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TRIBAL JUDICIAL REFORM

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SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON

INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

THE NEED FOR INDIAN LAW ENFORCEMENT AND JUDICIAL
REFORM ON INDIAN RESERVATIONS

FEBRUARY 24, 1975

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TRIBAL JUDICIAL REFORM

MONDAY, FEBRUARY 24, 1975

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

The subcommittee met, pursuant to notice, at 10 a.m., in room 3110, Dirksen Office Building, Hon. James Abourezk, presiding.

Present: Senator Abourezk.

Also present: Grenville Garside, special counsel, and staff director; Daniel A. Dreyfus, deputy staff director for legislation; Forrest Gerard, professional staff member; and Harrison Loesch, minority counsel.

Senator ABOUREZK. The Indian Affairs Subcommittee hearings will come to order.

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

This is an open, formal hearing to take testimony from Indians, non-Indians and public officials regarding the need for law enforcement and judicial reform on Indian reservations.

At the outset, I want to assure the Indian people that this hearing, or any subsequent hearing on these issues, is not intended as a covert or overt assault on the inherent sovereignty of Indian tribes. Instead, I am hopeful that you will share my conviction that the time is long overdue for the Congress to undertake an objective and penetrating look at the Federal and tribal law enforcement programs serving the Indian people in reservation areas. In addition, I believe that such an undertaking must also include an analysis of the complex judicial problems that are raised whenever an offense is committed within a reservation. The witnesses today are well aware of the tangled judicial problems that arise in this connection.

Although the scheduled witnesses, except for administration officials, represent Indian and non-Indian interests in South Dakota, it is anticipated that their testimony will reflect the same conditions that exist on Federal Indian reservations elsewhere in the application of law enforcement and justice.

Even a cursory examination of the record is sufficient to be impressed by the law enforcement caseload in the Indian field.

The rate of major crimes on reservations is 1,654 per 100,000 population, compared to 1,085 per 100,000 in rural areas as a whole; the incidence of violent crimes in Indian country out numbers that in rural America by 1,068 to 144 per 100,000 population; and aggravated

assault crimes are nine times as common Indian reservations as in rural America generally. Murders are almost three times as common, and rape, including attempted rape, is almost five times more common on Indian reservations.

During fiscal year 1976, it is estimated that the Bureau of Indian Affairs through its law enforcement program will be required to:

- Investigate 133,000 complaints;
- Respond to 339,000 non-enforcement calls;
- Confine an average of 480 prisoners per day;
- Train 350 police officers; and
- Conduct over 90,000 civil and criminal court cases.

In addition, there are complex jurisdictional issues related to this prospective caseload in determining which court—Federal, State or tribal—should assume jurisdiction over such cases.

This hearing presents an opportunity for all concerned parties to contribute to a more equitable system of law enforcement and justice for Indians and non-Indians residing on Indian reservations.

The first witness this morning scheduled is the Honorable William Janklow, State attorney general, the State of South Dakota. Is Mr. Janklow here?

Apparently not.

Our second witness or panel of witnesses consisting of Mr. Marion Schultz, president of the Civil Liberties for South Dakota, Inc., of Batesland; Mr. Tom Tobin, attorney, Winner, S. Dak., and Mr. Bob Halferty have notified us in advance they will not attend the hearings today.

The third witness will be Mr. Robert Burnette, president of the Rosebud Sioux Tribal Council. We would like to ask if Mr. Burnette is here.

I see he is. Would you please come up and present your testimony? Welcome to the committee.

STATEMENT OF ROBERT BURNETTE, PRESIDENT, ROSEBUD SIOUX TRIBE, ROSEBUD, S. DAK.

Mr. BURNETTE. Thank you, Mr. Chairman. I have a prepared statement which I have submitted to the committee.

Senator ABOUREZK. I have it here. I wonder if you would talk closer into the microphone?

Mr. BURNETTE. I would like to present a few facts about Indian justice.

Senator ABOUREZK. Your statement will be inserted in the record in full. We appreciate it, it looks like a good statement. If you want to go ahead and summarize it and discuss those things you want to discuss, please feel free.

[The prepared statement of Mr. Burnette appears on p. 7.]

Mr. BURNETTE. Thank you. First of all, Mr. Chairman, I would like to say the Governor of the State of South Dakota has done a tremendous job in keeping the peace in South Dakota, in spite of the fact there have been organizations who have been attempting to disrupt the peace in South Dakota, both Indian and non-Indian.

I am very unhappy with the fact that the non-Indians are not here this morning to testify, because I would like to have them on record as to what their feelings really are.

For the record, I would like to state that in Rapid City, S. Dak., there are several witnesses along with myself, I attended a meeting with the Governor of South Dakota, and the Civil Libertarians for South Dakota Citizens, as they call themselves, stated emphatically that they were out to destroy all Indian treaties, to make all Indian people subject to the same laws as everybody else is in this country, without regard to the fact that the Supremacy Clause of the Constitution protects the treaties of the United States, and especially with Indian people.

At this same meeting there were some very derogatory and inflammatory statements made, and the Congress ought to be aware of them. They said they were going to be shooting Indians and Indians would probably shoot them, and so on down the line. It was a very, very terrible kind of statement situation. It wasn't just one man, it was several, including Rick Johnson, attorney for the Rosebud Sioux Tribe, whom I fired the other day because of conflict of interests he has with us and the people he represents otherwise, who made a statement he too was for destroying the treaties and all the laws affecting Indians and putting us under State jurisdiction.

That being as it is, I think that the matter now reflects a great deal on the Attorney General of the State of South Dakota, who is in the position of continuing this inflammatory type of operation in South Dakota between non-Indians and Indians, or making the situation depending on what he is going to do. I doubt if he is going to contribute to the state of peace in South Dakota.

With that, I would like to go to several things hurriedly. No. 1, I think I should state for the record I am strongly in support of any legislation that would repeal Public Law 280 because of its detrimental effect on all Indian tribes across the country. I say that knowing full and well what has been happening in Nebraska, California, Oregon, and all the rest of the States that are subject to this jurisdictional act. I think it should have been repealed—it should have never been enacted. It was the one law signed by President Eisenhower when he said this is a very unchristianlike act, but then signed it.

Senator ABOUREZK. As you know, I introduced the repealer to Public Law 280 last session, and I propose to introduce it again in this Congress. I don't know if you are aware of that. It may be that we will make it a part of the law enforcement legislation. I also have legislation being prepared that will make an effort to define areas of jurisdiction, not land areas, but who has jurisdiction over whom through the several courts of jurisdiction. And we will have hearings on that legislation later on as well as the amendment to Public Law 280. It may be that for purposes of being able to pass all of those bills, we will tie all three together and try to come out with something that will be satisfactory to all parties concerned.

Mr. BURNETTE. I think that is a wonderful idea. I think that I will reserve my judgment of what is introduced though. I don't like to approve or disapprove anything or testify about something without having it before me.

Senator ABOUREZK. I don't know if I will approve it.

Mr. BURNETTE. I am sure you will be very careful in defining that area.

I would like to pass on and say to the committee this feeling of Indian people. You know, for a long time we have been in this country, our neighbors, the white people and black people and everybody else who joined us in this country, have had problems with jurisdiction and always will have; who is who and what is what for the law. I think that is for the courts to decide and that is where it belongs. I have a great deal of trust in our courts, and I think in the end it will definitely come out with the kind of ruling they should.

But in the Indian areas, somehow or other white people who live in and around reservations think they are too good for tribal courts. I think this is a very disastrous kind of feeling they have developed. When I go to Pierre, S. Dak., I am subject to the law in Pierre, S. Dak. And in Washington, D.C., I am subject to the law here. Wherever I go, I am subject to that law. I don't see why there should be any difference between that and when they enter the reservation. They ought to have enough respect for ours and themselves to go along with the kind of law we have in those areas. I can't see any difference. We are subject to the same kind of laws they are subject to constitutionally. We are not going to deny anybody their rights.

I want to say here, that I happen to know there are politics in every court in this country, and there are some politics in tribal courts too. I am not going to deny that. I am not going to tell you a lie, because there are politics in tribal courts, to a certain degree. But I think it is much less than even in the Federal courts.

We have a situation in South Dakota right now where Judge Bogan is attempting to rule on Indian cases after he disqualified himself as a judge on matters dealing with the Black Hills. If he should disqualify himself on the Black Hills matter, he should disqualify himself on all Indian matters because that affects the Sioux Nation entirely. That is the foundation of the Sioux Nation. I think it is a very touchy point and he should take a new look at what he is trying to do as the Federal judge of the court system we honor so greatly.

I would like to say for the record here, so that the committee will know, that we Indian people think that our judges and courts should be backed and supported by the Federal magistrate law, and we have qualified judges who can qualify as Federal magistrates.

The reason I say this, to give you one example, is that we have had cases on Rosebud where we could have acted and stopped all the violence that was building up, had we had a Federal magistrate who is in a position to act. But in some cases up to 20 hours, the FBI never came in to do their job because they were not ordered in by the U.S. Attorney or the people in Minneapolis who control the FBI in our area. So we have had some very terrible situations develop with a lot of people living in fear.

This is what the red neckers in South Dakota are using to try to get at us Indians on jurisdiction. Some of these people are probably worse than those people who are on the extremist side of the Indian movement, and I am talking about AIM on this matter, because they are taking advantage and can sneak around and create all kinds of diversions and fires without taking any blame for it.

There have been a terrible amount of fires on our reservation last summer. We had 37 fires in less than 11 days. We know they were not all Indians, because we can now prove who they were. The only

problem is the U.S. Attorney in South Dakota says arson doesn't affect the haystack. It is only implied to mean a building or structure of some kind. You can't charge a man with arson if he burns a haystack or \$90,000 worth of haystacks. They are not subject to the Federal statute, according to him.

I would like to say one last thing. I am appalled at this kind of decision. The Attorney General of the United States made a ruling last fall that it was not against the law to kidnap an Indian on the reservation. In other words, any Indian or group of Indians can kidnap me or any element of our government and keep them on the reservation without being arrested for it as long as they please. He says the kidnap law, a capital crime, does not apply to Indians on an Indian reservation.

Senator ABOUREZK. Isn't that one of the 13 major crimes?

Mr. BURNETTE. No.

Senator ABOUREZK. Could I ask the Solicitor for the Bureau of Indian Affairs, is kidnapping one of the 13 major crimes?

Mr. REID CHAMBERS. I think it is.

Mr. BURNETTE. It is not. I checked myself to make sure of that. It is not listed as one of the crimes. Arson and incest and all those kinds of things, but not kidnapping. So we had over five kidnappings on our reservation last summer, and without the Federal statute and law, we could not do anything about it. I want to be free of fear. I don't fear so much for myself as I do my family.

I think the Senate and House ought to act very quickly in introducing a law that would make the Federal statute applicable to Indian tribes on Indian reservations, whichever way it has to be, so we can be protected from kidnaping.

In other words, they can kidnap me for 50 days on our reservation and nobody can do anything about it. When you have these kidnappings, it was over 2 days in the first instance before the FBI came to our reservation to see what was happening in that case. I think the Attorney General of the United States ought to reprimand his division for the way they are acting in Indian cases on Indian reservations. Because if they don't act, we are going to have people who are going to act. In fact, if they don't act, I am going to have to act.

This is what caused the Rosebud Sioux Tribe to enact a resolution which it passed into law to take jurisdiction over non-Indians on our reservation, because the FBI and Federal people were not acting in accordance with law. I advised the U.S. attorney of South Dakota if he didn't act, I was going to act. I meant that emphatically. We are not going to have lawbreakers running around Rosebud doing some of the things they have done in the past.

With that, I would like to thank the Senator for all his hard work and for the wonderful things that have been happening in the Indian field in the last few years. We can now talk face to face without having any feelings about racial slurs or whatever. We were always afraid of that during the termination heyday. I would want to speak to the administration in saying that we are thankful that at least we have a little bit of the fear erased from the termination era.

Thank you very much.

Senator ABOUREZK. Thank you. Bob, I am having drafted right now the law enforcement and judicial improvement legislation that is

the subject of these hearings today. Without getting too specific because it is not finished yet, the bill would provide an option for the tribes. I have in mind a pilot program for the tribes in the Great Plains area. I want to get your opinion on it.

The bill would provide an option to tribes to come under this law enforcement program, if they wanted to. It will not compel them to do it; it is not mandatory, but if they choose to come under it, it would provide funds and training for police, good training, and it would pay police adequately and provide sufficient, at least for each reservation, police to do the law enforcement work necessary, especially in an area where you have a great number of poor people, as you do on reservations where crime rates go higher because people are poor.

It is essentially important that happens. Secondly, the judicial improvement will contemplate if the tribes choose to do it that way, go that route, they would receive adequate funding for a law trained judge and also an Indian circuit court of appeal, which would be in a central location in the area. That would provide for an appeal from a tribal court order.

I would just like to know if you have thought about it, to have your opinion. If you have not, you are free to reserve your opinion until you have studied the bill.

Mr. BURNETTE. I have not only thought about it, I have worked for that 15 years. We proposed in Rosebud that the training session like this be brought into the reservation as part of the police program, and we requested the FBI to do the training because they were supposed to be the most highly skilled group in the United States at that time. Their integrity has been somewhat bent, twisted, and defrayed and all that language. But in the case of the judges, we propose that a circuit court be established between us and Pine Ridge, for example, Sline River and Standing Rock, and wherever the tribes are together like that, they can have a circuit court situation, with the judge being paid enough money so he doesn't have to be pushed around by a political situation.

And then also to have the court of appeals located centrally so they could have a manner of appeal. But on to that, one step further than you went, we had requested that if somebody didn't like what was happening in that court of appeals, that it be appealable to the Federal court system. I don't know how that is going to be met by the Justice Department, but I think any and all courts in this country should be subject to appeal through our system that we have.

I think we have the capability, and in some cases, if the tribe doesn't have the expertise and capabilities, they can acquire the capability to hire professional attorneys for the judgeship, as we have done in Rosebud. We have a professional attorney I would place against anybody on any level on the State or National level, and I think he is perfectly capable of making rulings that are justifiable and will not use any political elements to make a decision. This is how the court should operate as much as possible.

Senator ABOUREZK. Thank you very much.

Mr. BURNETTE. Thank you.

[The prepared statement of Mr. Burnette follows:]

STATEMENT OF ROBERT BURNETTE, PRESIDENT, ROSEBUD SIOUX TRIBE,
ROSEBUD, S. DAK.

My name is Robert Burnette. I am the President of the Rosebud Sioux Tribe of Rosebud, South Dakota, which consists of over 10,000 enrolled members who reside in the south central part of the State of South Dakota.

My appearance before this committee is for the purpose of testifying on legislation that has long been needed by Indian people and that is to testify in favor of the repeal of Public Law 280, which was passed during the heyday of the Termination Era in 1953. I offer this testimony in favor of the repeal of Public Law 280 because Public Law 280 has been detrimental to all Indian Tribes across the Nation and has created a fear in the hearts of all Indian people because we are not ready, in any manner—economically, educationally or socially—for the day when we are subject to the State Laws of the United States. I say this by qualifying it with these statements:

1. Indian people, in many cases, are unfamiliar with State Law.
2. In and around Reservations, the population that lives with us—of all races—is normally anti-Indian and therefore, we would have no justice if we were subject to State Law because we are simply out numbered, even in our own treaty Reservation areas.
3. The old Public Law 280 has caused the United States, the several Indian Tribes and citizens of this Nation to spend millions of dollars on lawsuits that were totally unnecessary had the United States carried out their trust responsibilities to the Indian Tribes of this Nation.

Ever since August 15, 1953, Indians have been living in fear in what is supposed to be the greatest Nation in this world; where freedom lives throughout the Nation. Indian people, being subject to the various elements of political influence, have not fared very well in this economic world. I appear here in an effort to let the United States Congress know exactly how Indians feel. As a Reservation Indian, I believe I am totally qualified to speak for and in behalf of the average Reservation Indian across the Nation.

I fear State Jurisdiction for many reasons other than pure discriminatory action on the part of the population. I fear State Jurisdiction because it is foreign to us as a method and because it is such a political mode of operation. It has been said that Tribal Courts are subject to political pressures and I would like to make it very clear here that everything in this Nation of ours is subject to political pressures. I was a witness to the Bureau of Indian Affairs takeover in November of 1972 and I observed the Administrative branch of the Federal Government holding in abeyance Federal Court orders that were issued to do a certain job within that takeover. So no one can accuse the Tribes of being political themselves. Yes, there is a certain amount of politics in Tribal Courts, depending upon who is elected as a leader of his Tribe and how well he defines individual rights.

I am an individual who believes tremendously in the constitutional form of government that we have. I am the founder and Father of the movement that brought about the Indian Civil Rights Act and I do believe that Congress should do more work on this Act to improve its quality and application so that all Indians are protected equally within the Reservations. I think that can be done simply by two or three Jurisdictional Acts which would give all individual Indians the right to call their elected leadership to accounting.

I, also, believe that the Bureau of Indian Affairs should be subject to a Jurisdictional Act which would allow Indian people to make the Bureau accountable to Indian people for their actions concerning Trust Properties and the expenditure of Federal Funds appropriated for Indian matters. This type of Jurisdictional Act would certainly aid and abet the Indian cause of clearing up all the graft and corruption that has been taking place over the years in Indian Affairs.

I believe that the Senate of the United States and the House of Representatives should be made aware of what is happening in the State of South Dakota. Therefore, I submit the following for their information and consideration.

1. We have an organization known as the Civil Libertarians for South Dakota, who are operating under a so-called banner of equal protection of the Law, when in reality, they are nothing more than a group of "redneck" individuals who have their eyes upon Indian assets and over the years these people have had the use of cheap Indian land which has been tremendously profitable to them, as well as the cheap Federal lands that have been available to them in the various western states.

The organization or organizations that are organizing across the United States to oppose Indian people and their right to economic liberty are those who General Sherman once defined very clearly when he was asked, "What is an Indian Reservation?" General Sherman answered, "An Indian Reservation is a parcel of land set aside for the exclusive use of Indian people, surrounded by thieves." This is still in the main very true because most people who reside in and around our Reservation have been slowly but surely lifting our land through all types of operational procedures from Indian ownership because of the tremendous poverty that exists amongst all Indian people across this Nation.

The South Dakota group of so-called Libertarians should be inspected quite closely. Some of them have joined this effort because their son has applied to be a police officer on the Reservation, while this person was on probation from the State of Nebraska. Others have joined because they feel that Indians should have no control over their destiny and should be controlled by a majority. They are pressing in every fashion, including threats to the political lives of the Representatives in the House in South Dakota and the Representatives in the Senate of South Dakota and the Representatives in Congress—both of whom are Democratic Senators from the State of South Dakota. It should be noted that the Indian leadership in South Dakota, from all the Tribes, agreed to meet with these so-called Civil Libertarians and survey the ground that we were talking about, in an effort to try to reach a solution to the problems which they say confront us and the problems that we see as elected leadership. However, these men—these Civil Libertarians—have never ever contacted any Tribal Leader in an effort to set up a meeting. Instead, they have been screaming to the non-Indian in and around the Reservation area, including in Nebraska, that Indians are on a rampage to take over control of their lives, their land and their property of all kinds, including getting into business of all types. By rallying these people, they are raising funds through which they can fight the Indian people and the politicians who will not bow to their wishes. These Civil Libertarians operate under a theory that there should be only one law in the United States of America.

For their information, I would say that we have several levels of law, if that is what they are talking about. First, of course, we have the Treaties of the United States which are the Supreme Law of the Land. We have the Federal Statutes which are Acts of Congress, setting up protection for everyone across the Nation under the Constitution. Then, we have the State Law, which is applicable within the various states. Then of course, we have the local law, which is the counties that have the right to enact laws under their own banner, and then on down to the municipal area of law, where each city has a method of enacting laws for their own needs.

These same Libertarians operate under the theory that there is Tribal law that rampages off in all directions, that violates the concept of the normal procedures of law in this country. I say they are totally wrong because all laws enacted by the Tribe are subject to review and approval or may be rescinded by the Secretary of the Interior, should they violate anyone's rights. It is my contention that the Indian Courts in the State of South Dakota and elsewhere are subject to the planetary laws of Congress and act within the framework of the Constitution of the United States.

I should like to say at this point that if the United States Congress and the so-called Civil Libertarians are afraid of the Courts of the United States on all levels, then I think they belong someplace in Russia or China where they don't have to worry about the freedom of any group or the rights of any group because they are simply told what to do.

Since this is such a broad and vital area which we are dealing with, mainly the jurisdiction through which Indian Tribes operate and under which the United States Legislates the law, I believe that we should make it plain and the Indian Tribes, I'm sure, are 100% behind this statement—that if the United States Congress takes it upon itself to legislate in any manner against the most recent Court rulings that have now become settle law, it will become nothing more than pure, outright termination. By that I mean, that we have been working diligently on all levels of Government to bring the Indian people to the same economic, social and educational level with the rest of the Nation; expending a great deal of money in so doing and then to have Congress enact laws which would set aside these most recent court decisions would simply tear the Indian Country apart. There would be utter chaos throughout Indian Country with Indian Territory being redefined which, of course would also, cause the Courts to reexamine jurisdiction over individuals, be they Indian or be they non-Indian. This would simply

amount to a form of termination and I oppose it very strenuously and I would oppose any and all efforts to change the situation as it is.

I would support a legislative effort to define legal jurisdiction over non-Indian within Indian Country, but I hasten to say that I think that the law should be as it is everywhere else. In other words, when you're in Rome, you do as the Romans do; when you're in New York, you're subject to the laws of New York; when you're in California, you're subject to the laws of California and when you are in the State of South Dakota—off Indian Reservations—you are subject to the laws of South Dakota, but when a person enters Indian Territory, they should be subject to the law which exists there at this time. That is the misdemeanor courts of the Indian Tribes and should a person commit a felony within a Reservation, they should be subject to the Federal Courts, as the existing law provides. That I could support whole-heartedly but no other type of legislation could I see as benefiting Indian people. I believe that clearly defines the position of the Rosebud Sioux Tribe and I have a resolution which I would like to submit at this time for the record, as it is the statement which was enacted by the Rosebud Sioux Tribal Council specifically for the purpose of introduction here in the halls of Congress during this hearing. It defines rather clearly the position of the Rosebud Sioux Tribal Council.

Although it is rather difficult to anticipate the testimony of people who are to appear here today, I have prepared in advance a statement anticipating the words of those who have previously testified here today. First, let us deal with the Honorable Richard Kneip, Governor of the State of South Dakota. I have come to have a tremendous, profound respect for this man because he is a man of his own convictions. I know that he has made every effort to maintain peace in South Dakota in spite of the extremities of both the Indian and non-Indian extremists who have been operating within the boundaries of the state from time to time in the past year. It has been through his leadership that the affairs of the State of South Dakota have changed to a large degree. I would like to state for the record that Richard Kneip, as an individual, has created an era through which the American Indian who resides in South Dakota can sit down with the Legislators in the State of South Dakota and talk "turkey". By that I mean that the South Dakota Indian Task Force which was created through his efforts is a place where all elected leadership of the state can come together with a body of Legislators—both from the House and the Senate—and sit down and discuss our problems without any fear of any kind. There is equality in the state on this level and I certainly wish the Congress of the United States to join me in congratulating the State of South Dakota for its efforts over the past 24 months, in South Dakota. We are thankful for this era and we hope that through this kind of give and take situation, we can come to grips with the problems that are facing us as men and not have to pretend in any way that we are addressing a situation when we really are not. There is no pretending in the State of South Dakota as we do sit down together and really talk about what is happening in South Dakota, whether it is good or bad and try to find a solution. I want to thank the Governor here before the Congress for the seven acts of the State Legislature which passed through his office into law last January, a year ago January because I believe it is a step forward. It is too bad that other states could not take the lead of the Honorable Richard Kneip in this area and do something about Indian Affairs which will be positive and progressive, instead of retrogressing and causing dissension in and amongst the Indian Tribes of the various states.

Secondly, publicity has been that William Janklow, the present Attorney General for the State of South Dakota, is to appear before this committee. I hope that he does because, I believe, that this man is the core of what is happening in South Dakota in so far as the Civil Libertarians for South Dakota is concerned. It was through his image and contacts that the Civil Libertarians came into being. William Janklow came to the Rosebud Indian Reservation as a champion of the Indian Cause in 1965 and was with the Rosebud Legal Aid Services. A few years later, he and several young attorneys took it upon themselves to organize the South Dakota Legal Services, Inc. which has been receiving Federal Funds to aid indigene people in the area of South Dakota. Soon after coming to the Reservation, Mr. Janklow made it his cause to enter into politics and become the Savior of the Indian people. Although, as an individual, I opposed this kind of movement knowing the intent of Mr. Janklow, many other Indian people fell for this kind of operation by Mr. Janklow and his fellow attorneys. Then, in 1972, when I was running for election, Mr. Janklow has previously operated in two elections very deliberately expending Federal Funds for legal services to indigene people to see

that I was beaten in those elections. The elections were manipulated and I was defeated. In 1972, I was successful in causing Mr. Janklow to resign and get off the Indian Reservation and move to Pierre, South Dakota where his base of operations became even greater. There in the State of South Dakota he became the attorney for the United Sioux Tribes. Without a contract, he began representing Indian Tribes across the state and into North Dakota. By this 'without a contract' I mean that there is a Federal Statute which requires that all attorneys who operate for and in behalf of an Indian Tribe must have a contract approved by the Secretary of Interior. This he did not have and continued to operate in violation of Federal Statutes. While in the Legal Aid Service, Mr. Janklow guided many Indian people into defying law and not paying their bills. He created an atmosphere in and around the Reservation that caused many a company to stop doing business with Indian people. There, as a leader of the Legal Services, he had tremendous power and utilized it with glee—for he was that kind of individual. In 1974, Mr. Janklow became a candidate for the Attorney Generalship for the State of South Dakota on a platform which was basically anti-Indian. He used the fact that the American Indian Movement had done some damage in Custer, South Dakota and had caused terrible situations to arise in several other areas of the state to gain the position of Attorney General in the State of South Dakota. Now, Mr. Janklow is advocating that Indian Tribes do not own any water rights in South Dakota. He is advocating that he is going to protect each and every non-Indian within Indian Territory and no Indian Tribe is going to try any non-Indian in court. In other words, what he is really and truly advocating is racial separation of Indian and non-Indian within the Reservations. I will speak to whatever kind of testimony Mr. Janklow gives here before the United States Senate in an off the cuff situation, but in this prepared text, I would like to say this about Mr. Janklow for the record. "Mr. Janklow, without a doubt, raped a 15 year old Indian girl by the name of Jansetta Eagle Deer and Miss Eagle Deer has so testified before the courts of the Rosebud Reservation and we have a prepared text if anyone is interested in having a copy of that testimony." Likewise, Mr. Janklow is under the investigation of the South Dakota State Grievance Committee of the South Dakota Bar Association because I filed a grievance with them. In this grievance I state several things.

1. Mr. Janklow has been representing Indian Tribes without a legal contract signed by the Secretary of the Interior.
2. Mr. Janklow represented the Rosebud Sioux Tribe without a contract.
3. Mr. Janklow was found stripped from the waist down, drunk on the Crow Creek Reservation and was, thereby arrested.

Also, adding to this, I submit for this record a copy of an affidavit signed by John Fire Lame Deer which indicates and proves without a doubt that Mr. Janklow solicited Mr. Lame Deer and others to sue the City of Winner, South Dakota and then turned around and dropped the case after he had stirred up all kinds of racial overtones within that city, area and the Reservation.

These are serious matters and I do not state them lightly here before the United States Senate because Mr. Janklow is sitting in a very powerful office and as such, he carries the weight of a lot of people in South Dakota and I would like to make it clear that I believe the State of South Dakota's population was tricked and fooled by one of the most dangerous men that I have ever met in my entire life and I have met hundreds of thousands of people in the twenty five years of service that I have given to my Indian people.

Since I have previously dealt with the Civil Libertarians, I would only like to add that I believe that they are a group who are so racially biased and prejudiced that they can't see the nose on their face and would defy the law.

For the record, in Rapid City, South Dakota, before the Governor of the State of South Dakota, several of these individuals including Mr. Rick Johnson, an attorney, who should know better, appeared before a very large group and stated that Indian Treaties ought to be torn up and thrown away and that Indians should be put on the same plain with everybody else in this country. In other words, pure outright and deliberate abolition of all the Treaties and the Termination of all Indian Tribes. This we cannot stand for. Others like Mr. Halferty have stated that there is a Civil War going on throughout the State of South Dakota on Reservations. He said that white men were going to shoot Indians and Indians were going to shoot white men and there was going to be all kinds of trouble. He took it upon himself to try to agitate a crowd of people who were sitting in this auditorium. I don't think that many people realize that an elected Tribal Leader was sitting amongst them because when Rick Johnson

used my name as part of his statement, I rose to the occasion and told the entire group exactly what I felt in my heart. I advised them that I was appalled at the kind of conversation that they were creating in that motel in the presence of the Governor and challenged Rick Johnson, who was at that time one of the attorneys under contract to the Rosebud Sioux Tribe—by the way, since that time he has been fired by this Administration of the Tribal Government.

Many other derogatory, inflammatory kind of statements were made that day making all kinds of pure nonsense and outright lies up about Indian Tribal Governments. I left there with a feeling that something was wrong in the State of South Dakota when we had a group of people—two or three hundred of them—who would gather to listen to such a conversation. It reminded me of a show which I saw some time ago which pitted the Ku Klux Klan against the FBI and the death of three young men took place and caused the FBI to go into Mississippi to really route out the Ku Klux Klan and do something about their illegal activities.

I should like to close my statement by saying that I have a tremendous respect and pride for the United States of America. I believe that the people of the United States will generally, in all cases, make the right kind of decision when there is an unjust situation which arises. I know for a fact that over 90% of the population of the United States would come to the aid of the Indian people if it was necessary and if they were called upon to do so. Yet, we, as a free Nation, must take the kind of punishment that we receive from the people like those who are in the Civil Liberties Union of South Dakota and from people such as William Janklow who has no respect whatsoever for mankind or womanhood. I say this knowing what I am talking about and I would dare anyone to enter court on a basis of libel or slander for anything that I have said within this statement and I may say orally before this Committee. I have a deep-rooted belief that the press and the news media of the United States is truly committed to informing the Public of the truth, on all subject matter, regardless of its content. That was proven during the Watergate Situation. I call upon the press of the United States to do something about some of the injustices that confront Indian people and there Fellow Americans—or should I say Senators—I would like to present a few facts for your consideration. They are not so easy to face when you know a little about law and they are these:

A. Unknown to most of you, I'm sure, and maybe even unknown to the Senator from South Dakota, Mr. Abourezk, who is very steeped in Indian Law, is the fact that I, as an individual Indian, like all the rest of the Indians on an Indian Reservation, are not protected by the Federal Kidnap law. I say this because only recently the Attorney General of the United States ruled in an opinion that Indians were not covered by the Federal Statute involving kidnapping and that it was not against the law for one Indian or a group of Indians to kidnap another Indian on an Indian Reservation. Therefore, I am subject to being kidnapped any time and I hereby demand and I mean DEMAND that the proper committees of Congress immediately take action to amend the Federal Kidnap Law so that it is applicable to all Indian people, regardless of their residence on or off Reservations. This is a tremendous misconception of law and I believe that it is time that Congress took note of these facts. I had to fight a terrible battle and suffer still from some of the backlash from Indian Tribes who do not understand the Indian Civil Rights Act, for the passage of the Civil Rights Act. There are still grey areas of Jurisdiction in both the criminal and civil areas. I call upon Congress to take their time and review the criminal laws of the United States. The Attorney General of the United States is not causing his U.S. Attorneys—on the State level—to properly carry out the laws of the United States. In South Dakota, we are virtually unprotected and I submit herewith a list of cases that come from the Rosebud Reservation that are either pending or have been "no billed" by a Grand Jury; everything from embezzlement to rape and on down the line through the crimes that the U.S. Attorney of South Dakota has failed to prosecute. I think that it is time that the United States reversed its policy or policies and made sure that justice prevails, instead of using every kind of technical, legal situation to make sure that the criminals are protected even more than the person who is trying to abide by the law.

I sincerely believe what I have stated in this statement and I hope that it is of some benefit to the Congress of the United States in its deliberations in the future and I would like to close by saying that I hereby request a hearing at which time all Indian Tribes will be advised of the hearing and that they be given the right to present testimony in their own behalf because I believe that we are confronted with

one of the most serious problems that we have ever faced. That is that organized people such as the South Dakota Libertarians are organizing because the economics of the Reservations are changing and for the first time in history Congress has made it possible for Indian People to have credit and thereby become a part of the economic world which we have stood by and watched for so many years.

Thank you very much for this opportunity and I hope that this is enlightening and beneficial to the Congress for Congress carries the responsibility of this Nation upon their shoulders. I feel that most people do not realize the tremendous responsibility that the Legislators of the Congress have on their shoulders. I think that we ought to be cognizant of the fact that these men in the halls of Congress give a great deal of time and sacrifice a great deal of their health, even to work for you and I as they deliberate under the pressures of all kinds of groups in this United States.

Thank you very much and I close with a Prayer for the Senate of the United States of America.

Attachments.

ROSEBUD SIOUX TRIBE RESOLUTION

RESOLUTION COVERING JURISDICTIONAL QUESTION IN WASHINGTON, D.C.

Whereas, the Rosebud Sioux Tribe, a Federally Incorporated Tribe under the act of June 18, 1934, known as the Indian Reorganization Act, is an organized Tribe that has both a Constitution and Charter under this act; and

Whereas, the Rosebud Sioux Tribe, like most other Tribes, is vitally interested in improving the overall living conditions of its membership; and

Whereas, over the years, Congress and the population at large have set a fluctuating policy which effects all Indians across the nation in a manner that is detrimental to their well-being; and

Whereas, on July 8, 1970, the President of the United States, Richard M. Nixon, declared a policy of self-determination without termination; and

Whereas, the Congress of the United States, in recent years and more especially since 1968, after the passage of the Indian Civil Rights Act, have devoted a great deal of time and effort to improving the conditions of the American Indian citizens of this nation and in so doing have enacted legislation that more nearly meets the needs of our Indian citizens; and

Whereas, on January 31, 1975, the President of the United States, Gerald Ford, advised the Tribes of Region 8 that there would be no termination, whatsoever, under his administration and there would be self-determination without termination; and

Whereas, the Indian Tribes, over the years, have been deeply concerned about the effects of Public Law 280, which was enacted in August of 1953; and

Whereas, the many tribes of this nation have consistently pressed for legislation which would repeal Public Law 280 and place all Indian Tribes who are reorganized by the Federal Government under Federal Law; and

Whereas, Indian Tribes are deeply concerned with the development of their assets in this day and age when the Energy Crisis is a crunch upon the economy of this great Country of ours; and

Whereas, in the State of South Dakota, an organization known as the Civil Libertarians for South Dakota have organized in recent months and have attacked openly our esteemed Senators from the State of South Dakota and called upon our Congressional Delegates to tear up all Indian Treaties and place all Indians on a level equal to that of every other citizen in this nation, disregarding the fact that Treaties were made with this United States of America and that the United States intends to honor their Treaties with the several Tribes of this nation; and

Whereas, the Governor of the State of South Dakota has stated a position which he has consistently held against any attempt to erode Indian Rights in the State of South Dakota; and

Whereas, the Indian Community within the State of South Dakota has been working diligently through the Legislature of the State of South Dakota in an effort to settle many of the problems which are confronting both the Indian Tribes and the State as a whole; and

Whereas, the Indian Task Force which has been created through the efforts of the Governor and the Legislature of the State of South Dakota has effectively overcome some of the major problems facing both the Indian and non-Indian population of our State; and

Whereas, the Indian Leadership holding office today are deeply concerned with not only jurisdictional problems but with the educational and economic problems confronting not only Indian people but everyone within our Nation; and

Whereas, as concerned persons, the Indian people of this Nation are in a position to contribute to the best interests of the entire population of this Nation with the tremendous block of energy that it owns and controls under the laws of the United States and Treaties with the several Tribes; Therefore be it

Resolved, That the Rosebud Sioux Tribal Council in session this 20th day of February, 1975, that the Tribal Council calls upon the South Dakota Delegation, the Congress of the United States and the President of the United States to enact legislation which will repeal Public Law 280 and remove the many legal obstacles that have created road blocks to progress amongst the Tribes of this Nation; and be it further

Resolved, That the Rosebud Sioux Tribal Council is opposed to any kind of legislation that will strip the Indian Tribes of this country of any of the right established under the laws and rulings of the Courts of the United States; and be it further

Resolved, That the Rosebud Sioux Council wishes to inform the Congress of the United States and the President of the United States that they have no fear of the laws of the United States and places their faith in a system that has proven itself over the years; and, be it further

Resolved, That the Rosebud Sioux Tribal Council is diametrically opposed to any and all efforts of the Civil Libertarians of South Dakota, who are bent upon the destruction of Indian Tribes in the State of South Dakota; and be it further

Resolved, That the Rosebud Sioux Tribal Council will support legislation that will enhance, protect and revitalize the position of Indian Tribes so that they may go forth and develop their assets in such a manner as to be a contributing factor to the economy of the greatest nation in the world—The United States of America; and now therefore be it

Resolved, That this resolution does hereby authorize the President of the Rosebud Sioux Tribe, Robert Burnette, to testify for and in the behalf of the Rosebud Sioux Tribe and state its position in unequivocal terms.

Resolution No. 75-5

Whereas, on January 10, 1975, the confessed killer of an eighteen year old youth of the San Carlos Apache Tribe was given a sentence of seven years probation, and;

Whereas, the presiding judge, prior to pronouncing sentence himself stated that "There is no doubt in my mind that the Indians in this state have been discriminated against for a long time", and;

Whereas, this flagrant miscarriage of justice is only the most recent in the large number of incidents occurring in the state of Arizona which demonstrate that equal protection under the law is being denied Arizona's Indian citizen; now therefore be it

Resolved, by the Tribal Council of the San Carlos Apache Tribe, in meeting assembled this 15th day of January, 1975, that the administration of criminal justice in this state of Arizona as it affects members of the San Carlos Apache and other Indian tribes should be investigated and the appropriate measures to afford all Indians equal protection under the law, and be it further

Resolved, That the United States Department of Justice and the United States Commission on Civil Rights, and the Governor and Attorney General of the state of Arizona, are strongly urged to immediately initiate such action with general emphasis on the treatment of all Indians, by the courts and law enforcement authorities of the State of Arizona, its counties and municipalities where they have jurisdiction over such cases, and with special emphasis on the case of the killing of Vernon Wesley by Eugene Mayfield in which sentence was seven years probation and be it further

Resolved, That all Indian people in the state of Arizona and the United States are urged to support this action to establish for the Indian people of the United States equal protection under the law.

CERTIFICATION

I, the undersigned, Secretary of the San Carlos Council hereby certify that the San Carlos Council is composed of 11 members of whom 6 constituting a quorum

were present at a Special Meeting hereto held on this 15th day of January, 1975, and that the foregoing Resolution No. 75-5 was duly adopted by a unanimous vote of the Council pursuant to the provisions of Section 1 (a), Article V, Amended Constitution and Bylaws of the San Carlos Apache Tribe, effective February 24, 1954.

JANIE B. FERREIRA,
Tribal Secretary,
San Carlos Tribal Council.

ROSEBUD SIOUX TRIBAL COURT,
Rosebud, S. Dak., November 5, 1974.

HON. FRED NICHOL,
District Judge, United States District Court,
Pierre, S. Dak.

DEAR JUDGE NICHOL: Please be advised that William Janklow, an attorney who is admitted to practice law in the United States District Court for the District of South Dakota, has been disbarred from practice before the Rosebud Sioux Tribal Court. I am appending hereto a copy of the memorandum decision and order resulting from Mr. Janklow's disbarment proceedings.

Rule 1, Section 4 of the Rules of the United States District Court for the District of South Dakota states:

"Section 4. Any member of the bar of this court who has been disbarred by any court of competent jurisdiction shall ipso facto be disbarred from practicing in this court and his name shall be stricken from the roll of attorneys, * * *"

The Rosebud Sioux Tribal Court is a court of competent jurisdiction, thus, it appears that Mr. Janklow is ipso facto disbarred from practicing law in the Federal District Courts in South Dakota.

If you desire more information on the tribal court disbarment proceedings, please feel free to contact me. I will be most happy to furnish whatever information you desire.

Sincerely yours,

MARIO GONZALEZ,
Chief Judge.

ROSEBUD SIOUX TRIBAL COURT,
Rosebud Indian Reservation, Rosebud, S. Dak., ss:

ROSEBUD SIOUX TRIBE, PLAINTIFF V. WILLIAM JANKLOW, DEFENDANT
WARRANT TO APPREHEND

To any police, tribal police, or police officer of the United States Indian Service. Whereas, a hearing was held on October 31, 1974 on a petition entitled "Petition for Disbarment of William Janklow and Affidavit in Support Thereof;" and

Whereas, the hearing, among other things, established probable cause that Mr. William Janklow has committed at least two offenses under Chapter Five of the Revised Law and Order Code of the Rosebud Sioux Tribe, to-wit: (1) Assault with Intent to Commit Rape in violation of Section 46, and (2) Carnal Knowledge of a Female under Sixteen in violation of Section 45; and

Whereas, Jancita M. Eagledeer Sheldahl, the victim of the alleged offenses, has filed with this Court a written complaint charging William Janklow with both offenses above mentioned.

Now, Therefore, you are hereby commanded to apprehend and bring the said William Janklow forthwith before me to show cause why he should not be held for trial.

Dated this 5th day of November, 1974.

MARIO GONZALEZ,
Chief Judge,
Rosebud Sioux Tribal Court.

Received this warrant on the ___ day of _____, 19__ and executed same on the ___ day of _____, 19__, by arresting the within named defendant at _____ and now have him before the court as commanded.

(Officer's name and title)

ROSEBUD SIOUX, TRIBAL COURT
Rosebud Indian Reservation, ss: Rosebud, S. Dak.,
 In Re Disbarment of William Janklow.

ORDER

It is hereby ordered that William Janklow be permanently disbarred from the practice of law before the Rosebud Sioux Tribal Court and that the name of William Janklow be stricken from the roll of these attorneys admitted to practice before the Rosebud Sioux Tribal Court.

Dated this 5th day of November, 1974.

MARIO GONZALEZ,
Chief Judge, Rosebud Sioux Tribal Court.

Attest:

ROBERT McLEAN, *Clerk of Court.*

Senator ABOUREZK. We have a panel of witnesses next. Mr. Percy Archambeau, president of the United Sioux Tribes of South Dakota, and he is also chairman of the Yankton Sioux Tribal Business Committee of Wagner; accompanied by Mr. Clarence Skye, executive director of the United Sioux Tribes, from Pierre, S. Dak.; Mr. Wayne Ducheneaux, the chairman of the Cheyenne River Sioux Tribal Council; and Mrs. Elnita Rank, chairman of the Crow Creek Sioux Tribal Council.

Now, Jerry Flute of the Sisseton-Wahpeton Sioux Tribe, did you want to present your testimony separately or join this panel?

Separately? All right.

We want to welcome you all to the subcommittee hearings. Percy, do you want to moderate the panel?

STATEMENT OF PERCY ARCHAMBEAU, PRESIDENT, UNITED SIOUX TRIBES OF SOUTH DAKOTA, AND CHAIRMAN, YANKTON SIOUX TRIBAL BUSINESS COMMITTEE, WAGNER, S. DAK.; ACCOMPANIED BY CLARENCE SKYE, EXECUTIVE DIRECTOR, UNITED SIOUX TRIBES OF SOUTH DAKOTA, PIERRE, S. DAK.; WAYNE DUCHENEAUX, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBAL COUNCIL, EAGLE BUTTE, S. DAK.; AND ELNITA RANK, CHAIRPERSON, CROW CREEK SIOUX TRIBAL COUNCIL, FORT THOMPSON, S. DAK.

Mr. ARCHAMBEAU. You have introduced our people. I think I will go into what I want to say here.

Mr. Chairman, members of the committee, I am Percy Archambeau, chairman of the United Sioux Tribes of South Dakota. It is my privilege to address this Senate Committee on Interior and Insular Affairs, being the discussion will surround the general purpose of jurisdiction.

In the past years the word of "jurisdiction" rose to the surface in Indian affairs many times causing the Indian people to become insecure. One of the first acts of the Continental Congress of July 12, 1775, was to declare its jurisdiction on Indian tribes by creating three Departments of Indian Affairs—the Northern, Southern and Middle Departments—with Commissioners at the head of each, charged with duties comparable to those of earlier superintendents. On August 7, 1786, two superintendents had the power to grant licenses to trade and live with Indians. And on August 7, 1789, the War Department was established. The subject of Indian affairs continued as a responsibility of the Secretary of War.

The first Congress, the first President, recognized the need for remedy. The problem created by conflict between the Indian and white interests needed remedy. Serious even then in congressional policy, which was set forth in article 3 of the act of August 7, 1789, to the effect that—

... the utmost of faith should be observed towards the Indians, their land; property shall never be taken from them without their consent and their property and rights of liberty shall never be invaded or disturbed, unless in just and lawful treaties by Congress. But, laws founded in justice and humanities shall from time to time be made for preventing from wrong being done to them, and for preserving the peace and friendship with them.

The Handbook of the Federal Indian Law by Felix S. Cohen.

In those days we were protected under the law. But still we have problems in Indian country. We would assume that the States would read the laws passed by the Federal Government and Congress and carry out their intent. It is known to Indian people that the States have no jurisdiction on the Indian reservations and there are court cases in recent years to prove this. Individuals in the States are asking for protection of Indian reservations. The past violence in reservations have resulted in non-Indians becoming fearful of bodily harm.

In my personal opinion under the treatment of 1868 in article 1, there are two provisions for Indians and non-Indians that will be punished under the laws according to the laws of the U.S. Government.

It says in the treaty of 1868 that wrongdoers will be tried and punished according to the laws referring to non-Indians. So according to Congress under that treaty, the Federal Government is responsible for protection of non-Indians living on the reservations and not the States.

If it were possible for establishment of an office of Federal magistrate to protect the non-Indians and Indians, they could both receive equal protection under the laws. This could be done through a bill called judicial reform. Instead of having two sets of laws for Indians and non-Indians, there would be only one set, to have the jurisdiction over both races.

Therefore, the Indian tribes can still maintain jurisdiction over their Indian people within the interior boundaries of their reservation, and not be hampered by States having an overreaching effect on Indian reservations because of the non-Indians living there. The Justice Department would have to cooperate with other affected agencies in providing protection for both non-Indians and Indians.

The issue of law enforcement always will be a tough problem to battle in everyone's mind. All placing of the non-Indians living on reservations under Federal control has some problems. Federal law enforcement problems would not be hampered in arresting non-Indians and Indians because States do not have any jurisdiction on Indian reservations. The Federal Government cannot provide authority to States to go on Indian reservations because there would be a conflict under the Federal law and State law.

It is important to recognize that non-Indians are only asking for equal treatment under the law, and so are the Indian people. Furthermore, it is difficult to legislate a cooperative for both parties. We feel that a National Indian Policy Review Commission is the great approach to study the makeup of Indian affairs across the Nation, to

develop a diplomatic approach to management and law of the negotiation between the Congress, Federal and State and Indian tribes to develop the rules and regulations for all sides to live by.

Thank you.

Senator ABOUREZK. Thank you, Percy. You are saying that it is your recommendation as well as the recommendation of the United Sioux Tribes? Are you speaking for them?

Mr. ARCHAMBEAU. Generally, yes.

Senator ABOUREZK. Is it your recommendation that the Federal Government be given jurisdiction over Indian and non-Indian?

Mr. ARCHAMBEAU. This is what we are saying.

Senator ABOUREZK. And that is not only misdemeanors, but major crimes?

Mr. ARCHAMBEAU. Well, that is something that should be worked out later. I don't know that part of it particularly. But that could be worked out.

Senator ABOUREZK. What about civil actions? What did you plan for civil cases?

Mr. ARCHAMBEAU. Well, I would have to get maybe Clarence or Wayne to answer that. That is kind of deep for me.

Senator ABOUREZK. Now, were you here when I described in general terms the law enforcement and judicial improvement bill we are considering today?

Mr. ARCHAMBEAU. No.

Senator ABOUREZK. It would provide just an option for the tribes on kind of a pilot project basis in the Dakotas' areas, an option for the tribe to apply for judicial improvement and law enforcement improvement money. If they received the money, they would have to meet certain guidelines, law trained judges, an appeal system from a circuit court of appeals type of system.

Mr. ARCHAMBEAU. I cannot see anything wrong with that, Jim, because we need to advance and make a lot of progress toward that, to have better judicial service for our people, for all people.

Senator ABOUREZK. So if the bill were in that general form, you could support that?

Mr. ARCHAMBEAU. I suppose that we would take a good look at it, Jim, yes.

Senator ABOUREZK. OK. Who do you want to testify next?

Mr. ARCHAMBEAU. Wayne.

Senator ABOUREZK. Wayne Ducheneaux.

STATEMENT OF WAYNE DUCHENEAUX, CHAIRMAN, CHEYENNE RIVER SIOUX TRIBAL COUNCIL, EAGLE BUTTE, S. DAK.

Mr. DUCHENEAUX. Mr. Chairman, my name is Wayne Ducheneaux, chairman of the Cheyenne River Sioux Tribe and member of the United Sioux Tribes of South Dakota delegation to this hearing.

I appreciate the opportunity to appear before the Indian Affairs Subcommittee to present testimony with respect to alleged jurisdictional and law and order problems on Indian reservations in the State of South Dakota and other States.

Inasmuch as we have no bill before us today, setting out concrete proposals as solutions to these alleged problems, I do not feel I can

at this time present testimony in opposition or support of any prospective legislation in this area.

However, the tribes are aware of certain general proposals put forward by you, Mr. Chairman, and certain groups in the State of South Dakota, and we would be very happy to address these general proposals in general terms.

The proposals that are being advanced are said to be in response to a breakdown of law and order on or near Indian reservations in our State and others. Before I discuss these proposals, I would like to speak to this allegation.

There is nothing happening on Indian reservations in South Dakota that is not happening or has not happened in Sioux Falls or Rapid City, S. Dak.; Chicago, or Washington, D.C. In the last 5 years tribal and Federal law enforcement officials in South Dakota have had extraordinary law and order problems due to militant activity by the American Indian Movement.

But this situation can arise and has arisen in any jurisdiction in the United States. For instance, the Democratic Party convention in Chicago in 1968, the Watts riot, the riots in Washington, D.C., and even the takeover and destruction of a Federal building in Washington by the AIM people—which, I might add, resulted in no prosecution of those involved. AIM has also presented these problems to law enforcement officials in Chadron, Nebr., and Alcatraz, California—two Public Law 280 States. I do not recall any moves to rob the governmental entities involved of their jurisdiction because they could not prevent and, many times, not cope with these extraordinary law and order problems.

The only major action taken by the Federal Government in response to the problems State and local governments were having, was to provide Federal dollars under the Law Enforcement Assistance Administration Act to help them upgrade their capabilities.

However, Indian tribes and their governmental prerogatives seem to be fair game when such situations arise on Indian reservations. Sooner or later, someone will propose as a final solution to problems Indians are having on their reservations, the destruction of tribal government.

And we do not doubt for a moment that the proposals advanced by the Civil Liberties for South Dakota Citizens group acting in concert with certain members of the State legislature are aimed at, and if left unopposed, will eventually result in this destruction.

I would like to read a statement made by Marion Schultz, president of this group, as quoted in an article in the Eagle Butte, S. Dak., newspaper. He said:

Immediate action is sought to establish a special law enforcement group under the State's attorney General which would have federal, state, and county and tribal Authority * * *. This would be a first step toward restoring law and order on and around Indian reservations.

Any honest person has to admit after a review of other statements made by this group that the alleged breakdown of law and order on or near Indian reservations that they cite is only an excuse for the complete destruction of all rights and privileges that tribal governments now enjoy.

In a letter to the South Dakota congressional delegation and the State legislature that Mr. Schultz had printed as a letter to the editor

of the Eagle Butte newspaper, Mr. Schultz called upon Federal and State officials to "eliminate jurisdictional gray areas between Federal, State, and tribal governments." He went on to state that tribal powers of government "do not extend beyond their own members," and that tribes were wrongfully—that is, illegally and unconstitutionally—assuming such powers.

Two short months later, the Supreme Court of the United States, in a far-reaching decision in the *Mazurie* case, disagreed with Mr. Schultz and stated that under certain circumstances tribes do indeed hold this power constitutionally.

Did Mr. Schultz and company admit their error, accept the verdict of the Court and recognize the legal and constitutional power of Indian tribes—no.

Rather, a February 20 article in the Eagle Butte News quotes Mr. Schultz as stating that his group now seeks to amend the statutory definition of "Indian country." This proposed action can only be an attempt to get around the *Mazurie* decision.

We submit that the definition of Indian country as set out in title 18, U.S.C. 1151 is very clear. Furthermore, there are no insurmountable problems of definition of jurisdiction in South Dakota. There are only non-Indians who refuse to submit to the law.

There is further proof that the motivation of these groups in South Dakota is unrelated to problems of law and order in that State. And, rather, that they are more interested in having the power to tax, regulate and thus control tribal and individual trust assets and perhaps, to continue the sordid history in that State of cheating Indians out of their assets.

In the same news article it is stated that the South Dakota Citizens Group is seeking limitation on the Federal Traders Act. We can only assume from the article that they would repeal provision of the act which allows Federal agents to inspect the records of traders on Indians' lands and regulate their prices. This same sort of thinking has been included in a proposed Senate concurrent resolution introduced into the State legislature this month.

When any non-Indian group begins to talk about the management our natural resources, Indians know that dispossession of those assets cannot be far behind. We submit that this kind of thinking is really what is at the root of the whole jurisdictional furor in the State of South Dakota and other States.

I would like now to address the legislative proposals that we understand are being advanced by you, Mr. Chairman. We understand they are basically 3 in number.

You are proposing legislation to assist tribes in upgrading their law and order and judicial functions. As I have already stated, we do need assistance in this area from the Federal Government as other jurisdictions have needed it, and we applaud your efforts. The LEAA funds dispensed by the Federal Government to assist State and local governments with these extraordinary problems must come to us from the State of South Dakota—not a very reliable source under present circumstances.

We can only hope, Mr. Chairman, that if you are successful in getting this authorizing legislation through the Congress, you will be as successful in getting the Congress and the executive branch to fund it.

Secondly, we understand that you are proposing legislation which would repeal Public Law 280. While we are not vitally concerned with this act in view of the 1968 amendment, we do understand this is a major issue and problem with other tribes in other States. Obviously, we support them in their desires and again, we applaud your efforts.

Thirdly, we understand your last proposal would seek to limit tribal jurisdiction over, and the tribal power to tax, non-Indians on fee patented land within reservations.

Without a bill with specific language before us, I do not feel we should attempt to offer a position in this area at this time. However, I suggest that perhaps legislation is not needed in this regard if proposals advanced by the Cheyenne River Sioux Tribe and other South Dakota tribes are adopted. I would like to tell you about our proposed solution to the problems that have arisen between non-Indians and Indian tribes in the State and the reaction they received from officials and citizens of the State.

During my campaign for the chairmanship, I ran on a platform of cooperation and negotiation with the local governments concerning the jurisdiction issue and as my presence indicates, the people of Cheyenne River agreed with me.

Basically, my proposal included:

- (1) Cross deputization of Federal, State and local and tribal law enforcement personnel;
- (2) Extradition procedures;
- (3) Full faith and credit in each other's courts; and
- (4) General cooperation with State and local governments in every way to insure a better system of justice on Indian reservations.

At public hearings concerning the matter of jurisdiction, including one called and chaired by you, Mr. Chairman, I announced my intentions and willingness to work out jurisdictional agreements with those other governments. And I might add, Mr. Chairman, I heartily congratulated on my statement by Mr. Schultz, Mr. Jack Freeman, yourself, and others.

At a meeting of the State Indian Task Force with Bill Janklow present, I again offered to sit down and talk with anybody, any time and any place about my proposal. At a meeting with Gov. Richard Kneip, I once again expressed a desire to negotiate on these matters.

To date, I have received no workable response from any of the above-named citizens or officials of the State. Why have I received no response? Because as I said in the beginning, the issue here today is not one of law and order but State jurisdiction over Indian lands for the reasons I mentioned.

If you are thinking of legislation in this area, Mr. Chairman, I think a solution along these lines would go much further in easing the tension and strife in our State. Perhaps, legislation authorizing and requiring the State and the tribes to negotiate out these problems is the only answer. In any case, we do not feel at this time that a solution imposed on us from the national level is the answer.

Thank you very much, Mr. Chairman.

Senator ABOUREZK. Thank you, Wayne. I don't have that jurisdictional bill completed yet. It is a lot more detailed than this law enforcement bill we are discussing today. It is going to take a little while longer than this particular bill because of the complexities of

jurisdiction and who has jurisdiction over whom on what land. And when we get that drafted, of course, we will send it out to everybody that is concerned and hope to get their comments on it. We will have more hearings on the bill after people have had a chance to look it over.

I like the ideas that you have just discussed. It is possible we can try to work those ideas into the bills I am having drafted. So I am glad that you have got some positive suggestions on this and we will try to get together on them.

Mr. DUCHENEAUX. Thank you, sir.

Senator ABOUREZK. You have already stated in your statement that you think the plan for the judicial improvement, law enforcement improvement, is OK?

Mr. DUCHENEAUX. Yes, sir.

Senator ABOUREZK. You would, in general, kind of support that direction?

Mr. DUCHENEAUX. Yes.

Senator ABOUREZK. Thank you very much.

Elnita Rank, chairperson, Crow Creek Sioux Tribal Council?

Ms. RANK. Wayne says to talk like I holler at him.

Senator ABOUREZK. I heard you doing that yesterday.

STATEMENT OF ELNITA RANK, CHAIRPERSON, CROW CREEK SIOUX TRIBAL COUNCIL, FORT THOMPSON, S. DAK.

Ms. RANK. Honorable Chairman and members of the committee, I am Elnita Rank, chairperson of the Crow Creek Sioux Tribe. It is an honor for me to come before you today to present our views on judicial reform, law enforcement and jurisdiction. We congratulate this committee for taking the time to hold these hearings because it gives Indians and non-Indians a chance to discuss both sides of the issue of jurisdiction. Sioux tribes in South Dakota have had many problems concerning who is supposed to receive legal protection on and off Indian reservations. It says non-Indians receive all the privileges on reservations, because they will not go before tribal courts.

Since the treaties of the Indian tribes and the U.S. Government, it is our contention that Indians are aiming in the wind of non-Indian people who are claiming after the Indian land held in trust for Indians. It seems to me that this is the whole cause for non-Indians back home asking Congress to legislate laws to take Indian land and protect them from Indian people.

Senator ABOUREZK. Could I interrupt you for just a minute— Wayne brought up nearly the same point as you did about what some of those groups are after is to take away jurisdiction of the tribes over their own pursuits and entities. And I want to announce right now, as I have before on many different occasions, that I am opposed to the State taking jurisdiction over Indian tribes without consent of the tribes as provided in the law. I would be opposed to any legislation that might be offered in that regard. I wanted to just calm any question you might have had about my own position in that matter.

Ms. RANK. I think we understand your position, but it is some groups back home we have to educate.

Furthermore, court cases have been tried between Indians and non-Indians which uphold the jurisdictional backup of Indians on reservations. To recite a lot of court cases and laws that establish our position as Indians is unimportant at this time. It is more important to provide a direction to you as legislators. The Bureau of Indian Affairs does not have the funding to provide adequate law enforcement for the Indian people on reservations.

This year the Bureau of Indian Affairs submitted a supplemental budget in the amount of \$1.5 million because of the problems of violent activities which took place on the reservations in South Dakota this past year. We would hope that the Bureau of Indian Affairs personnel would be able to justify this supplement. This is only one example of the problem—that BIA cannot provide for law enforcement people on Indian reservations.

It seems hopeless for Indian people to operate their programs on Indian reservations when the non-Indians are a major cause of the problem. It will do no good for States to have jurisdiction over Indians on reservations because the State taxpayers can only be burdened with additional property taxes.

To consume Indian reservations under the State jurisdiction would be too costly for South Dakota taxpayers. The position only brings hard feelings between Indians and non-Indians. People seem to get jurisdiction tied into a trust responsibility, but they are separate issues. Of course, one could generate the other. Trust responsibility only means the land and boundaries surrounding that Indian land.

Our land is under the protection of the Federal Government which was legislated by Congress and boundaries established by treaties. Jurisdiction only deals with the courts, criminal aspects and authority by a sovereign group to control people in a society. The States have nothing to do with trust responsibility over Indian laws.

It is important to understand that reservation lands under the protection of the Federal Government and Congress within the reservation boundaries must be included under the jurisdiction of the Federal Government in order to protect the non-Indian people from Indians, although the Indian people have been living under great fear for many years, having been destroyed by the States and local interest groups.

Presently it is true that the court systems on reservations need to be improved and are subject to political influence. But so are the non-Indian courts. It is necessary to understand the reservation courts, that they are having great difficulty in upholding meaningful decisions of non-Indians. We can discuss the fact that our panel of judges needs more training and background in order to deliver adequate decisions before non-Indians would go before a tribal judge and be prosecuted. We must recognize that many of the non-Indian judges elected in the county positions do not have training. Hopefully, anybody who becomes a judge who does not have law training should receive training in order to provide competency in the local courts.

To provide for equal treatment under the law on reservations, the Federal Government must establish a Federal magistrate to handle many of the cases between Indians and non-Indians. Thereby non-Indians will feel at ease going before a trained judge to handle their cases against Indians and cases against another non-Indian, if the problem happened within the boundaries of an Indian reservation.

Law enforcement on reservations needs Indians and non-Indians to be trained adequately to handle all the arresting problems on reservations. If arresting officers on a reservation have Federal authority, they can handle both non-Indians and Indians. The trouble with our system of government is the general lack of administration of the laws.

In any case, the law enforcement officials are not communicating with each other in order to establish some general direction and interpretation of the laws and treaties. The general problem with the non-Indians on reservations is that the State has no jurisdiction there, so something legally must be done.

Hopefully, if Congress established that tribes cannot have jurisdiction over non-Indians living on deeded lands, then Congress and the Federal Government must provide Federal protection for non-Indians. Although many non-Indians lease Indian tribal land, this places them under some tribal, or BIA, jurisdiction. It is most important that the Indian Service in States manage to negotiate diplomatically with Indian tribes as domestic dependent nations on a gradual process of jurisdictional aggrandizement on the one hand, and voluntary surrender of tribal powers on the other. Hopefully, the tribes will not be subject to the uncontrolled discretion of its officials and their negotiations on law and order problems and Indians versus non-Indian.

That is my testimony, Mr. Chairman. Thank you very much for giving me the privilege to be here today.

Senator ABOUREZK. Elnita, thank you very much for your testimony.

I am going to ask about that Federal magistrate you talked about. Specifically, what do you believe that system ought to do?

Ms. RANK. We were discussing this, in ways to satisfy the Indians and non-Indians. We thought that perhaps a Federal magistrate could be appointed, either by law or by the Congress, to handle both cases, of Indians and non-Indians. That would eliminate the tribal court system and maybe people would be more free to go to a Federal magistrate that understands laws and the laws of the tribe and State. That is just a suggestion.

Senator ABOUREZK. In other words, you would suggest the court system. Instead of having a system of tribal court judges, you would suggest a Federal magistrate who, when an Indian person is being tried for a Federal, criminal, or civil misdemeanor, that magistrate would follow tribal law? Or would he follow a standard set of laws?

Mr. SKYE. It would be Federal laws.

Mr. DUCHENEAUX. Mr. Chairman, I do not concur in the idea of a Federal magistrate. I think our courts are competent to handle these matters—and we can handle the matters.

Mr. SKYE. Just a suggestion is being offered.

Senator ABOUREZK. One other question: I think Wayne brought up the Federal Indian Traders Act in his testimony; am I correct in that? Although we are not really technically discussing jurisdiction today, it has come up so frequently we ought to talk a little about it.

The legislation that I am getting drafted on jurisdiction would, in general, provide that on private land—talking about within the boundaries of a reservation—the tribes would have only the jurisdiction over non-Indians that would permit their tribal police to arrest them if they committed an offense and turn them over to the

State authorities. And if that would mean then that if you don't have jurisdiction over non-Indians on private land, you could not collect a license fee from him on private lands. But if a non-Indian did business on tribal land, or on trust land, then he is presumed to have submitted himself to the jurisdiction of the tribal court.

Now, what do you think about that?

Mr. DUCHENEAUX. Mr. Chairman, the reason we brought up the Federal Traders Act—I think the reason Mr. Schultz and his comrades are bringing it up—is we propose to set up on our reservation bar examinations for their attorneys before they can practice before our courts, and they have to be licensed before they can practice before our courts. That is the reason they want that knocked out; they don't want to follow our code.

Senator ABOUREZK. Now, would the proposal you made include some kind of reciprocal agreement like some States have between each other? For example, not all States have it, but if I have a law license in South Dakota, I am entitled to—just by reciprocal motion, I think, in the District of Columbia—come here and be able to practice here. Not all States have that. In some States, you have to take an exam. How are you planning to do that?

Mr. DUCHENEAUX. You would have to take our bar examination.

Senator ABOUREZK. No matter what kind of license?

Mr. DUCHENEAUX. Most attorneys licensed by the State don't know the first thing about Indian law.

Senator ABOUREZK. You think that is behind part of what the civil liberties organizations are doing?

Mr. DUCHENEAUX. Yes, perhaps.

Senator ABOUREZK. What do you think about the other questions I asked about the difference between business operating on private land and one operating on the trust land or tribal land?

Mr. DUCHENEAUX. Once again, until I see a bill of particulars, I would like to reserve my judgment.

Senator ABOUREZK. How about that concept?

Ms. RANK. I will answer that, Senator. I think it would create a great state of chaos if you do this. I am going to exaggerate here for you, a little, if that is all right. Take, like an appropriate Indian reservation—we have the Big Bend Dam which brings in tourists. Along that shore is land controlled by the Corps of Engineers and policed by our Indian police department. If you take some Indians who go down there and raise Cain with the campers, turn the camper over and scare the non-Indians and do something drastic to them, that non-Indian is going to come running to our police department for assistance. And if we have the law like you want to introduce it—

Senator ABOUREZK. The tribal police?

Ms. RANK. Yes. Say then they come up to our department and say we are having problems down here and we have to say, that is deeded land and we can't go down there.

Senator ABOUREZK. I guess you misunderstood me. The tribes would always have jurisdiction over members of the tribe in matters where—

Ms. RANK. I am not speaking about members of the tribe. What if they are Indians committing a crime against the non-Indians? How are you going to work that situation?

Senator ABOUREZK. You say if an Indian commits a crime. The tribe would then have jurisdiction.

Ms. RANK. On deeded land?

Senator ABOUREZK. Yes; within the boundaries of the reservation. Just like it is now, as a matter of fact.

Ms. RANK. I thought you said you intended to give jurisdiction to the State.

Senator ABOUREZK. Only so far as non-Indians are concerned.

Mr. RANK. So they can do whatever they want on that deeded land within the boundaries of the Indian reservation?

Senator ABOUREZK. No. They would have to follow the law. If they committed an offense, then they could be arrested—

Ms. RANK. Who is going to arrest them?

Senator ABOUREZK. They would be subject to the State court law.

Ms. RANK. Who is going to arrest them?

Senator ABOUREZK. They could be arrested by the State authorities, county authorities, or by the tribal authorities. But they would be subject only to the State court of law.

Ms. RANK. You are going to have to work out some sort of a system to get the sheriffs to patrol and be on duty 24 hours. What if the tribal council says, Mr. Counsel, I am not going to let you cross tribal land to get to the deeded land. What if that happens?

Senator ABOUREZK. You can never solve that problem. If they won't let them cross trust land, you are stuck. I know that nobody in South Dakota, no tribal official, would be that obstinate.

Mr. DUCHENEAUX. In regard to what you just said, Mr. Chairman, it would be hard to talk about this without a bill of particulars on account of suppose the tribe sets up a zoning code. And you have a site there, and there is a piece of deed lying in the middle of the city, and some fellow builds a feedlot in there. Until we see something that shows exactly how it is going to be written out in the bill, I would rather reserve judgment on it.

Senator ABOUREZK. I think in most cities and towns all over the country, not just South Dakota, it is all private land or all trust land. I don't think there is any checkerboard within cities.

Mr. DUCHENEAUX. In Timber Lake there is.

Senator ABOUREZK. Is there trust land within Timber Lake?

Mr. DUCHENEAUX. Yes.

Senator ABOUREZK. Right in the city?

Mr. DUCHENEAUX. Yes.

Senator ABOUREZK. How much of it is there?

Mr. DUCHENEAUX. Quite a little of it.

Senator ABOUREZK. That would be interesting. I would like to, if you would not mind, send me a plate of those towns that have—perhaps you could have somebody color in, in different colors, the trust and private land so we could take a look at that. That would be helpful to know as we get the legislation underway.

Mr. DUCHENEAUX. The Bureau of Indian Affairs should be able to give you that.

Senator ABOUREZK. It would be quicker if you did it.

Mr. DUCHENEAUX. Yes, sir, I will see what I can do.

[The material requested was not received in time to be incorporated in the hearing record.]

Senator ABOUREZK. Nothing personal against the Bureau of Indian Affairs, but I would appreciate it if you would do it.

Clarence, did you have a statement?

Mr. SKYE. I didn't, Senator. I just came to chaperone the group.

Senator ABOUREZK. That is pretty paternalistic.

Mr. SKYE. The issue of jurisdiction is something that is going to take not just 6 or 7 months to study; it is going to take longer, more than a year, and we are going to have to become more involved with you as far as the reservations, more involved with the State, because this resolution that the State is talking about, the State legislature, that is being pressured by this lone maverick group, is forcing a lot of issues or trying to force a lot of issues down the throats of the reservations, and I think that rather than talking about law and order here, not talking about any law at all with those people.

Non-Indians living on the reservation—they are trying to become a group that is independent from everyone. Hopefully, the reservations, with their effort of saying we have got jurisdiction, they have got to provide some protection for their own people and other people.

Thank you.

Senator ABOUREZK. I think we all have to realize a couple of things that are important: There is an inadequacy of law enforcement and judicial procedure on some reservations, maybe not all reservations. But that inadequacy then gives those people some kind of a basis to go around and make arguments like we ought to take jurisdiction away from the Indians.

Now, obviously, you don't want jurisdiction taken away from the Indians. The best thing to do is to try to minimize their arguments as much as you can. So, whatever effort you and I can make to improve law enforcement to undercut that argument will serve two purposes. It will provide protection for the Indian people living on the reservations. I think most of the crimes committed are Indian against Indian. I don't think—there are some Indian against white, but the majority of them are Indian against Indian. That protection should be provided no matter what. It will also undercut the arguments these people are coming up with out there in an effort to take away jurisdiction from the Indian tribes. That is what you don't want, and I don't want it either.

Mr. SKYE. If I may, I think it is important to not only look at the tribal court systems, but I think the non-Indian court systems in your municipalities and counties need a lot of improvement also. Because there is at one time 34 percent Indians in the State penitentiary. I am sure they are being discriminated against in the county and municipal courts. I am sure they don't get a true and just decision in your off-reservation court system.

Senator ABOUREZK. I think in a lot of cases that is true. And another thing, for years I practiced law in South Dakota. Before I practiced law, we had a police magistrate system, justice of the peace system.

Now, that was totally political in nature. They were not trained in law. I recall many times I would represent somebody in front of a justice of the peace, the JP would always follow the advice of the prosecutor. If he said convict him, he would do it. If there was a question of evidence, especially in a preliminary hearing, it was sometimes pretty tough to prevent evidence from coming in because

the justice of the peace knew nothing about the rules of evidence and would always follow the prosecutor's advice on that. You can see what the result would be nearly any time.

The same thing is true in a lot of tribal courts. When they are not trained in the law and procedures. It is not a question of knowing what the Indian law is, because you can learn that in a big hurry. But it is a question of procedures that a lot of people can never learn. Even some trained lawyers can never learn it. Procedural due process is important because that procedural due process provides protection to people accused of crimes. Many of them wrongly accused.

Mr. SKYE. One is in the other area, if a non-Indian signs a lease with that tribe, and that tribe places the wordage in that lease that he is subject to the jurisdiction of that reservation, I think that is a prerogative of the tribe to assume jurisdiction over him.

Senator ABOUREZK. That is what I was saying, that is what I wanted to include in this definition of jurisdiction, that if he does business on tribal or trust land, he really has to be under some kind of jurisdiction or there is no hope for it. You can't operate properly.

Likewise, I can't operate a tribal government unless the tribe has jurisdiction over its own people. There is no other way to operate a tribe.

Mr. SKYE. Then of course in your bill, if you put that an Indian or if a non-Indian is arrested on deeded land you take him to a State or county court, first of all you know, I don't know how you are going to solve the problem like Elnita mentioned, that the sheriff or police getting across that Indian land. That is something that has to be worked on and agreements made out, I suppose.

One of the things that I really am concerned about is this resolution 650 that State legislatures were pressured to pass and to try to get to this hearing as soon as possible today.

Senator ABOUREZK. They didn't pass it.

Mr. SKYE. No; but it is reported back in the State affairs committee. It is coming up again Wednesday night at 8 o'clock. The group that is pressuring the State legislature is going to come on a lot stronger, and the State of South Dakota, I think, has got to go along and improve the relationships with the tribes. This the tribes have done. They have made an effort, like the chairman of Cheyenne River said, he told these people he will meet with them any time and any place to discuss with them the issues. But they have not sat down long enough to do this with each of the chairmen.

Senator ABOUREZK. I would like to get a statement from you on that right now. When I held that meeting in Rapid City, which you all attended, there was an agreement at that time between Marion Schultz and the civil liberties group and the United Sioux Tribes that there would be negotiations on voluntary limits or extensions of jurisdiction. Have there been any negotiating sessions?

Mr. SKYE. They have had in Sioux Falls, they met with the Indian Commission.

Senator ABOUREZK. They did?

Mr. SKYE. Right. There were delegates there. They weren't all members.

Mr. DUCHENEAUX. They came down and espoused the same thing they have been saying for quite some time. They didn't meet with us.

I sat down there late at night and tried to discuss these things with them, but they weren't interested in discussing concrete proposals. They wanted the Mounties down there to police the reservation.

Mr. SKYE. One of the things they said was that they had a great environmental problem in the State of South Dakota, and that was the Indians.

Senator ABOUREZK. They said the Indians were the environmental problem?

Mr. SKYE. Yes.

Senator ABOUREZK. Have you asked that group for further negotiations?

Ms. RANK. In Sioux Falls the Civil Liberties Corp. was there. We met with them that night and extended them an invitation to negotiate with them if they wanted to. But you know, I think they are just a bunch of radicals. They want to send us Indians back to where we came from. What are we going to do with them? They just make some radical statements like we are second-class citizens. Well, if they are going to get that radical, you know, we offered to meet with them. They don't come to meet with us. They just want to be radical, as far as I am concerned.

Senator ABOUREZK. You are going to go back and testify before the State legislature committee on that resolution; is that correct?

Ms. RANK. No, sir, we have some other jurisdiction meetings we have to go to. We have our lobbyist there to take care of it.

Senator ABOUREZK. You will have somebody there to testify?

Mr. SKYE. We made our testimony, but are watching what they do at the meeting.

Senator ABOUREZK. I want to thank you all very much. It has been a good discussion. I appreciate very much the contribution you have made this morning.

The next witnesses, Mr. Jerry Flute, chairman of the Sisseton-Wahpeton Sioux Tribe, accompanied by Mr. Rollin Ryan, councilman, Sisseton-Wahpeton Sioux Tribe.

STATEMENT OF JERRY FLUTE, CHAIRMAN, SISSETON-WAHPETON SIOUX TRIBE, SISSETON, S. DAK.; ACCOMPANIED BY ROLLIN RYAN, COUNCILMAN, SISSETON-WAHPETON SIOUX TRIBE

Mr. FLUTE. Mr. Chairman, apparently I misunderstood the purpose of this hearing or I am confused with what is going on here. It was my information this hearing was going to pertain to tribal law enforcement problems and judicial reform specifically, and not getting into the jurisdictional issue. But if that is what the committee is interested in going into, we will forgo the comments we prepared and can talk about jurisdiction.

Senator ABOUREZK. The hearings today are called specifically about judicial improvement and law enforcement improvement for the tribes. You have heard me describe it. It is an optional system. If the tribes decided to come under this option under this pilot program we are contemplating, they could then take advantage of the funding that would be provided under this legislation. If you want to talk about that, I would appreciate your comments on the law

enforcement part of it. If you want to comment on jurisdiction, that is fine. We are going to have other hearings on jurisdiction. We would like to try to confine it to law enforcement, because we do have other witnesses who want to testify.

Mr. FLUTE. Right. Mr. Chairman, I would like to go into the area of police protection on our reservation. This is in the area of inadequate police protection due to inadequate funding.

There are insufficient federally funded BIA and tribal police officers on the Lake Traverse Reservation, which directly imposes the following conditions:

(1) Long hours in excess of 80 hours of work per pay period for tribal police, with unavailable funds for overtime compensation;

(2) Delayed response to place of offense, due to distance involved and shortage of police personnel, necessitated by limited funds;

(3) No time for law enforcement prevention measures in the reservation communities, due to limited number of police personnel who are kept at peak levels of performance in crisis intervention activities;

(4) Tribal police are required to take intensive training and yet the lack of funds and no assurance of continued funding discourages the retention of qualified and capable tribal police officers;

(5) Pay rates for trained tribal police officers are significantly lower than untrained BIA police officers on neighboring reservations, which amounts to a direct repudiation of the Commissioner's policy of Indian self-determination for tribes;

(6) The tribal government wants minimally to have one resident police officer in the following reservation Indian communities: Sisseton, Peever, Big Coulee, Lake Traverse, Veblen, Enemy Swim, Long Hollow, and Buffalo Lake.

Due to limited funds, hence limited personnel, tribal police officers rotate hours from the police station on a 24-hour basis and respond to the community's needs, with delay and often ineffectiveness.

In response to these conditions, the tribal government early in fiscal year 1974 conducted in coordination with local BIA agency staff a financial needs assessment, the results of which identified a realistic annual financial need of minimally \$542,636 for reservation law enforcement. The tribe requested that Congress, specifically the Senate Appropriations Committee, commence annual appropriations in the needed amount for the reservation. Neither BIA, central office, nor the Department of Interior, Secretary's Office, have reacted to this current need. Evidently, the Department of Interior places higher value on paying for law enforcement studies and surveys than requesting and providing for actual law enforcement activities on the Lake Traverse Reservation.

Regarding Federal implementation of the Major Crimes Act on the Lake Traverse Indian Reservation, exercise of Federal responsibility has yet to be totally evidenced. The Sisseton-Wahpeton Sioux Tribal government annually witnesses variant major crimes such as murder, rape, assaults with intent to kill or with a dangerous weapon, burglary, carnal knowledge. Federal arrests and judicial processing of these offenses are also, and often impeded due to inadequate investigation. When the tribal police attempt to take action, Federal officers tell the tribal police to keep out of Federal investigative work.

While the BIA and FBI officers are negligent in investigating and processing major crime offenders, they have no problem in coming to the Lake Traverse Indian Reservation in great numbers to investigate alleged tribal election irregularities. While the major crimes continue to be committed, Federal officers busy themselves with investigating alleged tribal election irregularities.

In the fall of 1974, a non-Indian gas station owner became involved in a face-to-face confrontation with Indian militants. Not since the Minnesota Sioux uprising of 1862, have the Sisseton-Wahpeton Sioux seen so many State troopers and Federal officers in one place in Indian country. Yet, when an elderly Indian lady died as a result of a hit and run accident, or when Indian women and children are raped or molested by non-Indians, scores of the same State troopers and Federal officers cannot be found. Corrective measures need to be taken.

Problems with State law enforcement:

State law enforcement on the Lake Traverse Indian Reservation is second rate in quality compared with the tribal government's law enforcement system. The reasons are listed as follows, and are not meant to impute wrong-doing to the State or its law enforcement agencies.

County sheriffs on the reservation are elected officials, and do not have professional background or training in law enforcement. They do not speak the Dacotah language, do not know the Indian social or cultural systems, values, clan system, or life-style patterns of the younger acculturated Indians. Tribal police in contrast are Indian, are hired because of qualifications, experience and personal maturity and are required to pursue intensive studies in law enforcement. The tribal police department has been funded by LEAA for 3 years, including the current fiscal year. This funding agency requires tribal police to be professional, efficient, and are subjected to in-house tests of competence.

Municipal police in one reservation town never maintained a record-keeping system until a tribal Indian police officer transferred to that city's police department where as chief of police, he established a record system comparable in quality to that of the tribal police department.

While the tribal government has provided for the cross-deputization of county and municipal police officers on the reservation, State police officers are reluctant to arrest Indian offenders, preferring to call the tribal police for assistance. The tribal government stands ready to offer classes in reading, writing and apprehension techniques for State police officers who have need of such skills.

At every opportunity, the tribal police attempt to complement State law enforcement activities. Recently, when a rash of cattle rustling occurred, tribal police, at extra cost, patrolled rural areas in an effort to protect non-Indian livestock and property. Interestingly, State law in South Dakota forbids the county sheriff from patrolling the rural areas.

More than ever before, non-Indian reservation residents are afforded protection, since tribal police enforce tribal law and State law, the latter when a non-Indian is involved.

COURTS

The tribal court is organized pursuant to provisions in the Sisseton-Wahpeton Sioux tribal code of laws. The principal problem with the tribal court centers on inadequate pay for the tribal judges, their clerks of court, and inadequate funds for secretarial and file clerk positions.

The tribal court is a court of record, utilizing the docket system. While the tribal court has organizational capability, what is lacking again is adequate funds to implement this capability.

In response to pending introduction of legislation requiring the tribal judges to have a legal background, the Sisseton-Wahpeton Sioux Tribe encourages this legislation provided adequate dollars are appropriated to secure the properly trained individuals to fill the judge capacity.

We would also encourage sufficient dollars appropriated to place Federal magistrates in key areas accessible to tribes for the Federal crime arraignments and followup court processes.

We encourage congressional study to develop a tribal circuit court judge system to enhance and progress tribal judicial systems.

In summation of tribal law enforcement and judicial reform, it should be apparent that tribal court systems are generally adequate but grossly underfunded and suffering from a lack of qualified and trained bodies to fill the positions.

It is the contention of my tribe that funding of judicial responsibility over Indians is by virtue of treaties, congressional and judicial intent the responsibility of the Federal Government.

This tribe has previously testified before congressional committees, Department of Interior officials, Office of Management and Budget officials, Bureau of Indian Affairs officials, law enforcement administration assistance officials, and has yet to see the positive action taken to insure my tribe of sufficient funds to adequately handle law and order.

JAILS

Currently, Indian offenders on the Lake Traverse Reservation are incarcerated in the Toberts County jail, under terms of a contract. This facility is antiquated, unsanitary and militates against any form of rehabilitative measures. Fortunately, this current arrangement is temporary.

On May 20, 1974, the Sisseton-Wahpeton Sioux Tribe was awarded a grant in the amount of \$139,000 from LEAA for purposes of constructing a facility to house the tribal court, police and Indian inmates. The design of the structure is intended to promote the rehabilitation of Indian offenders. Contained in the new facility will be a kitchen, dining area, detoxification unit and two dormitories. From this facility Indian offenders may be transferred to work projects or to the Tribe's Alcohol Program, which operates a half-way house. In May 1975 the new facility will be ready for occupancy.

The goals that we have identified in the area of law enforcement are: police:

Police duties must include work in crime prevention activities. Locally, tribal police coordinate activities closely with the tribally

sponsored alcohol program. More involvement will hinge on greater amounts of funding to the tribal police, enabling them to diversify activities.

Consistency with Commissioner Thompson's policy of self-determination for tribes, it is mandated that BIA actively prepare and encourage tribal assumption of law enforcement programs now operated by BIA, while continuing BIA funding. There is definitely a marked need for tribes to become involved in the enforcement of their own tribal laws.

Standards of conduct and professional competence for reservation law and enforcement personnel undoubtedly must be raised; however, the unique character of each reservation and the laws of each tribe must be intimately involved in the training process.

In the area of courts, there is a need to improve the quality of justice as administered in courts of Indian law, whether by means of training in an academic environment or in an on-job training context. Such progression is dependent on greater availability of funds.

Jail staff must be involved in inmate rehabilitation. Provision for their training must be stressed. Currently, the tribe has in-service training for police, and as far as the programs that we see for the tribe, we would like to see in-service training for police conducted locally on the reservation by a mobile team of technical transfers who can rotate from reservation to reservation within the area.

The head of the BIA police on the reservation should report directly to the agency superintendent. The Area Special Officer's position is an unnecessary duplication of services. Local reservation autonomy must be stressed, as upheld in treaty and legislation of each tribe.

The BIA having trust responsibilities over lands on reservations should consistently exert Federal responsibility for law enforcement, especially as regards the channeling of funds, which can then be administered by the tribes if they so desire. The Department of Justice should be a technical assistant to the BIA, especially as regards improving BIA competency and professionalism.

GOALS FOR THE COURTS

Tribal judges should be under the supervision of the provisions of the tribal code of laws, which can be provided for by the legislation of the tribal council. The separation of powers must be upheld in a tribal democracy, with minimum ill-influence from the United States.

Each tribe must provide for the manner of appointment of judges in their respective tribal code of laws.

Funds for tribal courts must be administered by the tribal court, pursuant to provisions contained in the tribal code of law.

The tribal courts need funds for positions of prosecutor and public defender.

The tribal court should be administered separately from law enforcement.

Jails: Cooperation with existing agencies may be made in establishing rehabilitation programs for inmates, especially as regards treatment of Indian offenders having alcohol-related problems.

There is a need for the construction of rehabilitation centers and a need for funds for their correctional staff on reservations.

Rehabilitation staff need to be increased, with added funds for their training in rehabilitation.

Conditional release programs ought to be developed, provided there is a planned procedure outlined as well as a place for inmates to stay, work and followup counseling provided.

The conclusion of my testimony, Mr. Chairman, is in response to the proposed legislation disallowing tribes to assert jurisdiction over non-Indians residing in Indian country.

Senate bill 1017 developed in this committee and subsequently signed into law by the President outlines a dramatic step forward for tribes to exercise more autonomy and self-government.

Public Law 93-500, American Indian Policy Review Commission, developed in this committee, strives to even more develop and streamline the Federal assistance guaranteed by treaties to the various tribes for their self-government and progress. This committee stands commended by my tribe for its tireless efforts regarding Indian legislation as well as important legislation passed for the benefit of all Americans. My tribe also in its compliments encourages great caution in the proposed legislation pertaining to jurisdiction of non-Indians within Indian country.

We remind this committee of congressional language in the great Sioux Treaty of 1868, and specifically language in the 1867 treaty establishing my reservation:

Article 9. And it is further agreed that no person not a member of said Bands, Parties hereto whether white, mixed blood, or Indian, except persons in the employ of the Government or located under its Authority, shall be permitted to locate upon said lands, either for hunting, trapping, or agricultural purposes.

We also remind this committee that recent Supreme Court rulings have addressed in part the question of non-Indian jurisdiction. References being the Mazurie Decision handed down last month.

Mr. Chairman and members of the committee, this concludes my statement and I appreciate having the privilege of appearing before you. I would like at this time, Mr. Chairman, I would like to give you a little background and the committee as to why my tribe passed a resolution exerting jurisdiction over non-Indians. This goes back to a meeting that was held in the Roberts County court house in August of last year by law enforcement officials throughout the State, the U.S. Attorney, a representative from the Attorney General's office, Mr. Sandy, and members from the Justice Department located here in Washington.

On a jurisdictional chart prepared in conjunction with those organizations as to jurisdiction on my reservation, I am going to quote to you from the chart. I don't have a chart here to give you. I am sure one can be made available.

Where the subject and the victim are Indians, the State would not have jurisdiction; the tribal court would have jurisdiction in misdemeanors, the Federal court in felonies. The arresting authority would be cross-deputization.

Where the subject is an Indian, the victim is non-Indian, the State would not have jurisdiction, the tribal court would have jurisdiction in misdemeanors, the Federal court with felonies, and cross-deputization for arresting authority.

Where the subject is non-Indian and the victim is non-Indian, the State would have jurisdiction, no tribal jurisdiction, and in certain instances the Federal courts would have jurisdiction. Again, cross-deputization would have the arresting authority.

The issue that brought my tribe to pass the resolution asserting jurisdiction over non-Indian was the last section. Where the subject was a non-Indian and the victim was an Indian, the State would not have jurisdiction, the tribal court would not have jurisdiction, and only the Federal courts would have jurisdiction on felonies as well as misdemeanors. And when this chart was presented we raised the question to Mr. Clayton, who was the U.S. Attorney in South Dakota, as to what the chances would be for an Indian to see justice on misdemeanor crimes committed by a non-Indian by taking this case into the Federal court. His response was something to the effect that each case would be looked at separately and because of the backlog of felonies within the Federal court, that he thought there would be a very slim chance of any of these cases coming before the Federal courts. From this response it was my tribal council's interpretation that whenever a non-Indian were to commit a misdemeanor crime against an Indian, there would not be justice for the Indian.

And that led the tribal council to pass legislation that would assert jurisdiction over non-Indians for the protection of the rights and justice for the Indians of our tribe.

That, briefly, Mr. Chairman, is why my tribe took the action of asserting jurisdiction over non-Indians. It was not the intention of the tribe to intervene in the governing processes of the counties, cities, or to intervene in their taxing base. It was primarily in the area of violations committed against our own people.

As far as the comments to your proposed legislation, I think in terms of what you have discussed here on the traders license, my tribe would stand opposed to that until we have had a chance to see what the ramifications would be to the existing trader's act. We would feel this issue of Indian traders is a very complex problem and your legislation, I am sure, will be equally as complex. And hopefully, it will resolve some of the problems that exist with the act as it now reads.

In terms of your legislation on non-Indians, the jurisdiction of non-Indians, we feel strongly that the tribe must control everything that goes on within its jurisdictional boundaries, just as the State maintains control within its jurisdictional boundaries as the United States maintains control over its jurisdictional boundaries. And the tribe would stand on that position unless we are able to see the details of the proposed legislation.

Senator ABOUREZK. Jerry, we do not have the draft. We will send you a copy as soon as it is available.

Mr. FLUTE. The primary problem that we feel with out law and order and courts is lack of funding. We know what our problems are. We have the capability of correcting the problems and with my tribe with an annual income of something like \$1,300 a year, we just don't have the money to support a system which was given to us by the Federal courts. And we feel it is the responsibility of the Government to give us the adequate dollars needed to upgrade the existing systems that we now operate.

Senator ABOUREZK. You talked about the one area in the jurisdiction chart that you discussed that made you oppose or made you take jurisdiction over non-Indians on private land. You heard the discussion earlier about a proposed Federal magistrate system that would take care of some of these problems. What do you think of that?

Mr. FLUTE. Senator Abourezk, that is part of my testimony encouraging that the money be appropriated to the Federal courts to establish Federal magistrates. And we have discussed this—

Senator ABOUREZK. One trained in Indian law as well?

Mr. FLUTE. Someone trained in Federal law as far as the kind of crimes that the courts would be handling, and if the State and the Government are in agreement with the jurisdictional chart that they mutually prepared, then I think it is incumbent upon the Federal courts to establish a magistrate to handle, for example, the misdemeanors if the Federal courts are bound up with felonies. And I am sure that the Federal magistrate would have that kind of authority to do this.

Senator ABOUREZK. There are Federal magistrates now, as you know, but they are in very limited areas out in South Dakota so far as I know. Probably without committing myself to make a change, we would just take the addition of perhaps three or four magistrates. Maybe he could ride a circuit.

Mr. FLUTE. We had at one time discussed this with Judge Nichol. He was in total support of this action and his response was primarily that his hands were tied with an inadequate budget to operate the Federal courts. And I think last night Chief Justice Burger had some comments on that publicly as far as the salaries that he feels are inadequate for the Federal court system. So I would imagine that their budgets are like everybody else's, they are not flexible enough to provide what he feels is important for the State additional magistrates.

Senator ABOUREZK. I would like to, before you take off, just announce the presence of some other people from South Dakota who are not scheduled to testify. The Lt. Governor Harvey Wohlman just came in. And Also Don Lockner, on the Commission of Indian Affairs for South Dakota. I think our Secretary of Agriculture was here. Is he still around? Apparently he left.

I just want to get into one other area with you, Jerry, and that is—Rollin, do you have a statement?

Mr. RYAN. Yes.

Senator ABOUREZK. Is it on behalf of the tribe or you individually?

Mr. RYAN. On behalf of the tribe.

Senator ABOUREZK. I want to get into this one other area, and that is of this definition of "jurisdiction." We probably should not get into it today, but I guess since everybody else brought it up, we may as well talk about it further. I want to talk about the political aspects of it. As you know, I want to premise this on the conversation I had recently with the State legislator who shall remain unnamed who called me up and said, "My God, this civil liberties group is out here at the legislature swamping us with resolutions."

He said they have so much power around the State they affected the elections last year.

What I am trying to point out is the kind of panic that seems to be building up in the legislature over this jurisdiction problem. Because, as you know, the civil liberties organization wasn't even organized by last election. If you recall the meeting I had in December, the civil liberties group president got up and announced they had 250 members at that time. I guess you weren't there. But they

announced 250 members in December. This just points out the panic that has gone on up there.

Now, what I would hope that the tribes would recognize is that there are certain things going on in South Dakota politically, the whole State seems to be stirred up as a result of the vocal minority. I don't have to tell the Indian tribes what a vocal minority can do. You have seen what AIM has been able to do throughout the country by being extremely vocal. And I just want to point out to you the political realities of doing something to—if you are interested in retaining your own jurisdiction over your own people, which I am sure you are, there has to be some kind of action taken to preclude the arguments being used by people who would like to take jurisdiction away from you. And so I would hope that—I am very glad that—you are supporting this law enforcement legislation, all of you here today have done so. I think it does two things: It is good politics, No. 1, and it is good humanitarianism, No. 2, because some of the reservations desperately need upgrading in their judicial machinery and law enforcement programs. So far as the jurisdictional legislation, when that comes up we will have further hearings. It is not going to be a one-shot deal. Everybody has a lot of work to do on that particular bill.

But it is a bill that will provide some kind of comfort for people, non-Indians out there, who sincerely in their own mind believe there has to be a definition of "jurisdiction". It will also assist the tribes in retaining jurisdiction over their own people.

As you know, the political pendulum can swing one way too far and the other way too far. It will prevent this, as far as your own jurisdiction is concerned. I am hopeful the tribes can realize the political reality of that.

Mr. RYAN. I am sure all the tribes throughout the United States are very well aware of the repercussion that is being created in the State of South Dakota today. It is my understanding that the civil liberties resolution as it was presented to the State legislature last week has been sent to every State with an Indian population, encouraging them to introduce similar legislation within the States. And we have knowledge and have seen the identical resolution that was introduced in the North Dakota State Legislature last week. We understand that several of the other States are moving in that direction now.

Senator ABOUREZK. Well, I think with the assistance of the Indian people in South Dakota—and the Governor of our State has been good with regard to Indian affairs, and I don't think anybody can refute that—with the assistance of the Indian people who hopefully can work with us in this area, that those people who say that South Dakota is becoming the Mississippi of the North so far as racial relations are concerned will be proved wrong. Because I don't believe South Dakota is the Mississippi of the North. We might have a few problems there, like the guy that got up and said the Indians ought to go back to where they came from, at the last meeting I had out there. Those people are in a small minority, or at least I hope they are.

In other words, it is something that we have to just try to avoid or prevent. And I sincerely appreciate your consideration of all this legislation. It is intended in that vein.

Rollin, did you have a statement?

**STATEMENT OF ROLLIN RYAN, COUNCILMAN, SISSETON-WAHPETON
SIOUX TRIBE OF SOUTH DAKOTA**

Mr. RYAN. I have a brief statement and I would like to comment on your bill.

Mr. Chairman and members of the committee, my name is Rollin Ryan, tribal councilman, Sisseton-Wahpeton Sioux Tribe of South Dakota. My comments will be brief and pertain to tribal law and order. I have with me and attached to my statement, Aberdeen, Bureau of Indian Affairs, area office statistics dated July 1974 for your information.

These statistics pertain to unemployment on Indian reservations serviced by the Bureau of Indian Affairs. You will note statistics for my reservation indicate an unemployment percentage of 55.8 percent. This is a constant figure and has nothing to do with the present economic situation nationally.

I think it is easy to understand when your labor force is unemployed to the degree on my reservation that crime rates are also going to be greater.

Recent press information indicates the crime rates for metropolitan areas suffering from job layoff is doubling. My reservation has had the constant unemployment and is suffering from constant misdemeanor and felony crimes. I want to encourage this committee that money is needed not only for law and order but for jobs. I feel that by putting people to work, you also lessen your crime rates.

Our courts and police need constant training. We need trained prosecutors and defense counsel. We need to have our codes updated. We need tribal constitutional reform. We need the continuing education for our people as to what our laws are and how they protect not only the Indian but the white man on our reservation.

All of this requires money which my tribe does not have. My tribe had an annual income of \$1,300 last year. The per capita income of tribal members is not much more than our tribal income.

I feel strongly that in spite of our lack of money for law and order, our Indian people are still getting better and a more true form of justice than we did under State jurisdiction.

As with all of our social and economic problems, we need dollars to develop our people, our land, and our resources. It wasn't very long ago that the Indians on my reservation were agriculturalists and did not rely on anyone but themselves and the great spirit for their livelihood. We have the capability to correct what is wrong if you can help us to get the Federal appropriations that are given to us by our treaties with the Government of this country.

Thank you for hearing my statement. I hope you can do something for us.

As far as your bill goes, not giving the tribes authority on private land, this is one of the comments made last August by Carl Nellan. This is the statement I made. He said I can refuse service to anyone. This is my property. And he had a 30-06 pointing at us.

When I looked at that 30-06 I said something has got to change here. And I think the tribe should have jurisdiction. The reservation boundaries of the Lake Traverse Reservation have never been diminished.

In our Treaty of 1867, article 10, it gives us this authority to have law and order. But the tribe is getting all set up for everything to handle the problems. Most of our crimes there are misdemeanors. Now, this guy, all the people asked me, they said, are you going to take him to court? I said yes, they are going to indict him. To the Indian people that means he is going to jail. But that isn't so. The Indian doesn't understand the white man's law. And they were very disappointed when we got the verdict back from the grand jury that there wasn't enough evidence.

So I said, what does it take to convict? Well, if he would have shot you. Now, I think——

Senator ABOUREZK. You were not willing to volunteer your body for that evidence?

Mr. RYAN. I think the Federal statutes need to be corrected and maybe more laws added there to give us more protection.

Senator ABOUREZK. Was he tried in a Federal court or before the Federal grand jury?

Mr. RYAN. Yes.

Senator ABOUREZK. What was the charge?

Mr. RYAN. Assault and battery with a deadly weapon with intent to do bodily harm. See, that intent, that is the question there. To me he should have been convicted. The man is still free.

Senator ABOUREZK. He came down to Lake Preston where Senator McGovern and I were having a meeting on agricultural credit. He got up and talked about Indians. I don't know if you are aware of that.

Mr. RYAN. Anyway, I think——

Senator ABOUREZK. He suggested they be sent back to where they came from.

Mr. RYAN. The 10 major crimes, a guy could beat up another person and almost beat him to death and still that isn't enough to convict him in Federal court.

Senator ABOUREZK. Isn't that part of the prosecution? I don't know. It seems to me that—it is hard to second guess how a case is presented and so on, but it seems to me under the grand jury system you could indict anybody for almost anything if you wanted to. Isn't that—don't things kind of depend on how the prosecution of the case is handled?

Mr. RYAN. Well, I guess we went first to the State attorney and he says no, we don't have jurisdiction. So we go to the Federal people, and all the people wanted was this guy in jail, arrested, because I think if you get to know him personally, he could be a dangerous man. They wanted him in jail for safekeeping. Nobody would react to it. So the tribe took the action and they handled it good.

So I know the tribal police on our reservation are capable of maintaining law and order.

Senator ABOUREZK. Gentlemen, I have one other question. Did you ever straighten out with the superintendent of schools out there the use of school facilities for Indian dance lessons?

Mr. RYAN. Nope.

Senator ABOUREZK. That never happened?

Mr. RYAN. No; so where does the Indian go? You go to the Justice Department, it will probably take a couple of more years. So we have

to have something where the Indian will get justice immediately, like everybody else.

Senator ABOUREZK. That is hopefully what we are going to get done with these three pieces of legislation. Hopefully, we can get it done. I appreciate your contribution to it and your comments. We are going to come back and ask you again when we go on with this jurisdiction question.

Thank you very much.

[Attachment to Mr. Ryan's statement follows:]

ABERDEEN AREA—LABOR STATISTICS

Reservation	Total Indian population			Labor force					
	Number	Percent	Percent in labor force	Total		Employed		Unemployed	
				Number	Percent	Number	Percent	Number	Percent
Cheyenne River.....	4,504	100.0	33.7	1,519	100.0	1,208	80.0	311	20.0
Crow Creek.....	1,236	100.0	23.9	296	100.0	101	34.1	195	65.9
Flandreau.....	2,293	100.0	34.5	101	100.0	93	92.1	8	7.9
Fort Berthold.....	2,798	100.0	39.3	1,100	100.0	699	63.5	401	36.5
Fort Totten.....	2,286	100.0	23.2	531	100.0	300	56.5	231	43.5
Lower Brule.....	783	100.0	20.8	163	100.0	134	82.2	29	17.8
Omaha.....	1,390	100.0	37.5	521	100.0	221	42.4	300	57.6
Pine Ridge.....	11,660	100.0	27.2	3,175	100.0	2,050	64.6	1,125	35.4
Rosebud.....	7,671	100.0	30.0	2,308	100.0	1,831	79.3	477	20.7
Santee.....	356	100.0	33.4	119	100.0	60	50.4	59	49.6
Sisseton.....	3,482	100.0	26.7	929	100.0	410	44.2	519	55.8
Standing Rock.....	4,874	100.0	27.3	1,329	100.0	835	62.8	494	37.2
Standing Rock, S. Dak., 44 percent.....	2,534	100.0	27.3	691	100.0	434	62.8	257	37.2
Standing Rock, N. Dak., 56 percent.....	2,340	100.0	27.3	638	100.0	401	62.8	237	37.2
Turtle Mountain.....	7,385	100.0	26.9	1,985	100.0	1,128	56.8	857	43.2
Winnabago.....	809	100.0	33.5	271	100.0	127	46.9	144	53.1
Yankton.....	1,425	100.0	36.7	523	100.0	157	30.0	366	70.0
Totals:									
Nebraska.....	2,555	100.0	35.7	911	100.0	408	44.8	503	55.2
North Dakota.....	14,809	100.0	28.7	4,254	100.0	2,528	59.4	1,726	40.6
South Dakota.....	33,588	100.0	28.9	9,705	100.0	6,418	66.1	3,287	33.9
Areawide total.....	50,952	100.0	29.2	14,870	100.0	9,354	62.9	5,516	37.1

Source: Informational measures from the PPE data system prepared July 1974.

Senator ABOUREZK. Is Mr. Gene Stucker of McLaughlin here?

How about Mr. Terry Pechota, director of the South Dakota Legal Services in Mission?

The next panel of witnesses then will be the administration, Mr. Theodore C. Krenzke, Director of the Office of Indian Services, BIA; Mr. Eugene Suarez, Chief, Division of Law Enforcement Services, BIA; and Mr. Reid Chambers, Associate Solicitor, Division of Indian Affairs, Interior Department; and Mrs. Doris Meissner, Assistant Director, Office of Justice Policy and Planning, Department of Justice.

Would all of you folks come forward and sit at the table?

For the official reporter, I wonder if you would all identify yourselves?

Dennis, do you want to sit at the table? The Assistant Head of the Justice Department's Indian Civil Rights Division is here. He may as well come up and join you.

I will ask Mr. Chambers if he would moderate this panel and kind of regulate who testifies at what time. I don't know who wants to go first. You can decide that among yourselves.

STATEMENT OF THEODORE C. KRENZKE, DIRECTOR, OFFICE OF INDIAN SERVICES, BUREAU OF INDIAN AFFAIRS; ACCOMPANIED BY EUGENE SUAREZ, CHIEF, DIVISION OF LAW ENFORCEMENT SERVICES, BIA; REID CHAMBERS, ASSOCIATE SOLICITOR, DIVISION OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR; AND DORIS MEISSNER, ASSISTANT DIRECTOR, OFFICE OF JUSTICE POLICY AND PLANNING, DEPARTMENT OF JUSTICE

Mr. CHAMBERS. Thank you. Mr. Krenzke is going to speak for the Bureau of Indian Affairs, and Ms. Meissner will speak for the Department of Justice. Mr. Suarez and I are here at your request.

Senator ABOUREZK. You are going to submit your statement in full without reading it?

Mr. CHAMBERS. I thought I might summarize a few points, depending on the time.

Senator ABOUREZK. All right, Mr. Krenzke.

Mr. KRENZKE. We have submitted a statement and if you don't mind, I will summarize it.

The Bureau of Indian Affairs appreciates the opportunity to meet with you and discuss various problems relating to the Indian criminal justice system. We share your concern about some of the weaknesses in the system which have not only led to unrest on occasion, but have prevented the establishment of a climate of justice, safety, and stability needed by all communities if they are to progress and solve the problems that they face. I am pleased to have with me today Eugene Suarez from our law enforcement staff and Reid Chambers, our Associate Solicitor.

During much of the past year members of our Bureau staff, working closely with Indian leaders, have endeavored to identify some of the problems in the Indian criminal justice system, and suggest recommendations to reduce and, where possible, eliminate them. For the benefit of your committee we are pleased to furnish you with a copy of our efforts to date, although we would point out that at present this study is only a working document, and in no way reflects a final position. It is still under review by the administration, which is giving this study its serious attention. From this review, revisions may emerge before the study becomes a final document. Also, the study is presently being reviewed by tribal leadership throughout the country, who have been requested to furnish their reactions and comments to be included in a revised publication.

We have endeavored to identify the problem areas in the Indian criminal justice system, and the areas where progress is being made. We have worked closely with Indian leaders in this process.

With respect to Indian police, over the 5-year period from 1969-73, their workload increased by 30 percent in terms of the number of offenses reported and the number of nonenforcement services rendered has risen by 52 percent, but the number of BIA law enforcement personnel increased by only 3 percent. As a consequence, the Indian citizen today who reports a crime inevitably waits longer for help to arrive after making his need known.

We also find that the police are inadequately trained and compensated, that supervision is lacking, and the result is often a low level

of police professionalism. Entry salaries paid to BIA police are far below those paid law enforcement officers in other Federal agencies or urban police departments. Entry salaries for BIA police are at the GS-3 level, or \$6,764 per year, and tribal police are frequently paid at a much lower rate. In contrast, the U.S. marshal service starts its personnel at the GS-5 level, \$8,500, as does the National Park Service. Starting salaries for police privates in 15 cities of over 800,000 population each, range from \$8,760 in Baltimore to \$14,448 in San Diego. Even in small towns in the West, the median starting salary is \$7,700. As a consequence of the poor salaries, recruiting difficulties exist which prevent supervisors from insisting on a high level of professional police qualifications.

Senator ABOUREZK. I am sorry the witness from McLaughlin, S. Dak., is not here. But I had a phone call from some people there that told me an off duty BIA policeman who was in a bar got drunk and thrown out by the manager of the bar, I think the American Legion Club or something. When he was thrown out, he went and got his tear gas gun and his other weapons and came back and tear gassed everybody in the bar and shot it through the window. Nothing has been done. Do you have a report on that? Nobody has done anything to him.

When you talk about poorly trained policemen, I don't know if you consider that to be good training or poor training. At least he hit his target, I guess. You can't complain about that. It seems to me when people are afraid of the police and can't get any grievance procedure taken care of when a policeman violates the law, using weapons and equipment that are furnished to him for enforcing the law, then definitely something has got to be done and in a hurry. I don't know if you want to comment on that or go ahead.

Mr. KRENZKE. I certainly sympathize with your feelings. Most of the crimes in Indian country are against people. I think it was mentioned before that the assaults rates are like nine times greater than the average for rural America. Reports of rape something like five times greater. Reports of murder something like three times greater. I think when you are talking about crimes about people, also the fact many of them are related to problems of alcohol and the abusive use of alcohol, it becomes all the more important that there be a high standard of professional police conduct. And I think what I am saying is that our report points out there are certainly good many deficiencies in this respect that we are aware of.

The second area I would like to mention relates to the detention centers and jails. Most of these are operated by the tribes or the Bureau and are in poor physical shape. Of the 49 operated, we have found in the study that only 18 have round-the-clock, 24-hour-a-day supervision of the prisoners. We think it is as a direct result of this that we have had numbers of prisoner assaults and deaths from other causes that possibly could have been eliminated had there been adequate supervision within the jails.

We also find that in the jails in general there is no female supervisory personnel to supervise female prisoners. And we also find an average daily jail population of something like 62 boys and 25 girls under the age of 18. By and large the jails in Indian country simply are not constructed and operated so as to have juveniles incarcerated therein.

In relation to the courts, we find one of the major problems relates to the pay of judges which is very poor. As a result many of the judges have to hold down other jobs, although I think their caseload is sufficient to indicate they should be devoting full time to the duties that they have as judges. In most instances the judges have no access to either assistance from prosecutors or defense counsel, even though we know in a non-Indian world, the judges need this kind of assistance. We find in a good number of instances that basic clerical services are not available to make the courts a court of record. We also find that only a few instances are probation and parole services available, this being the arm of the court that is really concerned with the matter of preventive and rehabilitative activity.

In addition to the problems relating to law enforcement, to the matter of the jails, detention homes, and the courts, we have the matter of jurisdiction. One of the things we find that recently the jurisdiction of Indian tribes has been greatly increased. In part this came as a result of actions by the tribes and State legislatures under the so-called 1968 Indian Civil Rights Act.

We have also some instances where courts have made decisions as a result of actions taken by tribes to increase their jurisdiction. And in most of these instances we have had some special problems because the additional jurisdiction has come upon the tribes without the benefit of advanced planning and often they have not had the funds available to provide the services needed to be involved in the law enforcement activity with this expanded jurisdiction.

Our report also identifies some problems which I will go over briefly. We find that we have a lack of an adequate information system. There is no basic system of inspection and evaluation. There is a certain amount of confusion as to various organizational responsibilities. There are poor efforts, as was mentioned here earlier today, to prosecute against major crimes, and in general we have a poor system in terms of the equitable funding by the Bureau of Indian Affairs to the various tribes throughout the country for criminal justice programs.

Although I pointed out a number of problems, I would be remiss if I did not indicate some progress has been made and is being made. I think one of the things that you have expressed concern about is the matter of training, and I would point out the fact that the Bureau of Indian Affairs did establish a police academy in 1969.

Under this academy we are training more than 100 police recruits annually in basic recruit training, and in addition, some 200 additional officers are receiving specialized training. Other training facilities are also available in many instances to law enforcement personnel. These include State facilities in some instances and in other instances the facilities include the resources of the National Law Enforcement Training Center and the FBI Academy.

I think another important thing that has happened in the area of training is that the Bureau of Indian Affairs and the Department of Interior have recently adopted mandatory training standards for our law enforcement personnel. Under the Department's requirements this would also hold true in relation to tribal organizations for whom we provide the funding resources under contract.

I think another bright spot that is in the general area of Indian criminal justice system has been the activity of the American Indian Judges Association. This group has been very active in recent years and has received some funding from LEAA and also from some private organizations. Members of the Bureau staff have been made available to assist them. This organization is very concerned about the training for tribal judges and concerned about lifting and elevating the general standards of tribal courts.

Another program that has, I think, been very effective has been the Indian offender rehabilitation program which is operated by the Bureau of Indian Affairs. Under this program special services are provided to Indian people who are incarcerated in State and Federal penal institutions to help obtain jobs upon their release on parole and also to further their education.

The success of this program is evidenced by the fact that the rate of recidivism of these individuals is much lower than the population in general.

A lot of good has come especially out of the LEAA funding which has provided improved facilities and equipment in Indian communities and also in some instances provided help for improving the quality of services. However, one of the problems that we have in this latter respect is the fact that normally their funding is limited for a period of 2 years, and after that period of time many of these excellent efforts have to be picked up by the tribe or Bureau or else dropped.

While some good things are taking place, there is much more that needs to be done. I think, as suggested earlier here, one of the things we feel very strongly about is that we need to at some point get at some of the basic problems of poverty and unemployment which contribute to the high crime rate in Indian communities.

We also believe that there is a great need for adequate community and social services to help individuals, families and communities to reach the goals and aspirations that they have. And most of all, I think the thing that we are concerned about is that the answers to most of these problems are going to have to be developed at the reservation level and we need to avoid pro forma solutions to the problems developed here in Washington.

Within this framework, we strongly recommend that several enabling actions should be taken immediately. First of all, we believe that funding should be available to provide at least minimally adequate services in the area of law enforcement, detention and jail facilities, and for the courts in Indian communities. I should note there has been some increase in funding proposed in the President's 1976 budget, and that further requests for funding are at the present time being reviewed by the administration.

A second thing we would recommend is that the tribes be encouraged very strongly and helped to plan and conduct programs which address themselves to their needs. I guess what I am saying is we feel we should provide them with minimally adequate services immediately, and we should then help them to go beyond just minimal service, to do what they really need to do to get a hold of the problem in their communities.

Finally, I would just like to say that the Bureau is ready to work with the tribes and with the legislative arm of the Government to address ourselves to these problems. Some of the issues we believe are going to be very, very complex and we feel rather certain that unfortunately overnight solutions are not going to be found. However, we think that with all of the folks working together on it and with the Indian tribes taking the lead, good solutions to many of these problems can be obtained.

Senator, the Bureau of Indian Affairs appreciates the opportunity to have been here this morning to address ourselves to this subject.

Senator ABOUREZK. I made the statement this morning, it can never be said that the Indian Affairs Subcommittee doesn't have heated hearings. Someone during the hearing this morning has burned part of the door and the witness list hanging on the door.

I want to ask you, Mr. Krenzke, you said the BIA wants to work with the legislature and the Indian people themselves. I am curious to know why the BIA hasn't done something before today so far as law enforcement is concerned on reservations and judicial improvement? Because in spite of the note of optimism you struck in your statement about the progress you made, in theory that sounds great. In practice, things are getting worse on a lot of reservations.

What is the problem and why has not the Bureau of Indian Affairs done something about it?

Mr. KRENZKE. I would like to take the position that the Bureau of Indian Affairs has tried to do something. The report that was given to you shows in some detail the efforts that the BIA has made since roughly 1968 or 1969 to draw particular attention to the kinds of problems which I outlined. We have, as I said, just completed a study in which there are a good many, I think, important recommendations for change.

Additionally, we have made many of these recommendations previously. So far—

Senator ABOUREZK. To whom?

Mr. KRENZKE. We have made these recommendations and I have—

Senator ABOUREZK. To whom?

Mr. KRENZKE. To the administration and to the Congress.

Senator ABOUREZK. Well, you have not made them to me. Who in the Congress?

Mr. SUAREZ. Senator, since 1969, we have made a concerted effort to try to upgrade tribal law enforcement. There are certain restraints within the Bureau we have to work under.

Senator ABOUREZK. What are those?

Mr. SUAREZ. Administration policy.

Senator ABOUREZK. What is that?

Mr. SUAREZ. We have a number of problems within the Bureau in terms of how they see the law enforcement program is to be operated, the organizational structure. Sometimes there isn't concern voiced up and down the ladder.

Senator ABOUREZK. Who have you made your recommendations to in the Congress before today?

Mr. SUAREZ. You and I have had a number of conversations regarding the needs in law enforcement.

Senator ABOUREZK. That was when I was making recommendations to you?

Mr. SUAREZ. I think it went both ways. If you look at some of our program requests and budget requests over the years, since 1969, we have made efforts in this regard. In 1969 we started the Indian police academy that is currently in operation. We now have mandatory training regulations, uniforms are purchased for tribes and Bureau police agencies and standardized a number of areas which had not been done prior to this.

Senator ABOUREZK. I would like to know from somebody in the Bureau of Indian Affairs, preferably one of you witnesses here today where is the obstruction occurring? Is it in the Bureau of Indian Affairs or the Office of Management and Budget?

Mr. SUAREZ. I think that the obstruction is above the Bureau of Indian Affairs.

Senator ABOUREZK. Let's try to get it closer. Is it in the Office of Management and Budget? Yes or no?

Mr. SUAREZ. Part of it. The other one is in the hands of Congress, who makes the final appropriation.

Senator ABOUREZK. How about the request for appropriation?

Mr. SUAREZ. We have pushed forward in the Bureau since 1969 for increased funding. In a number of instances the Department has supported us. In a number of instances it has not gone past OMB.

Senator ABOUREZK. What was your request for law enforcement last year? For fiscal year 1975-76.

Mr. SUAREZ. In 1974-75 we asked for about \$18 million.

Senator ABOUREZK. What did you get?

Mr. SUAREZ. In 1970 we received about \$11.8 million.

Senator ABOUREZK. Let's try to go through it. This is for fiscal what?

Mr. SUAREZ. Let me go back and review it from the beginning, Senator.

Senator ABOUREZK. What I want to know, Gene, is what you recommended, as the head of the BIA law enforcement. How much you recommended for that year, how much OMB recommended, and how much you got from the Congress.

Mr. SUAREZ. In the 1970, Senator, the BIA proposal was \$8.5 million. The Presidential budget called for \$4.7 million. The congressional appropriation was \$5.1 million.

Senator ABOUREZK. So Congress increased it in 1970?

Mr. SUAREZ. Yes, sir, they increased it.

Senator ABOUREZK. From what OMB gave them. In 1970 Congress didn't know the BIA had recommended this.

Mr. SUAREZ. We have a problem in terms of relating to Congress those things above us.

In 1971, Senator, we asked for \$11.5 million. The President's budget was \$5.4 million, and the congressional appropriation was \$5.9 million. An increase of \$500,000.

Senator ABOUREZK. Over OMB's recommendation. OMB has consistently cut you in half?

Mr. SUAREZ. Yes, sir. In 1972, our proposal was for \$10.6 million. The President's budget was \$7.3 million and the congressional allocation was \$7.3 million.

Senator ABOUREZK. You mean by Congress over OMB's request.

Mr. SUAREZ. In 1973 we proposed \$12.1 million, the President's budget was \$8.3 million, and the congressional appropriation was \$8.3 million.

Senator ABOUREZK. OK.

Mr. SUAREZ. In 1974, our proposal was \$18.5 million. The President's budget was \$8.3 million, and our appropriation was \$11.8 million, of which, Senator, \$3.5 million went to reimburse the Department of Justice for Wounded Knee. We didn't get that money.

Now, we have pending before OMB the supplemental request that has been supported by the Department but is currently, as Mr. Krenzke indicates, under study by OMB.

Senator ABOUREZK. What is your request for this year? When you said 1974, was that fiscal year 1975?

Mr. SUAREZ. Yes, sir.

Senator ABOUREZK. So you are talking about your 1976 fiscal year request. What is that?

Mr. SUAREZ. Our planning allowance is \$13.5 million, although we have gone in for an amendment of that of \$24.5 million.

Senator ABOUREZK. You are asking for \$24.5 million?

Mr. SUAREZ. Yes, to amend our current 1976.

Senator ABOUREZK. OMB did not make their recommendation?

Mr. SUAREZ. Not yet. Our planning allowance is \$13.5 million.

Senator ABOUREZK. When you call it "planning allowance," that is what they propose to submit?

Mr. SUAREZ. That is right.

Senator ABOUREZK. They have said \$13.5 million?

Mr. SUAREZ. Right.

Senator ABOUREZK. They have cut you \$11 million so far this year?

Mr. SUAREZ. So far.

Senator ABOUREZK. Now, would \$24.5 million be what the military calls a "turn-around" budget?

Mr. SUAREZ. I think so. It will allow us to begin the development of viable law enforcement systems on the Indian reservations, at least at the level they should be started at.

Senator ABOUREZK. That has nothing to do with the judicial improvement. That is just law enforcement?

Mr. SUAREZ. It has something to do with it, Senator. It includes at least bringing up to an adequate level the salaries of judges.

Senator ABOUREZK. This includes judicial salaries?

Mr. SUAREZ. Yes, it does. This is a starting point in 1976. We made an analysis of the judges salaries, and they get from \$100 a year to \$11,000 a year, which is ridiculous to pay a judge and expect him to be able to do all the other things you request of him. Yet, in all the efforts we have consistently not been able to get the money that is necessary.

Senator ABOUREZK. Do you feel that you have done your part and what is necessary? The problem has been you do not get the budget requests you ask for?

Mr. SUAREZ. I think we have done our part of the effort. I think we have gone as far forward as we can from the financial aspect. We have not gone as far as we would like to or could in all aspects of reservation law enforcement.

Senator ABOUREZK. Let me ask you—the proposed legislation we are talking about in general concept—are you familiar with the general concept?

Mr. SUAREZ. Yes, I am.

Senator ABOUREZK. What is your comment on that?

Mr. SUAREZ. From the enforcement aspect, the first portion of it, I think we are doing that. However, I think there are ways in which we can support your effort.

Senator ABOUREZK. You agree with the general concept?

Mr. SUAREZ. Generally speaking, I think it is good. I think if Congress could make available adequate funds to pay adequate salaries to police, give them adequate protection in terms of their career, keep them at a high entry level, then we could provide the type of training that is necessary.

One thing I would like to bring to your attention is that right now tribal and Bureau police are receiving about 500 hours in recruit training at the Indian police academy. The State of South Dakota requires only 150 hours for their officers to be certified under the existing peace officers' training standards which means the tribal and Bureau police go to the police academy and receive almost 3 times as much training as any other officer in South Dakota.

Senator ABOUREZK. Are they required to go?

Mr. SUAREZ. They are, yes.

Senator ABOUREZK. What is the percentage?

Mr. SUAREZ. About 50-50.

Senator ABOUREZK. Half do and half don't?

Mr. SUAREZ. We have had more tribal police within the last year going to the academy. The problem initially in getting tribal people to go was twofold. One was, the tribal police departments were so grossly undermanned when an officer left for 16 weeks, there was nobody else to take his place.

Second, the tribes did not have the money and/or the resources to send this man down there. Within the past several years we have had an agreement within the Bureau, that the division employment assistance picks up transportation costs for training of the tribal officer at the police academy. He is being trained, and there is at his disposal adequate training capability and resources.

Senator ABOUREZK. Now, are tribal and BIA police departments generally undermanned around the country?

Mr. SUAREZ. Yes, sir. I would say they are.

Senator ABOUREZK. Thank you.

Mr. Krenzke, do you agree with that assessment?

Mr. KRENZKE. I certainly do.

[The prepared statement of Mr. Krenzke follows:]

STATEMENT OF THEODORE C. KRENZKE, DIRECTOR, OFFICE OF INDIAN SERVICES,
BUREAU OF INDIAN AFFAIRS

The Bureau of Indian Affairs appreciates the opportunity to meet with you today for the purpose of discussing the need for criminal justice reform within our Indian communities and reservations. We share your concern that weaknesses in the system have not only led to unrest on occasion, but have prevented the establishment of a climate of justice, safety, and stability needed by all communities if they are to progress and solve the problems they face. To assist me here today, I am pleased to introduce Mr. Eugene Suarez, Chief of the Division of Law En-

forcement services of my office, and Mr. Reid Chambers, our Associate Solicitor for Indian Affairs.

During much of the past year members of our Bureau staff, working closely with Indian leaders, have endeavored to identify some of the problems in the Indian Criminal Justice System, and suggest recommendations to reduce and, where possible, eliminate them. For the benefit of your Committee we are pleased to furnish you with a copy of our efforts to date, although we would point out that at present this study is only a working document, and in no way reflects a final position. It is still under review by the Administration, which is giving this study its serious attention. From this review, revisions may emerge before the study becomes a final document. Also, the study is presently being reviewed by Tribal leadership throughout the Country, who have been requested to furnish their reactions and comments to be included in a revised publication.

I

We have endeavored to identify the problem areas in the Indian Criminal Justice System, and the areas where progress is being made. We have worked closely with Indian leaders in this process.

With respect to Indian police, over the five year period from 1969-1973 their workload increased by 30% in terms of the number of offenses reported and the number of non-enforcement services rendered has risen by 52%, but the number of BIA law enforcement personnel increased by only 3%. As a consequence, the Indian citizen today who reports a crime inevitably waits longer for help to arrive after making his need known.

We also find that the police are inadequately trained and compensated, that supervision is lacking, and the result is often a low level of police professionalism. Entry salaries paid to BIA police are far below those paid law enforcement officers in other Federal agencies or urban police departments. Entry salaries for BIA police are at the GS-3 level, or \$6,764 per year, and tribal police are frequently paid at a much lower rate. In contrast, the U.S. Marshal service starts its personnel at the GS-5 level, (\$8,500) as does the National Park Service. Starting salaries for police privates in 15 cities of over 800,000 population each, range from \$8,760 in Baltimore to \$14,448 in San Diego. Even in small towns in the West, the median starting salary \$7,700. As a consequence of the poor salaries, recruiting difficulties exist which prevent supervisors from insisting on a high level of professional police qualifications.

Police in Indian communities must deal with particularly complex problems. Violent crimes are predominant, and are high when compared to other rural areas. Assault rates are nine times higher, rapes five times as frequent, and murders three times more numerous. Also, many of those incarcerated should be in other types of institutions, but frequently there is no alternative to jail. Many of those arrested by Indian police are intoxicated. For example, 37.1% of all arrests made in FY 1971 were the result of alcohol abuse. While some progress is being made with regard to police training we are at present only beginning to provide a reasonable level of effort to deal with these problems and it is reliably estimated that as many as 300 Indian police have not yet received basic recruit training.

Extremely serious problems also exist in most reservation jails. Of the 23 BIA jails, 25% should be replaced and 70% need major renovation. Among 26 tribally owned jails, 20% should be replaced and 55% need renovation. Only 18 of the total 49 reservation jails have personnel on duty 24 hours a day. These jails have no rehabilitation programs. From February 1972 to June 30, 1973, 15 Indians killed themselves by hanging in BIA or tribal jails. In general, there are no female detention personnel to supervise female prisoners. While these jails are no places for juveniles, the lack of other resources or alternative facilities has resulted in an average total daily population of 62 boys and 25 girls under age 18. Lack of adequate supervisory personnel results in numerous suicide attempts, assaults and other incidents. An undetermined number of inmates die in jail of alcohol related illnesses.

Serious problems also exist with regard to Indian courts. In general, the pay of judges is extremely low. One South Dakota judge who handled 550 cases per month in 1973, received an annual salary of less than \$6,200. Other judges handling over 100 cases per month received less than \$4,000 in annual compensation. As a result of the poor pay most judges must hold other jobs and frequently cannot participate in training opportunities available to them.

Indian judges, like their counterparts on State and Federal benches, need the assistance of prosecutors and defense counsel to present the facts and the law

needed to make decisions. Yet, most cases are tried without either prosecutor or defense counsel to present the facts and the law needed to make decisions. Yet, most cases are tried without either prosecutor or defense counsel present, and often the most basic clerical services for proper record keeping are missing.

Most Indian courts do not have probation or parole services available to them. Probation officers represent that part of the criminal justice system with the clearest mandate to deal with the individual problems that are the root causes of crime. Without them, the only alternative to incarceration is unsupervised probation or a suspended sentence.

An additional problem in recent years has been that of expanded Federal and Tribal jurisdiction. In some cases actions by State legislatures and Tribal referenda have resulted in jurisdiction being retroceded from the States to the Tribal and Federal government. Court decisions have expanded reservation boundaries, by declaring certain State jurisdiction over certain Indian lands to be illegal, which also would have the effect of expanding Federal and Tribal jurisdiction. In virtually all such instances special problems have resulted because there has been inadequate advance planning and adequate funds have not been immediately available for the tribes to effectively carry out their new responsibilities.

There are a number of related problems. They include: the lack of essential information reporting systems, the lack of an inspection and evaluation program, confusion over organizational responsibilities for the various elements of the system, problems relating to the effective prosecution of major crimes in the Federal courts, and general concern over equitable funding for the various tribes.

II

While major problem areas have been identified, we would be remiss in not stating that there has been some real progress within the Indian Criminal Justice System.

Inroads have been made to remedy the inadequacy of police training. The Bureau of Indian Affairs established a police academy in 1969 and since then has been actively involved in training over 100 recruits per year while providing specialized training for an average of more than 200 additional personnel. Additional training facilities are available from a variety of sources including numerous state facilities, the National Law Enforcement Training Center, and the F.B.I. Academy. Recently, both the Bureau and the Department adopted mandatory training standards which affect not only our personnel, but also those for whom we provide funding resources through contractual arrangements.

The National American Indian Judges Association is an organization composed of Indian judges throughout the nation who are vitally concerned with the quality of tribal courts. Supported by both Law Enforcement Assistance Administration and private sources of funding, they have given special attention to training activities aimed at upgrading the education of individuals serving in tribal judicial posts. They have accomplished much and are deserving of an opportunity to continue their leadership in this respect.

The Bureau's Indian Offender Rehabilitation program has been very successful in helping Indian inmates of State and Federal prisons to obtain employment and educational opportunities upon release. Our data indicates that participants in this program are significantly less likely to violate the terms of their parole than non-Indian parolees from the same institution.

III

There has been improvement in both quality of police service and in the facilities and equipment primarily due to LEAA funded programs. Unfortunately, these are meant to be merely demonstration efforts which normally do not continue for more than two years. At the conclusion of this time the effort must be either dropped, picked up by the tribe, or assumed by the Bureau.

While some improvements have and are being made in relation to the Indian Criminal Justice System, there remains much more to be done in this respect. In approaching the problem, it is important to recognize that at some point in time we must come to grips with some of the underlying causes of the problems which have been noted. This means that we must search for solutions to the problems of poverty and unemployment which have such a depressing effect on both individuals and communities, and create the atmosphere in which crime thrives.

We must also learn to more effectively help individuals, families and communities to experience the realization of their hopes and aspirations, and in order to ac-

compish this must make certain the existence of essential social and community services. More importantly, we must withstand the temptation to dictate from Washington pro forma solutions to these problems. Rather, in the spirit of Indian self-determination, we recognize that while the solutions to complex problems are not going to materialize overnight, they will come and will be best developed by the Indian people themselves. Within this context, we maintain that there are several actions that should be taken to enable the Indian Tribes to improve the quality of their Criminal Justice programs.

The Indian Criminal Justice System needs the funding necessary to provide the minimally acceptable and adequate level of basic services to its constituents. Many of the law enforcement, detention, and judicial inadequacies are of such gross proportions as to defy at this time meaningful preventive efforts. Certainly, a reasonably competent and effective police force, round the clock supervision of jails, and protection of the basic rights of the accused in courts should be assured in all Indian communities. In this regard, it should be noted that the President's budget proposes a 34% increase for BIA law enforcement program funding fiscal year 1976. Furthermore, the matter of the appropriate level of funding for this program is being reviewed within the Administration along with other recommendations of the recent study.

Upon achieving minimally adequate levels of Criminal Justice services, each tribe should be encouraged by the Federal Government to address themselves to their specific problem areas and plan realistic programs which will best provide solutions for their community. It should be recognized that this will require some time, with some tribes moving forward more effectively than others.

The Bureau is working to resolve these problems. It is highly desirable that there be close coordination and collaboration between the Indian leadership and both the Legislative and the Executive branches of government. In this respect, some very complex issues should be addressed. It is important that they be approached deliberately, and that there be a certainty as to the objectives, so that the benefits to the Indian community will be of long lasting duration.

Again, the Bureau is pleased to be here. We are ready to work cooperatively with both the Congress and the Indian community to achieve solutions which will result in justice for Indian citizens and stability for Indian communities.

Senator ABOUREZK. OK. Who is next then? Ms. Meissner?

STATEMENT OF DORIS MEISSNER, ASSISTANT DIRECTOR, OFFICE OF JUSTICE POLICY AND PLANNING, DEPARTMENT OF JUSTICE

Ms. MEISSNER. Thank you. I am from the Office of Justice Policy and Planning.

This is the policy and planning staff of the Attorney General. One of the matters our Office has undertaken is a review within the Department of the whole subject of Indian affairs and how we handle them; resource litigation as well as the law enforcement question, and so on.

A departmental task force which I cochair is undertaking this review, and we have just begun to study this whole question of law enforcement and reservation policing.

As a means of developing an agenda for this purpose, we called a meeting in January of the U.S. attorneys who are primarily involved in reservation law enforcement in the Western States. We had a full discussion for 3 days with officials of the Department of Interior and the U.S. attorneys on a whole range of matters similar to those being discussed here.

The meeting produced a number of items on which we are moving forward. I will mention a few of them to you, and comment on several other things that came up this morning that perhaps you may have questions about.

First of all, there is a matter of the declination of cases that the U.S. attorneys make in relation to cases which are brought to them from Indian reservations.

We are trying to work out a procedure through which we can develop more evidence as to the allegations being made about cases not being prosecuted. In other words, this whole question of whether or not the Indian reservation is a no man's land.

Senator ABOUREZK. You are doing that study now?

Ms. MEISSNER. Yes. And the Department of Interior is providing us with case examples of the material they have. In addition, we have worked out a simple procedure of communication between the U.S. attorneys and the tribes for those instances where a case is found to be within the jurisdiction of the tribe.

In the past there has not been a clear procedure for the FBI to convey information about declinations in favor of tribal prosecution back to the tribes. There are a number of small things we have been able to do to help take care of this.

In addition, we have the whole question of the relationship between the FBI and the BIA, the question of who investigates a case, whether the FBI can get there fast enough in order to preserve the scene of the crime, all those matters.

We are also studying these matters. The FBI has been asked to do a complete review of its resources in relation to the reservation. There is the terrific problem of distances with the FBI office located hundreds of miles away, the question of time in getting there and so forth. That review is going on right now, and we hope to determine measures which can be taken to reallocate manpower, possibly establish some offices in a little closer proximity, and so forth.

The question of jurisdiction which Reid is going to be talking about is one we are concerned about. I am not going to make any comment specifically on it, although we do have representatives here from the Department who can answer any specific questions that you have.

In addition, we have noticed throughout the morning that the question of LEAA funding has been raised often. LEAA is a primary source of funding for the law enforcement institutions on the reservation, tribal court situations, and so on, and there is the problem that was mentioned of two and three-year funding. Funding simply expires because the whole point of LEAA is to provide seed money.

We have recently established an Indian desk in LEAA to be absolutely sure we are doing the most we can to get the funds out where they ought to be. We hope we will be able to sustain a kind of funding effort we had in the past from LEAA.

With that brief summary, Mr. Chairman, I will be glad to answer any questions you might have. Mr. Pauley and Mr. Ickes are also here from the department and can respond to any questions.

Senator ABOUREZK. You have no objections to the legislation we are considering today?

Ms. MEISSNER. I would have to see it first. I would say one thing I noted in going over the outline on the legislation is the provision for training assistance from U.S. marshals. I would think that you might want to consider adding FBI resources into that capability.

One area the task force is examining closely involves additional ways that the FBI can provide training on the spot, not just by sending officers to academies which raises the problem of the officers being away when there are minimal resources, and so on, but what we can do to bring training to the reservations. The FBI should be considered.

Senator ABOUREZK. Let me ask you as a panel, what do you think is the best way to provide the training that is necessary? If you are short handed, if you send somebody away to a training academy, is it better to have U.S. marshals come out and ride around in shifts, or the FBI come out and ride with them and provide in-house training?

Mr. SUAREZ. There would be no disagreement that training of any type is necessary in the life of a professional policeman. Experience has shown us that basic recruits, people coming into the profession, should have at least training in which they are with their peers, which is of a paramilitary type of structure. I am for having police officers go to a central location for training of recruits. Advanced training should also be done, but not to the degree of sending a man off for 16 weeks.

We are using facilities of the FBI, and the FBI does go into a reservation on many, many occasions for training at the community level. Each Bureau special officer, has as part of his job the responsibility of providing no less than 40 hours of inservice training in about 20 categories to those police under him, tribal as well as Bureau.

There is training capability there. There is no doubt that U.S. marshals can come and ride with the police on reservations and do on-the-job training. We would welcome and hope, and know that every tribe would accept whatever training it can.

Senator ABOUREZK. If you are going to mandate a program, how would you do it? I know they can do it, once a year do it. How about setting up a program?

Mr. SUAREZ. We have a training program, Senator. Remember, we cannot demand that the tribal police attend these programs. We have a police academy at which we openly invite and request participation of the tribe.

We have today in the Federal Law Enforcement Training Center two or three tribal employees there for training in criminal investigation. We conduct at the agency level all sorts of training from fingerprinting to alcoholism to police methods to search and seizure. We have those currently going on at almost ever reservation at one time or another. These are held for the benefit of tribal and bureau employees.

Senator ABOUREZK. I wonder if you could provide my office with a report on that BIA policeman who used tear gas? Apparently nothing has been done to investigate it or to penalize the man, if what was charged is true.

Mr. SUAREZ. If this has happened, someone would have made an investigation, and I am quite sure some of the people from Justice would have been involved and we would have heard it.

There have been a number of incidents where we get reports at this level that are grossly exaggerated. We immediately ask for an investigation whenever we get a report.

Senator ABOUREZK. I would appreciate a report. I have to respond to that myself.

Thank you very much.

Mr. CHAMBERS. I have submitted a statement which is like a legal memorandum. Anything I say is purely informational. It doesn't reflect an official department position. I am appearing at your invitation.

[The prepared statement of Mr. Chambers follows:]

STATEMENT OF REID PEYTON CHAMBERS, ASSOCIATE SOLICITOR OF INDIAN AFFAIRS, DEPARTMENT OF INTERIOR; LEGAL MEMORANDUM ON ISSUES OF JUSTICE REFORM ON INDIAN RESERVATIONS

Mr. Chairman and members of the committee, I am appearing at the request of this committee to discuss legal issues concerning the need for justice reform on Indian reservations. My statement will be informational only, and does not represent a position of the Department of the Interior.

There are, I believe, three governmental entities which must be considered with respect to legal problems concerning law enforcement and the administration of justice on Indian reservations—Federal, State, and tribal governments. I think it might be of some help to the committee if I try to summarize the legal bases and limitations of these governments, in the form of a legal memorandum.

First, there is the United States. Congress has plenary power to regulate Indian affairs and activities on Federal Indian reservations—whether by Indians or non-Indians. But the existence of this plenary power does not mean that Congress has in fact exerted complete Federal authority over criminal or civil activities on reservations, excluding entirely either State or tribal governments. For example, since the Major Crimes Act was enacted in 1885, certain enumerated offenses committed by Indians on reservations have been Federal crimes.¹

Apart from these "Major crimes," the criminal laws of the United States extend generally to crimes committed by Indians against the person or property of non-Indians, or by non-Indians against the person or property of Indians.² If, however, a non-Indian commits a crime against another non-Indian,³ or an Indian commits a crime against another Indian which is not a "major crime,"⁴ the Federal criminal statutes do not apply to it.

Apart from criminal laws, Congress has clothed the Secretary of the Interior with certain powers to control and regulate subjects such as the establishment of businesses,⁵ the use of water⁶ and the leasing of land on reservations.⁷ But usually the powers of the Secretary on these matters are limited by the statutes.

Since Indians are also citizens of the United States and the State wherein they reside, the State governments have some obligations to provide services to them—a primary example is education.⁸ But States do not have general authority to regulate Indians on the reservation—either with respect to criminal law enforcement, or civil matters—such as land use or taxation—unless Congress has specifically provided that they may exercise that authority.

Congress has delegated some civil and criminal jurisdiction to certain states,⁹ principally by Public Law 83-280, enacted in 1953.¹⁰ This law has certain exceptions and limitations which are the subject of litigation and which I will not

¹ 18 U.S.C. § 1153.

² 18 U.S.C. § 1152.

³ *Draper v. United States*, 164 U.S. 240 (1896); *United States v. McBratney*, 104 U.S. 621 (1882).

⁴ 18 U.S.C. § 1152.

⁵ 25 U.S.C. §§ 261, 262.

⁶ 25 U.S.C. § 381.

⁷ *E.g.*, 25 U.S.C. §§ 415, 416, Compare 25 C.F.R. 1.4.

⁸ States have generally been held required to provide education and other public services to reservation Indians despite their immunities from most State taxation. *E.g.*, *Piper v. Big Pine School District*, 193 Cal. 664, 226 p. 926 (1924); See *Acosta v. San Diego County*, 126 Cal. App. 2d 455, 272 p. 2d 92 (1954).

⁹ The following states have assumed at least some jurisdiction under Public Law 280—Alaska, Arizona, California, Florida, Idaho, Minnesota, Montana, Nebraska, Nevada, Oklahoma, Oregon, Washington and Wisconsin. Two of these states—Nebraska and Nevada—have retroceded some of this jurisdiction pursuant to the 1968 Civil Rights Act. 25 U.S.C. § 1301, et seq.

¹⁰ Act of August 15, 1953, 67 Stat. 588 (popularly called Public Law 280), 18 U.S.C. § 1162 and 28 U.S.C. § 1360.

discuss here.¹¹ Apart from Public Law 280—and a few similar statutes affecting Kansas, Iowa and New York¹²—states do not have jurisdiction over reservation Indians, or over transactions between Indians and non-Indians (except with the consent of the Indian), on the reservation. Indians off the reservation are generally subject to state jurisdiction, except where they are exercising a treaty protected right, as may be the case with hunting and fishing. So the states are the second governing entity which may, depending on the circumstances, have some authority over Indian reservations. But that authority is usually far more limited than in other parts of the state.

The third government to be considered with regard to events occurring on an Indian reservation is the tribe.

The starting point in any consideration of the scope of tribal jurisdiction is the fact—not known or fully appreciated by most Americans—that Indian tribes were once sovereign nations. They were recognized from the earliest Congresses and Presidential Administrations as “distinct, independent, political communities,” and as such, qualified to exercise powers of self-government. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). This exercise of tribal self-government does not derive from a delegation of powers from the federal government—although on occasion Congress has specifically delegated power to tribes—but rather is a result of their original tribal sovereignty. To be sure, the doctrine of Indian tribal sovereignty has not been static in the past two centuries. In some instances, tribal sovereignty has been limited somewhat by treaties and express legislation. Compare *McClanahan v. Arizona Tax Commission*, 411 U.S. 164 (1973). The evolution of tribal self-government over the years is marked by adherence to three fundamental principles articulated by Felix Cohen in his authoritative *Handbook on American Indian Law* (1942) at p. 123:

“(1) An Indian tribe possesses, in the first instance, all the powers of any sovereign state; (2) conquest renders the tribe subject to the legislative power of the United States and, in substance, terminates the external powers of sovereignty of the tribe; and (3) these powers are subject to qualification by treaties and by express legislation of Congress, but, save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government.” (Footnotes omitted.)

See also *Iron Crow v. Oglala Sioux Tribe*, 231 F. 2d 89, 94 (8th Cir., 1956) (“tribes still possess their inherent sovereignty excepting only where it has been specifically taken from”). Cf. *Mattz v. Arnett*, 412 U.S. 481, 505 (1973).

Recent Supreme Court decisions have made it clear that tribal sovereignty is not a “Platonic notion,” and that it is relevant “not because it provides a definitive resolution to issues . . . [of federal-state-tribal jurisdiction and relations], but because it provides a backdrop against which the applicable treaties and federal statutes must be read. It must always be remembered that the various Indian

¹¹ Some of the cases now pending are *Omaha Tribe of Indians, et al. v. Peters*, 383 F. Supp. 421 (D. Neb. 1974), appeal docketed, 5th Cir. (whether the State has power to impose an income tax on reservation Indians pursuant to P.L. 280); *Russell Bryan, et al. v. Iasca County*, No. 44947, before the Supreme Court for the State of Minnesota (whether the State has authority to impose a personal property tax on the mobile home of a reservation Indian); *The Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, et al. v. John C. Moe, et al.*, Civil No. 2145, U.S.D.C., Montana, Missoula Division (lawfulness of state sales tax on reservation sales by an Indian retailer to a non-Indian consumer); *U.S.A. v. State of Washington*, Civil No. 3909, U.S.D.C., E.D. Wash. (filed July 18, 1973), (amended complaint filed October 4, 1974) (whether the State may impose its excise tax laws on transactions of tribally licensed retailers on the Yakima Reservation on their sales to Indians and non-Indians); *Confederated Tribes of the Colville Indian Reservation v. State of Washington*, Civil No. 3868, U.S.D.C., E.D. Wash. (filed May 17, 1973) (whether the State can impose taxes on tribal and individual sales transactions; retail sales of cigarettes to Indians and non-Indians); *Quileute Indian Tribe, et al. v. State of Washington*, Civil No. —, U.S.D.C., Wash. (filed Dec. 19, 1974) (whether the Quileute Tribe and individual members can carry on tribal functions, Indian economic enterprises and other activities free from state taxation); *U.S. v. Humboldt County*, Civil No. C-74-2526-RFP, U.S.D.C., N.D. California, (whether the State has authority to apply its zoning, building, sanitary and environmental laws to construction on the Hoopa Reservation).

It is difficult to say which way these cases will go, that is, whether they will give a broad and all inclusive definition to civil jurisdiction or a more limited and circumscribed one.

A recent court decision involving a Public Law 280 taxing authority question was rendered by the State Supreme Court of Washington in *Tonasket v. State of Washington*, on remand by the U.S. Supreme Court, 79 Wash. 2d 607, 488 P. 2d 281 (1971); remanded 411 U.S. 164, 93 S. Ct. 1257, 36 L. Ed. 2d 129 (1973); —, Wash. 2d —, 525 P. 2d 744, issued August 8, 1974, Supreme Court File No. 41640; appeal dismissed (lack of substantial federal question) February 18, 1975. The court held as part of its opinion that the state could extend its civil excise tax laws to Indian retailers who serve non-Indian consumers within the exterior boundaries of an Indian reservation over which the state had assumed civil and criminal jurisdiction under P.L. 280. It should be noted that the state court did not sustain imposition of the tax upon on-reservation sales by an enrolled reservation Indian to another enrolled reservation Indian.

¹² These states were granted criminal jurisdiction (and civil in the case of New York) over some or all reservations by statutes predating Public Law 280. See 54 Stat. 249 (1940), 62 Stat. 1161 (1948), and 25 U.S.C. §§ 232-233.

tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own government." *McClanahan v. Arizona State Tax Commission*, *supra*.

The very recent decision of the Supreme Court last month in *United States v. Mazurie* reemphasizes the governmental status and powers of Indian tribes, even as they extend to non-Indians within reservation boundaries.

The case arose when a non-Indian saloon keeper on privately-owned fee land within the Wind River Indian Reservation in Wyoming was denied a tribal liquor license, after a hearing, by the Shoshone and Arapahoe Tribes. Operation of liquor establishments on reservations without a tribal license is (except in a "non-Indian community") a federal criminal offense. 18 U.S.C. §§ 1154, 1161. The tavern owner and his wife were charged and convicted for operating in defiance of the tribal ordinance and federal statute. The Tenth Circuit Court of Appeals had reversed their conviction, in part by reasoning that Congress could not delegate to an Indian tribe the power to regulate a liquor business on fee land within the reservation because a tribe is "a private, voluntary organization, which is obviously not a governmental agency." The Court of Appeals reasoned that Indian tribes "have the usual powers of an owner of land" and governmental authority over their own members. But it concluded that:

"The tribal members are citizens of the United States. It is difficult to see how such an association of citizens could exercise any degree of governmental authority or sovereignty over other citizens who do not belong, and who cannot participate in any way in the tribal organization. The situation is in no way comparable to a city, county, or special district under state laws. There cannot be such a separate "nation" of United States citizens within the boundaries of the United States which has any authority, other than as landowners, over individuals who are excluded as members."

The Supreme Court reversed this analysis by the Tenth Circuit in a unanimous opinion by Mr. Justice Rehnquist. The Supreme Court dismissed the holding of the Tenth Circuit that an Indian tribe is a "voluntary association" which cannot exercise governmental authority over citizens who do not belong and cannot participate in tribal government. The Court cited *Worcester v. Georgia* for the proposition "that Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory," and held that tribes are a "separate people" with power to regulate their internal and social relations, including those with non-Indians. While the Court declined to discuss the precise extent of the Tribe's governmental authority it did clearly confirm the existence of its governmental power. The Court also relied on *Williams v. Lee*, 358 U.S. 217 (1959), for the proposition that the jurisdiction of tribal courts can extend over non-Indians where transactions on a reservation with Indians are concerned.

Mr. Chairman, while I believe the existence of tribal governmental authority is thus clear, from these cases—virtually an unbroken line of Supreme Court decisions stretching over 150 years—the precise scope of tribal power is not as clear. This is particularly true as respects tribal authority over non-Indians living on fee land within the reservations. Originally, virtually all reservations were for the exclusive use of the tribes—by treaty, non-Indians were excluded except for a few federal employees and licensed traders. This policy was changed for some reservations pursuant to the General Allotment Act of 1887 (24 Stat. 388), 25 U.S.C. § 331 *et seq.* This statute authorized opening up reservations to settlement by non-Indians by permitting the President to divide a reservation into parcels which would then be allotted in trust to the individual members of the tribe.

The land not needed for the allotments was either declared "surplus" to be made available for sale to non-Indians or otherwise opened for settlement under the homestead laws. In practice, the most significant impact of the allotment scheme was the loss to the Indians of over 90 million acres of land which they had held prior to the Allotment Act. Much of this land, however, remains within reservation boundaries, for the courts have in a number of recent cases determined that opening and patenting lands to non-Indians does not generally alter the boundaries of the reservation as a federal political entity. For example, in the state of South Dakota, most of the land on most reservations is owned by non-Indians. Fifty percent (or 1,402,960 acres) of the land on the Cheyenne River Reservation is owned by non-Indians. At the Lower Brule and Rosebud Reservations, about 71% (or 253,700 acres and 2,294,000 acres respectively) of land are owned by non-Indians. About 42 percent (or 1,138,200 acres) of the land on Pine Ridge is owned by non-Indians. Standing Rock, Sisseton and Yankton have even higher proportions of non-Indian owned land at 87 percent (or 2,038,950 acres),

89 percent (or 797,383 acres) and 92 percent (or 393,343 acres) respectively. On the Flandreau Reservation, only 10% of the land (188 acres) is owned by non-Indians.¹³ I hasten to add, Mr. Chairman, that this situation does not prevail to this extent in most other states where there are Indian reservations. It does exist on three reservations in Nebraska (Winnebago, Santee Sioux and Omaha, where 76%, 66% and 91% of the land is owned by non-Indians), on two reservations in North Dakota (Turtle Mountain—93% and Devil's Lake—79%), on two Montana reservations (Flathead—81% and Fort Peck—60%) two Idaho Reservations (Nez Perce—88% and Coeur D'Alene—80%), one reservation in Oregon (Umatilla—65%) and some smaller reservations in western Washington. But over 90% of reservation lands at all reservations in the Southwest is in Indian trust ownership. This is also true for many reservations in the Plains States and Northwest—Yakima, Fort Hall, Warm Springs, Northern Cheyenne, Fort Belknap, and Southern Ute to name some.

The Allotment policy was ended with the passage of the Indian Reorganization Act of 1934 (25 U.S.C. §§ 461-479), which also provided for the restoration of "surplus" lands which had not been patented to non-Indians and empowered the Secretary of the Interior to acquire other lands for Indians. Nevertheless, this reversal in government policy still left open vexatious questions of jurisdiction by the triad of governments which may have some authority over some persons, occurrences and even crimes within reservation boundaries. On reservations where there are substantial non-Indian landholdings, uncertainty over which government has jurisdiction does on occasion lead to gaps in law enforcement, confusion over what law governs, and has produced some social frustration and tensions. One of the most important and probably most difficult questions of Indian law and policy, in my opinion, is to provide for a satisfactory and amicable resolution of this situation.

This troubled situation has been accompanied by a growing trend on the part of tribal governments to assert their political authority over reservation territory, rather than just over tribal members. This phenomenon has led to a number of lawsuits. The principles to emerge from this litigation are to some extent unclear, but the courts tended to confirm tribal authority over reservation lands, as in the recent Supreme Court decision in *Mazurie*, which appears to reaffirm tribal court jurisdiction over at least non-criminal transactions between non-Indians and Indians. Other cases have also supported tribal jurisdiction over non-Indians in civil controversies.¹⁴

The cases have not usually dealt with situations involving tribal criminal jurisdiction over non-Indians, although a recent district court decision, presently on appeal, affirms this jurisdiction over a misdemeanor committed on trust land.¹⁵

¹³ This acreage approximation for the Indian reservations in South Dakota, including the Standing Rock Reservation which is located in both North and South Dakota, was mathematically computed by a member of my legal staff based on statistics of tribal and individually allotted land taken from the Annual Report on Indian Lands and Income from Surface and Mineral Leases, BIA, Office of Trust Responsibility, June 30, 1973.

¹⁴ In *Buster v. Wright*, 135 Fed. 947 (8th Cir. 1905), the Court of Appeals for the Eighth Circuit upheld the power of the Creek Nation to tax non-Indians residing within its borders, stating that "[t]he authority of the Creek Nation to prescribe the terms upon which non-citizens may transact business within its borders did not have its origin in an act of Congress, treaty, or agreement of the United States. It was one of the inherent and essential attributes of its original sovereignty. It was a natural right of the people, indispensable to its autonomy as a distinct tribe or nation, and it must remain an attribute of its government until by the agreement of the nation itself or by the superior power of the republic it is taken from it." 135 Fed. at 950.

To the same effect are the holdings in *Iron Crow v. Oglala Sioux Tribe*, *supra*, 231 F. 2d 89, 94, 98-99 (8th Cir. 1956), and *Barta v. Oglala Sioux Tribe*, 259 F. 2d 553 (8th Cir. 1958), in which tribal authority to impose taxes on non-members was similarly upheld. See also *Morris v. Hitchcock*, 194 U.S. 334 (1904).

In *Williams v. Lee*, 358 U.S. 217 (1959), the Supreme Court, in considering whether a state court had jurisdiction over a controversy between an Indian and a non-Indian stemming from activities engaged in within reservation boundaries, explicitly acknowledged the authority of tribal courts with respect to such matters: "There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there." 358 U.S. at 223.

Similarly, *Quechan Tribe v. Rowe*, 350 F. Supp. 106 (S.D. California, 1973), affirmed the right of a tribal game warden to seize hunting equipment from non-Indians within the reservation who had not obtained tribal hunting licenses. Pointing in a contrary direction are statements in *Dodge v. Nakai*, 298 F. Supp. 17 (D. Arizona, 1968), in which a supposed lack of tribal jurisdiction was made one basis for declining to require a non-Indian to exhaust tribal remedies before invoking federal jurisdiction under the Indian Civil Rights Act, 25 U.S.C. §§ 1301 *et seq.*; and *United States v. Pollman*, 364 F. Supp. 995 (D. Mont., 1973), in which the purported absence of such jurisdiction was cited in explanation of the enactment of a federal statute making it an offense to enter an Indian reservation for purposes of hunting or fishing without tribal permission.

¹⁵ *Oliphant v. Schlei*, — F. Supp. — (W.D. Wash. 1974), appeal docketed, No. 74-2154, 9th Cir., April 30, 1974.

The Department of the Interior has withdrawn an earlier opinion of the Solicitor holding that no tribes have any criminal jurisdiction over nonmembers. This subject is under ongoing review within the Department, and will be carefully assessed as the law develops and becomes clearer in this area. At the present time I do not believe that the Department is prepared to support tribal criminal jurisdiction over non-Indians on fee land within open portions of reservations.

Speaking just for myself, let me suggest that the cases in the past decade confirming Indian tribes as part of the family of American governments—like cases such as Pyramid Lake involving Indian water rights and the “Boldt decision” in Washington protecting treaty fishing rights—are part of a just and growing assertion by Indians of their treaty and other special rights. They feel, with considerable justification, that these rights have too long been unnoticed and unenforced. As in the early years of the civil rights movement, they have turned in large measure to the courts for redress—for these are legal rights, and judicial enforcement and resolution of them is far more orderly and desirable than any recurrence of self-help and violence.

During the past decade, Indians have generally been vindicated in the courts—and particularly by the Supreme Court—with respect to their water rights, hunting and fishing rights, and their special status as governmental entities. Any process such as this, however, invariably upsets the long continued expectations of the non-Indian people around them and social relationships that have grown up over many years. For example, as you know Mr. Chairman, the United States has brought suit in Nevada to have decreed a water right for Pyramid Lake. This suit is essential to preserve the lake and to enforce the *Winters* doctrine water rights of the Pyramid Lake Paiute tribe. If the government and the tribe are successful, however, the case may possibly curtail long established uses of water by non-Indians irrigators. Predictably, that result will be intensely upsetting to them, just as the “Boldt decision” produced great distress on the part of commercial and sports fishermen in western Washington.

Similarly, I can well appreciate that court decisions favoring tribal sovereignty have greatly upset non-Indian residents of open reservations. Many of these persons or their ancestors moved onto these reservations decades ago, sometimes at federal urging, and at a time when the powers of tribes as separate governments were thought to be waning. Now, these non-Indian residents are faced with possible regulation by a government over which they have no political control.

The impassioned distress of the non-Indian people at this turn of events is understandable and resolution of the conflicts that have occurred is extremely important. In my own personal view, however, and I stress that I offer this suggestion for the committee's information only and not as a position of the Department—the Congress has some options available to it other than simply retracting the gains in tribal jurisdiction which tribes have won in the courts. These options I do not see as being mutually exclusive. Some tribal control over the reservation is very important to the Indian—for this reason. The original promise of the reservation was in large part as a home for a distinct culture, separate from the dominant, non-Indian society. To fulfill this promise the existence of a separate governmental entity with some real powers becomes imperative, for without such a government, a culture invariably atrophies.

One possible approach is providing increased funding and increasingly high standards for the operations of tribal government—a process Congress began with the Civil Rights Act of 1968 and carried on with the Indian Self-Determination Act (S. 1017) earlier this year. Tribal courts, administrative agencies and law enforcement activities could be particularly strengthened. States could reach intergovernmental agreements with the tribes, providing for full faith and credit, for court judgments, cross-deputization, extradition, and similar matters. If there is greater confidence that tribal procedures are fair, there may be less anxiety about the functioning of tribal government.

Another option is to consider that there are vast differences among reservations. There are large contiguous non-Indian landholdings on some; others are mostly trust land with scattered tracts in non-Indian ownership. Different rules could be developed for different situations, or for criminal as distinct from civil matters. This could be done by legislation, or by a process of intergovernmental compacts between the United States, the states and the tribes.

Another possibility is that, in any areas of the reservation where tribal jurisdiction is thought inappropriate, a more extensive federal authority could be pro-

vided. In that way, a comprehensive control over the entire reservation could be established, and jurisdiction need not rely on land surveys.

Mr. Chairman, I appreciate your invitation to present my personal comments on the legal issues before you today. I agree with you and with the committee that the administration of justice on Indian reservations is a matter of the most critical importance, and I will be glad to assist the committee in any way it thinks desirable.

Mr. CHAMBERS. One thing we did in the statement is to look into the amount of land that is owned by non-Indians on Indian reservations.

We went through this quickly and it may not be completely accurate, although I think it is accurate. We found that, for example, in your State of South Dakota, there is a greater incidence of non-Indian landholdings pursuant to the Allotment Act on reservations than in almost any other State. I think, in fact, more than any other State.

Our figures indicate that about half of the land on the Cheyenne River Reservation, for example, is owned by non-Indians. At the Lower Brule, about 71 percent. The figure is less for Pine Ridge, about 42 percent, but that is still over 1 million acres of land, Standing Rock is 87 percent.

The only reservation where there is not almost half, or more than half, of the land owned by non-Indians is Flandreau, but that situation doesn't prevail in most of the other States, except for Nebraska.

Over 90 percent of reservation lands on all reservations I am familiar with in the Southwest is in Indian trust ownership. This is also true for many reservations in the Plains States and the Northwest—Yakima, Fort Hall, Fort Belknap, and Southern Ute, to name some.

So, I think this particular problem of law enforcement and of jurisdiction—the two interrelated problems you are considering—and the problems of substantial non-Indian landholdings, are probably restricted to perhaps 20 reservations around the country.

There are different kinds of reservations. On those reservations where you do have a lot of non-Indians there has been uncertainty as between Indians and non-Indians, the tribes, State and Federal governments, as to who has jurisdiction over what types of matters. You almost have to do a land survey to find out. I think this is an important and complex problem and we are looking forward to assisting you in any way we can in looking into that.

I think the other thing that has been happening, in the natural resources area, also in the tribal sovereignty area, is there has been a growing insistence by Indian tribes and Indians in endorsing their treaty rights and other special rights.

I guess I see a certain analogy between the civil rights movement in the 50's and early 60's when the minority group went, to start with, principally to court, and that seems justifiable for these are legal questions.

The Indian groups have felt for too long these kinds of treaty rights and special rights have not been enforced. They have been largely successful in going to court, both with respect to the protection of natural resources and in the tribal sovereignty area. I think particularly with the Mazurie case, about which there has been some testimony this morning, and which I go into in my memorandum in greater detail, the court did basically confirm a civil jurisdiction by the Indian tribe over non-Indians on fee land. That case related to liquor.

There was a special statute that provided for some tribal power in this area. The court did go a little out of its way in a unanimous opinion to dismiss the idea that had been articulated in the lower court opinion in the 10th circuit, that after all, Indian tribes are just voluntary associations and have power only over their members. The Supreme Court wrote a strong opinion reaffirming 150 years of Supreme Court law that the status of Indian tribes is different. They are a separate government. I think it is important.

Obviously, when you have a situation like this where a group goes into court and alters longstanding legal relationships and longstanding practices in a particular area, that is going to upset the non-Indian groups, and understandably so, that are involved here.

For example, the United States brought a lawsuit in the Pyramid Lake case against 14,000 people in Nevada, non-Indian irrigators to preserve Indian Lake, which is the chief asset of the reservation. That lawsuit, if we are successful, may well end up disrupting longstanding irrigation use and the economies that have built up in the Nevada area. There is always going to be distress when this kind of thing happens.

I think what is particularly productive, speaking for myself—and I reiterate that I am not here as a Department witness in this hearings—that there are options available to the Congress in dealing with this difficult and complex situation other than retracting the legal victories that the Indians have won, and I think, are winning in the civil jurisdiction area in court.

I think the courts, generally when they have been presented with this problem, have tended to at least confirm civil jurisdiction of Indians over a territory, over their reservation territory. In the criminal area it is not as clear. There have been fewer cases. But there is a recent Federal district court decision in Washington confirming jurisdiction by an Indian tribe over non-Indians on trust land. The U.S. Department of Justice participated in that case and espoused the Indian position with respect to the trust land situation. And roughly simultaneously with that case, the solicitor withdrew an earlier opinion in the Department of Interior that held that Indian tribes did not have any criminal jurisdiction over any non-Indians within their reservation. That is something currently undergoing reevaluation in the Department.

Senator ABOUREZK. There is no opinion in the Department of Interior with respect to tribal jurisdiction over non-Indians?

Mr. CHAMBERS. Not at the present time, no.

Senator ABOUREZK. The one you had you have withdrawn?

Mr. CHAMBERS. We no longer think the cases confirm that. It is my own opinion, and I stated this in my statement, that I don't anticipate that the Department of Interior will issue a statement saying all Indian tribes have jurisdiction over all non-Indians on fee land on reservations.

I think probably the Department will proceed more on a case-by-case basis and see how the law develops and formulate a policy as the law develops in this area. So, I would not anticipate a completely opposite opinion being issued.

But I appreciate the approach that you have taken in this law enforcement position, a very promising one from my own standpoint.

There are options other than just retracting tribal jurisdiction. One is to strengthen the tribal governments in the way you have suggested and the ways that Mr. Wayne Ducheneaux was putting forth.

I kind of thought when he mentioned them that our minds were running together because it was right here in my statement, too the idea of agreements, intergovernmental agreements can be made between the States and the counties and the Indian tribes, recognizing tribal sovereignty and providing for mutual full faith and credit between the tribal court and State jurisdictions, providing for extradition.

Senator ABOUREZK. That is a kind of thing we will have to try and include in the jurisdiction legislation that we are now preparing. I think I am very glad for Wayne Ducheneaux's suggestions along those lines. I think something like that ought to be included.

Mr. CHAMBERS. There is another option which my colleague and co-witness, Dennis Ickes, has put forward which is to the extent basically—Dennis could summarize it better than I, but I think it is accurate to state it this way—that to the extent it is felt that tribal jurisdiction isn't appropriate, if Congress were to feel that way, it could proceed to extend the Federal jurisdiction, for Congress does have plenary power in this area that has not been fully exercised, rather than bring in the State jurisdiction. Because, I think that is very important for the whole self-determination concept. The promise of the treaties was that the Indian tribes could maintain, if they chose to do so, a separate culture on this reservation territory. Unless they have a government that can function and govern, control what is going on on at least large portions of that territory, there is a danger that without that government the culture itself might atrophy.

Dennis suggested that approach and we have been looking into it, and will look into it. One option would be for Federal jurisdiction to be expanded rather than State jurisdiction. Other options would be to treat different reservations differently, to have different rules for criminal than for civil matters, or different rules for some States rather than others.

So, I think there are a lot of options before you. I appreciate you inviting me here to talk about some of them.

Senator ABOUREZK. I want to thank you for coming up here for what turned out to be an excellent memorandum which will go into the record, which I want to read very carefully.

Would you provide for the record an estimate of the annual financial burden that the State of South Dakota would have to carry if that State were to assume jurisdiction over Indian reservations for civil and criminal matters.

Mr. CHAMBERS. Public Law 280, jurisdiction?

Senator ABOUREZK. Yes. In other words, if the State of South Dakota assumed that the tribes would give consent to the State to assume jurisdiction, what would that cost the State every year?

Mr. CHAMBERS. All right. I hope I will have the help of my colleagues in the BIA. We will be glad to get you the information.

[Subsequent to the hearing the BIA submitted the following information:]

Hon. JAMES G. ABOUREZK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ABOUREZK: In response to your request at the recent hearing held by the Indian Sub-committee of the Senate Interior and Insular Affairs Committee, we are pleased to provide the following information:

1. The attached report relates to the incident at the "121" Club in McLaughlin, South Dakota, involving a BIA police officer having a temporary appointment. The owner of the Club, we understand did not wish to file charges; but as you note the individual involved was discharged from his position;

2. In its request to the Office of Management and Budget, the Bureau requested supplemental funding to cover the following cost items, which totaled \$1,500,000;

(a) Meet expenses generated by increased law enforcement activity rates in Aberdeen and Navajo areas (\$493,000);

(b) Provision of enforcement services not previously required of the Bureau but now required due to (a) retrocession of state jurisdiction, (b) expansion of existing jurisdiction, (c) BIA funding to continue tribal programs, and (d) turnback of tribal contract programs (\$825,000);

(c) Operation of new facilities at Red Lake, Lower Brule, Sisseton and Yankton (\$107,000); and

(d) Continuation of LEAA projects for which funding is expiring at Truxton Canyon and Sisseton (\$75,000).

3. At present, the Bureau has not finalized its plans for meeting the need requested in the supplemental appropriation through a reprogramming process. However, the following constitutes the plan being favorably considered at the present time.

(A) Although the total need presented is considered essential, certain portions of the request cannot be considered more essential than ongoing programs underway in the field at the tribal level. Therefore, some items would be deferred, others reduced in scope and only the most essential and pressing needs would be met through reprogramming.

This could be accomplished as follows:

1. Proposals that can be deferred to fiscal year 1976 rather than taking from ongoing programs:

Retrocession of State jurisdictions—Nevada, \$148,000; Natt Lake, \$35,000	\$183, 000
Funding of programs now funded by tribes—Cheyenne River Sioux, \$172,000; northern Cheyenne, \$42,000	214, 000
Operation of 3 new facilities constructed with LEAA funds	65, 000
LEAA funded projects	75, 000
Total	537, 000

2. Proposed additional needs which are now being met but at less than adequate levels:

Expanded jurisdictions/Standing Rock, \$99,000; Sisseton, \$50,000; Great Lakes \$32,000; western Washington \$42,000	\$223, 000
Resumption of contracts from tribes—Yankton, \$50,000; Fort Berthold, \$5,000	55, 000
Increased activity rate	150, 000
Total	428, 000

3. Items to be funded through reprogramming:

Increased activity rates (mostly Aberdeen area)	\$343, 000
Nevada retrocession (4th quarter)	150, 000
Operation of Red Lake facility	42, 000
Total	535, 000
Less pay increase funds not previously assured	189, 000
Minimum estimate for reprogramming	346, 000

The bottom line need of \$346,000 could be met by withholding funds in the amount of \$350,000 at the Central Office level which have not as yet been fed into the pipeline to the field.

Any amounts beyond \$350,000 will have to be recalled from the field, and since tribal entities are becoming increasingly knowledgeable of fund availability, would cause considerable discontent. In our opinion, such a course of action is not feasible since it would cause the Administration to receive more criticism than a further deferral to FY 1976 of Law and Order items.

4. It is believed that the following chart illustrates the amount of funding at a minimum which would be required by the State of South Dakota if it was to take over the responsibility of law enforcement now being met by the Indian Tribes of South Dakota and the Bureau of Indian Affairs. This, of course, does not reflect costs absorbed by the Justice Department and the U.S. Courts.

[In thousands]

Tribe	Fiscal year—		
	1975 BIA funding	1975 tribal funding	1975 tribal BIA/tribal
Cheyenne River.....	\$56.7	\$157.7	\$214.4
Pine Ridge.....	341.7	85.3	427.0
Rosebud.....	205.3	0	205.3
Yankton.....	24.1	14.2	38.3
Sisseton.....	50.1	0	50.1
Standing Rock.....	244.7	31.7	276.4
Crow Creek.....	123.5	10.9	134.4
Lower Brule.....	73.6	87.4	161.0
Total.....	1,119.7	387.6	1,506.9

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Fort Yates, N.Dak., February 25, 1975.

Special Report—Matter of Misconduct of B.I.A. Police Officer Ralph Taken Alive.

BRIEF OF CASE

This report relates to the misconduct of Ralph Taken Alive, Police Officer assigned to the McLaughlin district, and who was employed on a temporary appointment by the Bureau of Indian Affairs since March 3, 1974. It is alleged that on February 16, 1975 Ralph Taken Alive was intoxicated in the American Legion Club at McLaughlin, South Dakota and that he did shoot tear gas into the bar when patrons were present.

FACTS

On February 16, 1975, at 12:45 a.m., Henry Gayton, Jr. advised the police department that he had received a telephonic report from McLaughlin, South Dakota, stating Officer Ralph Taken Alive was using tear gas in the "121" Club in McLaughlin. Gayton requested that an officer be detailed to investigate the report.

At 1:18 a.m., Officer Sylvan Ireland advised that he investigated the report by attempting to interview persons at the bar. Ireland relates Daniel Has Horns informed him that Ralph Taken Alive had been in the club and had attempted to fight a non-Indian, and further, that he shot some tear gas in the bar area.

Don Demarrias advised Officer Ireland that Taken Alive did not start a fight, but that a non-Indian had tried to throw Taken Alive out of the club.

Dorothy Weist, Manager of the club, advised that on February 16, 1975 she went on duty at 10:30 p.m. She relates she saw Jack Taken Alive at the bar and he was drunk, so she ordered Gene Stoeckert, the bar tender, not to serve him any more drinks.

At this time, Ralph and Myrna Taken Alive entered, and Myrna went into the rest room. Ralph followed her into the rest room, so the bar tender asked Ralph

to leave and to take Jack with him. The trio left through the rear entrance, and a few minutes later, entered through the main door. When Gene Stoeckert attempted to push them out, he and Ralph exchanged blows. Dorothy Weist stated she grabbed a can of mace and shot at Ralph and Jack Taken Alive. After getting them outside, Mrs. Weist heard Ralph say "I've got a gun."

Mrs. Weist states she saw Daniel Has Horns calling on the telephone for the Fort Yates Police Department.

Mrs. Weist advises that during the scuffle at the door, Jack Taken Alive hit Gene Stoeckert. Mrs. Weist stated there were about thirty-five patrons in the bar when the altercation took place and that she had some difficulty getting them to leave.

Mrs. Weist advises she was shot in the face by Ralph Taken Alive with tear gas and that she was treated by Dr. Noel Smith at the McLaughlin Hospital.

Attached is the letter of termination dated February 19, 1975 to Officer Taken Alive by Captain James Molash.

HENRY J. GAYTON, Jr.,
Agency Special Officer.

Memorandum

To: Ralph Taken Alive, B.I.A. Policeman
From: Supervisory Policeman
Subject: Misconduct and Termination of Services

This is to inform you that your employment as a police officer with this department will terminate as of February 22, 1975. The reason for this action is because you were involved in a fight at Club 121 in McLaughlin, South Dakota on February 16, 1975.

I am sure that you are aware that officers of this department are not to enter liquor establishments on the reservation for socializing purposes, as you were cautioned before in references to an incident of the Western Bar in McLaughlin.

If you have any questions regarding this memorandum, please feel free to come to my office, and I will be happy to discuss them with you.

Approved:

JAMES R. MOLASH,
Supervisory Policeman.
HENRY J. GAYTON, Jr.
Agency Special Officer.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
Washington, D.C., March 11, 1975.

HON. JAMES ABOUREZK:
*U.S. Senate,
Washington, D.C.*

DEAR SENATOR ABOUREZK: During the hearings which you held on Indian Justice reform on February 24, 1975, you requested information from the Solicitor's Office as to the financial burden which the State of South Dakota would have to assume if it were to assume civil and criminal jurisdiction over all the Indian reservations in the State. According to Gene Suarez of the Bureau of Indian Affairs, a rough estimation of this cost for 1975 would be 1.6 million.

If I can be of further assistance, please do not hesitate to call.

Sincerely yours,

PAMELA MIRIAM SAYAD,
Attorney, Division of Indian Affairs.

Senator ABOUREZK. What is the immediate status of the BIA supplemental appropriations request for law enforcement programs?

Mr. KRENZKE. We were advised last week by OMB that our supplemental request to OBM had been denied.

Senator ABOUREZK. And how much was that supplemental request?

Mr. KRENZKE. \$1.5 million.

Senator ABOUREZK. What was that to be used for?

Mr. KRENZKE. It was a supplemental request for fiscal year 1975. It related to extraordinary costs which the Bureau needed to provide for as a result of a good deal of militant activity in South Dakota last summer.

It related to the expansion of the jurisdiction in many areas of the Dakotas. It relates to the retrocession of jurisdiction in Nevada, in Minnesota, and in the State of Michigan, also. It also provided for the Bureau of Indian Affairs to assume the responsibility for funding the operating costs of some LEAA projects which are being completed, including detention-type facilities.

Senator ABOUREZK. If, as you say, the OMB is denied that supplemental request and will not ask for it as an administration item, what program would suffer as a result of that \$1.5 million being made up out of other funds? Who is going to suffer as a result of that?

Mr. KRENZKE. We are in the process of reviewing that at the present time.

Senator ABOUREZK. As to who is going to suffer?

Mr. KRENZKE. Right. Tentatively, it looks like it will be a combination of not fully meeting some of these needs which we felt were necessary when we requested the \$1.5 million and taking relatively small sums of dollars from a number of programs to meet the most urgent of these needs as we see them.

Senator ABOUREZK. Would let you me know just as soon as you find out who is going to suffer from that shortage? I would like to know who you are going to pick out.

Second, would you provide me with the items that comprise that \$1.5 million so I can offer an amendment to the appropriations bill and try to get that reinstated?

Mr. KRENZKE. I think that we have that with us today.

Senator ABOUREZK. Would you provide that to me personally so I can get that to the Appropriations Committee? One of the staff will pick it up from you.

Public Law 93-638 contains a provision to authorize grants to tribes for the purpose of strengthening tribal governments. In view of the fact that the strength of the tribal court system is highly relevant to the strength of the government itself, could some of that money be used to improve tribal judicial systems?

Mr. KRENZKE. We certainly believe it could. However, at the present time there are no additional appropriations attached to Public Law 638 as far as I know.

Senator ABOUREZK. Have any formal studies been undertaken to compare reservation law enforcement and justice with adjacent rural areas?

Ms. MEISSNER. The only one I am aware of is the one Mr. Suarez' unit at the BIA has done which gives a good comparison of the crime data. We have not undertaken any.

Senator ABOUREZK. Are you talking about this book?

Ms. MEISSNER. Yes.

Senator ABOUREZK. It does have a comparison of adjacent areas?

Ms. MEISSNER. Yes.

Mr. SUAREZ. It makes a comparison of the rates of crime by population, rural versus reservation. It goes into extensive detail.

Senator ABOUREZK. Great.

Mr. SUAREZ. In the back of the study is the cost, for the Aberdeen area, that covers North and South Dakota for law enforcement programs. You could take that figure which would give you an idea of what it would cost the State of South Dakota to pick up what we are currently doing there. It is about \$3.8 million.

Senator ABOUREZK. Thank you very much.

I would like to express my thanks to this panel of witnesses. Dennis, did you have anything.

Mr. ICKES. No.

Senator ABOUREZK. You had a longing look like you wanted me to speak to you.

Mr. ICKES. I would like to compliment the Senator on the interest he has shown in this problem. I have attended some of the meetings you have held in the Midwest and, of course, this meeting, and I think it is a sincere effort being made by Congress to look at this problem.

I wanted to offer to you, Senator, and to your staff, full cooperation of my office in assisting you in resolving this particular problem.

Senator ABOUREZK. I want to thank you very much. Perhaps this is a good time to tell you now that I went into the House of Representatives in 1971 and one of the first public meetings in the 4 years since I have been in office, I have been holding public meetings around South Dakota wherein I schedule and stand up in front of my constituency out there in nearly every community in the State.

One of the first town meetings I ever held was in Pine Ridge. And that was the first time that I had a request to improve reservation law enforcement. I know it is going to blow your mind when I tell you who made the request, his name was Russell Means.

From then on, every time I have gone to the reservation or talked to, I have been asked to do something about improving law enforcement. In turn, I have asked the Bureau of Indian Affairs, as Gene Suarez can testify, with the results as we have seen, that nearly nothing has happened so far as improving law enforcement and judicial machinery out there.

So, I am grateful for all of the witnesses today who came to testify and offer their views, and the administration as well as the tribal witnesses.

I am sorry some of the witnesses who had asked to testify did not show up. I am hopeful we can get their views in some other way. Whoever burned the witness list today, I would like to ask them to stop it while we have discussion about law enforcement going on.

Thank you very much.

The hearing is adjourned.

[Whereupon, at 1 p.m. the hearing was adjourned.]

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