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# INDIAN JUDGMENT FUNDS DISTRIBUTION ACT OF 1973

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## HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

**S. 1016**

A BILL TO PROVIDE A MORE DEMOCRATIC AND EFFECTIVE  
METHOD FOR THE DISTRIBUTION OF FUNDS APPROPRI-  
ATED BY THE CONGRESS TO PAY CERTAIN JUDGMENTS OF  
THE INDIAN CLAIMS COMMISSION AND THE COURT OF  
CLAIMS, AND FOR OTHER PURPOSES

APRIL 13, 1973



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(II)



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## ATKA 195

The first of the two main groups of the  
population of the Atka Islands is the  
group of the Atka Islands proper, which  
includes the islands of Atka, Agassiz, and  
Admiral. The second group is the group of  
the outer islands, which includes the islands of  
Admiral, Agassiz, and Atka. The population of  
the Atka Islands proper is estimated to be  
about 1,000, while the population of the outer  
islands is estimated to be about 500.



# INDIAN JUDGMENT FUNDS DISTRIBUTION ACT OF 1973

FRIDAY, APRIL 13, 1973

U.S. SENATE,  
SUBCOMMITTEE ON INDIAN AFFAIRS,  
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,  
*Washington, D.C.*

The subcommittee met at 9 a.m., in room 3110, Dirksen Office Building, Hon. James Abourezk, chairman, presiding.

Present: Senators Abourezk [presiding], Fannin, and Hansen.

Also present: Jerry T. Verkler, staff director; Forrest J. Gerard, professional staff member; Harrison Loesch, minority counsel; and W. O. Craft, Jr., deputy minority counsel.

Senator ABOUREZK. The Senate Indian Affairs Subcommittee meeting is in order.

I would like to ask the Department witnesses to be seated at the witness table.

Mr. KYL. Well, we can bring the whole crew, sir, if that is fine by you.

## OPENING STATEMENT OF HON. JAMES ABOUREZK, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator ABOUREZK. This is an open public hearing to take testimony from public and private witnesses on S. 1016, the "Indian Judgment Funds Distribution Act of 1973."

The proposed measure offers an alternative method for the processing of numerous judgment awards made to Indian tribal groups by the Indian Claims Commission or the U.S. Court of Claims.

These payments, for the most part, represent initial and additional compensation to the tribal groups for land sold or taken by the Federal Government in the past at prices considered to be grossly inequitable in relation to the value of the land.

Under current congressional policy, authorizing legislation must be enacted into law to provide for the disposition of each award.

This policy served a useful purpose in the past, but now imposes an undue burden on the Senate Interior and Insular Affairs Committee and limits the committee's capacity to address its energies and resources to the substantive issues in the Indian field.

In addition, the sheer volume of Indian judgment legislation which must be processed contributes to an additional delay of the use of judgment funds by the Indian people for constructive purposes.

In this connection, the processing of specific judgment bills during the 92d Congress accounted for 50 percent of the committee's legislative workload on Indian-related matters.

The new approach outlined by S. 1016 will provide a method of oversight by the committee, yet will relieve it of the necessity of having to legislate on all judgment awards, except for the most complicated.

We look forward to hearing from the administration and other witnesses today to hear their views and recommendations with respect to S. 1016.

At this point I shall order that a copy of S. 1016 and administration reports be made a part of the official record.

[The text of S. 1016 and administration reports follow:]



93D CONGRESS  
1ST SESSION

# S. 1016

---

## IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 1973

Mr. JACKSON (for himself and Mr. ABOUREZK) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

---

## A BILL

To provide a more democratic and effective method for the distribution of funds appropriated by the Congress to pay certain judgments of the Indian Claims Commission and the Court of Claims, and for other purposes.

- 1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Indian Judgment Funds  
4       Distribution Act of 1973".

5               STATEMENT OF FINDINGS AND PURPOSE

- 6       SEC. 2. (a) The Congress declares that a new method  
7       of distributing funds of Indian judgments must be estab-  
8       lished as the existing procedures for developing, approving,

1 and enacting a distribution plan for each Indian judgment  
2 are cumbersome and—

3 (1) infringe upon the full and free development of  
4 the unique relationship between the Indian people and  
5 the Federal Government;

6 (2) inhibit democratic and effective expression of  
7 the desires and needs of the Indian people;

8 (3) limit the opportunity for Indian people to par-  
9 ticipate in and exercise effective control over decisions  
10 which determine their economic, social, and cultural  
11 well-being; and

12 (4) reduce the time available to, and limit the  
13 ability of, Congress to effectively investigate and legislate  
14 in the areas of substantive Indian policy.

15 (b) It is the purpose of this Act to declare a policy for  
16 the distribution of judgment funds to Indians; to delegate  
17 certain ministerial functions to, and establish specific guide-  
18 lines and standards to be followed by, the Secretary of the  
19 Interior in the development of plans for the distribution of  
20 such funds; to provide maximum participation to Indian  
21 tribes, bands, groups, pueblos, or communities in determining  
22 the uses to be made of such funds; to protect the interests  
23 of any groups and individuals who are in a minority position  
24 but who are also entitled to receive such funds; to enhance



1 the educational, social, and economic opportunities available  
2 to the Indian people; and to enable the committees of the  
3 Congress to dedicate the time and resources of their members  
4 more fully to substantive policy issues associated with the  
5 historic relationship between the Indian people and the  
6 United States Government and to the improvement of this  
7 relationship.

#### 8 INDIAN JUDGMENTS

9 SEC. 3. Notwithstanding any other provision of law,  
10 from and after the date of enactment of this Act, all distribu-  
11 tions of funds appropriated by the Congress to pay in favor  
12 of Indian tribes, bands, groups, pueblos, or communities  
13 judgments of the Indian Claims Commission and of the  
14 Court of Claims (hereinafter referred to as "Indian judg-  
15 ments" or "Indian judgment") shall be made pursuant to  
16 the provisions of this Act.

#### 17 PLAN FOR DISTRIBUTION OF FUNDS OF INDIAN JUDGMENTS

18 SEC. 4. (a) Within six months after the date of the  
19 appropriation of funds by the Congress to pay each Indian  
20 judgment, the Secretary of the Interior (hereinafter referred  
21 to as the "Secretary") shall prepare and submit to the  
22 Congress a recommended plan for the distribution of such  
23 funds (hereinafter referred to as a "plan") to the Indian  
24 tribe, band, group, pueblo, or community in whose favor

1 such judgment is rendered and such funds appropriated.  
2 The Secretary shall also submit to the Congress with such  
3 plan—

4       (1) copies of the transcripts of hearings held by  
5 him concerning the Indian judgment pursuant to clause  
6 (2) of subsection (c) and all other papers and docu-  
7 ments considered by him in the preparation of such  
8 plan, including any resolution, communication, or sug-  
9 gested distribution plan of the pertinent Indian tribe,  
10 band, group, pueblo, or community submitted pursuant  
11 to clause (1) of subsection (c); and

12       (2) a statement of the extent to which such plan  
13 reflects the desires of the tribe, band, group, pueblo, com-  
14 munity, or individuals who are entitled to such funds,  
15 which statement shall specify the alternatives, if any,  
16 proposed by such tribe, band, group, pueblo, community,  
17 or individuals in lieu of such plan, together with an indi-  
18 cation of the degree of support among the interested  
19 parties for each such alternative.

20       (b) The plan shall be prepared by the Secretary pur-  
21 suant to the provisions of subsections (c) and (d) of this  
22 section and such rules and regulations as the Secretary may  
23 prescribe in accordance with section 7 of this Act.

24       (c) The Secretary shall prepare a plan which shall best  
25 serve the interests of all those individuals entitled to receive



1 the funds of each Indian judgment. Prior to final preparation  
2 of the plan, the Secretary shall—

3 (1) receive and consider any resolution or com-  
4 munication, together with any suggested distribution  
5 plan, which any Indian tribe, band, group, pueblo, or  
6 community in whose favor the Indian judgment is  
7 rendered, may wish to submit to him; and

8 (2) hold a hearing or hearings of record, after  
9 appropriate public notice, to obtain the testimony of  
10 leaders and members of the Indian tribe, band, group,  
11 pueblo, or community and any individual who may re-  
12 ceive any portion, or be affected by the distribution, of  
13 such funds. Such hearing or hearings shall be held in  
14 the area or areas in which such Indian tribe, band,  
15 group, pueblo, or community resides and at a time or  
16 times which shall best serve the convenience of eligible  
17 members thereof;

18 (d) In preparing a plan for the distribution of the funds  
19 of each Indian judgment, the Secretary shall, among other  
20 things, be assured that—

21 (1) legal, financial, and other expertise of the De-  
22 partment of the Interior has been made fully available  
23 in an advisory capacity to the Indian tribe, band, group,  
24 pueblo, or community which is entitled to such funds to  
25 assist it to develop and communicate to the Secretary

1       pursuant to subsection (c) its own suggested plan for  
2       the distribution and use of such funds;

3               (2) the needs and desires of any groups or indi-  
4       viduals who are in a minority position but who are also  
5       entitled to receive such funds have been fully considered;

6               (3) the interests of minors and others legally in-  
7       competent who are entitled to receive any portion of  
8       such funds and such portions as are subsequently dis-  
9       tributed to them are and will be protected and pre-  
10      served;

11              (4) the constitution, bylaws, rules, or procedures  
12      of such Indian tribe, band, group, pueblo, or community  
13      which relate to enrollment, eligibility to share in the  
14      distribution of such funds, and decisionmaking concern-  
15      ing the distribution of such funds accord with the prin-  
16      ciples of due process and equal protection: *Provided*,  
17      That this clause shall not be deemed to authorize the  
18      Secretary to either add persons to or remove persons  
19      from those who are clearly designated as recipients of  
20      such funds in the pertinent Indian judgment or appro-  
21      priation Act;

22              (5) a significant portion, as defined in section 8 of  
23      this Act, of the net distributable funds shall be set aside  
24      and programed to serve common tribal, band, group,  
25      pueblo, or community needs, educational requirements,



1 and such other purposes as the circumstances of the  
2 Indian tribe, band, group, pueblo, or community in  
3 whose favor the judgment is rendered may justify; and

4 (6) methods exist and will be employed to insure  
5 the proper performance of the plan once it becomes  
6 effective pursuant to section 5 of this Act.

7 CONGRESSIONAL REVIEW

8 SEC. 5. (a) Congress shall have sixty calendar days,  
9 exclusive of days when Congress is adjourned or in recess,  
10 from the date of submission of a plan to the Secretary in  
11 order to review such plan.

12 (b) Such plan shall become effective and the distribu-  
13 tion of Indian judgment funds provided for by such plan  
14 shall be made by the Secretary upon the expiration of such  
15 sixty-day period.

16 (c) The full sixty-day period, or any portion thereof,  
17 may be waived by committee resolutions of the Committees  
18 on Interior and Insular Affairs of both the Senate and the  
19 House of Representatives. Such plan shall become effective  
20 and the distribution of such funds shall be made upon the  
21 effective date of the waiver of the committees of the Congress.

22 (d) Such plan shall not become effective and no dis-  
23 tribution of such funds shall be made if, within such sixty-  
24 day period, a committee resolution disapproving such plan  
25 is passed by either House of Congress.

1       (e) Within thirty calendar days of the date of passage  
2 of a committee resolution disapproving a plan, the Secretary  
3 shall propose legislation embodying such plan, together with  
4 whatever changes the Secretary deems appropriate.

5                   PROCEDURES IN ABSENCE OF A PLAN

6       SEC. 6. Whenever the Secretary determines that cir-  
7 cumstances do not permit the preparation of a plan for the  
8 distribution of funds of an Indian judgment which shall meet  
9 the policies or purposes of this Act or the requirements of  
10 section 4 or whenever he shall determine that a plan for the  
11 distribution of such funds reflects a new policy or purpose  
12 not contemplated by this Act, he shall submit to the Congress  
13 his recommendations, either in the form of a report or of  
14 proposed legislation, to effect the distribution of such funds.

15                   RULES AND REGULATIONS

16       SEC. 7. (a) The Secretary shall promulgate rules and  
17 regulations to implement this Act no later than six months  
18 from the date of enactment of this Act. Among other things,  
19 such rules and regulations shall provide for adequate notice  
20 to all persons who may receive funds under any Indian  
21 judgment of all relevant procedures pursuant to this Act  
22 concerning any such judgment.

23       (b) No later than sixty days prior to the promulgation  
24 of such rules and regulations the Secretary shall publish  
25 the proposed rules and regulations in the Federal Register.



1       (c) No later than thirty days prior to the promulga-  
2   tion of such rules and regulations, the Secretary shall pro-  
3   vide, with adequate public notice, the opportunity for hear-  
4   ings on the proposed rules and regulations, once published, to  
5   all interested parties.

6       SEC. 8. For the purposes of clause (5) of subsection  
7   4(c), "significant portion of the net distributable funds"  
8   means a portion of the net distributable funds of an Indian  
9   judgment which shall be no less than 20 per centum unless  
10  otherwise warranted by the particular circumstances of the  
11  pertinent Indian tribe, band, group, pueblo, or community,  
12  or unless otherwise provided for in the pertinent judgment  
13  or appropriation Act.



## United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20460

APR 12 1973

Dear Mr. Chairman:

This responds to your request for the views of this Department on S. 1016, a bill "To provide a more democratic and effective method for the distribution of funds appropriated by the Congress to pay certain judgments of the Indian Claims Commission and the Court of Claims, and for other purposes."

We recommend enactment of this bill, if amended as suggested herein.

The bill provides a new method of disposition of the funds awarded to Indians by the Indian Claims Commission and the Court of Claims. The present procedure involves the development of a separate piece of legislation for each award made. Each of these bills must then proceed through the Congressional process to become law before the disposition can be made. This process has proven time-consuming, especially in those instances when conflicts have arisen as to the proper allocation of the funds that are the subject of the disposition legislation. Over the past few years, the volume of bills to be considered by the Congress has caused delays, not only in consideration of judgment legislation itself but, because of the volume of judgment legislation, in the consideration of other legislation. The new approach outlined by this bill will enable the Congress to oversee the disposition of judgment funds without having to enact a law for each award.

### I. SUMMARY OF BILL

Section 1 of the bill is the citation section. Section 2 sets out a statement of findings and purposes of the legislation.

Section 3 of the bill provides that from and after the date of enactment all dispositions of funds appropriated by the Congress pursuant to judgments made by the Indian Claims Commission or the Court of Claims in favor of Indians shall be made pursuant to the provisions of the bill.

Section 4 sets out the procedures to be used in lieu of the present system of legislation for disposing of funds. The Secretary of the Interior shall, within six months after the appropriation of funds for an Indian judgment, prepare a plan for the distribution of the funds. Such a plan shall be predicated upon full consultation with the Indians involved, including a public hearing, and shall be accompanied by appropriate documents, including a statement delineating the



extent to which the Department's plan differs from the expressed desires of the Indians involved. This section contains guidelines for the formulation of such a plan. Inter alia, the Secretary, in preparing the plan, shall be assured that Departmental resources have been fully made available in an advisory capacity to the involved Indians; that the needs and desires of groups or persons in a minority position among those entitled to receive funds are fully considered; and that a significant portion of the new distributable funds is set aside to be used for the common good of groups involved in the award. (The term "significant portion" is defined in section 8 to be at least 20 percent of the net funds unless special circumstances warrant otherwise.)

Section 5 provides for Congressional review of submitted plans. Congress will have 60 days in which to review a plan, which will automatically become effective at the end of the 60 days if no Congressional action has been taken. On the other hand, a disapproving resolution passed by either House of Congress during the 60-day period shall suffice to render the plan ineffective. Upon the disapproval of any plan, the Secretary shall have 30 days in which to propose legislation embodying that plan, altered as he may see fit.

Section 6 prescribes the procedure to be followed in the event that special circumstances do not permit preparation of a plan. The Secretary may submit either a report or a proposed bill embodying his recommendations to the Congress.

## II. RECOMMENDED AMENDMENTS

Initially, we believe that section 5 as it is presently written raises constitutional questions. To delegate authority to the executive branch to carry out an activity subject to a disapproval conveyed by any means less than a positive act of Congress would constitute, we believe, a violation of the doctrine of separation of powers. More specifically, we cite Article II, section 3, of the United States Constitution, which provides, inter alia, that the President "shall take Care that the Laws be faithfully executed . . ." It is our conviction that the President cannot properly execute this mandate if an executive-branch activity, even one delegated by the Congress, is conditioned upon the disapproval of a single House of Congress, as in section 5 of this bill, thereby eliminating the possibility of Presidential review of this disapproval. This problem can be avoided by reworking section 5 so that only by positively enacting a rejection of the Secretary's plan could Congress override that plan. We recommend that this be done by striking everything in section 5 after subsection (b). We also believe that to specify the term of review provided to Congress in section 5(a) as



"exclusive of days when Congress is adjourned or in recess" unduly complicates the counting of days. Therefore, we recommend that the comma at the end of line 8, page 7, and all of line 9 be stricken.

Section 4(a), which establishes the basic mechanism for handling judgment distributions via Secretarial plan, speaks in terms of funds to be distributed to the Indian tribe, band, group, pueblo, or community "in whose favor such judgment is rendered and such funds appropriated." However, with the exception of a few very early Indian Claims Commission awards, neither the Indian Claims Commission nor the Court of Claims specifies the ultimate or present-day beneficiaries of an award. Furthermore, the appropriation acts covering the awards are silent on the subject of beneficiaries. The burden of identifying beneficiaries has fallen on the Secretary of the Interior, a process that we feel should continue to be followed because of the fact that the identification of beneficiaries often demands intense research in the cultural and political history of the involved group or groups. This is a task that neither the Indian Claims Commission nor the Court of Claims is equipped to handle. As we see it, the Secretary's recommended plan will include a designation of beneficiaries which the Congress may or may not accept. In addition, we would point out that the beneficiaries of an award are often individuals, for example, the persons listed on a given roll. Accordingly, we recommend the deletion, in line 23, page 3 of the term "Indian" and the insertion, in lieu thereof, of the term "Indians and Indian"; also in line 24, page 3, and line 1, page 4, we recommend deletion of the words "in whose favor such judgment is rendered and such funds appropriated." and the insertion, in lieu thereof, of the words "which has been determined by the Secretary to be the present-day beneficiary or beneficiaries of the subject award and entitled to participate in the distribution of the appropriated funds." Similarly, in section 3, line 12, page 3, we recommend deletion of the words "of Indian" and the insertion, in lieu thereof, of the words "of Indians, Indian".

In keeping with the amendment recommended above, we recommend that section 4(c) (1), on lines 3 through 7, page 5, be amended by inserting the word "affected" immediately after the word "any" on line 5, and by deleting the words "in whose favor the judgment is rendered" in lines 6 and 7. Similarly, in section 4(d) (5), we recommend the insertion of the word "affected" immediately before the word "Indian" in line 2, page 7, and the deletion from lines 2 and 3 on the same page, of the words "in whose favor the judgment is rendered".

For the same reason, we recommend the deletion of the proviso to section 4(d) (4) on lines 16 through 21 of page 6. This proviso would bar the Secretary from adding or subtracting persons from those who are designated as recipients of funds in judgments or appropriation Acts. However, as



has been mentioned, the determination of beneficiaries is made by the Secretary of the Interior and the Congress. Thus, this language is not needed and should be deleted. The plan submitted by the Secretary of the Interior will identify the beneficiaries and those persons will receive the funds if the Congress does not disapprove. Likewise, the words "or unless otherwise provided for in the pertinent judgment or appropriation Act" that appear in section 8, lines 12 and 13, of page 9, should be deleted from the bill.

The disposition of judgments affects both entities, particularly modern, organized reservation-based tribes, and individuals. On occasion, local reservation-based communities within a tribe, or group of tribal members in definable locales off a reservation, are interested in programming or other aspects of the disposition of awards. We therefore recommend the insertion of the words "entities and" immediately before the word "individuals" in section 4(c) on line 25, page 4, and to make section 7(a) agree, we recommend the insertion of the words "entities and" immediately before the word "persons" on line 20, page 8.

Because of the fact that many judgments involve entities which are comprised solely of individual descendants, sometimes numbering in the thousands, we respectfully suggest that to guarantee that all individuals' views be heard in public hearings, as section 4(c) (2) contemplates, would be impossible, even with respect to smaller, organized tribes. Certainly, we would make every effort to accommodate as many persons as practicable at such hearings, but we recommend against implying that all persons who present themselves have an ironclad right to testify. (It should be noted, however, that any person who was not able to testify at such a hearing would be welcome to submit his views in writing for the record.) Accordingly, we recommend that the words "and any individual" on line 11, page 5, be deleted.

Section 8 of the bill sets 20 percent as the minimum amount to be withheld from disposition for programming by the affected entities, unless otherwise warranted by the particular circumstances of the tribe or group. The section incorrectly refers to clause 5 of subsection 4(c), when it should refer to clause 5 of subsection 4(d). In addition, our reading of subsection 4(d) prompts us to suggest that the portion of that subsection quoted in section 8 should be shortened to the term "significant portion." We recommend, finally, that the 20 percent minimum percentage be upped to 25 percent. We make this recommendation in view of the severe socio-economic conditions of most Indian tribes and communities and their need to finance meaningful programs. This percentage is flexible in that the Secretary of the Interior can find particular circumstances that would allow him to recommend more or less. This provision also takes into consideration



the fact that in those instances where the award is made in its entirety on a descendancy basis, there will be no programming. It will be our policy in preparing plans pursuant to this legislation, as it has been in the past, to encourage tribes, whenever feasible, to program sufficient portions of judgment funds, up to 100 percent, and to use these funds to initiate and implement the most useful programs and projects possible. Therefore, we recommend that the figure "20" in line 9, page 9, be deleted and the figure "25" be inserted in lieu thereof.

### III. OTHER COMMENTS

While we are not recommending an amendment of the six-month deadline for the submission of distribution plans, we take this opportunity to point out that in some instances the preparation and submission of a plan within the time limit will be extremely difficult. This is caused by the fact that, while judgment awards are handed down at different times during the year, the funds of the awards are appropriated only once or twice per year, thereby bunching the times when the process for the preparation of plans for disposition of funds will begin. While there is some work that can be done prior to the time the funds are appropriated, most of the very tedious work involved in the determination of beneficiaries and the development of formulas for the division of funds, quite often between two or more extremely competitive groups, can only be done after the award is final and the appropriation of the funds has been made. Another area that will consume time is the hearing process, which, however, will be quite useful in establishing the wishes of the recipients of the funds. We are certain that the time limitation can be met, except in a few most difficult cases, where we will not be able to reach agreement with the recipients.

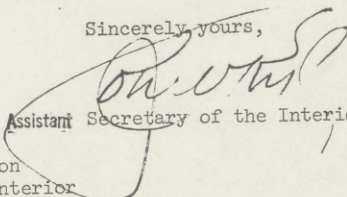
Finally, we question whether the broad sweep of the statement of findings and purposes in section 2 is truly supported by the conversion of the legislative process for the disposition of judgment funds to an administrative process. We think the reasons for the change could be adequately set out in the legislative history. In any event, it would be our understanding that none of



these findings or purposes provides or recognizes any additional rights on behalf of Indians or alters their existing relationship with the Federal government.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

  
Assistant Secretary of the Interior

Honorable Henry M. Jackson  
Chairman, Committee on Interior  
and Insular Affairs  
United States Senate  
Washington, D.C. 20515

Senator ABOUREZK. We have as the first witness, John Kyl, who is with the Department of the Interior, the Legislative Liaison Section. Would you proceed, Mr. Kyl?

**STATEMENT OF HON. JOHN H. KYL, ASSISTANT SECRETARY FOR CONGRESSIONAL AND PUBLIC AFFAIRS, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY WILLIAM L. ROGERS, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS**

Mr. KYL. Thank you, Mr. Chairman.

If it would serve your purpose, we can place the statement in the record. The significant action this morning, I think, is on the number of amendments which we have suggested.

If that be your pleasure, we will proceed in that fashion or would read the statement, whichever you choose.

Senator ABOUREZK. That is fine. If you wish to submit it for the record, it will be printed in full, and we would be happy to proceed right into the questioning.

Mr. KYL. Yes, sir.

Senator ABOUREZK. Mr. Kyl, have you prepared an estimate of the potential number of cash awards that may be awarded to the tribal groups from the 223 dockets currently under litigation before the Indian Claims Commission?

Mr. KYL. Mr. Chairman, the only answer which I can give you, which be substantive, would be that which is derived from the House hearings on the expert witness testimony at that time given by the Indian Claims Commission.

At that time, Mr. Kuykendall reported that most of those awards which were pending, quite obviously would be made. As I understand it, there were some 250 dockets remaining on the schedule.

They may be combined, there may be some reorganization of the dockets, but it is very obvious that the workload which remains is a very heavy one; and since the Congress has decided that that Commission now has a termination date, the workload will quite obviously be heavier than it has been at any period in the past.

Senator ABOUREZK. Can you provide us with an estimate?

Mr. KYL. Of the number of cases?

Senator ABOUREZK. Of the cash awards.

Mr. KYL. There is no way that we could anticipate that because it does depend on action of the Claims Commission, Mr. Chairman. But as I say, there are listed, certainly more than 200 possibilities.

Senator ABOUREZK. Aside from the substantive amendment proposed to section 5 of S. 1016, your report suggests several technical amendments as well, and I would like you to explain if you would, the purpose of each of those amendments.

Mr. KYL. Yes, sir.

On page 1 of the report, we have a brief summary of the bill, and then on page 2, we have the recommended amendments listed so that you might follow with us.

In section 5—do you want to skip that section 5 amendment at this point, Senator?



Senator ABOUREZK. Well, we will want to take it up. Are you intending to come back to it?

Mr. KYL. I can start with that one if you like, sir.

Senator ABOUREZK. Why don't you go to the technical amendments, John, and we will come back to section 5, as I expect that it will require some discussion.

Mr. KYL. Section 4(a), which establishes the basic mechanism for handling judgment distributions, by way of the Secretary's plan, speaks in terms of funds to be distributed "to the Indian tribe, band, group, pueblo, or community in whose favor such judgment is rendered and such funds appropriated."

However, with the exception of a very few earlier Indian Claims Commission awards, neither the Indian Claims Commission nor the Court of Claims specifies the ultimate or present-day beneficiaries of the award.

Furthermore, the Appropriation Acts covering the awards are silent on the subject of beneficiaries. The burden of identifying beneficiaries has fallen in the past on the Secretary of the Interior, a process that we feel should continue to be followed because of the fact that the identification of beneficiaries often demands very intensive research in the cultural and political history of the involved group or groups.

This is a task that neither the Indian Claims Commission nor the Court of Claims is equipped to handle. As we see it, therefore, the Secretary's recommended plan will include a designation of beneficiaries which the Congress may or may not accept.

In addition, we will point out that the beneficiaries in the award are often individuals; for example, the persons listed on a given roll. Accordingly, we recommend the deletion in line 23, page 3, of the term "Indian," and the insertion in lieu thereof of the term "Indians and Indian."

That is to take care of the individuals who are involved.

Also, in line 24, page 3, and line 1, page 4, we recommend deletion of the words "in whose favor such judgment is rendered, and such funds appropriated," and the insertion in lieu thereof of the words "which has been determined by the Secretary to be the present-day beneficiary or beneficiaries of the subject award, and entitled to participate in the distribution of the appropriated funds."

Similarly, in section 3, line 12, page 3, we recommend deletion of the words "of Indian," and the insertion in lieu thereof of the words "of Indians, Indian." That is the first set of technical amendments.

Now, in keeping with those amendments previously recommended, we suggest that section 4(c)(1) on lines 3 through 7, page 5, be amended by inserting the word "affected" immediately after the word "any" on line 5, and by deleting the words "in whose favor the judgment is rendered" in lines 6 and 7.

Similarly, in section 4(d)(5), we recommend insertion of the word "affected" immediately before the word "Indian" in line 2, page 7, and the deletion from lines 2 and 3 on the same page of the words "in whose favor the judgment is rendered."

For the same reason, we recommend the deletion of the proviso to section 4(d)(4) on lines 16 through 21 of page 6. This proviso would bar the Secretary from adding or subtracting persons from those who



are designed as recipients of funds in judgments or Appropriation Acts.

However, as has been mentioned before, the determination of beneficiaries is made by the Secretary of the Interior and the Congress. Thus, this language is not needed and therefore should be deleted.

The plan submitted by the Secretary of the Interior will identify the beneficiaries, and those persons will receive the funds if the Congress does not disapprove.

Likewise, the words "or unless otherwise provided for in the pertinent judgment or Appropriation Act," which appears in section 8, lines 12 and 13 of page 9, should be deleted from the bill.

The disposition of judgments affects both entities, particularly modern organized reservation-based tribes, and individuals. On occasion local reservation-based communities within a tribe, or a group of tribal members in definable locales off a reservation are interested in programming or other aspects of the disposition of awards.

We therefore recommend the insertion of the words "entities and" immediately before the word "individuals" in section 4(c) on line 25, page 4. And, to make section 7(a) agree, we recommend the insertion of the words "entities and" immediately before the word "persons" on line 20, page 8.

Because of the fact that many judgments involve entities which are comprised solely of individual descendants, sometimes numbering in the thousands, we respectfully suggest that to guarantee that all individuals' views be heard in public hearings, as section 4(c)(2) contemplates, would be impossible, even with respect to smaller organized tribes. Certainly we would make every effort to accommodate as many persons as practical at such hearings, but we recommend against implying that all persons who present themselves have earned that right to testify.

It should be noted, however, that any person who has not been able to testify at such a hearing would be welcome to submit his views in writing for the record. Accordingly we recommend that the words "and any individual" on line 11, page 5, be deleted.

And, I repeat again, this is not to keep people from testifying, or to make their desires known, but it is probable that we could end up with thousands of individuals wanting to testify at a particular hearing.

Section 8 of the bill assessed 20 percent as the minimum amount to be withheld from disposition for programming by the affected entities, unless otherwise warranted by the particular circumstances of the tribal group.

Incidentally, the section incorrectly refers to clause 5 of subsection 4(c), when it should refer to clause 5 of subsection 4(d). That is a little typo error.

In addition, our reading of subsection 4(d) prompts us to suggest that the portion of that subsection quoted in section 8 should be shortened to the term "significant portion."

We recommend finally that the 20 percent minimum percentage be increased to 25 percent. We make this recommendation in view of the severe social economic conditions of most Indian tribes and communities, and therefore, their need to finance many more programs.



This percentage is flexible in that the Secretary of the Interior can find particular circumstances that would allow him to recommend more or less. This provision also takes into consideration the fact that in those instances where the award is made in its entirety on a descendancy basis, there will be no programing, none whatsoever.

It will be our policy in preparing plans pursuant to this legislation, as it has been in the past, to encourage tribes, whenever feasible, to program sufficient portions of judgment funds up to 100 percent, and to use those funds to initiate and implement the most useful programs and projects possible.

Therefore, we recommend, as I say, that the figures "20" in line 9, page 9, be deleted, and the figure "25" be inserted therein.

I think that in addition to the amendments, Mr. Chairman, it would be worthwhile to point out some potential problems here.

We are not recommending an amendment of the 6-month deadline for the submission of distribution plans, but we would like to take this opportunity to point out that in some instances the preparation and submission of a plan within the time limit will be extremely difficult.

This is caused by the fact that while judgment awards are handed down at different times during the year, the funds for the awards are appropriated only once or twice a year, thereby bunching the times when the process for the preparation of plans for disposition of funds will begin.

And, as I mentioned, in giving you a partial answer to your previous question, we expect that this workload will increase because of the setting of the deadline for the operation of the Commission.

Senator ABOUREZK. Excuse me.

Would you recommend the 6-month time period to start at the time the judgment award is made by the court of claims or the Indian Claims Commission, rather than the time of appropriation?

Mr. KYL. My response would be that that would shorten rather than provide a longer period for the consideration, and the time that is expended is not predicated in anyway on trying to make the job easier; it is simply the fact that in equity treatment of the Indians, when you consider all of the rolls, all of the individual cases, and all of the hearings that are involved, plus the fact that we bunch these in 6-month periods, sometimes once a year, and then add the fact that we will probably have a heavy workload in the future, the 6-month period is going to be extremely difficult. And I think another reason we mention it at this point, I think the Senate and the House ought to know that it is possible that if the Indian Claims Commission could complete its work in this time frame, and we get all these additional cases, it may be necessary to employ additional individuals in the Department to help do all this work.

You see, there are hearings in the field involved, and interpretation of reports, and so on.

Senator ABOUREZK. I can understand, I think you brought up an excellent point. And, I wonder if we might try to get another suggestion considered by the Department. What if there were a provision or an amendment provided in this bill that would provide for the Department, in the event they need additional time, to come to the



committee with justification for extending the 6-month time period. I think you understand what we are trying to do. I am sure we understand what you are trying to do, so can we accommodate it that way.

Mr. KYL. We would be happy for any accommodation which the committee would provide, sir, any form that you would like to have it take.

Senator ABOUREZK. I believe the Department should be required to submit a written request to the committee, and I would imagine that the House would want that same justification. The House and Senate committees could then take immediate action.

If that recommendation is satisfactory to you we will work on something like that.

Mr. KYL. One of the staff just handed me a note, Mr. Chairman. If the time is set from the date of an award, it could be possible that the plan for the distribution could be submitted before the appropriation of funds is made, if that would meet your needs, too.

Senator ABOUREZK. That is true.

Mr. KYL. We could work from that opposite end.

Senator ABOUREZK. We can leave it until after the money is appropriated, but if there is to be an extension I think it would be a good idea to have a justification so that the people you have running that program in the Department will not become dilatory.

Excuse me for interrupting.

Mr. KYL. No, that completes the——

Senator ABOUREZK. Is that the last amendment?

Mr. KYL. I would like to add one additional comment. At the beginning of your bill you have a "Statement of Findings and Purposes." And, while we offer no amendments on that, I would hope that the committee members would take a good look to make sure that there are in this section on "Findings," no new relationships of substance created in a statutory fashion by the "Findings."

Senator ABOUREZK. We thank you.

Now, if you want to turn to the amendment that you recommended for section 5, we will go into that at this time.

Mr. KYL. Thank you, Mr. Chairman.

Section 5 as presently written raises constitutional questions. Now, as I discuss this matter with you, I would like to do so in this context.

I think maybe the committee is as interested in a second matter as it is in the pure constitutional issue, whatever that might be. With the kind of procedures suggested in the bill, I think it might be possible to have some problems develop for which there really is no solution. In other words, I don't think it is a really clean process, and perhaps that is the approach the committee might want to take in considering this.

But, to get to that constitutional matter, to condition the delegation of authority to the executive branch on a disapproval conveyed by any means less than a positive act of Congress would constitute, we believe, a violation of the doctrine of separation of powers. Of course we recite article 2, section 3, U.S. Constitution, which provides among other things that the President shall take care that laws be faithfully executed.

It is our conviction that the President cannot properly execute the mandate if an executive branch activity, even one delegated by the



Congress, is conditioned on the disapproval of a single House of the Congress as in section 5 of this bill, thereby eliminating the possibility—

Senator FANNIN. What was the last item that you referred to? I know you are on section 5, but what was the last item?

Mr. KYL. Did you want me to reread, Senator Fannin?

Senator FANNIN. Yes.

Mr. KYL. It is our conviction that the President cannot properly execute this mandate if an executive branch activity, even one delegated by the Congress, is conditioned upon the disapproval of a single House of the Congress as in section 5 of this bill, thereby eliminating the possibility of Presidential review of the disapproval. This problem can be avoided by reworking section 5 so that only by positively enacting a rejection of the Secretary's plan could Congress override that plan.

Our recommendation is that this be done by striking everything in section 5 after subsection (b). We also believe that to specify the term of review provided to Congress in section 5(a) as "exclusive of days when Congress is adjourned or on recess" unduly complicates the counting of days.

Therefore, we recommend that the comma at the end of line 8, page 7, and all of line 9 be stricken.

Now, if the Chairman would desire to go into this matter just a little bit more, this particular issue has been enunciated in the same directions we have this morning, clear back to Madison's time, and by very many presidents from that time to now.

We would willingly stipulate that nothing might ever happen because of the possible complications, but I reiterate that I think we want to make sure that this kind of legislation would not create some problems down the line, for which there is no easy solution.

Senator ABOUREZK. If I understand your objection, it turns primarily on the delegation of a veto to one committee of the Congress.

Mr. KYL. Yes.

Senator ABOUREZK. Isn't it true though, that similar clearance procedures are presently being followed in a number of different programs. For example, the Soil Conservation Service submits watershed projects for subcommittee approval, and the Corps of Engineers is authorized to conduct its feasibility studies by resolutions of the Public Works Committee.

Am I correct in thinking that the constitutionality or unconstitutionality of such clearance procedures has not been challenged or resolved by the courts as of this date?

Mr. KYL. Each statement that you have made is correct.

Senator ABOUREZK. What in your opinion would be the situations in which the procedure could be challenged, and if a challenge was successful, what would be the results in your opinion?

Mr. KYL. I would prefer to have Mr. Drabelle of the Legislative Office respond to that.

Mr. DRABELLE. I suppose the most common example of the way the procedure could be challenged would be where a client was disappointed in the way a decision was worked out and they would go into court and say this was an irregular procedure when the Secretary's plan went into effect because neither of the Houses of Congress did anything about it. They would argue that the whole setup is uncon-



stitutional. And, they would point to the various arguments going back to President Madison, as in Mr. Kyl's testimony.

Senator ABOUREZK. What you are saying in effect is nobody has really challenged these other procedures, but if they did, you think they would stick?

Mr. DRABELLE. I think there is a good chance they would, yes.

Senator ABOUREZK. Do you know what the Leavitt Act is?

Mr. DRABELLE. Offhand, no.

Mr. BRUCE. As you know, Senator, that is the act under which we forgive Indians for debts that they are not able to pay.

The present procedure is that the Secretary prepares the list and submits it to both committees, submits it to Congress and it goes to the Interior Committees in both Houses by December 31 of each year. If the committees do not act to disapprove the action that the Secretary has recommended, that is, the forgiveness of those debts by July 1 of the following year, he then proceeds to forgive them for each of those tribes.

Senator ABOUREZK. Essentially the same procedure.

Mr. KYL. Another case in point, sir.

Senator ABOUREZK. Well, if this bill were enacted into law with the retention of this disputed section 5, would the Department recommend a Presidential veto?

Mr. KYL. I would simply have to go to history on this in responding to your question, sir. The matter has been discussed in at least three instances by the President when he signed bills—when he approved them. There was another case in which there was a veto, but the veto did not turn on the matter of constitutionality. The amount of money involved was the contention. It was mentioned but it was not a point on which that decision to approve or veto turned.

That history I can cite. Of course, I cannot have the prerogative of determining in advance what any Executive might do in the future, and I would not presume to indicate what the court might do if the matter did go to court.

Senator ABOUREZK. Well, I think the point is that the administration had let these other so-called questionable laws stand and nothing has been done about them. Let me just pursue that point just a little further.

For the record I want to state that I feel a little bit uneasy myself about any kind of a law that would require a negative act on the part of Congress to stop something from going through as provided in the Judgment Funds Act. And, I personally am in favor of the Department bringing back within the specified time period a plan for distribution of judgment funds to be affirmatively acted upon by the Congress before it can go into effect.

In other words, the proposed measure in effect transfers the hearing procedure to the Department, which is probably where it ought to be in this case because it does require a considerable amount of time. If you would care to comment on that, please go ahead, but you don't really have to.

Mr. KYL. Yes, sir. I think what might evolve as a result of that kind of process is that the committee, in making its decision, if there is a major disagreement among members of the tribe, might want to



proceed with a full set of hearings as they have in the past. And, I think that the tendency would be to ultimately get back to the same procedure which we have been following, and we would not relieve the Congress of a great deal of the burden of time.

I have this other matter which I mentioned previously. Aside from the constitutional issue, I am contemplating what might have happened in a case which is pending right now in which a distribution goes to three branches of the same tribe.

The members of those three branches have not been able to resolve their difficulties. We are as far from reaching an agreement, a consensus among those people, as we were at the start, in spite of at least two hearings in the Congress.

And, in such a case, I am wondering what would happen if we bring a program to the Congress and say, this is the way the distribution ought to be made, as we have recommended in the past. An appreciable dispute arises among one branch of the three, and the Congressman then says, we can't approve this without going through a hearing process in the Congress, et cetera. So, you send it back to the Secretary for another look, and you get to a situation which you cannot resolve without having the thing going back and forth and Congress ultimately saying, well, we throw up our hands, and we are going to accept the Secretary's recommendation and let it go.

To this point we have not resolved one issue in their particular case, and it is the legislative process involved there in such a difficult situation which bothers me more than the constitutional issue.

The Justice Department said that this is a constitutional issue, and we abide by their judgment of the matter, but there is also inherently this legislative problem. What happens when we get a real honest-to-goodness dispute among three branches of a tribe as to the distribution of funds?

Senator ABOUREZK. Do you have any further comment to make on that?

Mr. KYL. I think that is it, sir.

Senator ABOUREZK. Thank you.

In the past those awards to be shared by two or more tribal groups have proven to be difficult to resolve due to conflicting demands for a portion of the funds. Now, this question relates to what you just talked about. Will S. 1016 be helpful to the Department in achieving an agreement from the tribes on such awards?

Mr. KYL. I think, sir, pragmatically, that would depend on the kind of pressure that one group of Indians could put on the committee of the House or of the Senate.

Getting back to this other case that I mentioned, the Department did make what I thought, and what the gentleman now in the chair of this committee thought, was a recommendation of merit. And, the committee of the House did in fact approve the recommendation of the Secretary, but the matter was never concurred in by the Senate. The problem still exists.

Now, if the attitude of the Congress were, we think that the Secretary has found a legitimate, logical basis for determining this distribution on the basis of some historic role, and if the Congress said, we believe that is a viable solution and we approve it, then of course, it would help. Congress could be relieved of some of its responsibility.



There is in section 6 of the bill, of course, a means of making an ultimate decision.

I want to make one other thing abundantly clear at this point, Mr. Chairman. We in the Department certainly approve, applaud, and desire congressional oversight.

Senator ABOUREZK. That is refreshing to hear. I can understand it, because I, as a former Congressman—you are still pretty sensitive to that kind of thing, I am sure.

Mr. KYL. The gentlemen will remember a year ago when the committee of the House actually removed one of its committee review propositions by its own action, rather than by the request of the administration, on the land use bill.

Senator ABOUREZK. It has been suggested by our legislative counsel that if the sections 5 (b) and (c) on page 7 were stricken in full, and that if the committee resolution talked about on line 24, page 7 were changed to a joint resolution, and the corresponding language were changed on page 8 as well, this change might accomplish the task. Would you care to comment on that? Would you like for me to go through that again?

Mr. KYL. Was your comment directed to a joint resolution or a concurrent resolution?

Senator ABOUREZK. Joint resolution.

Senator HANSEN. Mr. Chairman, would you be kind enough to go through it for me again?

Senator ABOUREZK. Yes, I certainly will.

On page 7, strike in total sections 5(b) and 5(c) on line 24, page 7, strike "committee" and insert "joint" in lieu thereof.

On line 25 strike "either House of," the three words "either House of," on page 8, line 2, strike "committee" and insert "joint" in lieu thereof.

Do you have any comments you would like to make upon that kind of a change?

Mr. KYL. Yes, at first blush, sir, I think that would be fine. I still wonder about the authority of the President under that joint resolution situation. And, at this point I don't know whether you would preserve a Presidential action or whether you wanted a concurrent resolution, or what the Chief Executive's authority would be under that circumstance that you just described.

Senator ABOUREZK. You mean under the joint resolution?

Mr. KYL. Yes.

Senator ABOUREZK. His authority would be the same as any other joint resolution.

Well, it goes into some complicated discussions with the counsel.

Mr. KYL. We are aware of that.

Senator ABOUREZK. We will have to take it up later.

Mr. KYL. The joint resolution does require a Presidential signature?

Senator ABOUREZK. So far as I know, it does. But there is a question and I am just advised by the staff, as to whether we are expanding now on the powers of the Presidency which we can't do here and now. So, if you have comments on it—

Mr. KYL. But that is the exact reason why my answer was no more explicit than it was, because there is a question involved, sir.

Senator ABOUREZK. I have one more question.



There appears to be considerable confusion in the minds of Members of Congress, the Indian people, and the general public concerning the administration's plans for filling the vacant Commissioner's post at the Bureau of Indian Affairs.

Would you care to advise? Is there a lot of confusion in your minds, too?

Mr. KYL. May I confer for 1 moment?

Senator ABOUREZK. Would you advise the committee on how the administration proposes to proceed on this issue?

Mr. KYL. I hope that my dear friend from South Dakota will permit this response.

Senator ABOUREZK. We will give you until 1976.

Mr. KYL. I can only say at this moment, sir, that I am hopeful that the matter will be resolved expeditiously, and soon, and I have some reason to believe that it will. We do have this problem, of course, it has been our desire as expressed in the submission of a piece of legislation to the Congress, that we hire an Assistant Secretary for Indian Affairs, which would in effect give a greater import to the Bureau of Indian Affairs, and a direct line to the Secretary, rather than as a part of some department.

Senator ABOUREZK. I wonder if I might put myself on record with regard to that. I, at this time, personally have no objection to the legislation in question by the administration with regard to creating a new post of Assistant Secretary of Indian Affairs. However, I want to caution the public, and the administration, and my colleagues as well, that many people seem to think that that is going to be a panacea for many of the Indian problems, and I just don't think that is going to be. I just think that it is a paper title and that it doesn't mean much of anything. And we will come to the legislation—I might advise the Department that we will come to it. We have got some other stuff that we think is more significant, more important than we want to do. However, that particular bill will not do anything more than just provide a title. So I would hope that nobody believes that that is going to do anything to take care of what needs to be done.

Mr. KYL. May I respond briefly to that, sir?

Senator ABOUREZK. Sure.

Mr. KYL. We believe that creation of this Assistant Secretary's post will be important in the reorganization in giving a greater import to the activities of the BIA, but we concur entirely that it is not the panacea.

We have submitted a package of six other bills, and in addition to that, we have proposed to use some reorganization of the Department, all of which is directed at trying to solve the very serious problems that we had in the entire field of Indian affairs.

Senator ABOUREZK. Thank you.

Senator FANNIN.

Senator FANNIN. Thank you, Mr. Chairman.

Mr. Secretary, you made some very valuable contributions in your recommendations.

I am concerned, of course, when we talk about termination of the Indian Claims Commission. It is about like talking about termination of a tribe, and I think then we get into a lot of trouble. Accordingly, I am not going to ask you when you think that the Indian Claims Com-



mission will be terminated. Of course, you know that we have the responsibility. It may be a long time in the future. As you explained, there are a number of claims pending. We always get to the point where we say, well now, after this session for the Indian Claims Commission, then it will go to the courts.

I am afraid that we won't be that fortunate, since there are some problems that I think are vital. I agree with you insofar as the additional difficulty provided in section 5 in which authority is delegated to the executive branch to carry on activities subject to disapproval conveyed by any means. Less than a positive act of Congress would constitute, as you state, a violation of the doctrine of the separation of powers. I am really concerned about this. Do you feel that the recommendations you have made now would circumvent that problem?

Mr. KYL. Yes, sir.

Senator FANNIN. In your comments, I was particularly concerned about what you said on the "Statement of Findings and Purposes." You evidently have doubts as to whether or not this is worded in such a way that certain difficulties would be raised. Would you want to elaborate on that?

I think that you said you were concerned that this may be an overstatement.

Mr. KYL. In this case, Senator Fannin, let me express my personal view rather than that of the Justice Department, or the Interior Department, or anyone else.

In the first place, I have a personal obsession against what sometimes is poetry describing the purpose of a bill, and in trying to overplead the case for a piece of legislation. There is a good basic reason for wanting this legislation. We want to expedite the handling of these cases, these dockets, so that the Indians may receive the funds which are coming to them.

And I think that if we just stick to that basic purpose, which is to change the procedure, then we have expressed reason enough for getting the bill passed.

There is always a danger that what we write into what amounts to a preface to a bill, becomes legislative history, it becomes almost the same as though it were statute as approved by the committee, and I think we always have to be careful that that statement of desires does not in fact legislate. In this case, it would be some new relationship between the Federal Government and the Indians, or some new responsibility.

The real reason for the bill is to change the procedure, and that is a worthy enough purpose because the present procedure does burden both the House and the Senate.

Senator FANNIN. Yes, I certainly agree, it is a very awesome procedure, and it not accomplishing the objectives timewise and in many other ways. And I realize a few of the very difficult problems which go beyond what has been mentioned today. When these claims are heard and settled, the followup is just as important as arriving at a just settlement. We know that there are great difficulties with respect to those claims which have been settled and the funds are handled.

Could you just designate in these "Findings and Purposes," the items that specifically concern you, Mr. Secretary?



Mr. KYL. In item No. 1 on page 2, Senator, we have an expression here "infringe upon the full and free development of the unique relationship." That is not a unique relationship, it is a trust relationship under law.

As a matter of fact, in each of these cases I would reiterate that there is a purpose for this bill, which is to change the process, and I think the rest of it there is window dressing, we hope, but it might be more than that.

I have to relate this, too, there is no way of determining what kind of mischief might be done, and I have to go back to a Member of this body, a Member who was here long ago when the presentation of the bill on the floor spent about 2½ hours making sure that the legislative history would be absolutely clear. This gentleman then, shortly afterward became a judge, and one of his first cases involved this piece of legislation, and it was argued that the legislative history said so and so. And, this new judge said, "legislative history be damned, it doesn't amount to a thing, the bill is the bill."

So, you never can anticipate exactly what will be attached.

Senator FANNIN. Well then, if we could have your objections concerning the use, perhaps it covers more than what you think would be proper. What deletions would you recommend? Now, you comment on the unique trust relationship. Would you specify exactly what it is, a trust relationship? I think that is beneficial, now, to know.

Mr. KYL. We believe, sir, that I think item No. 4 "reduce the time available to, and limit the ability of Congress to effectively investigate and legislate in the areas of substantive Indian policy," is the one very significant item. And, it would be our belief that the rest of those are superfluous, and possibly could lead to some mischief.

Senator FANNIN. Well, our whole objective is to simplify the procedures and methods of handling these claims rapidly, orderly, and in proper time. It should not be done hurriedly, but without under delay.

Now, do you have any other suggestions as far as policy is concerned, or purposes?

Mr. KYL. The section on line 15, page 2, Senator, you may desire to alter some language in subparagraph (b) if you do follow through on the clarifying amendments which we have suggested. That would be the only other comment sir.

Senator FANNIN. Very fine. Well, we will go into that. The last item we are discussing was the desire to "as rapidly as possible," in an orderly fashion and in a beneficial way, to increase their participation to a greater extent in their own activities—self-determination as we call it.

You are just recommending the increase from 20 percent to 25 percent for the residual trust funds. Would you feel that as time went along, that this should be increased? In other words, we are not really giving them very much self-determination with either 20 or 25 percent.

Mr. KYL. No, sir; and the problem here is that each case is an individual case. There are some cases, some dockets in which all the recipients are individuals widely scattered where there is no real tribal organization anymore, in which case you almost have to have a per capita distribution.

There are other cases where there are very serious needs, and the tribal area where the majority of the Indians live, there are sanitation



needs, there are education needs, scholarship needs, there are all kinds of needs, and in those cases it would be to the benefit of the Indians, of course, to utilize what funds they have to accomplish tribal purposes, rather than individual purposes. And of course, you also mentioned a very valid point, a followup on these instances.

Senator FANNIN. Well, I wholeheartedly agree. In fact, within my own State we have 16 tribes. Some have progressed quite rapidly and now have leadership undoubtedly handle some of these programs which you mention that are so vitally needed. Others might be lost if we turned them over before they could prepare themselves, which might be sometime in the future.

But, I was just wondering, shouldn't this be our goal?

Mr. KYL. It would be our intent, of course, to use that percentage figure as the minimum guide. I would like at this point, Senator, to have Mr. Feraca respond further to that question. Mr. Feraca is an anthropologist by training, he is in the Tribal Operations Office at the Bureau of Indian Affairs, and I would like to have him respond a little further.

Senator FANNIN. Please, thank you.

Mr. FERACA. My name is Steve Feraca, I am with the Division of Tribal Operations. I would really like to say this, among my duties, among the concerns of the section within tribal operations, is the business of discussing with tribal groups throughout the country the disposition of these funds and the use of these funds.

If I may be permitted on a purely personal basis to say that in time after time, very, very, very often, elected tribal chairmen, members of the councils, and local respected leaders practically implore us to offer a formal guideline in the matter of a percentage that they can speak to their people about for the utilization of the funds. That is a programing percentage.

We have with us here today the attorney for the Fort Berthold Tribes, that is the three affiliated tribes of Fort Berthold, and this is Mr. Jerry Straus. He is sitting behind me.

Mr. Straus will surely be able to bear out that this is quite a case in point, a very current case where Mr. Strauss and I, and other individuals in the Bureau and without the Bureau have been practically begged by the tribal leaders at Fort Berthold to provide a guideline, something that they can offer their people in terms of a programing percentage. And, we in the Bureau, for quite a long time, have been requesting such a guideline.

It is, we think, Mr. Chairman, and Mr. Fannin, very, very important that we have a figure, to offer the tribes a minimal figure. We would like the 25-percent figure. As Mr. Kyl stated just awhile ago, in some instances we speak in terms of 100 percent, that is, in terms of encouraging the tribe to utilize these funds totally for programing purposes. This is a guideline, and if I may repeat, very, very many tribal leaders are very impatient for such guidelines.

Thank you, sir.

Senator FANNIN. Thank you.

I agree with the guideline, but I think we have an obligation to assist the Indian people in every way possible, and at the same time I think that we should look to the future when we can give greater authority.



The fact that a tribe by vote decides that it wants to give their officials certain authority in this fashion. I think we have an opportunity to work toward that end.

I observed on several reservations where it would have been perhaps not beneficial to have disbursed the total settlement where the tribe did not seem to be ready. In fact, we know in some instances in which it could have caused a waste of funds and resulted in a very great injustice to the tribal members. But, I think we must have a goal, if we are going to talk about self-determination.

Mr. KYL. Mr. Chairman and Senator Fannin, if we go back to the original philosophy of the Indian Claims Commission, this was an opportunity to address grievances against tribes, and the application of the Claims Commission was to take care of the tribe which in some way had been inadequately paid by the Federal Government for land, et cetera.

So, you have a basic philosophy which moves in the direction of a program for a tribe. Now, it is not always possible to find the members of the tribe. There is another little technical factor. We have had it in Indian Claims Commission, and also in family plan arrangements, and Mr. Abourezk's own area where if you make a per capita payment, which is above a certain figure, then the State under its welfare laws cuts off certain welfare provisions because the income in this one-time proposition puts the individual above the welfare maximum income limitation.

Most of the time the Interior has been able to work out arrangements with the States, but in the case of Fort Thompson, up in Senator Abourezk's area, we had a family plan which called for a per capita payment. We had a little problem in working with the State because if the money were granted, or if food or clothing were provided, then this interrupted the normal State procedures on welfare. So, they had to have an approved family plan which would improve the status of the Indian without lowering the funds that the indigent would otherwise get from welfare.

Senator FANNIN. I realize that there are many ramifications which cannot be handled. All contingencies can't be covered by legislation. No legislation is perfect. So, we are going to have problems, but I think our goal is to reach for what can best be done to adequately handle the distribution. And, I know that in many cases if we just had an outright provision of the funds to the members of the tribes, it would work a gross injustice on them as time went on because it would not be provided or facilitate the opportunities to go forward. We have even witnessed where certain tribes had been terminated and received funds, are now coming back to us. We can name several instances where it has created a problem rather than solved a problem.

Thank you very much, Mr. Secretary.

Senator ABOUREZK. I have no more questions, Mr. Kyl. I just want to thank you very much for coming up and giving us your views today. And, as chairman of this Indian Affairs Subcommittee, and as a former Member of the House who served 2 years with you, I am very happy to have you working with us in this area.

Mr. KYL. Thank you, sir.

Senator ABOUREZK. Thank you, sir.



[The prepared statement of Mr. Kyl follows:]

PREPARED STATEMENT OF JOHN H. KYL, ASSISTANT SECRETARY FOR CONGRESSIONAL AND PUBLIC AFFAIRS, DEPARTMENT OF THE INTERIOR

S. 1016 provides a new method for disposition of the funds awarded to Indians by the Indian Claims Commission and the Court of Claims in satisfaction of claims made by them against the Federal Government. Present procedure necessitates the development of a separate piece of legislation for each award made. Each of these legislative items must then proceed through the Congressional process to become law before the disposition can be made. This process has proven time-consuming for the Congress, especially the Interior and Insular Affairs Committees.

We recommend enactment of S. 1016, if amended as suggested in our report on S. 1016.

S. 1016, after setting out a statement of findings and purposes for the legislation, provides that from and after the date of its enactment the disposition of all funds appropriated by the Congress pursuant to judgments made by the Indians Claims Commission and the Court of Claims in favor of Indians shall be made pursuant to the provisions of S. 1016.

The bill sets the procedure to be followed in the preparation of a plan of disposition by the Secretary of the Interior and its presentation to the Congress for its consideration. Basically, the bill requires the Secretary, within six months after the appropriation of funds covering the award, and after full consultation, including public hearings with the Indians involved, to submit a plan making disposition of the judgment funds. After the plan has been submitted, the Congress is given 60 days in which to review the plan, which automatically becomes effective if the Congress takes no action during the sixty day review period to disapprove the plan. (The bill sets out the procedure to be followed in the event Congress disapproves the plan. It also sets procedures to be followed in the event the Secretary is not able to develop a plan for the disposition of the funds.)

We believe that this bill, with the amendments we have recommended, will provide a guide to be used by the Department and the Bureau of Indian Affairs in making disposition plans. We know that it will reduce the number of bills that will have to be considered by this Committee and its counterpart in the other House of Congress, giving them more time to consider other legislation of importance to the Indian people.

We strongly support the provision of the bill setting out the consultation process to be followed in the preparation of the disposition plan. The hearings will give us an opportunity to hear and then consider the views of the recipients in preparing the plan for submission to Congress. This consultation process is in keeping with the policy of self-determination set-out in the message on Indians that President Nixon sent the Congress on July 8, 1970.

The guidance furnished by Congress in this bill when coupled with the procedures that will be developed by the Department will provide the basis for cooperation between the recipients and the Bureau in developing disposition plans. This will, in nearly all instances, get the judgment funds in the uses the Indians have for them.

With the exception of one amendment of substance, all of the amendments suggested by the Department in its report are clarifying amendments. Our amendments of substance deals with section 5 which raises constitutional questions by conditioning the delegation of authority to the Executive with a disapproval based on anything less than a positive act of Congress. This process is, in our opinion, a violation of the separation of powers doctrine. We believe that this problem can be eliminated by amending section 5 so that only by enacting a rejection of the Secretary's plan could Congress override that plan. This can be done by striking subsections (b), (c), and (d) of section 5.

This concludes my statement. If you have any questions, we stand ready to respond to them.

Senator ABOUREZK. The next witness will be Jerry Straus of the law firm of Wilkinson, Cragun & Barker. Mr. Straus is here, and I would appreciate it if you would come forward and offer us your testimony.



Mr. Straus, we are very happy to have you here today as a person who has dealt a great deal with the question of Indian judgments and distribution.

In the interest of time, and because we want to proceed to a mark-up session as soon as these hearings are over, you will be entitled to summarize your statement if you would like to, and we will insert the entire statement in the record.

**STATEMENT OF JERRY C. STRAUS, LEGAL COUNSEL TO THE NATIONAL CONGRESS OF AMERICAN INDIANS; ACCOMPANIED BY WEBSTER TWO HAWK, PRESIDENT, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION**

Mr. STRAUS. Thank you, Mr. Chairman, Senator Fannin.

I am here this morning to represent the views of the National Congress of American Indians, the Arapahoe Tribe of the Wind River Reservation, Wyo., the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Mont., the Hoopa Valley Tribe of the Hoopa Valley Reservation, Calif., the Quinault Tribe of the Quinault Reservation, Wash., and the Three Affiliated Tribes of the Fort Berthold Reservation, N. Dak.

All these support the basic plan of this legislation, which would allow judgment fund distribution plans proposed by the Secretary of the Interior to go into effect without their having to go through the normal legislative process as is required in the present law.

I think all agree that the present system is far too time consuming and has led to a lot of unproductive work by all concerned, including the committee staffs of both Houses of Congress, and the Senators and Congressmen concerned.

It seems to us that to allow the plan of this bill to go into effect would free the committees of much of this unproductive work, but still provide a sufficient measure of legislative oversight.

While we support the general aim of this bill, we do believe that the bill should be amended in certain particulars, and these amendments are attached to our written statement.

Senator ABOUREZK. Would you like to discuss those?

Mr. STRAUS. That is what I would like to proceed to.

First, it seems to us that the 6-month period provided for the submission of a plan to Congress may be too short.

It seems to us that the Secretary of the Interior ought to be allowed an extension of time of this period if requested by the Indians concerned, the tribe or organized group, who is the beneficiary of the award.

We don't want the Secretary to become dilatory, and I think in normal circumstances there is no reason why the Secretary shouldn't be able to come up with a plan, within the plan that the bill provides, because there are no reasons, for instance, it seems to me that the Department must wait until the appropriation is made in order to get this process started.

Once the judgment is made, once there has been a final judgment by the Commission or the Court of Claims, at that point it seems to me the Department is on notice that they are going to have to come



up with a plan, and they ought to get the machinery into high gear at that time.

Senator ABOUREZK. What do you think of the idea that was discussed earlier in the hearing this morning, that the 6-month time period will stand in the bill as it already is stated, and if the Department needs more time they should submit a written request to both committees in the House and the Senate to ask for that extension of time, and they will have to justify the extension in their request.

Mr. STRAUS. I think that would be desirable as far as it goes, but I would go one step further. It seems to me that the tribe concerned ought to have the right to have more time if they need it, because of the businesses involved, and very often you are dealing with people who aren't very highly educated, and who are going to take more time to understand what is going on, to organize themselves. I think that if the tribe concerned needs another 6 months, they ought to be definitely entitled to it.

Senator ABOUREZK. Would you recommend, then, that the additional amendment be placed in the bill that would allow for a request for extension by a tribe or its attorneys?

Mr. STRAUS. We have provided language for such an amendment.

Senator FANNIN. Mr. Chairman, wouldn't that be in the orderly process of handling it by the Interior? Wouldn't they go through their regular procedures and make this request of the BIA if they saw fit—that they would make that request of the Congress?

Mr. STRAUS. I think in most instances they would, but it is the concern of our tribal clients that the Interior Department not be in the position where they could cut off the time where a tribe wants more.

In other words, it seems to me that this ought to be a matter of right for the tribe in the rare instance where the Interior Department might not want to go along with the Department's request.

Senator ABOUREZK. Rather than the committees themselves dealing directly with the tribes, what about a provision that would require the Department of the Interior to advance the request made by a tribe to them.

Mr. STRAUS. That would be perfect.

Senator ABOUREZK. Would that satisfy your requirements?

Mr. STRAUS. Yes, it would. And, in addition, and this is a somewhat related point, it is theoretically possible under this bill as drafted, for a plan to go into effect that is contrary to the wishes of the tribe concerned.

It seems to us that where the Department and the tribe cannot come to an agreement on the plan, I think that would be very rare instances. But in those rare instances it seems that the usual legislative processes and the usual procedures that have been in effect, ought to be adhered to, rather than the expeditive procedure offered by this bill.

That kind of an amendment, it seems to us, would not frustrate the basic purpose of this bill, and yet, would not put the Congress in the position of having a plan for judgment distribution rammed down the throat of a tribe against its will. Because even the aims of the Indian Claims Commission Act were to secure justice for the tribe concerned, and if there is an injustice perpetrated, or one imagined in the distribution of the award, that is what frustrates the basic purpose of the act.



So, it seems to us that in those rare instances where there is a disagreement, that the Congress should be asked to go through the process that it presently goes through.

Senator ABOUREZK. Does section 6 on page 8 satisfy that particular requirement?

Mr. STRAUS. Not necessarily, but there again, it is at the discretion of the Secretary. It doesn't give the tribe what we are proposing in effect; it is giving the tribe the right to veto the Secretarial plan because if they don't like it—

Senator ABOUREZK. What about an amendment to this legislation that would require the Secretary to advance to the committees once again any veto on the part of the tribe, so that we would be put on official notice.

I am sure that you understand, Mr. Straus, that if the tribes are unhappy, we want to hear about it directly anyhow, but through some formal notice.

Mr. STRAUS. I think that protection exists really as the bill is drafted, because I think that if a tribe were unhappy with the plan proposed, that it would advise the committee. But again, there is the possibility, I am not saying this is likely to happen, that a plan would go into effect because of the failure to act by one of the committees, that is against the wishes of the tribe concerned, the governing body of the tribe concerned.

We are talking here about organized groups. I think they have a much more difficult situation in the instances with the awards where the awards are made to groups that are not organized, and that creates some special problems.

But, when you have a tribe, it seems to me that in no instance should they be forced to take a plan that they are opposed to, at least without the full consideration of the committee through its usual hearing process, and through full consideration of the Congress.

And that brings me to—I would like to just close by commenting on the amendments suggested by the Department's witnesses to section 5, which I have not had a chance to study this, but I must say that in looking this bill over I did not see the constitutional problem that they posed. I am not saying the matter is free from doubt, but my reaction and the reaction of others in our firm who have looked at this, is not to see this problem. And, perhaps further study would convince us otherwise, but we would be very reluctant to support this bill if that amendment were adopted because it seems to us, it seems to me anyway, that this would give the Secretary of the Interior far more power than he has now, or he ought to have with respect to tribal judgment distribution.

Senator ABOUREZK. If which amendments were adopted?

Mr. STRAUS. If the Department's amendment were adopted so that the Secretary's plan would go in effect unless Congress passed affirmative legislation to reject it.

It seems to us that in almost all instances the plan would go into effect, it would be just too difficult to get the affirmative legislation, and I would be very fearful of giving that much power to the Secretary.

Senator ABOUREZK. Do you have any comment to make on the alternative to the joint resolution that we discussed?



Mr. STRAUS. I don't see where that would be materially different. You still have the problem, you would have to get affirmative action by both Houses of Congress.

Senator ABOUREZK. What would you suggest as an alternative procedure?

Mr. STRAUS. I like it the way it is.

Senator ABOUREZK. You mean the existing legislation?

Mr. STRAUS. The existing bill, I think the plan proposes workable—it provides in most instances—I think there would be encouragement to the tribes and the Department to come up with a plan that they agree upon. I think in most instances you would get resolutions of the committees waiving the time period in order to expedite it. I think it would work. And, I don't see the need, given all the precedents that were mentioned here today, for going to this other procedure. Although I am here today to generally support this legislation, I would certainly not be in a position to say that NCAI and the tribes that I mentioned would support it, if that authority were given to the Secretary.

Senator ABOUREZK. Thank you. Do you have any other comments on the legislation?

I thank you for that recommendation.

Mr. STRAUS. That is all I have.

Senator ABOUREZK. Senator Fannin, do you have any questions?

Senator FANNIN. I would just like to determine your position on the 25 percent that you heard the previous witness—it was 20 percent and the recommendation was to go to 25 percent. Mr. Straus, what is your position?

Mr. STRAUS. That is something that I really can't express an opinion on today, because as far as the opinion of our tribal clients, I haven't consulted with them and I don't know how they would take it.

I think as the bill is drafted now it certainly would be possible to have 25 percent or even a larger percentage in the proper circumstances.

Senator FANNIN. Would you be in favor of just eliminating any stipulation as to the present?

Mr. STRAUS. I see nothing wrong with the 20 percent figure that has been suggested in the bill, which I think follows the percentage that has been used in very many judgment distribution bills, although there are differences and the bill would allow for differences.

Senator FANNIN. Do you see a jeopardy in letting the tribe make a determination?

Mr. STRAUS. Yes, there certainly is some danger in letting the tribe make a determination, but that, of course, is one of the—there is jeopardy in democracy. And, I think they may make the wrong decision but it is their decision.

Senator FANNIN. Well, Mr. Straus, you know, we can't have legislation for the exceptions, we are trying to have legislation to cover the need in the majority of the cases, and that is why it is a question of whether or not it is fair to leave in a certain percentage, or whether we should have the tribes given the prerogative of making that determination.



Mr. STRAUS. As I understand the legislation, the 20-percent figure is a flexible one in that it is a target figure, it is not one that is going to be adhered to in all cases, Senator, certainly the expectation that in individual cases the views of the tribe as to what the percentage should be, would be given very much consideration.

Senator FANNIN. Yes, the statement is no less than 20 percent unless otherwise warranted by the particular circumstances of the pertinent Indian tribe, band, or so forth.

Mr. STRAUS. This at least gives them a target to shoot at, and it really declares what the policy of the committees have been, I think, in most of these bills. It is a kind of a rule of thumb, and as long as it isn't a rigid rule I think it would be acceptable.

Senator FANNIN. Thank you, Mr. Straus. Thank you, Mr. Chairman.

Senator ABOUREZK. Thank you, Mr. Straus.

[The prepared statement of Mr. Straus follows:]

PREPARED STATEMENT OF JERRY C. STRAUS, LEGAL COUNSEL TO NATIONAL  
CONGRESS OF AMERICAN INDIANS

Mr. Chairman, my name is Jerry C. Straus, I am a member of the law firm of Wilkinson, Cragun & Barker. I am appearing here this morning to testify in general support of S. 1016, the Indian Judgment Funds Distribution Act of 1973, on behalf of the National Congress of American Indians, the Arapahoe Tribe of the Wind River Reservation, Wyoming, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, the Hoopa Valley Tribe of the Hoopa Valley Reservation, California, the Quinault Tribe of Quinault Reservation, Washington, and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

We strongly support the basic plan of this bill—to free the Senate Committee on Interior and Insular Affairs from much of the time consuming work it presently does on Indian judgment distribution problems.

Under the present law, every time an Indian tribe obtains a judgment, specific legislation must be obtained authorizing the distribution of that judgment. This process has proved extremely expensive and time consuming for all concerned. We are advised that over half of the time spent by the staff of the Senate Interior and Insular Affairs Committee on Indian problems was devoted to judgment distribution legislation during the past Congress.

As we understand, the provisions of S. 1016 would provide a much more expeditious means of handling judgment distribution problems in the following manner:

One, the Secretary of the Interior would be required to submit a recommended judgment distribution plan within six months following the appropriation of the funds by Congress. Prior to submission of this plan the Secretary would be required to hold a public hearing to obtain the views of the Indian tribe concerned with respect to the distribution in the area or areas in which the Indians concerned reside.

Two, a significant portion of the funds to be distributed would be held available for program purposes and this would ordinarily be required to be at least 20 percent of the total judgment unless particular circumstances of the pertinent tribe dictate a lesser sum.

Three, after a plan is submitted to Congress it would become effective unless disapproved by resolution of either house of Congress within 60 days—the full 60 day period could be waived by committee resolutions of both the Senate and House Interior Committees.

Generally speaking, we believe that the provisions of this bill would be highly beneficial in enabling Indian tribes to secure necessary authorization for the distribution of their judgments much more expeditiously than is possible under present law. More important, it seems to us that it would be advisable to free the Senate and House Interior Committees from the time consuming and often unproductive job of reviewing tribal judgment distribution plans through the usual legislative process.



While we support the general aims of this bill we do believe that the bill should be amended in certain particulars. First, it seems to us that the six month period provided for the submission of a plan to Congress may be too short. It seems to us that the Secretary ought to be allowed an extension of this period if one is requested by the governing body of the tribe concerned. In many instances, the Indian tribe affected will need a great deal of time to formulate its own views on the distribution of its judgment. In some instances delay will be caused by serious enrollment problems or other factors beyond the control of any party.

In addition, it is theoretically possible, under the bill as drafted, for the Secretary of the Interior to submit a plan to Congress for judgment distribution that is not acceptable to the tribe concerned. While we don't think this would happen very often, if at all, we believe that where an Indian tribe and the Secretary are not able to agree upon a judgment distribution plan to submit to Congress, the Secretary's plan should not be put into effect by Congress under the expedited procedure provided by this bill. In this instance the past procedure of requiring specific judgment distribution legislation should be adhered to. A related amendment should provide that waiver of the usual waiting period should not occur unless requested by the tribe concerned and we think the waiting period should be increased to 120 days in order to give the tribe concerned ample time in which to take appropriate action.

We think that these amendments would make sure that Indian tribes are not subjected to arbitrary decisions by the Secretary of the Interior while not seriously interfering with the accomplishment of the basic objectives of the bill.

Attached to this statement are suggested amendments to accomplish these aims.

#### SUGGESTED AMENDMENTS TO S. 1016

1. Sec. 4(a). Add the following after the word "appropriated" on line 1, page 4:

"Provided that upon the request of the governing body of the Indian tribe, band, group, pueblo or community in whose favor the judgment is rendered the submission of a plan to the Congress may be delayed for a period of six months."

2. Change "sixty" to "one hundred twenty" in Sections 5(a) and (b) and delete present Sections 5(c), (d) and (e) and insert the following in lieu thereof:

"(c) The full one hundred twenty day period, or any portion thereof, may be waived by Committee resolutions of the Committees on Interior and Insular Affairs of both the Senate and the House of Representatives upon the request of the governing body of the Indian tribe, band, group, pueblo or community in whose favor the judgment is rendered. Such plan shall become effective and the distribution of such funds shall be made upon the effective date of the waiver of the Committees of the Congress.

"(d) Such plan shall not become effective and no distribution of such funds shall be made if, within such one hundred twenty day period, a Committee resolution disapproving such plan is passed by the governing body of the Indian tribe, band, group, pueblo or community for whose favor the judgment is rendered.

"(e) Within thirty calendar days of the date of passage of a Committee or tribal resolution disapproving a plan as specified in subsection (a), the Secretary shall propose legislation embodying such plan, together with whatever changes the Secretary deems appropriate."

Senator ABOUREZK. Oh, before we adjourn, we are going to mark up. I will just announce that the statement of Webster Two Hawk, president of the National Tribal Chairmen's Association, will be submitted in the record in full.

[The prepared statement of Mr. Two Hawk follows:]

#### PREPARED STATEMENT OF WEBSTER TWO HAWK, PRESIDENT, NATIONAL TRIBAL CHAIRMEN'S ASSOCIATION

Mr. Chairman and members of the Indian Subcommittee, It is a pleasure to appear here and testify in support of S. 1016.

S. 1016 provides a new method of distribution of the funds awarded to Indians and Indian tribes by the Indian Claims Commission and the Court of



Claims in satisfaction of claims made by the Indians against the Federal Government.

The bill, after making a statement of findings and purposes for the legislation, provides that from the date of the bill's enactment, the distribution of all funds appropriated by the Congress as a result of judgments rendered by the Indian Claims Commission or the Court of Claims in favor of Indians shall be made in accordance with the provisions of S. 1016.

This bill outlines the procedure to be followed by the Secretary of the Interior in the preparation of a plan for the distribution of judgment funds and its presentation to the Congress for its consideration. The bill gives the Secretary of the Interior six months after the judgment funds are appropriated by the Congress to consult with the affected tribes and submit a proposed plan to the Congress. After Congress has received the plan, it has sixty days within which to consider the plan, and if it takes no action in that period to disapprove the plan, it becomes final. It also sets a procedure for the Secretary of the Interior to follow if the plan is disapproved by the Congress.

We, as Indian leaders, have encountered many problems connected with the distribution of judgment monies. One of the problems has been that no one knew exactly how to proceed once a judgment was received. This legislation, when coupled with procedures developed by the Department of the Interior, will set out clearly for everyone the steps that need to be taken by a tribe and the Secretary of the Interior in order to prepare a plan of distribution. Further, this procedure will give the tribal groups an incentive to work together and with the Department of the Interior to develop the plan within the six month period.

Another feature of the bill that we like is the provision calling for consultation with the affected tribes, including hearings. This will give us an opportunity as leaders to hear the views of our people and at the same time present our views to the Department of the Interior before a plan is finalized. This is in keeping with the development of self-determination. Another feature that we approve of is the provision that gives Congress an opportunity to take a look at the plan, and turn it down if they find it unsatisfactory. This sixty day period gives everyone involved a chance to take a second look and if serious problems appear, we can report them to our Congressional members so they can take action.

The bill will relieve the Interior and Insular Affairs Committees of a heavy legislative role and will give them more time to conduct oversight investigations and to take action on needed substantive legislation.

In closing, let me once again state our strong support for this bill. Thank you for allowing me to appear here today.

Senator ABOUREZK. The Department of the Interior has requested that the committee make part of the record a letter from the Office of the Attorney General to the Secretary of the Treasury, dated July 19, 1971, and I wish to announce now that the committee wishes to study this document before it is placed in the record. And I just wanted the Interior Department to be notified of that at this time.

[The letter referred to above has been retained in the committee files.]

[Whereupon, the hearing was adjourned.]



