indian lessor as well as the trust relationship existing between the United States and the Indian owners of said lands, and is therefore a matter which affects not only each individual competent Indian lessor, but affects the United States as trustee for all competent Indians where such violations exist; and be it

Resolved by the Crow Tribal Council, That the Solicitor of the U.S. Department of the Interior and Department of Justice are hereby demanded to proceed by legal actions to determine the validity of overlapping leases made under and pursuant to said acts of Congress.

Passed, adopted, and approved by the Crow Tribal Council this 2d day of February A.D. 1962, by unanimous votes for passage and no votes against.

Attest:

Chairman, Crow Tribal Council.

Secretary, Crow Tribal Council.

EXHIBIT No. 25. RESOLUTION OF FEBRUARY 2, 1963, REGARDING VIOLATIONS OF CROW ALLOTMENT ACT OF JUNE 4, 1920

RESOLUTION No. 63-22B

Whereas the major landholders operating within the Crow Reservation, with the wrongful consent and cooperation of the Bureau of Indian Affairs, have, for many years, been allowed to become purchasers of Indian trust land of the members of the Crow Tribe in violation of section 2 of the Crow Allotment Act of 1920, and those lands still belong to the original Crow allottees or their heirs, in spite of corrupt political efforts by the landholders; against which we have protested for the past 6 years; and

Whereas the Secretary of the Interior is now conspiring with the illegal landholders, their influence peddlers, and pressure peddlers, and their tools in Congress, again to attempt legislation seeking to cure the illegality of these land titles, in spite of the failure of six different bills in Congress to confiscate the right of the original Indian owners to recover their inheritance, and in spite of the request of the former Secretary of the Interior in the year 1960, to the Attorney General of the United States to enforce the restitution of those Indian trust lands; and

Whereas the Attorney General has now, for 3 years, refused to enforce the rights of the Crow Indians and their heirs to recover those lands; Now, therefore,

Whereas the Government agencies have failed and refused for 35 years to condemn overlapping leases, well knowing them to be illegal, and are still refusing to permit the U.S. attorney to bring court actions for that purpose; and be it

Resolved by the Crow Tribe of Indians in Council assembled, That we renew, repeat, and reaffirm our condemnation of the theft of the land of our people; again condemn and denounce those within the Government and without who continue to conspire against our property rights as citizens of the United States; and call upon the Members of both Houses of Congress to defeat any renewal of the attempt to legalize the lawbreaking of past years; and be it further

Resolved, That copies of this resolution be transmitted to the U.S. Attorney for Montana, to the Attorney General of the United States; to the Senate Subcommittee on Constitutional Rights; to the Montana congressional delegation; and to the press.

Passed, adopted, and approved by the Crow Tribal Council this 2d day of February 1963, by unanimous votes for adoption and no votes against adoption.

_____,
Secretary, Crow Tribal Council.

Approved:

I recommend -----

I do not recommend -----

_____, *Chairman.*

_____,
Superintendent, Crow Indian Agency,

Mr. CREECH. Mr. Chairman, our next witness is Mrs. Dolly Akers, member of the Fort Peck Sioux and Assiniboine Tribes, Fort Peck, Mont.

Mrs. Akers?

Senator ERVIN. Mrs. Akers, I am delighted to have you here with us. You may proceed with your statement.

STATEMENT OF MRS. DOLLY AKERS, MEMBER, FORT PECK SIOUX AND ASSINIBOINE TRIBES, FORT PECK, MONT.

Mrs. AKERS. Thank you, Mr. Chairman.

My name is Dolly Akers. I am a member of the Assiniboine and Sioux Tribes of Fort Peck, Mont.

I wish to support the Crow tribal delegation's statements.

In addition, I wanted to say a few words as to these obsolete forms that are used in our tribal courts that I spoke about to Mr. Waters yesterday. He said that I should bring in these forms.

I appreciate this opportunity to appear before the committee, and I ask permission to make only one point: I call your attention to part II of title 25 of the Code of Federal Regulations. Part II is called "Law and Order on Indian Reservations." It is the law and order code prepared and sponsored by the Department of the Interior. To me, it would seem that this should be a model code since it is put out by the Department of the Interior and, naturally, Indian tribes would expect it to set an example. However, in my experience, I find it to be a very inadequate code. I am quite familiar with the problems, because I have worked closely with our tribal court for many years and I am now chairman of the tribal law and order committee.

The code is outmoded. I would judge that it has been on the books for more than 30 years without any substantial revision. Some idea of how outdated this code is, is shown by the provisions relating to operation of vehicles on the highway set out in 25 CFR 11.50 which deals only with reckless driving.

Another idea of how far back in the dark ages this code extends, is demonstrated by the official Bureau forms for bail. I should like to offer a copy of this for the record. Under this form of bail bond, when an Indian acts as bondsman, the bond requires that if the accused does not personally appear, the bondsman agrees to serve a specified number of days in jail "without trial" or pay a specified fine. It is almost unbelievable that a great department of the United States would permit such forms to continue. I do not suppose this penalty provision in the bail bond is frequently enforced. Nevertheless, it is on record and it indicates to me that the Bureau of Indian Affairs has so little concern for our law-and-order problems that it has not bothered in all

these years to overhaul and revise the code and make it a model for the tribes.

I should like to quote from the bail form:

Be it remembered that the undersigned bondsmen upon their word of honor promise and agree that if the above-named defendant fails to appear personally before the above-entitled court on such and such a date to answer to a complaint duly filed against him, and at such other time or times as he may be ordered by the court until final disposition of the case the undersigned bondsmen will serve 90 days in jail without trial, or pay a fine of \$180.

Senator ERVIN. That is certainly out of harmony with anything I ever knew about the law. In other words, the bondsman can only be required to sign the bond and forfeit his bond in the event the defendant fails to return. I never heard of any system that put the bondsman in jail.

Mrs. AKERS. We have ask and ask to get this changed. This is just one of the forms.

They are still in effect—I have signed one for several people—and we can't do anything about it. We tell them to strike out that 90 days, and they say, "Well, OK, we won't let them out of jail."

Senator ERVIN. Well, I would certainly hesitate to sign a bond if I had reason to believe that the fellow might trust his two good legs rather than the kind of justice he would get in court.

I certainly agree with you, it should be changed.

Mrs. AKERS. We have so many of these regulations that have been in effect since the days when there was no education, and nobody changes them.

I guess this is the only committee that we can come to and complain about changing them. How else can we solve our problems when we give a remedy and they won't carry it through? Whose fault is it? I don't feel that it is our fault.

Senator ERVIN. You certainly can't reconcile this form with any conception of justice. The form says he will go to jail without trial, not even have an opportunity to see why the man didn't appear. He might have been arrested and put in jail somewhere else. This really ought to be put into some kind of museum for legal curiosities.

We will put this in the record.

(The document referred to follows:)

EXHIBIT No. 26. FORM FOR BAIL BOND USED IN THE COURTS OF INDIAN OFFENSES

COURT OF INDIAN OFFENSES, ----- JURISDICTION, U.S. INDIAN SERVICE

----- v. -----, Defendant

BOND

Be it remembered, that the undersigned bondsmen upon their word of honor promise and agree:

That if the above-named defendant fails to appear personally before the above entitled court, on the ----- day of -----, 19—, there to answer to a complaint duly filed against him, and at such other time or times as he may be ordered by the Court until final disposition of the case, the undersigned bondsmen will serve 90 days in jail without trial or pay a fine of \$180.

(Signed) -----

(Signed) -----

Signed and agreed to before me this ----- day of -----, 19—.

Judge of the Court of Indian Offenses, ----- Jurisdiction.

Mr. AKERS. We would surely appreciate it, if you would help us get some of these old regulations changed. We could operate better.

How are we going to know what are our civil rights if the Bureau, which is supposed to take care of us, has a staff of attorneys who won't help us?

This is something that we have been talking to them about for 3 years. At least, I know our tribe has.

That is the only statement I had. I would like, as I said, to support the other statements.

Senator ERVIN. We certainly appreciate your being with us today. This should be changed, and any other ideas you may have about changes that should be made, if you will write the committee a letter, we will take it up.

Mrs. AKERS. Yes, I would request that the record be kept open for a written statement that we may present.

Thank you.

Mr. CREECH. Mr. Chairman, we have two other witnesses. Mr. Miller, who has a prepared statement, I believe he has stepped out momentarily, and Mr. Aronow, who was here earlier.

Senator ERVIN. I regret that I was unable to be here when my friend, Chief Saunooke of the Eastern Band of Cherokees, made his statement. I appreciate the comments he made in his statement.

Mr. REAL BIRD. We have Mr. Robert Philbrick, who wishes to make a short statement.

Senator ERVIN. We will be delighted to hear him at this time, while we are waiting on the other witnesses.

STATEMENT OF ROBERT PHILBRICK, CHAIRMAN, CROW CREEK SIOUX TRIBE, FORT THOMPSON, S. DAK.

Mr. PHILBRICK. I will introduce myself as Robert Philbrick, chairman of the Crow Creek Sioux Tribal Council.

I would like to ask, if I may, to have Mr. Burnette come up to help me with this part of the testimony.

Senator ERVIN. That will be fine.

You might state your name and your tribe.

Mr. PHILBRICK. My name is Robert Philbrick and I am with the Crow Creek Tribe.

Mr. CREECH. Are you a member of the tribal council, Mr. Philbrick?

Mr. PHILBRICK. Yes.

I want to bring out to the committee the fact that there is discrimination against Indians in the State of South Dakota.

Now, I shall bring the point to the city of Chamberlain, which is about 20 miles from the Crow Creek Reservation, it is the town where these Indians go to buy their groceries, clothing, and other needs. The next town would be 35 or 40 miles away.

In this town, probably some of the citizens may take drinks, and as a result they get put in jail. I know the city gets all of their city work done by Indian prisoners. I can state as a fact that I was sitting in the police department, last winter, when one of the police commissioners came in and he said, "Well, I think the boys are going to have to get some more Indians in jail, because we need quite a lot of snow moved over there on the north side of town."

He didn't see me sitting behind the door.

Of course, this is just one incident.

We feel that this law can be corrected to a great extent. Some of the other citizens that live there can verify this fact. It makes some of us who go down there to trade feel bad.

We feel that this should be brought to the city's attention.

Just last summer a young man was inside a cafe and some little incident broke out as a result of drinking. I was told he wasn't unruly in any way. I have never known him to be but the policeman hit him with a blackjack on the head. This boy is known to be pretty well and healthy, he has been in the Navy.

As a result, he now has been stricken with some kind of a disease of the spine, or something in his nerves that caused him to lose the use of his arms and legs. He has partial paralysis. He was sent to the Indian hospital at Winnebago, and was under treatment there. I went in and talked to him several times while he was in the hospital. I asked him if it looked like they were going to find out what caused it, and if there was any way of curing it.

At that time, he didn't know, that was about a week ago.

I felt that maybe this boy did get hurt as a result of the blow that he had got. Until that time, he had had no trouble.

Most of us consider ourselves pretty good citizens. We pay some taxes, obey all the laws, try to get along with the businessmen, and live in as nice a way as we can. When we see some of our Indian people get abused like this, we feel that something should be done.

At the present time, in South Dakota, there is a big problem concerning the State taking over jurisdiction on the reservations.

Senator ERVIN. My understanding is the South Dakota Legislature, acting under Public Law 280, have accepted complete jurisdiction over the reservations as well as elsewhere in the State. Is that right?

Mr. PHILBRICK. That is what I am trying to say. It is just in the process of taking this over. We have been working on this for a short time. I would say we didn't have the real committee hearings on it that would have taken them into the reservations and given them a fair chance at this. However, I will say that we are going to still see if something can be done to correct it.

As a result of the State trying to take over this jurisdiction, it is going to cause more serious problems on the reservations, and a hardship to the Indian people.

I know that the percentage of Indian people in the prisons and the reformatories is very large. This is not because the Indians are such bad people. Whenever Indians commit an offense of any kind, whether it requires them to go to prison, they are taken there. They plead guilty and are gone. Whereas a white man is protected. They usually have a court appointed lawyer and he is probably kept from going to jail, prison, or the reformatory.

These things have been going on for several years. This is the reason why they can say there is a large percentage of Indians in the reformatory and the prison.

If the State takes over jurisdiction, they are going to have to build another penitentiary and reformatory. There isn't very much future for the Indian people, we are just at the stage of getting these young people and all the Indians accustomed to some of these State laws.

They only understand tribal law.

Senator ERVIN. I was very impressed this morning by the statement of Mr. Jones. He expressed the opinion that it would be much wiser to approach the solution to this jurisdictional problem gradually, because the Indian on the reservation had been used to having so many of their matters settled according to tribal laws and customs. They are necessarily ignorant of the laws of the State which would become immediately operative all through the reservation if jurisdiction was assumed.

I was very much impressed by his opinion.

I inferred from your statement that you agree that would be a wiser course to pursue rather than taking over complete jurisdiction.

Mr. PHILBRICK. Yes.

Senator ERVIN. I certainly agree with you that all the laws ought to be applied to all the people just alike. That is the main purpose of what we call equal protection under the laws as stated in the 14th amendment.

It is very unjust to judge one man one way by the law and treat him one way by the law and then apply the law in an unequal way to the other. That is certainly inconsistent with the basic philosophy of the law. The laws ought to apply to all people alike.

Mr. PHILBRICK. I want to say this in my closing remarks, we are depending on the Governor of the State of South Dakota to either veto or to try to make some arrangements for a future study of this before he signs it.

I will say, in the event that he signs it, and it becomes law, I am sure your committee is going to have quite a few people here testifying on every reservation in the future if the State does take over.

Senator ERVIN. On behalf of the other members of the subcommittee, I want to thank you for being with us and calling this matter to our attention.

We will take a little recess for a few minutes.

(Brief recess.)

Mr. CREECH. Mr. Chairman, I have the statement of Mr. Arvid Miller, who is Chairman of the Stockbridge-Munsee Indian Community, Bowler, Wis.

Mr. Miller had expected to be a witness today but unfortunately he has been detained.

Senator ERVIN. We will receive the statement as his testimony and have it printed in the record.

(The statement referred to follows:)

STATEMENT OF ARVID E. MILLER, PRESIDENT, STOCKBRIDGE-MUNSEE COMMUNITY, BOWLER, WIS.

I am Arvid Miller, president of the Stockbridge-Munsee Community of Bowler, Wis.

My people are bands of the Mohican Nation originally of the State of New York. We were moved to what is now the State of Wisconsin in the year of 1832.

We occupied two different parcels of land in Wisconsin and did lose our lands base through the Allotment Act.

However, after our plea for lands and a home, as we were homeless and without money, our request was granted and we were given 2,250 acres of Indian Reorganization Act lands under an Executive order and permitted to use 13,077 acres of Farm Security Administration Act lands.

We are organized under the Indian Reorganization Act and did have Bureau of Indian Affairs law and order on the 2,250 acres and semi-State jurisdiction on the

Farm Security Administration lands. This was because no one seemed to exactly know just who properly had jurisdiction.

[This state of affairs continued until Public Law 280 was passed. When this law was supposed to cover our area, it was in effect not entirely clear, nor carried out to the best interests of the Indians concerned.

It is clear to members of my tribe at this time and we should, I feel, be more qualified than any other tribe in Wisconsin because we did live under State law and order between the years 1912 to 1936. However, we lack greatly in the knowledge of State law and order, and I feel that the Congress should, and I would recommend that some manner of law and order instruction be made available to the Indian communities which must now live under Public Law 280.

We have had a recent case of murder of one of our tribal members, he had gone to Milwaukee, Wis., looking for employment, and was to have returned home on September 17, 1962. He failed to return and his bullet-ridden body was found in Dodge County, some 60 miles from the city of Milwaukee while his car was located in Milwaukee.

During the time this boy was missing his father went to the local sheriff's department in our local country of Shawnee and tried in vain to get that office to put out a missing persons bulletin on the boy. The sheriff refused to do this and would only act if the father would sign a complaint charging the boy with stealing a car, as he was driving his brother's car. This the father would not do because his son had not stolen the car.

We feel, therefore, that much valuable time was lost in trying to determine just what happened, the dates being between September 17 and October 6, as the car when found had its tires changed, the new ones taken off and replaced by old ones, and it had been driven approximately 300 miles more than the victim would have driven it and other contents had been removed.

The State officials did some investigating in this case but I do not feel they conducted a proper investigation nor as thoroughly as they would have done had the victim been non-Indian.

At any rate, they seemed to forget about the murder until on the night of January 30, two homes were burned to the ground on our reservation, definitely arson cases. Then our local sheriff made a statement to the press that the arson was definitely associated with the murder case, because some of the suspects in the murder case were relatives of the owners of the homes that were burned.

Knowing that immunity existed in this case, and my sincere belief that the cases were not being properly handled, I called our agency and asked for Bureau of Indian Affairs assistance. Our local agency office contacted our area office and they did send me a special officer of the Bureau of Indian Affairs to assist. He was cooperatively accepted by the local authorities and I worked with him. We uncovered certain facts that the local officials did not, but then we all wondered who had proper authority or jurisdiction in these cases.

I, as an individual, do not blame any individual for not knowing just where the jurisdiction lies; and I would like to ask does this committee, Mr. Chairman, know whether or not the structure of the constitution of the State of Wisconsin permitted the immediate assumption of the law Public Law 280?

At least the special officer of Bureau of Indian Affairs and I were able to stimulate more action in these cases. However, they are awaiting my return for a more vigorous effort in this direction of law enforcement.

Once again I should like to stress the need of Indian education in regard to their constitutional rights.

Thank you.

MR. CREECH. Mr. Chairman, the subcommittee has been apprised of the interest of Mr. Cedor B. Aronow, general counsel for the Blackfeet Tribe, of Browning, Mont.

He is interested in submitting a statement to this subcommittee.

May the record be kept open for his statement?

Senator ERVIN. Yes, we will keep the record open, and if he will forward his statement to the committee, it will be inserted into the record.

(The statement follows:)

STATEMENT OF CEDOR B. ARONOW, GENERAL COUNSEL, BLACKFEET TRIBE, BROWNING, MONT.

My name is Cedor B. Aronow. I reside at Shelby, Mont., where I have practiced law since 1933 and for the past 12 years I have represented the Blackfeet Indian Tribe of the Blackfeet Indian Reservation at Browning, Mont.

I wish to thank the committee for this opportunity to submit a statement and express my thoughts which I hope will be of some aid.

It has been my observation over the years in dealing with Indian people not only Blackfeet but from other tribes as well that Indians generally have no practical understanding of constitutional rights as you and I think of such rights. The concept of constitutional rights is entirely foreign to their way of life. For generations, the Indian has lived under the domination of the Indian Bureau and their regulations appearing in 25 Code of Federal Regulation. These regulations have been changed according to the whims of the Commissioner of Indian Affairs or the Secretary of the Interior and mostly without consultation or consent of the Indians themselves. The Indian has been accustomed to the rules being changed on him in midstream. The Indian for generations has seen the breaking of treaties that were negotiated years ago and the consequent loss of Indian lands. The Indian has been pushed around by the non-Indian livestock operator and by vested interests who coveted the Indians' land and natural resources as well as sportsmen's groups that wanted to share in the fishing and hunting on Indian reservations.

There has been bred into the Indian through generations of experience, the fact that the white man has a position of dominance over the Indian and anyone with a badge of authority, whether it be rightfully assumed or not, is nearly always the final word insofar as the Indian is concerned.

To illustrate the above, I would like to mention two or three criminal cases in matters in which I was involved in behalf of Indians. There is an old Indian about 60 years old by the name of Joe Newbreast who is nearly blind and wears very thick glasses. Joe was a janitor at the tribal council meeting rooms and that is the way I became acquainted with him. Mr. Newbreast has an allotment of land on the reservation which he leases out to a white man through the Indian Bureau. Joe came to Shelby to see his lessee and while in Shelby, Joe had a few beers and became confused. He was picked up by the police and lodged in jail and the eager young county attorney that we had in Shelby at that time, about 2½ to 3 years ago, had an information prepared charging Joe with burglary and had Joe talked into pleading guilty. On the way out of the jail and through the sheriff's office on his way to the courthouse, Joe remembered that he knew me and that I lived in Shelby and he asked the deputy sheriff, who luckily happened to be a good friend of mine, to call me in his behalf. When the deputy sheriff told me of the problem and that Joe was going to go up and plead guilty, I dropped everything in the office, rushed over to the jail, talked to Joe, and suggested to the county attorney that we delay this thing while I have an opportunity to look into it. I looked into the matter and 2½ days later after I had investigated carefully, I determined that the county attorney could not successfully prosecute Joe Newbreast and could not get a conviction and I was able to convince him of this and the charges were dismissed and I sent Joe on home to Browning some 60 miles west of Shelby. Joe, although not guilty of any crime whatsoever, was perfectly willing and agreeable to go up to the courthouse and plead guilty to a charge of burglary and be incarcerated in the State penitentiary at Deer Lake, Mont., and this was because the county attorney told him that he didn't stand a chance and that he was guilty and that this is what he must do. Luckily, Joe knew me and I happened to be in town and by a string of fortunate coincidences, the message came through to me and I was able to protect Joe's rights. If this had not happened the way it did, Joe Newbreast would still be in the State prison at Deer Lodge, Mont., for no reason whatsoever.

Another case which came to my attention about 3 years ago was of a young Indian by the name of Kelly La Plante who was about 21 or 22 years old. Kelly had participated in the Golden Gloves boxing and was in the State finals. He had been attending the College of Great Falls at Great Falls, Mont., and had been there, I believe, about a year. Just before school started in the fall, Kelly was out for the evening with a white man who was employed by the Park Service

in Glacier Park and they went to one or two taverns and had a few drinks and got into a controversy which was not Kelly's fault. The white man called him an Indian half-breed in a rather uncomplimentary manner and they fought. It was a fair fight and Kelly whipped the white man but in return Kelly La Plante had a few lumps on his head also. An eager FBI agent at Cut Bank, Mont., got a hold of this situation and either upon the complaint of the white man, after school started, came down to the college at Great Falls and arrested Kelly La Plante about noontime on the campus, in front of all of the students, handcuffed him and took him to jail. Kelly was ready to plead guilty but his parents engaged the services of a lawyer in Cut Bank by the name of John P. Moore. Mr. Moore investigated the case and then came to me to see if I could not prevail upon the tribal council to authorize me to do something to assist Kelly La Plante. We decided in our minds from our investigation that this was a case of third degree or simple assault and was a misdemeanor properly triable in the tribal court. The council agreed with me so we filed a complaint against Kelly La Plante in the tribal court to which complaint Kelly pled guilty and paid a \$25 fine. Kelly was perfectly willing to go down to the Federal court and plead guilty when the charge was filed in the U.S. district court. Mr. Moore and I would not allow him to do this and we plead double jeopardy in the U.S. district court as the tribal court had concurrent jurisdiction with the Federal court and the U.S. district judge, the Honorable William J. Jamerson, held with us and the charge against Kelly La Plante was dismissed over the violent objections of this FBI agent and the U.S. attorney at that time in Montana.

The third instance occurred in Kalispell, Mont., where a young man from the Blackfeet Reservation, who was working over in the Kalispell country, was picked up on a charge of receiving stolen property. He was held in the county jail for some 2 to 2½ months. His father was an elderly rancher, went over to Kalispell to see his son in jail and talked to the county attorney and when Mr. Carlson suggested to the county attorney that he, Mr. Carlson, would get the tribal attorney, Mr. Aronow at Shelby to look into this matter, the county attorney at Kalispell replied that the Carlson boy didn't need any attorney and there was no use, and they had the goods on him and that was it. The father did not come to me but he did prevail upon his boy not to plead guilty and eventually after some 2 months or more of incarceration, the charge was dropped and the Carlson boy was turned loose. Luckily, this county attorney who did not like Indians and treated them in such a fashion was defeated at the polls at the last election last November.

I could go on at great length and recite innumerable cases where Indians do not know what their rights are or how to protect them and are afraid to consult a lawyer or do anything about it when in custody of someone apparently in a position of authority and control.

In the early part of February of this year, we had a hearing before the Montana Legislature Judiciary Committee of the State Senate in opposition to a bill to extend State jurisdiction to Indian reservations in Montana. I would like to quote from the testimony of Walter S. Wetzel, chairman of the Blackfeet tribal business council who is also the president of the National Congress of American Indians. Mr. Wetzel said at the legislative hearing:

"On the Blackfeet Indian Reservation we have approximately 6,500 enrolled members of the tribe. Out of this membership approximately 10 percent or 650 people speak no or very little English and understand very little English. They are unable to express themselves in the English language. They have no understanding of due process or the form of government under which most Indians live. Not having the basic understanding, they are also unable to understand the meaning of an accusation of alleged wrongdoing and how to defend themselves. They have a feeling of inferiority and are afraid of the white man's courts and police and because of such feeling and lack of education, they are afraid to proclaim their innocence or deny anything said to them by a white man in a position of authority. Insofar as petty offenses are concerned and with the prejudice existing in many of the justice courts, this large segment of approximately half of the Blackfeet people would be wholly and entirely helpless and do not even know their rights let alone how to defend them. The Blackfeet Tribe now provides seven tribal policemen on the reservation who work closely with the Browning city police who are mostly Indians and with the Glacier County law enforcement officers. The tribe shares the cost of maintaining a police radio with the city of Browning and Glacier County. The Blackfeet Tribe provides three tribal courts and judges in different areas of the reservation

and the Indian Bureau provides one trained special officer who works closely with the tribal police and the FBI when necessary. Admittantly law and order is not perfect on the Blackfeet Reservation but steady progress is being made with experience and the training of personnel. Even in the tribal courts some of the Indians appearing have to have an interpreter or the tribal judge and the tribal police must explain and talk with the defendant in the Blackfeet language and then in many instances the individual Indian would rather than make a defense for himself, throw himself upon the mercy of the tribal court."

I am happy to report to this committee that we were able to defeat the State jurisdiction bill in the State Senate of Montana.

In Montana the sportsmen's groups have been eyeing the fishing and hunting on the Blackfeet Reservation and wishing to take it over for themselves and deprive the Indian of his treaty rights. We have had a concentrated drive by the State Fish and Game Commission of Montana to take over the conservation of fish and game on the Blackfeet Indian Reservation. So far the Blackfeet Tribe has resisted valiantly and we may have to go to court eventually.

The anthropology class at the College of Great Falls at Great Falls, Mont., did some research for the State civil rights commission, particularly on welfare, and I would like to attach a copy of their report to my testimony as I think the information on the extreme poverty in which Indians live would be interesting to the committee and would also help explain some of the Indians' attitude of hopelessness where he does not have a concept of constitutional rights as I have related heretofore. One of the young ladies of the anthropology class testified and I would like to quote her testimony appearing on pages 5 and 6 of the College of Great Falls' report.

"The weather was cold and windy on the day that several anthropology and sociology students made the trip to Sun River area near Great Falls. The main purpose was to distribute clothing and blankets to many families of Blackfeet and Cree Indians who were picking potatoes there. They had come to Great Falls on the previous weekend to make their camping needs known. They planned to work in the fields for 2 more weeks and then return to their reservation homes along the Hi-Line in Montana. The students wished to observe the working conditions of the Montana Indians and to become acquainted with their problems.

"When we arrived in the camping area, the first thing we noticed was that many of the children were running around without coats or hats. These children seemed quite happy playing with bows and arrows which they had made from branches of nearby trees.

"The Indians had set up ragged tents and cooked on tiny stoves; some were oil stoves and some were inverted corrugated tubs. There was no evidence of food, and the tents were set on the damp ground. In several of the tents were small babies sitting on mattresses on the ground. One baby in a hammock seemed very sick. Flies were present in great numbers in most of the tents, although these were quite neat, in spite of circumstances.

"The women who were not in the fields seemed glad to receive the blankets and clothing. But in general, their attitude was one of apathy. They seemed "beat," as we say, by their appalling living conditions. The enthusiasm present in the eyes of the children was absent in the eyes of the adults.

"In the potato fields, both children and adults were working. One old grandmother was picking potatoes along with her grandchildren. After talking with some of the workers, we left the field because the wind was blowing hard up there on the bench. The Indians, who were not bundled up as we were—some picking in their shirtsleeves—remained in the field doing stoop labor for little gain.

"We hoped that the wages they would receive at the end of the harvest would help with the clothing problems of the winter, even at 6 cents a bushel sack. However, since October, letters and reports have been coming in with evidence of unsolved needs. There has been an unexplained delay of welfare programs, on the Blackfeet Reservation (Glacier County) particularly." (This full report is retained in the subcommittee's file.)

To understand the Indian one has to spend some time with them and be mindful of the circumstances and conditions under which he lives and his background, in particular, his dealings with the white man. Because of this background, the Indian is unable to comprehend the concepts of constitutional rights that we as a more affluent members of our society have ingrained and instilled in us from childhood and all the way through school. Because the Indian has been accustomed, for generations, of having no appeals or manner of review of decisions

of the superintendent of his reservation or other government employees, except by a method that is beyond the means of most Indians to employ and beyond their comprehension, they accept their lot and do not complain too loudly or to too many people and have a natural reluctance to come before people of authority with their personal problems. As Miss Patton so aptly said:

"The enthusiasm present in the eyes of the children was absent in the eyes of the adults."

Thank you.

Mr. CREECH. Mr. Chairman, this concludes our list of witnesses for this afternoon.

Senator ERVIN. I want to thank all of you for being here and express the hope that, as a result of the information we have received in this hearing and previous hearings, we will be able to come up with some recommendations to cure some of the situations which certainly ought not to be allowed to continue.

The committee stands adjourned, subject to the call of the Chair.

(Whereupon, at 3:20 p.m., the subcommittee adjourned, subject to the call of the Chair.)



